

# CURRENT PUBLIC LANDS AND FORESTS BILLS

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

ON

**S. 1546**

**S. 2830**

**S. 2798**

**S. 2963**

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APRIL 21, 2010



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## **CURRENT PUBLIC LANDS AND FORESTS BILLS**

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**WEDNESDAY, APRIL 21, 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 3:01 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Mark Udall presiding.

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

Senator UDALL. The 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. 1546, the Box Elder Utah Land Conveyance Act; S. 2798, the National Forest Insect and Disease Emergency Act of 2009; S. 2830, a bill to amend the Surface Mining Control and Reclamation Act of 1977; and S. 2963, the Cathedral Rock and Horse Heaven Wilderness Act of 2010.

At this point, I would like to ask that the first panel come forward and take their seats. I know on behalf of Senator Barrasso, I would like to welcome the Honorable Harris Sherman, the Under Secretary of Agriculture for Natural Resources and Environment, and Glenda Owens, Deputy Director of the Office of Surface Mining Reclamation Enforcement at the Department of Interior.

I know that we have a long list of bills to go through. So I would like to ask you to summarize your oral remarks, and we will include all of your written testimony in the record. But before we do that, I have a statement I would like to make.

I know, Senator Barrasso, you have got a tight schedule. Would you like to make your statement first?

Senator BARRASSO. No. I will go right after you.

Senator UDALL. Let me make my statement, and then I will turn to the Senator from Wyoming, and then we will hear the testimony from our 2 witnesses.

I want to thank the chairman for holding this hearing today. It is important to me and my State. First, I want to focus on S. 2798, the National Forest Insect and Disease Emergency Act of 2009, which I introduced with Senator Risch.

S. 2798 will address a real and serious threat to our Nation's forests and communities, especially in our western States. This bipartisan bill will provide additional tools and resources to the Forest

Service and, to a lesser degree, to the Bureau of Land Management to help address the deaths of millions of acres of trees due to insect infestations.

This bill is in direct response to an especially pronounced epidemic of bark beetles in western States. This epidemic is creating serious concerns in our communities regarding our forested regions, the recreational economies of these areas, and water supplies and infrastructures that exist on these lands.

Today, various parts of the U.S., but especially western States, continue to experience unnaturally large-scale infestations of bark beetles and other insects that have resulted from past policies and warming climate conditions. Recent periods of drought and population growth on land adjacent to Forest Service land has increased the risk of lost lives and property due to wildfire and other impacts from millions of acres killed by insects and disease.

In addition, this large-scale forest condition creates threats to hundreds of miles of power transmission lines and dozens of communicationsites, hundreds of miles of roads and trails, thousands of campgrounds and recreationsites, and community water supplies in forested headwaters. This sort of threat is akin to an emergency like any other natural phenomenon, and I believe we need to treat it as such.

That is what this bipartisan bill does. It creates emergency insect areas. I should say insect emergency areas. That is more properly the way it is in the bill. That is areas defined by the Forest Service as experiencing significant tree mortality, resulting in increased wildfire threats and risks to people and infrastructure from falling dead trees.

Within these areas, the Forest Service would be directed to provide priority treatment to reduce these threats. It would also provide additional funding sources and incentives to remove trees and other woody biomass and convert it to energy use and streamline the National Environmental Policy Act expedited environmental analysis of the treatment work.

The bill also authorizes the use of good neighbor authority, which allows the Forest Service to contract with State foresters to enter Forest Service lands and implement treatments to reduce threats next to homes and private property whose owners have, in many cases, removed dead trees and performed treatments on their own property adjacent to Forest Service land.

Finally, it makes permanent and authorizes and makes more effective the successful stewardship contracting tool that allows the Forest Service to fashion agreements to perform treatment for trees like insect-killed trees that may not have high commercial value.

Since the bill was introduced, I have heard from many interests affected by the current epidemic and others who are interested in forest health. This includes support from the Northwest Colorado Council of Governments, composed of the counties in Colorado at ground zero of the current epidemic; Lake County in Colorado; the National Ski Area Association; the Colorado Timber Industry Association; and from the Society of American Foresters. All of these entities appreciate the need to address this issue, and I thank them for this support.

Let me turn to the second bill that I believe is an important one on our agenda, and that is S. 2830. That is Senator Bingaman's bill. I support it. It is a bill that would ensure States could use abandoned mine land payments for both coal and non-coal reclamation.

I am disappointed that the Interior Department currently limits these funds to coal reclamation. Colorado has many abandoned hard rock mine sites that must be cleaned up, and the Interior Department should be working with us to make this job easier, not creating roadblocks. I am pleased to be a co-sponsor of Senator Bingaman's bill, which would fix this problem.

Again, I want to thank the chairman, who I think will join us, for holding this important hearing. I look forward to hearing from today's witnesses.

With that, I want to turn to my good friend and colleague from Wyoming, Senator Barrasso.

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

Senator BARRASSO. Thank you very much, Chairman Udall. That sounds good. Thank you for being here to chair this important hearing.

I want to welcome each of our witnesses today. I want to make a couple of comments on 2 of the bills before us this afternoon, and one is the bill that Senator Udall and Senator Risch have introduced, S. 2798, to reduce catastrophic fire risk by treating insect and disease infestation in the western United States.

This bill takes many important steps to mitigate effects of the bark beetle infestation, and that bark beetle infestation truly is devastating the Intermountain West. We are facing an unprecedented forest health epidemic. Three and a half million acres of forest in Wyoming are infested by bark beetles. The infestation totals 17.5 million acres across the West.

This situation is presenting many challenges. Two hundred sixty communities in Wyoming are considered at risk for wildland fire. We face erosion and habitat loss. Roads and infrastructure need to be protected. All uses of the land will have to change, including grazing, hunting, fishing, and energy. This is a natural disaster unlike any we have faced before, and the administration must respond accordingly.

I am deeply disappointed to see that the President's budget does not allocate a single penny to addressing this multi-State emergency. We need to discuss that issue today. I want to know how the administration is going to meet its responsibility to the people of my State and the entire Intermountain West.

Funding is not our only challenge in the face of this infestation. We must also address long-term efficient management of our forests. In the face of this emergency, the administration must ignore politics and focus on results.

The Forest Service should utilize all available management authorities that will mitigate bark beetle effects. There is no time for political proposals to eliminate timber sales, road improvements, or any of the agency's management tools. It is important that we discuss these issues today as well.

So I want to thank the sponsors of S. 2798 for their hard work on this. The bill gives the Forest Service important tools to manage the bark beetle infestation. The provisions to prioritize insect mitigation are important, and I am glad to see the good neighbor authority within the bill. S. 2798 recognizes that we are facing a forest health disaster in the West, and we must respond with the same intensity that we would to other natural disasters.

Now the other bill that I would like to comment on is S. 2830, sponsored by Chairman Bingaman. The Department is prohibiting the use of AML funds for hard rock mine remediation. I want to work with Senators Bingaman, Bennett, and Udall to address this issue that is so important to New Mexico, Utah, and Colorado.

I hope the committee will help ensure Wyoming and other certified States and tribes continue also to receive the AML money that we are owed. The department has proposed undoing the 2006 bipartisan agreement that paid back States like Wyoming and Montana, as well as the Indian tribes like the Crow and the Navajo Nation.

This agreement was reached after more than a decade of bipartisan negotiation. The money is owed from taxes levied on coal production within our States and tribal lands. The President and Secretary Salazar both supported this agreement when they were members of the U.S. Senate. The administration and Congress must stand by this commitment.

So thank you, Mr. Chairman. I look forward to the hearing.

Senator UDALL. Thank you, Senator Barrasso.

Let me turn to the chairman of the full committee, who has joined us, who is the author of one of the bills we are considering today. Senator Bingaman is recognized.

**STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM  
NEW MEXICO**

The CHAIRMAN. Thank you very much, Chairman Udall and Senator Barrasso.

Let me just talk a minute about the bill that Senator Barrasso was just speaking of. S. 2830 is an important bill that I have introduced and that Senator Udall is co-sponsoring with me.

I do think since the initial enactment of the Surface Mining Control and Reclamation Act, States and tribes have been able to use a portion of the abandoned mine land funds to reclaim abandoned high-priority non-coal mines. Unfortunately, the department has construed amendments that we enacted in 2006 to preclude this. So this legislation would fix that problem.

It does not increase the amount of funding being distributed to any State. It merely reinstates the interpretation of the law that had been in effect since 1977. So I hope very much we can enact this, and I appreciate you including it on the list of bills that you are considering today.

Senator UDALL. Thank you, Chairman Bingaman.

I will extend those thanks to Chairman Wyden of the subcommittee. I am proud to be a co-sponsor of this important bill.

Let me propose that we do this. Secretary Sherman, we would like to hear from you, if we might, and then I know Senator Bar-

rasso has a busy schedule. I would like to extend to him the courtesy to be able to ask you some questions.

Then, Ms. Owens, if that is acceptable to you, after the Senator has asked his questions, we will then turn to your testimony.

So, Secretary Harris, it is wonderful to see you here. As a fellow Coloradan, I want you to know how proud we are of the service you are extending to your Nation. You come with a long biography, a long involvement in all of these important public lands issues, and I know we are well served as Americans by your service.

So thank you for being here, and the floor is yours. We look forward to your testimony.

**STATEMENT OF HARRIS SHERMAN, UNDER SECRETARY OF AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE**

Mr. SHERMAN. Thank you very much, Chairman Udall.

My name is Harris Sherman. I am the Under Secretary at USDA for Natural Resources and the Environment. It is a pleasure to be here.

I wanted to offer testimony on 2 bills. One is your bill, Chairman Udall, S. 2798, and I wanted to briefly address S. 1546. I will start with S. 1546 because I just have a few comments.

S. 1546 involves a conveyance of about 31.5 acres of Forest Service land to the Town of Mantua, Utah. We are clearly willing to work with the Town of Mantua to effectuate this conveyance, but we want to do so under the terms of the Townsite Act, which requires us to receive fair market value for the conveyance.

Our concern with the bill is that it does not provide for fair market value to Forest Service, which runs counter to well-established, longstanding policies of the department and the Forest Service. Under the Independent Offices Appropriation Act and FLPMA, we are precluded from engaging in conveyances without fair market value.

So I simply want to say that we stand ready, willing, and able to work with the town to effectuate a conveyance, but it needs to be under the Townsite Act, unless Congress decides to proceed in a different direction.

With that said, let me then turn to the National Forest Insect and Disease Emergency Act of 2009. At the outset, I want to say that the Obama administration supports the goals and the principles of this act.

As Senator Barrasso has said, there are 12 States today that are facing an epidemic with the bark beetle. As he has said, this affects some 17 million acres of land in the West. This is a vast, complicated, challenging situation for many reasons.

No. 1, it represents significant risk to hundreds, if not thousands, of communities in the West to the threat of wildfire. This is wildfire that occurs usually within the wildland-urban interface area, but there is no question that these communities need to be prepared for this kind of an eventuality.

No. 2, it challenges the protection of our watersheds and challenges the protection of our water supplies, both for communities within the WUI and for communities outside of these areas. We need to take steps to protect our intake structures and our res-

ervoirs. We need to take steps to protect water quality issues. Millions of Americans get their drinking water from the national forests.

Last, but not least, how do we protect the public from falling trees that can jeopardize roadways, rights-of-ways, trails, campgrounds, ski trails, and so forth? This is a significant and emerging problem. It is very hard to explain the magnitude of this problem, but I want to try to use an example that my colleagues in the Forest Service in Region 2 provided us.

If you take 3 national forests in southern Wyoming and in northern Colorado, there are 3.5 million acres of dead trees in these 3 national forests. If you assume roughly 100 trees, 100 dead trees per acre, and you assume that once a tree dies, it will take approximately 5 to 10 years for that tree to fall over, we are looking since the late 1990s at a situation where the trees are now starting to fall over.

If you just do the math for these 3 national forests out of 155 national forests that we have in this country, we are looking at somewhere in the neighborhood, on average, of 100,000 trees a day, or 1 million trees a day falling in just these 3 national forests. Most of this will occur in the backcountry. But a certain percentage will occur where there are people, there are recreational activities taking place, where there are power lines and roads, and so forth.

So this is a significant problem that we need to address. We applaud you for this bill. This bill, first of all, deals with this situation on a comprehensive regional basis. We applaud that because it transcends individual States, and it deals with a collective problem across the western United States.

It allows the Secretary to prioritize with the Governors these critical needs. It reaffirms our existing authority to perform necessary restoration work. Importantly, as you mentioned, Chairman Udall, it adds certain new authority so that we can proceed with permanent stewardship contracts, a very important tool. As you mentioned, Senator Barrasso, it allows us to expand on this good neighbor effort with State governments that we want to fully take advantage of.

It also allows the Federal Government to make direct payments to private land owners to deal with thinning issues and restoration issues, which we think will be helpful. It fine-tunes the National Environmental Policy Act to address emergency designated areas.

The administration does have some concerns with certain aspects of this legislation, and we wish to work with the staff of the committee, staffs of Senator Udall and Senator Risch, and others to address these limited number of concerns we have. We will do so, hopefully, in the coming weeks.

So, in conclusion, let me say this. There is a real problem that demands attention. We must deal with this on a landscape-scale basis. We must bring together the stakeholders in a collaborative fashion so we are working together, as opposed to litigating these issues.

We need to maximize our use of biomass materials for wood products and for energy-related products. We must keep our timber industry strong because we need our timber industry to help us do

the vital work that is necessary and to provide jobs for rural communities throughout the West.

We must have a responsive and efficient National Environmental Policy Act process that responds to this crisis. We must provide the necessary budgetary resources to address this problem because it is a very large, complicated problem.

We feel this legislation is a positive, progressive step in the right direction, and we are looking forward to working with you on it.

Thank you very much.

[The prepared statements of Mr. Sherman follow:]

PREPARED STATEMENTS OF HARRIS SHERMAN, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

S. 1546

Mr. Chairman and members of the subcommittee, thank you for the opportunity today to present the Department's view on S. 1546. I am Harris Sherman, USDA Under Secretary for Natural Resources and Environment. S. 1546 would direct the Secretary of Agriculture to convey, without consideration, to the Town of Mantua, Utah, all right, title and interest of the United States in approximately 31.5 acres of National Forest System lands in Box Elder County, Utah. These lands are currently part of the Unita-Wasatch-Cache National Forest. The conveyance would be conditioned upon the town using the conveyed land for public purposes. If the land is ever used for other than public purposes, title would revert to the United States at the election of the Secretary. While the Department does not object to these lands being made available for conveyance to Mantua, Utah, we object to the terms of the bill.

The 31.5 acres in question comprise two irregular peninsula-shaped parcels which are surrounded on three sides by private land. The parcels are encumbered with several outstanding rights in Brigham City including three pipelines, a right to construct a pipeline, and use of four springs. A survey would be required to be made in advance of any proposed conveyance.

We oppose the bill because it does not require market value consideration for the conveyance and because of the reverter provisions.

A general public policy is that the Federal Government receive market value consideration for the conveyance or use of its property. This policy is well established in law including the Independent Offices Appropriation Act (31 U.S.C. 9701), section 102(9) of the Federal Land Policy and Management Act (43 U.S.C. 1701), as well as the numerous land exchange authorities.

There are also practical problems with S. 1546. The land is required to revert to the Secretary in the event it is used for other than "public purposes." However, public purposes are not defined and could cover a vast array of land uses from municipal waste treatment, low income housing, to industrial parks. This lack of public purpose definition could draw a future Secretary of Agriculture into future local land use controversies. Therefore, we oppose the Reversionary Clause listed in Section 2 (e).

There are laws on the books which would accommodate the municipal needs of the Town of Mantua, Utah. Specifically, the Townsite Act of July 31, 1958 (16 U.S.C. 478a) was enacted to permit established communities to acquire up to 640 acres of National Forest land to serve indigenous community objectives. Consistent with the aforementioned public policy, the Townsite Act requires payment to the United States of the fair market value of the land. Similarly, the lands could be made available by exchange for equal value consideration.

S. 2798

Mr. Chairman, Members of the Committee, thank you for the opportunity to share the Administration's views on S. 2798, the National Forests Insect and Disease Emergency Act of 2009.

I would like to express my appreciation to Senators Udall and Risch for their leadership in addressing insect and disease issues on millions of acres affecting thousands of communities across the western United States. This legislation: authorizes the Secretary of Agriculture to designate emergency areas in order to mitigate hazards posed by large scale infestations of beetles and insects; directs that increased resources are available within each emergency area to mitigate hazards; and makes existing good neighbor and stewardship contracting authorities perma-

ment. The legislation directs the Secretary to give priority consideration to the removal of hazardous fuels and hazard trees, the restoration of forest health, and the delivery of assistance to state and local governments, Indian tribes, and private landowners in the designated emergency areas. The legislation provides for the application of the Healthy Forest Restoration Act environmental documentation process and a pre-decisional administrative review process to provide for a more rapid response to address these issues. We believe the pathway forward to restore these areas is to work in close coordination with states and private landowners.

#### CURRENT CHALLENGES

Outbreaks of bark beetles, which are occurring in numerous forest ecosystems across western North America, are the largest in recorded history.<sup>1</sup> Although western forests have experienced regular infestations throughout their history, the current outbreaks are notable for their intensity, extensive range, and simultaneous occurrence in multiple ecosystems. During the last 10 years there have been 17 million acres affected by bark beetles in the interior west (CO, MT, ID, WY, UT, SD)<sup>2</sup>

The primary difference between previous beetle outbreaks and the current epidemic is that more people now live, work and recreate throughout the lodgepole pine ecosystem. Removing dead trees and other fuels can effectively reduce the risk of fire damage at a local scale, e.g., in the immediate vicinity of a home or community, although the effectiveness of removing dead trees to reduce fire risk at the forest landscape scale is less clear.<sup>3</sup> Communities surrounded by dead trees are at increased risk of wildfire and damage from falling trees. In addition, the forest products industry that is vital to the efficient removal of hazardous fuels and hazard trees has been hard hit by the down turn in the market. These important differences along with the scale of infestations require new and innovative approaches that reduce safety threats to people and property while ensuring that the restored forests are diverse and resilient to change across the landscape.

#### PUBLIC HAZARDS

Dead trees pose several significant hazards to public safety including increased risk of catastrophic fire, threats to water supplies as a result of catastrophic fire, and hazard trees along utility corridors, roads, trails, and other infrastructure.

#### *Wildfire Implications*

The relationship between bark beetle outbreaks and subsequent fire at the larger landscape scale is not yet fully understood<sup>4</sup>. Outbreaks in recent years have provided scientists with excellent opportunities to conduct studies and gather new information about the role of bark beetles in western forests, but more research remains to be done.

At the stand level, both crown and surface fire hazards<sup>5</sup> change over time after a bark beetle outbreak<sup>6</sup>. The fire hazard in the crown is high in the period one to two years after pine trees die because the dead needles are retained in the tree's crown, stocking the canopy with dry, fine fuels that can ignite quickly during weather conditions conducive to fire.<sup>7</sup> Importantly, in the grey phase, characterized by

<sup>1</sup>Bentz, et. al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

<sup>2</sup>USDA, Forest Service—Forest Health Protection Aerial Survey Data. 2009

<sup>3</sup>see Dominik Kulakowski, Thomas T. Veblen (2007) EFFECT OF PRIOR DISTURBANCES ON THE EXTENT AND SEVERITY OF WILDFIRE IN COLORADO SUBALPINE FORESTS. Ecology: Vol. 88, No. 3.

<sup>4</sup>Bentz, et. al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

<sup>5</sup>The term Fire hazard as used here refers specifically to the state of fuels in a given stand— independent of variables such as temperature, wind, and precipitation that influence fuel moisture content and fire occurrence.

<sup>6</sup>Bentz, et. al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

<sup>7</sup>Page, W.; Jenkins, M. 2007. Mountain pine beetle-induced changes to selected lodgepole pine fuel complexes within the intermountain region. Forest Science 53(4):507-518.

Page, W.; Jenkins, M. 2007. Predicted Fire Behavior in Selected Mountain Pine Beetle— Infested Lodgepole Pine. Forest Science 53(6):662-674

Hawkes, B. 2008. Effects of the mountain pine beetle on fuels and fire behaviour. In Mountain Pine Beetle: From Lessons Learned to Community-based Solutions Conference Proceedings, June 10-11, 2008. BC Journal of Ecosystems and Management 9(3):77-83. [http://www.forrex.org/publications/jem/ISS49/vol19\\_no3\\_MPBconference.pdf](http://www.forrex.org/publications/jem/ISS49/vol19_no3_MPBconference.pdf)

Jenkins, M., Hebertson E., Page, W. and Jorgensen C. 2008 Bark beetles, fuels, fires and implications for forest management in the Intermountain West. Forest Ecology and Management 254 (2008) 16-34

dead standing trees with no needles, the risk of ignition and the risk of crown fires actually go down, and that lasts for 10 to 20 years after the tree is attacked.<sup>8</sup> As the trees lose their needles, the fire risk in the crowns decreases because there is less fuel. The fire hazard at the surface increases as dead trees begin to fall and create a heavy fuel bed with young trees growing up through the tangle of down logs<sup>9</sup>. In dry, hot, windy weather conditions, fires burning in heavy surface fuels can move fast, burn extremely hot, and be very resistant to control<sup>10</sup>. An additional significant concern is the safety of our firefighters. Large areas of fallen trees limit escape routes for crews, severely limiting our ability to deploy firefighters in these areas<sup>11</sup>.

A wildfire burning in the heavy fuels close to the soil can literally bake the soil, sterilizing it and sometimes leaving a water-repellent surface that sheds rain, and leads to severe gully erosion, debris flows into reservoirs and streams, and flood damage. We experienced these effects after the Hayman Fire in central Colorado in 2002. After the Buffalo Creek Fire in 1996, Strontia Springs Reservoir filled with sediment that washed off burned areas after heavy rains, and the South Platte River was running brown with mud.

#### *Hazard Trees*

In certain areas, dead trees are an immediate hazard because of the increased risk they may fall and damage property or hurt people. For example, in the beetle-infested area of northern Colorado and southern Wyoming, over 900 miles of trails and 3500 miles of roads are lined with dead trees that are at high risk of falling. There are hazard trees on more than 21,000 acres of developed recreation sites—such as campgrounds and picnic areas. Power lines and communication sites are also threatened by hazard trees. There are more than six thousand acres of right-of-way corridors for authorized transmission and distribution lines in the area affected by bark beetle infestation in northern Colorado and southern Wyoming.<sup>12</sup> Forest Service resource specialists have estimated this represents over 1000 miles of transmission lines. When dead trees within and bordering on transmission corridors fall on lines they can start wildfires and disrupt power supplies to cities and towns.

#### CURRENT EFFORTS

No effective treatment for suppression of large-scale pine beetle outbreaks currently exists, but the agencies within the Department are approaching this problem in a variety of ways based upon their individual missions, policies, laws, and management mandates under which they operate. On National Forests that have been affected by bark beetle, we are actively engaged in numerous on-the-ground efforts to address the insect and disease outbreak that this legislation targets. In the areas hardest hit by bark beetles, we modified our 2010 budget allocations to focus resources to mitigate the outbreak.

When Secretary Vilsack articulated his vision for America's forests, he underscored the overriding importance of forest restoration by calling for a commitment to restoration across landscapes—an all-lands approach to forest restoration—by working closely with other landowners to encourage collaborative solutions. Restoring our forests includes mitigating the effects of severe infestations of insects and disease by removing dead trees where appropriate and working across boundaries by cooperating with the states, other governments, and private landowners. Much of the woody material to be removed can be used as a sustainable energy source for our country and other uses such as pellets for wood stoves, house logs, furniture, and decorative items.

As Forest Service Chief, Tom Tidwell, recently stated in testimony on the President's budget, the agency will integrate traditional timber activities predominately within the context of larger restoration objectives, focusing on priority watersheds in most need of stewardship and restoration work, pursuing forest products when they support watershed, wildlife, and restoration goals. We will also greatly expand

<sup>8</sup> see Dominik Kulakowski, Thomas T. Veblen (2007) EFFECT OF PRIOR DISTURBANCES ON THE EXTENT AND SEVERITY OF WILDFIRE IN COLORADO SUBALPINE FORESTS. Ecology: Vol. 88, No. 3, pp. 759-769.

<sup>9</sup> Bentz, et. al. (2009) Bark Beetle Outbreaks in Western North America: Causes and Consequences, Bark Beetle Symposium, Snowbird, Utah.

<sup>10</sup> Barrows, J. 1951. Fire Behavior in the Northern Rocky Mountains. Station Paper No. 29. USDA Forest Service, Northern Rocky Mountain Forest and Range Experiment Station, Missoula MT. 133 pages

<sup>11</sup> Alexander, M and Stam, J. 2003. Safety Alert for Wildland Firefighters: Fuel Conditions in Spruce Beetle Killed Forest of Alaska. Fire Management Today 63 (2) 25.

<sup>12</sup> Figure derived from data in the Forest Service Special-Use Database System, Region 2.

the use of stewardship contracting authority to meet restoration objectives and build in longer-term contracting certainty for communities and the private sector to invest in the kind of forest restoration infrastructure we will need to achieve these objectives. In this regard and to the extent that S. 2798 is implemented using a sciencebased and collaborative approach, engaging multiple and diverse stakeholders, this bill will be more consistent with the aspirations and goals of the Administration concerning ecological forest restoration and rural job development.

The Forest Service recognizes the impact a depressed market is having on the forest products industry in much of the West. The forest products industry is a primary partner in accomplishing work integral to sustaining and restoring the health, diversity, and productivity of the National Forest System, and can help us in our work to mitigate the risks of insect and disease. To accomplish the work of effectively and efficiently restoring National Forest System lands to a healthy condition, we need skilled forestry operators, vibrant rural communities, and a healthy forest products industry.

Our experience indicates that an expanded use of the objections process under the Healthy Forest Restoration Act tends to increase direct dialogue between the agency and stakeholders and often results in resolution of concerns before a decision is made, and thus a better, more informed decision results.

#### CONCERNS

I look forward to further dialogue with Senators Udall and Risch and the committee to consider the following suggestions, concerns and other minor technical input into sections of the legislation.

##### *Biomass*

We appreciate the emphasis on biomass production and use to promote a sustainable and renewable energy source for our country that may lead to greater diversification of the wood products markets and the development of new businesses and jobs. However, we would like to work with the committee to understand and address the relationship between the bill and the Clean Air Act and existing programs and policies.

##### *Stewardship Contracting*

We appreciate and value the recognition of the need for stewardship contracting authority as a tool to achieve forest restoration goals on the national forests. We have serious concerns with the methods used to address the challenges of awarding long-term stewardship contracts, and do not believe the provisions in Section 7(a) (1) and (3) is necessary or desirable. The administration has the flexibility to address relevant requirements and is convening a multiagency working group to identify and assess options for issues related to stewardship contracting, and we look forward to apprising the Committee on progress.

##### *National Environmental Policy Act Provisions*

We are concerned about the applicability provisions under Section 4 emergency designations. We are concerned that not subjecting emergency designations to applicable laws and regulations would give the impression that the bill circumvents important environmental protections and we would like to work with you to ensure environmental protections remain. We would also like to work with you to clarify the nature and effect of designating insect and disease emergency areas to better understand applicability to other laws and regulations. Similarly, the Administration has significant concerns about the overly broad waiver contained in Section 4(c)(6)(c).

While the bill recognizes NEPA's applicability to treatment decisions, it does so by expanding the use of the Healthy Forest Restoration Act (HFRA) provisions for NEPA analysis and documentation. The bill needs to provide for an effective NEPA process and include HFRA protections for old-growth forest stands, threatened and endangered species, and other resources. We would like to work with you to ensure that management actions will be consistent with land management plans and consistent with prohibitions and restrictions on removing vegetation from Federal land including roadless areas.

##### *Good Neighbor Authority*

As the Departments of Interior and Agriculture testified before this subcommittee in October of 2009, we believe our Nation's forests and public lands face forest health challenges that must be addressed across diverse land ownerships. In these times of limited resources, it is important to leverage workforce and technical capacities and develop partnerships for forest restoration across all lands, while ensuring

compliance with existing applicable laws and regulations. However, we believe further study and analysis is needed to better understand the interplay of needs, state and federal contracting and labor law, and regulation before expansion of the authority is authorized. For example, where federal or applicable state contracts are awarded, we would seek to use competition, consistent with current statutory requirements and the President's March 4, 2009 Memorandum on Government Contracting. We look forward to working with the committee, States, and federal agencies to make suggestions to improve the bill in a manner that meets the needs of key stakeholders.

I want to again thank Senators Udall and Risch for their leadership and commitment to our national forests, their surrounding communities and the forest products infrastructure. I look forward to working with the Senators the committee, and all interested stakeholders on this bill and to help ensure sustainable communities and provide the best land stewardship for our national forests.

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

Senator UDALL. Thank you, Secretary Sherman.

Let me turn to Senator Barrasso for comments and questions he might have.

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

First, Ms. Owens, thank you for your patience in this. The committee meeting was moved back a bit, and that has bumped into other schedules. So, thank you.

Thank you, Mr. Sherman, for the comments that you made. Obviously, you understand the scope and the magnitude of the problem, and I understand you recently flew over Wyoming to specifically assess the bark beetle damage in our forests. So, you have seen firsthand the things that I see every weekend when I return to Wyoming.

For just a second, could you go over the statistic that you talked about that since the 1990s with the dying of the trees, and they are starting to fall over now, and I think you said 100 dead trees per acre? Because it really is an astonishing number, and I want to make sure that everyone really has a chance to focus on that number.

Mr. SHERMAN. Yes. I would be happy to.

In these 3 national forests, we have 3.5 million acres of dead trees. Once these trees are dead, within a 10-year period, most of these trees will fall over. Since the late 1990s, this epidemic has been in full force and effect, and many of these trees are now starting to fall.

We estimate conservatively that every day in these 3 national forests, 100,000 trees on average will fall. Every 10 days, a million trees will fall. The implications of this for campgrounds, roads, rights-of-ways, ski trails, you name it, there are going to be some very, very significant challenges for us.

Senator BARRASSO. So that over the summer, we are looking at 10 million trees falling between Wyoming and Colorado, in those 3 national forests. So, obviously, you know what we are facing. The numbers are astonishingly large.

Then I look at the budgeting. The things that you say in terms of the commitment and the concerns are the ones that are important for all of America to hear. In fiscal year 2010, the Department of Agriculture provided substantial funding to Wyoming, Colorado, South Dakota, Montana, and Idaho, for bark beetle mitigation. We know that the infestation has now doubled in the last year.

But the President's budget doesn't include bark beetle funding for the Intermountain West in fiscal year 2011. That, to us, doesn't seem to make sense, having heard all of the words that you have spoken about commitment. How does the department intend to meet this responsibility? Can you explain for us a little bit so we can understand how you plan to deal with this?

Mr. SHERMAN. I would be happy to do so, Senator.

The President's 2011 budget contains multiple items, which will address the bark beetle situation. Let me just briefly explain what some of those are.

Three hundred fifty million dollars approximately is set aside for fuel reduction activities. Seven hundred million dollars is set aside for this integrated resource restoration category we have, which clearly will impart focus on the bark beetle epidemic in the West. We are spending well over \$1 billion on fire preparation and fire suppression in our Forest Service system, and a portion of that clearly will be devoted to these areas in the West where fire occurs in bark beetle areas.

Through other agencies in USDA, we will be allocating money for the harvesting, collection, transportation, and storage of biomass materials through the so-called BCAP program. Through the Rural Development Agency at USDA, we will be making opportunities available for new experiments with biomass facilities in communities in various parts of the country.

We are working very hard on these collaborative efforts throughout the country and our planning efforts, all of these things are focused in part on dealing with the bark beetle challenges that we have.

Senator BARRASSO. When you would take a look at those, the commitment of finances, is that new money or is that money that is going to come from within current Forest Service programs? It makes me think are you going to have to cut other programs that are necessary throughout the Forest Service.

Mr. SHERMAN. We will have to review very carefully how we allocate priorities here. I am pleased to say in the President's budget, the Forest Service was one of a few agencies that actually had an increase in its budget, rather than a decrease. I think that is a recognition within the White House and in the department that these problems are very real, and we have got to devote a lot of attention to them.

So the Forest Service will look each year at how it is going to allocate its budget between regions. But clearly, the bark beetle issue throughout these 12 States will be an important priority.

Senator BARRASSO. In terms of the way that those decisions are made, it seemed that the agency barely escaped closing campgrounds recently to pay for bark beetle mitigation. So I don't know what you are expecting for this year. Will you have to close campgrounds? Because that is a concern for folks throughout the tourism industry and folks that live in these communities. Is that an area that you would have to cut?

Or are you going to be closing down certain areas of the forest? I am just trying to see what kind of thought process you are engaged in with this because there are limited resources.

Mr. SHERMAN. One of the activities we are undertaking now is to convene a national incident management team with Region 2 to look at the magnitude of this problem and what the budgetary needs will be to address all of the issues that you just mentioned.

I think it is too early to say exactly what we will be doing, but we are going to have to very thoughtfully prioritize the needs. This is expensive work. When you are providing for maintaining roads and campgrounds and water facilities and so forth, there are a lot of resources that needs to go into these activities.

So we will be working on this, but we also have other needs throughout the forest system nationally that have to be addressed. But we would be happy to report back to you as we develop this strategy for the coming fiscal year.

Senator BARRASSO. Because if a million trees are falling every 10 days, and we want to give considerable thought to that, but the bark beetle infestation is continuing. Over the next year, we are looking at another doubling of acreage. The impacts are going to be such that the faster that these decisions can be made, the more helpful it is going to be, which gets into the issue of management.

I have concerns about timber sale programs and how that will play into this. You talked about the importance of the economy, timber, and proper harvesting. Can you give us some of your thoughts on that?

Mr. SHERMAN. We are making every effort to look at the panoply of steps that need to be taken to address moving forward effectively with timber sales. The stewardship contract is a very important tool that we want to develop because it deals with not only the removal of material, but it deals with the restoration of these areas as well. We are trying to take a holistic approach at this.

We need to make sure on the front end that we have got collaborative efforts working because that is a key to moving forward on these various contracts in timber sales. We need to make sure the NEPA process is working efficiently because that is an important step that we have to go through. But if we can go through it quickly and efficiently, that will help us to get to where we need to be. We need to work with the timber industry to develop new markets for these materials and hopefully develop the biofuels industry that goes with it.

Senator BARRASSO. I have a pie chart here that I will ask you to take a quick look at, if you would, Mr. Sherman. This talks about the Forest Service's review for 2009, which found that about 59 percent of Forest Service lands, or about 113 million acres, are at high risk for forest fires. Meanwhile, less than 15 percent of the agency's acreage has been treated to reduce the wildfire risk in the past decade.

The chart says, of that 15 percent, 1 percent of the treatment was conducted under stewardship contracts, about 11 percent from timber sales, prescribed burns about 33 percent, and then wildfire over half, the other 55 percent. So can you talk a little bit about how this track record supports the Department's proposal with the elimination of timber sales and relies more on some of the other ways?

Mr. SHERMAN. Let me be clear that we are not eliminating timber sales. Stewardship contracts are a new tool that supplements

timber sales. I think we will be moving more and more toward the use of stewardship contracts, but timber sales are an avenue that will always be available to the Forest Service as we go forward. It will be right now a blend of the 2.

But I hope that that composite figure of 15 percent will increase, but it will be a combination of stewardship contracts and timber sales.

Senator BARRASSO. There are some concerns with the stewardship contracts in terms of bonding requirements, the length of contracts, and I don't know if that discussion is taking place in the agency.

Mr. SHERMAN. It is. In fact, this bill will help to address a number of the challenges and the issues that we have with stewardship contracts. We are hoping to fine-tune this tool so it can be a more effective one going forward.

Senator BARRASSO. All right. I think I have used plenty of time, Mr. Chairman. Perhaps I could submit to Mr. Sherman some additional questions in writing?

Ms. Owens, thank you once again for your patience. I appreciate it very much.

Thank you, Mr. Chairman.

Senator UDALL. Thank you, Senator Barrasso.

I look forward to working with you as we move forward. Secretary Sherman has surfaced some important concerns and opportunities.

We have been joined by the real chairman of the subcommittee, Senator Wyden. Senator Wyden, I don't know if you would like to make any opening remarks or direct questions at Secretary Sherman?

Senator WYDEN. Senator Udall, thank you very much, and I am sorry that I was in the Budget Committee and was detained. I am very appreciative of your stepping in, Senator Udall.

Let me also thank Mr. Sherman. I know that he and his team are spending a lot of time and effort working with us on trying to address our eastside forestry bill, and I think we are making a lot of headway. Very appreciative of the kind comments that you have made, Mr. Sherman, to folks in Oregon, and I thank you for it.

The question I had involves briefly S. 2963. I guess this will be a question for both of our administration witnesses. This is the bill that would consolidate a splintered ownership of land in our home State and protect almost 16,500 acres of new wilderness along the lower John Day River.

We have put the proposal together the Oregon way, lots of folks at the local level developing the proposal from the ground up. It has won the endorsement of private land owners in the region, all of the affected counties—Wasco, Wheeler, and Jefferson—a variety of recreational interests, and the conservation community.

In addition to protecting what is a stunning landscape and providing 2 consolidated blocks of Federal land that will provide a host of recreational activities—hunting and fishing and rafting and camping—the legislation would also solve the management challenges faced by both private land owners and the BLM in dealing with land ownership that I think you charitably could call a check-board.

With the equal-value land exchanges included in the bill, public lands would be consolidated into 2 new wilderness areas. This would enhance public safety, improve land management, and increase public access. So there are lots of benefits here—nearly 5 miles of new river access for the public, 16,500 acres of protected wildland, better management for private land owners and the public agencies, and important habitat protections.

So we also note that it has come to our attention that the addition of some parcels of Forest Service/BLM land through the exchange might enable the addition of another 2,381 acres of wilderness, and certainly, we would like the views of the agencies on this today.

I will close by way of a point that Mr. Sherman and I have talked about, and I have appreciated his input. It is obvious that our wildlands are playing an increasingly important role in the economic development of Oregon and the West. That is particularly true in traditionally rural areas east of the Cascades in my home State.

Visitors come from thousands of miles away to hike, fish, raft, and hunt. In our desert wilderness, the Cathedral Rock and Horse Heaven wilderness areas are going to make sure that there is permanent protection for the landscape for generations to come. That is good news.

For the 2 administration witnesses at the Forest Service and the BLM, as you could tell from my opening statement, I have learned of some additional parcels of Forest Service and BLM land that might make sense to add to the land exchanges. These lands face the same management challenges as the parcels proposed for exchange in the bill and, if possible, would allow for another 2,381 acres of wilderness to be added.

Now, we have shared maps with your agencies on the proposed additions, and I would like to have some sense of how you all at the Forest Service and the BLM would look at it with respect to the prospect of the possible additional lands.

Mr. Sherman.

Mr. SHERMAN. Thank you, Chairman.

The Forest Service has not yet had an opportunity to evaluate either Parcel F1 or F2. But I would say that we have no objection to either parcel being identified for exchange with BLM, with the proviso that the environmental documentation necessary through NEPA would be completed prior to these parcels going out of Federal ownership. But other than that, we have no reason to object to what is being proposed here.

Senator WYDEN. Very good. Let me ask your colleague at the witness table, several colleagues at the witness table.

Mr. ROBERSON. Good afternoon, Senator. Chairman Udall, Chairman Wyden.

I would like to say that on behalf of BLM, and I know that Ms. Owens will be giving our testimony momentarily, but I have reviewed your April 13 letter. I have looked at those parcels. I have looked at your proposal for Cathedral Rock and the Horse Heaven wilderness area proposals, and we see that these areas would be a great asset to the wilderness preservation system.

The amendments that you have supplied to us, the additional areas, we would be happy to work with you on that. We have shared this information with our Oregon office, and the folks there in north central Oregon are going to be willing to work on the ground cooperatively with your office on this exchange.

Senator WYDEN. Thank you. Thank you both.

Mr. Sherman, we will spare you any questions on the eastside program. Obviously, we think this is exactly the kind of program that was in the budget for priority consideration as it relates to hazardous fuels reduction efforts, and we appreciate your ongoing attention.

I consider this my top priority for the rural part of our State. We think that this is going to be a breakthrough in forestry policy in the West because when we get this nailed down on the east side, save those remaining mills, I think a lot of the lessons that will be learned can be applied to the west side of Oregon.

After decades of timber wars, decades of gridlock in the forest, working in cooperation with you all, I think that on our watch we can go a long way to ending them. So very encouraged about the efforts underway.

Thank you for your comments today.

Senator Udall, I know you are on a tight time constraint. So why don't you just hold forth? I think you have manned the subcommittee well.

Senator UDALL. That means a lot to hear that from you, Chairman Wyden. You have piqued my curiosity as well about your talk about your eastern side of the Cascades mill projects. I am going to take a look at what you are proposing.

In Colorado, we are down to one mill. We have a couple of wood pellet mills in addition, but they have had some trouble recently with market downturns. But we do need to have a sustainable industry—

Senator WYDEN. Let us work together.

Senator UDALL. I would like to do that.

Senator WYDEN. Good.

Senator UDALL. I am certainly—if the names of these 2 proposed wilderness areas, Cathedral Rock and Horse Heaven, are any indication of the quality—

Senator WYDEN. Those are Udall-like places.

Senator UDALL. Those are excellent.

Ms. Owens, you have been patient. I want to thank you for taking the time to come up to Capitol Hill and testify to the subcommittee. Please, the floor is yours. If you can keep your remarks in that 5-minute timeframe, that would be very helpful. But the floor is yours. Welcome.

**STATEMENT OF GLENDA OWENS, DEPUTY DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR**

Ms. OWENS. Thank you. Thank you, Senator Udall and Chairman Wyden.

Thanks for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement on S. 2830. We look for-

ward to working with you on matters relating to the Surface Mining Control and Reclamation Act of 1977.

While we share your concern about abandoned non-coal mine sites, we cannot support S. 2830. It is inconsistent with the administration's goal of ensuring reclamation of high-priority abandoned coal sites before the reclamation fee terminates in 2021. We believe AML funds should be devoted to the highest-priority coal problems.

Through SMCRA, Congress established OSM for 2 purposes. First, to ensure that the Nation's coal mines operate in a manner that protects citizens and the environment during mining and to restore the land to beneficial use following mining. Second, to implement an Abandoned Mine Land program to address the hazards and environmental degradation created by 2 centuries of weakly regulated coal mining that occurred before SMCRA's enactment.

Title IV of SMCRA established an AML reclamation program funded by a fee assessed on each ton of coal produced. The fees collected have been placed in the Abandoned Mine Reclamation Fund. The money has been used primarily to reclaim lands and waters adversely impacted by mining conducted before the enactment of SMCRA and to mitigate the adverse impacts of mining on individuals and communities.

Since 2006, section 411(h)(1) of SMCRA has precluded uncertified States and tribes from using funds that they receive under that section for non-coal reclamation. S. 2830 would amend SMCRA to allow uncertified States and tribes to use funds received under section 411(h)(1) for reclamation activities on non-coal mine sites.

The Department's proposed fiscal year 2011 budget, in addition to reducing spending, proposes to limit the use of AML moneys to high-priority coal reclamation projects. The Department, therefore, cannot support S. 2830 because it is inconsistent with the 2011 budget proposal.

While we recognize the dangers that abandoned hard rock mines pose, the current challenging economic conditions, coupled with this administration's commitment to fiscal responsibility, heighten the need for AML funds to be focused on the core objective of high-priority coal reclamation problems.

However, because we share your concern about non-coal abandoned mine sites, OSM would be happy to work with the Congress and this committee to explore other options to address non-coal abandoned mine reclamation problems.

I am also submitting testimony for the record on behalf of the Bureau of Land Management regarding S. 2963, the Cathedral Rock and Horse Heaven Wilderness Act. The Department of the Interior supports the goals of S. 2963, which provides for the establishment of 2 new wilderness areas along the John Day River in Oregon.

The bill also provides for the exchange of lands between 3 private parties and the Federal Government, which, if completed, would allow the consolidation of fragmented land patterns and provide for 2 wilderness areas. Should the land exchanges be completed, the additional land would greatly enhance the wilderness quality and manageability of the 2 areas proposed for wilderness.

The BLM would like to work with you, Senator Wyden, and the committee on several concerns and to make adjustments to the legislation as discussed in the bureau's full testimony.

I am accompanied by Ed Roberson, who has already spoken. He is an Assistant Director for BLM, and he will be happy to answer any questions that you might have on S. 2963.

Again, thank you for the opportunity to appear before the subcommittee today and testify on these bills. I look forward to working with you to ensure that the Nation's abandoned mine lands are adequately reclaimed.

[The prepared statements of Ms. Owens follow:]

PREPARED STATEMENTS OF GLENDA OWENS, DEPUTY DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

S. 2830

Mister Chairman and Members of the Subcommittee, thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSM) regarding S. 2830. I look forward to working with you on matters relating to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

S. 2830 would allow noncertified states and tribes to use certain SMCRA payments for non-coal reclamation. While we recognize the importance of addressing hardrock mine hazards, we cannot support this bill because it is inconsistent with the President's FY 2011 Budget proposal to limit SMCRA payments to high priority coal sites.

The FY 2011 President's Budget includes a proposal to focus AML funds on the high priority coal reclamation sites in order to ensure that the most hazardous issues can be addressed before the AML fee expires. In addition to terminating unrestricted payments to certified states and tribes, the proposal will require all non-certified states to use their funding only for high priority coal reclamation projects.

BACKGROUND

Through SMCRA, Congress established OSM for two basic purposes. First, to ensure that the Nation's coal mines operate in a manner that protects citizens and the environment during mining operations and to restore the land to beneficial use following mining. Second, to implement an Abandoned Mine Land (AML) program to address the hazards and environmental degradation created by two centuries of weakly regulated coal mining that occurred before SMCRA's enactment.

Title IV of SMCRA created an AML reclamation program funded by a reclamation fee assessed on each ton of coal produced. The fees collected have been placed in the Abandoned Mine Reclamation Fund (Fund). OSM, either directly or through grants to States and Indian tribes with approved AML reclamation plans under SMCRA, has been using the Fund primarily to reclaim lands and waters adversely impacted by coal mining conducted before the enactment of SMCRA and to mitigate the adverse impacts of mining on individuals and communities. Also, since FY1996, an amount equal to the interest earned by and paid to the Fund has been available for direct transfer to the United Mine Workers of America Combined Benefit Fund to defray the cost of providing health care benefits for certain retired coal miners and their dependents. Section 402(a) of SMCRA fixed the reclamation fee for the period before September 30, 2007, at 35 cents per ton (or 10 percent of the value of the coal, whichever is less) for surface-mined coal other than lignite, 15 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal from underground mines, and 10 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite. As originally enacted, section 402(b) of SMCRA authorized collection of reclamation fees for 15 years following the date of enactment (August 3, 1977); thus, OSM's fee collection authority would have expired August 3, 1992. However, Congress extended the fees and fee collection authority through September 30, 1995, in the Omnibus Budget Reconciliation Act of 1990. The Energy Policy Act of 1992 extended the fees through September 30, 2004. A series of short interim extensions in appropriations and other acts extended the fees through September 30, 2007.

The AML reclamation program was established in response to concern over extensive environmental damage caused by past coal mining activities. Before the 2006 amendments, the AML program reclaimed eligible lands and waters using the Fund,

which came from the reclamation fees collected from the coal mining industry. Eligible lands and waters were those which were mined for coal or affected by coal mining or coal processing, were abandoned or left inadequately reclaimed prior to the enactment of SMCRA on August 3, 1977, and for which there was no continuing reclamation responsibility under State or other Federal laws.

SMCRA established a priority system for reclaiming coal problems. Before the 2006 amendments, the AML program had five priority levels, but reclamation was focused on eligible lands and waters that reflected the top three priorities. The first priority was “the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.” The second priority was “the protection of public health, safety, and general welfare from adverse effects of coal mining practices.” The third priority was “the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices.”

As originally established, the Fund was divided into State or Tribal and Federal shares. Each State or tribe with a Federally approved reclamation plan was entitled to receive 50 percent of the reclamation fees collected annually from coal operations conducted within its borders. The “Secretary’s share” of the Fund consisted of the remaining 50 percent of the reclamation fees collected annually and all other receipts to the Fund, and was allocated into three shares as required by the 1990 amendments to SMCRA. First, OSM allocated 40% of the Secretary’s share to “historic coal” funds to increase reclamation grants to States and Indian tribes for coal reclamation. However, all the funds which were allocated may not have been appropriated. Second, OSM allocated 20% to the Rural Abandoned Mine Program (RAMP), operated by the Department of Agriculture. However, that program has not been appropriated AML funds since the mid-1990s.

Last, SMCRA required OSM to allocate 40% to “Federal expense” funds to provide grants to States for emergency programs that abate sudden dangers to public health or safety needing immediate attention, to increase reclamation grants in order to provide a minimum level of funding to State and Indian tribal programs with unreclaimed coal sites, to conduct reclamation of emergency and high-priority coal sites in areas not covered by State and Indian tribal programs, and to fund OSM operations that administer Title IV of SMCRA.

States with an approved State coal regulatory program under Title V of SMCRA and with eligible coal mined lands may develop a State program for reclamation of abandoned mines. The Secretary may approve the State reclamation program and fund it. At the time the 2006 amendments were enacted, 23 States received annual AML grants to operate their approved reclamation programs. Three Indian tribes (the Navajo, Hopi and Crow Tribes) without approved regulatory programs have received grants for their approved reclamation programs as authorized by section 405(k) of SMCRA.

Before the 2006 amendments, States and Indian tribes that had not certified completion of reclamation of their abandoned coal lands could use AML grant funds on noncoal projects only to abate extreme dangers to public health, safety, general welfare, and property that arose from the adverse effects of mineral mining and processing and only at the request of the Governor or the governing body of the Indian tribe.

The Surface Mining Control and Reclamation Act Amendments of 2006 were signed into law as part of the Tax Relief and Health Care Act of 2006, on December 20, 2006 (Public Law 109-432). The 2006 amendments revised Title IV of SMCRA to make significant changes to the reclamation fee and the AML program. One change extended OSM’s reclamation fee collection authority through September 30, 2021. The statutory fee rates were reduced by 10 percent from the current levels for the period from October 1, 2007, through September 30, 2012, and an additional 10 percent from the original levels for the period from October 1, 2012, through September 30, 2021.

The Fund allocation formula was also changed. Beginning October 1, 2007, certified States are no longer eligible to receive State share funds. Instead, amounts that would have been distributed as State share for fee collections for certified States are distributed as historic coal funds. The RAMP share was eliminated, and the historic coal allocation is further increased by the amount that previously was allocated to RAMP.

Since 2006, the Department has interpreted the language of SMCRA section 411(h) to require that OSM use grants to provide funds to eligible States and Indian tribes and to preclude noncertified states and Indian tribes from using funds that they receive under that section for noncoal reclamation.

Under SMCRA, states can use some of the AML funds they receive for non-coal reclamation. S. 2830 would amend SMCRA to allow noncertified states and tribes to use their mandatory funds received under Section 411(h)(1) from their unappropriated AML Fund balance for reclamation activities on non-coal mine sites. Noncertified states and tribes can already use the funds they receive from the “state share” and “historic coal” formulas for non-coal reclamation.

When Secretary Salazar appeared before the Committee on Energy and Natural Resources to testify about the FY 2011 President’s Budget for the Department of the Interior, he noted that in developing a balanced budget request for FY 2011, tough choices had to be made. The budget, in addition to eliminating unrestricted payments to certified states, also proposes limiting the use of AML payments to priority coal reclamation projects. The Department cannot support S.2830 because it is inconsistent with the Fiscal Year 2011 budget.

In an effort to focus the AML program on coal reclamation before the reclamation fee terminates, the President’s FY 2011 budget proposes to restrict the use of AML funds by noncertified states to high priority coal reclamation. Because S.2830 is inconsistent with the Administration’s goal of ensuring expeditious coal reclamation, we cannot support this bill.

While we recognize the dangers that abandoned hard rock mines can pose, AML funding needs to be focused on the highest priority problems Congress originally identified in 1977. The challenging economic conditions, coupled with this Administration’s commitment to fiscal responsibility, only heighten the need for AML funds to be devoted to the highest priority coal problems. We note that the administration has continued to invest in AML, both through the Bureau of Land Management and National Park Service American Recovery and Reinvestment Act of 2009 funding and the FY 2011 President’s Budget to address hardrock mine reclamation on Federal Lands.

We share your concern about non-coal abandoned mine sites and would be happy to share the expertise gained administering SMCRA and work with the Congress and this committee as we seek to address abandoned non-coal mine problems.

Thank you for the opportunity to appear before the Subcommittee today and testify on this bill. I look forward to working with the Subcommittee to ensure that the Nation’s abandoned mine lands are adequately reclaimed.

Thank you for inviting the Department of the Interior to testify on S. 2963, the Cathedral Rock and Horse Heaven Wilderness Act. The Department supports the goals of S. 2963, which would bring into Federal ownership certain lands along the John Day River in Oregon, and designate those lands and adjacent public lands as wilderness. However, we would like to work with Senator Wyden and the Committee on several concerns and to make adjustments to the legislation as discussed below.

#### BACKGROUND

Congress recognized the rugged beauty of the John Day River in central Oregon by designating it as a wild and scenic river in 1988 (Public Law 100-557). Last year, we built on the success of that designation when President Barack Obama signed into law Public Law 111-11, the Omnibus Public Land Management Act of 2009. Title I, Subtitle J, of that Act provided for a series of land exchanges and the designation of the Spring Basin Wilderness in Wheeler County along the east bank of the middle reaches of the John Day River.

Along the western bank of the John Day Wild and Scenic River, just to the south of Spring Basin Wilderness, are some equally outstanding lands proposed to become the Cathedral Rock Wilderness. The lands planned for designation range from the cliffs and canyons along the river heading westerly to steep rolling hills punctuated by rocky escarpments. Wagner Mountain is located in the center of the proposed wilderness and is the highest point in the area. The geology is dominated by ancient volcanics, composed of andesite flows, plugs, and domes. The entire area is covered in rhyolite ash-flows which produce dramatic red, white, and buff colored soils. Hunters and hikers alike enjoy the breathtaking scenery as well as the resident mule deer and elk populations, while rafters brave the John Day’s rapids. Cultural sites showcase prehistoric fossils, stone tools, and rock art.

Four miles to the southwest of the Cathedral Rock region is the proposed Horse Heaven Wilderness. The name reflects Oregon’s pioneer past when the flawless grasslands of the areas were a closely guarded secret. Today that secret is out and

a wide range of recreationists enjoy the area's many opportunities. At more than 4,000 feet, Horse Heaven Mountain serves as a worthy centerpiece to a diverse landscape illustrating Oregon's high and low countries. Traveling south, rolling plains and steep terrain dominate the area; to the west, Muddy Creek is the area's lone perennial stream. Prairie steppes throughout connect hearty shrubs and woodlands that demonstrate steadfast resolve to thrive in the rocky soil.

S. 2963

S. 2963 provides for the establishment of two new wilderness areas to become components of the National Wilderness Preservation System. The bill also provides for the exchange of lands between three private parties and the Federal government which would allow the consolidation of fragmented land patterns, and provide for two coherent wilderness areas. Should the land exchanges be completed, the additional land would greatly enhance the wilderness quality and manageability of the two areas proposed for wilderness.

Section 4 of the bill outlines a series of land exchanges with three private parties. Under section 206 of the Federal Land Policy and Management Act (FLPMA), the Bureau of Land Management (BLM) has the authority to undertake land exchanges that are in the public interest. Exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into private ownership for local needs and the consolidation of scattered tracts. In principle, the BLM supports the land exchanges envisioned by S.2963; however, we would like the opportunity to work with the sponsor and the Committee to address a number of specific concerns. Foremost among these concerns is the need to assess whether all of the lands proposed for acquisition merit management for wilderness values, and provide for public access and enjoyment of these lands.

The lands proposed for exchange out of Federal ownership are largely scattered sections of public land intermingled with private land. The BLM in Oregon has not had an opportunity to fully assess these lands (nearly 7,500 acres) to determine if they are appropriate for disposal or if there are significant impediments to transfer out of Federal ownership. The BLM believes that there may be cultural resource sites that could raise serious concerns or require mitigation. We recommend that the legislation allow the Secretary to withdraw specific lands from the exchange if any serious impediments are discovered.

Likewise, while the BLM is generally aware of the resource values on the private lands to be acquired by the Federal government, the BLM in Oregon would like the opportunity to analyze these lands more closely. Furthermore, the legislation should also ensure that all non-Federal parties are responsible for the remediation of any human safety concerns or hazardous materials on the lands to be exchanged out of present ownership.

The BLM supports the provisions of the bill requiring that all three exchanges be equal value exchanges, and that the appraisals be undertaken consistent with Uniform Appraisal Standards. We recommend minor modifications to the language to make it consistent with FLPMA.

Section 3 of S. 2963 proposes to designate Cathedral Rock Wilderness and Horse Heaven Wilderness on the lands that would be consolidated under the land exchanges envisioned by section 4 of the bill. When those land exchanges are completed, the Cathedral Rock Wilderness would include nearly 8,700 acres of public land and the Horse Heaven Wilderness nearly 7,800 acres. The BLM could manage these areas as wilderness following the exchanges, assuming that the exchanges occur and that the private lands exhibit wilderness characteristics. It should be noted that absent the largest exchange envisioned under S. 2963, these areas would be impracticable for the BLM to manage as wilderness. That proposed exchange with "Young Life" involves the core of both the proposed Cathedral Rock and Horse Heaven wilderness areas. As previously noted, the BLM would like time to evaluate the proposed non-Federal parcels for wilderness characteristics.

The current land patterns of both the proposed Cathedral Rock and Horse Heaven Wilderness Areas are extremely fragmented. The BLM manages approximately 4,700 acres in seven non-contiguous parcels within the Cathedral Rock area and less than 3,000 acres in two separate parcels within Horse Heaven. The land exchanges are, of course, optional for the three private parties. If, in the end, the largest private land owner decided not to pursue the exchange, managing the wilderness areas would be extremely difficult given the fragmented nature of the BLM landholdings in these two areas. The BLM encourages the Committee and the sponsor to address these concerns before moving the legislation forward. One option may be for the bill to designate these lands as "potential wilderness," which would automatically become wilderness when the necessary exchanges are completed.

Additionally, the BLM would like to work with the sponsor and the Committee on boundary adjustments and management language modifications as is routine in such proposed designations. Specifically, the BLM would like to discuss boundary modifications to assure public access to the proposed wilderness areas and to make the areas manageable as wilderness.

Finally, S. 2963 envisions the land exchanges under the legislation being completed within two years of the date of enactment. Because of the complicated nature of the exchanges as envisioned by the bill, two years would very likely be insufficient time to complete the transactions.

#### CONCLUSION

The proposed Cathedral Rock and Horse Heaven Wilderness areas could be outstanding additions to the National Wilderness Preservation System if the critical exchanges envisioned by the legislation are completed. We look forward to working with Senator Wyden and the Committee toward that end.

Senator UDALL. Thank you, Ms. Owens.

I was remiss, and I hope you will accept my apologies. I didn't properly introduce you. You are Glenda Owens. You are the Deputy Director at the Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

Thank you again for taking the time to come up to the Hill.

Mr. Roberson, if you would, for the record, would you just state your name and your title and your responsibilities, please?

Mr. ROBERSON. Yes, sir. I am Ed Roberson, the Assistant Director for Renewable Resources and Planning in the Bureau of Land Management, Department of Interior.

Senator UDALL. Thank you. Thank you for that.

Senator Wyden, do you have questions? I will recognize myself for 2 questions.

Let me start, Ms. Owens, with you, given that you just shared your testimony with us. As I understand it, ever since the passage in 1977 of the Surface Mining Control and Reclamation Act, finally known as SMCRA, that it allowed the use of abandoned mine land funds for the reclamation of high-priority non-coal abandoned mines.

The previous administration interpreted the amendments that were passed in 2006 to preclude the use of AML funds by States for non-coal mine cleanup, despite the fact the topic was never debated and there was no expressed congressional intent to cutoff the funding. S. 2830 would set this straight and clarify that States and tribes can continue to use these funds for non-coal reclamation.

Given the serious problems that these non-coal abandoned mine sites pose to public health and safety, particularly in my State of Colorado and Chairman Bingaman's State of New Mexico, I think certainly in the eastern reaches of the great State of Oregon, why would the administration oppose the bill?

Ms. OWENS. Senator Udall, we do recognize the dangers that are posed by hard rock mine, abandoned mine sites. However, this administration feels—believes that the abandoned mine funds should be focused on the cleanup of coal reclamation, the initial intent of Congress in 1977 when the SMCRA was enacted.

Senator UDALL. I understand wanting to hew closely to what you think the intent of the law was. But as I understand it, the States since that time, which is now over 30 years, did use some of those funds for the non-coal mine cleanup work that certainly is very, very necessary in States like mine.

So we will continue to have this discussion, obviously. I will reserve the right on behalf of the committee and the chairman to extend questions to you and the agency over the next couple of weeks before we close the hearing record.

Ms. OWENS. Certainly. Certainly.

Senator UDALL. Let me turn to Secretary Sherman. Senator Barasso touched on a lot of the questions that I had and I think Senator Wyden would have had as well. I know he is going to enter some additional questions for the record, but I wanted to direct this question.

I am concerned about future forest conditions, as well as current forest conditions. If we do nothing about this epidemic—I think that is an appropriate term—that is, I mean prioritize treatments and harvest the stands of dead trees to reduce threats of harm and fire in emergency areas like my bill would accomplish and, just as important, manage our forests, we could be right back here with another epidemic of this size and scope.

Do you agree, and is the Forest Service taking steps to help produce a healthier, more sustainable future forest?

Mr. SHERMAN. Senator Udall, there is no question that we need to look to what the future forests of our country will look like, and they may look different than the forests of today. We have to recognize that climate change is a factor, and we have to recognize in certain areas there will be less precipitation, warmer temperatures, and so forth.

So we are looking at ways to diversify the species in given forests. We are looking at ways of diversifying the age classes of these forests so that we don't have a single, monolithic age class. We are looking at ways of reducing the density of some of these forests because they simply don't have the carrying capacity to serve all of the vegetation that they currently do. So I think the forests of the future will look different.

We have a very significant research arm within USDA and within the Forest Service to try to answer these types of questions. As we go forward with these efforts to restore our forests, we are going to have to focus on what do we want to encourage and what types of vegetation, how would they vary from what have previously existed?

But this is an interesting and a complicated issue. But it is an issue that certainly has our attention, and we are working on it.

Senator UDALL. Thank you for sharing those approaches with us.

I know Senator Wyden represents the second most beautiful State in the Nation. It goes without saying what I represent. But there is a beautiful area around Bend. The Cascades are a place in which I have had many adventures and skied and mountain biked and hiked. I am thinking the Bend ecosystem is probably similar to the one in the front range of Colorado, which is Ponderosa-like forests, which have become thicker and thicker, clogged with the dog-hair trees. But we have grown up thinking that is what a natural and healthy forest looks like.

So as part of what I think the Forest Service has to do is educate the public as to what a healthy forest looks like, the mosaic patterns that you referenced, the more grasses and shrubs, biomass in more diverse forms than just in the woody biomass that makes up

Ponderosas or lodgepoles or other tree species. Is that also on your list to work with the public and explain to us and educate us?

Mr. SHERMAN. Yes. I think a public education campaign here is vitally important. Interestingly, our use of prescribed fire is going to be one of the tools that we look to to determine what the future of forests in this country look like.

But you are right. People need to understand what a healthy forest does look like, and I think part of that clearly is the thinning of these forests, giving larger canopies a chance to exist within the forest. But again, I am very pleased with the research effort going on within USDA to focus on this issue. It is an important issue.

Senator UDALL. Yes. I think we all hold the goal of returning fire to our forests in the low-intensity, ground-level way that it has historically operated.

I know I have gone through my own evolution of learning from scientists like Dr. Kaufmann up at CSU as to the key role forest fire has played in our ecosystems. We want to reach a point where that kind of fire returns to our forests, but without great threats and significant threats to our watershed sheds and our human-built environment.

Senator Risch has joined us, my co-sponsor in the bill we are discussing. Senator, I would be happy to yield time to you if you have had a chance to gather your thoughts.

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

I am honored to co-sponsor this bill with you. Probably before I got here, you spent some time talking about the conditions that have brought about the situation that we have. The Intermountain region is a region that is dry anyway, and we went through a series of years where we had back-to-back droughts.

Things have gotten better. In fact, we have actually had a couple, a few good years in there. But that doesn't make up for the back-to-back droughts that we have. The situation that we have is we have large—we have some expansive stands of lodgepole pine that grow in what I think most people in America would classify as a semi-arid condition.

Since we didn't have the moisture, the trees were not able—trees obviously are attacked every year by bugs or by bark beetles, and generally, a healthy tree doesn't have a lot of trouble. They have lived with it for centuries, and they pitch the beetle out. But when you have a drought situation, they can't pitch the beetle out. The result, of course, the tree gets girdled, and we have large, expansive stands of lodgepole pine.

When I was Governor, we had—of course, we have fires every year. But that particular summer, we went out to look at them, and the particular route we took was over what is called the Stanley basin in Idaho. I have to tell you, I was shocked at seeing the expanses. It looked almost like a fire had gone through, but no fire had gone through. But there were just expansive stands of this lodgepole pine that are suffering from this.

So something has to be done. Like I said, we have gone through some wetter years, although this winter again is going to put us in a drought situation. But this bill, hopefully, will address that situation. I am honored to co-sponsor.

Thank you, Mr. Chairman.

Senator UDALL. I want to thank again Senator Risch. He and I have an excellent working relationship. Us westerners hang together, whether we are Rocky Mountain westerners or we are far westerners like Senator Wyden.

Senator RISCH. On a lot of things.

Senator UDALL. On a lot of things.

With that, let me thank the panelists, and you are excused, and we will call up the second set of panelists.

[Paused.]

Senator UDALL. We will call Mr. Reinhardt forward as well. Welcome to all of you. Let me briefly introduce each of you. Before I do that, though, I wanted to briefly express my regret that our hearing that was scheduled for March 23rd was canceled. But I know that we all very much appreciate each of you making a second trip to testify here in Washington.

We have been joined by—in no particular order, but Forrest Reinhardt. He is president of Venture Beyond, based in Coto de Caza, California. Gregory Conrad, with the National Association of Abandoned Mine Land Programs and Executive Director of the Interstate Mining Compact Commission, based in Herndon, Virginia. The Honorable Dan Gibbs, Colorado State Senator, Senate District 16, Denver, Colorado, who happens to be my State senator. Dominik Kulakowski, who is a Ph.D., assistant professor, School of Geography, Clark University.

I think you say it “Wooster,” Massachusetts. Is that right? I maybe didn’t pronounce your name—

Mr. KULAKOWSKI. “Woostah”.

Senator UDALL. Worcester, Massachusetts. But it is really appreciated that you are here today.

I have a bit of a tight schedule. So I am going to exercise a prerogative as the chair and ask the 2 Coloradoans or I should say the two witnesses that I asked to appear today to testify and then, if the chairman is willing, extend some questions to those 2 witnesses. Then, Mr. Conrad and Mr. Reinhardt, we certainly do want to hear your testimony as well.

So we will start with Dr. Kulakowski. Would you please share your thoughts with us within about a 5-minute timeframe? We look forward to hearing what you have to say.

**STATEMENT OF DOMINIK KULAKOWSKI, ASSISTANT PROFESSOR, CLARK UNIVERSITY, WORCESTER, MA**

Mr. KULAKOWSKI. Thank you, Chairman Wyden, Chairman Udall, and Senator Risch, members of the committee.

My name is Dominik Kulakowski, and I thank you for the opportunity to be here today.

I have been conducting research on the interactions between outbreaks of bark beetles and fires for over a decade. During that time, I have worked as a research scientist at the University of Colorado, and I am now a professor at Clark University in Massachusetts, where I continue this line of research. My testimony is based on the findings of my own research and on the research of other scientists.

First of all, it is important to recognize that the Rocky Mountains are being affected by the largest outbreak of bark beetles in

recorded history. The extensive areas of dead trees have understandably led to widespread concern about forest health and about the risk of wildfires.

However, the vast majority of scientific studies have found that fire risk does not increase following outbreaks of spruce beetle or mountain pine beetle. Consider the following examples.

Following a major outbreak in Colorado in the 1940s, there was substantial concern about the increased risk of fire. But although over 300 fires occurred in that region in the decades that followed, our research found that these fires were no more likely to have occurred in beetle-affected forests.

Similarly, after a large fire burned in Wyoming in 1994, another group of researchers found that stands of lodgepole pine that had been affected by beetles prior to the fire did not burn more severely compared to adjacent areas of forests.

Yet another recent study by a different group of researchers examined fuel conditions in lodgepole pine for 35 years following the outbreaks and concluded that the probability of active crown fire does not increase following the outbreaks, even when the red needles are still on the trees. This list goes on and on.

To understand these scientific findings, which may seem counter-intuitive, we need to consider that in any given ecosystem, either fuels or climate will be limiting to the occurrence of wildfire.

The emerging scientific view is that in the vast majority of forests that are currently being affected by beetles, there is no shortage of flammable material, regardless of outbreaks. Therefore, changes in fuels following outbreaks are not as important a fire risk as we may think.

In most cases, changes in fuels brought about by outbreaks are overridden by climatic and weather conditions to the point that the effect of outbreaks does little or nothing to increase the risk of fire.

There is compelling scientific evidence that outbreaks have little or no effect on the risk of wildfire in these forests. There is also compelling evidence that drought conditions have a major effect on the risk of wildfires. Over the past decades, we have seen an increase in large fires that have been associated with drought conditions.

Furthermore, numerous scientific studies have concluded that large and severe fires have occurred in these forest types for centuries and that these fires have occurred during periods of drought.

Over the past decades, firefighters have been using an extraordinary amount of resources and have been taking extraordinary risks to try to control wildfires—not because those fires have resulted from bark beetle outbreaks, but because they have occurred during drought conditions. It is climate we should be focusing on if we want to assess and mitigate fire risk in lodgepole pine and spruce forests.

If conditions are dry enough, then the risk of fire is likely to be high. If conditions are not dry enough, then the risk of fire is not likely to be high, regardless of the effect of outbreaks.

Unfortunately, as a Nation, we are increasingly building our homes in fire-prone ecosystems. Doing so is like building our homes in floodplains. We may be lucky for a while, but eventually the flood will come.

Scientific research concludes that reducing flammable material in the wildland-urban interface, especially in the immediate vicinity of structures, and using nonflammable building materials is the most effective way to protect structures against fire damage. Pine branches touching wooden decks are much more relevant a fire risk than is the structure of remote forests. Replacing wooden shingles with a metal roof will do much more to protect a home than treating all beetle-affected forests in the Rocky Mountains.

Although ongoing outbreaks have understandably led to widespread concern about the increased risk of fire, the best available science indicates that outbreaks of mountain pine beetle and spruce beetle do not increase the risk of fire in most types of forests. Now ongoing outbreaks have not increased the risk of wildfire as much as they have drawn attention to the risk that has been there long before the outbreaks began.

My concern is that by focusing treatments in remote forest areas, we will be using up limited funds and resources while still leaving homes and communities at risk to wildfire. Doing so would be like beginning surgery on a patient before first having the correct diagnosis. We will not address the real problem, and we may do more harm than good.

We do need to protect our homes and communities from the risk of wildfire, but the best way of doing so is by removing flammable material from their immediate vicinity and by using fire-resistant building materials, not by modifying forest structure in remote areas that have been affected by beetles.

Thank you.

[The prepared statement of Mr. Kulakowski follows:]

PREPARED STATEMENT OF DOMINIK KULAKOWSKI, ASSISTANT PROFESSOR, CLARK UNIVERSITY, WORCESTER, MA

Chairman Wyden, Senator Barrasso, members of the Committee: My name is Dominik Kulakowski. I have been conducting research on the interactions between outbreaks of bark beetles and fires for over a decade. During that time I have worked as a research scientist at the University of Colorado and I am now a professor at Clark University in Massachusetts where I continue to pursue this line of research. I have authored numerous scientific papers on this topic and have contributed to three major scientific literature reviews related to bark beetle outbreaks, the most recent of which is attached as supporting material with my testimony. I have also peer-reviewed numerous related scientific studies and research proposals of other scientists. My testimony is based on the findings of my own research and on the research of other established scientists. My goal is to summarize the best available science on the relationship between beetle outbreaks and fire risk and on associated mitigation efforts.

#### *1. Outbreaks and the risk of fire*

First of all it is important to recognize that the Rocky Mountain region is being affected by the largest outbreak of bark beetles in recorded history. The extensive areas of dead trees have understandably led to real concern about forest health and the risk of wildfires. However, these concerns need to be informed by the best available science to ensure that our responses do not have unintended ecological consequences with potentially undesirable effects. The vast majority of scientific studies have found that fire risk does not increase following outbreaks of spruce beetle or mountain pine beetle and some studies actually have reported a decrease in fire risk following outbreaks. In contrast, only a couple of studies have reported a minor increase in fire risk following outbreaks and the certainty of some of those conclusions was hindered by complications in the research design. Thus, the premise, such as that contained in S. 2798, that outbreaks increase the risk of fire is not consistent with the general conclusions of the scientific work on this topic. Consider the following examples.

Following a major outbreak of spruce beetle in Colorado in the 1940s, there was substantial concern about the increased risk of fire. But although over 300 fires occurred in that region in the decades that followed, our research found that the forests that had been affected by beetles were no more likely to have burned than other forests. Furthermore, no major fires occurred in those beetle-affected forests in the years and decades that followed the outbreak despite the abundance of dead trees. The most likely explanation for this lack of large severe fires is that climatic conditions in these spruce-fir forests are a greater factor in determining fire risk than is the presence of dead trees. In fact, it was not until a severe drought in 2002 that a large fire affected these forests and during that year there were many wildfires in Colorado, the majority of which burned forests with no recent history of outbreaks. During the drought of 2002, wildfires also burned some forests in northern Colorado that were being attacked by beetles at that time. It has been hypothesized that the risk of fire may increase during and immediately after outbreaks of bark beetles when the dry red needles are still on the trees. However, our research found that those ongoing outbreaks affected neither the extent nor severity of fires, most likely because changes in fuels brought about by outbreaks were overridden by climatic and weather conditions.

Similarly, after a large fire burned in Yellowstone National Park in 1994, another group of researchers found that stands of lodgepole pine that had been affected by beetles prior to the fire did not burn more severely compared to adjacent areas of forests that had not been affected by beetles. Yet another recent study by a different group of researchers examined fuel conditions for 35 years following outbreaks in lodgepole pine forests and concluded that, depending on wind conditions, the probability of active crown fire either does not change or actually decreases following outbreaks. Numerous other independent studies have also concluded that the risk of fire does not increase following outbreaks and may decrease in some situations.

To understand these scientific findings, which may seem counter-intuitive, we need to consider that (1) bark beetles affect fuels in several ways and (2) several factors are necessary for the occurrence of wildfires. Recent research indicates that reductions in canopy density following outbreaks are actually more important to fire risk than are increases in dead fuel. In other words, beetle-killed trees rapidly lose their needles and this reduces the amount of potentially flammable material in the canopy. In contrast, live trees have dense canopies which are instrumental in the spread of wildfire. Second, and most importantly, in any given ecosystem either fuels or climate will be limiting to the occurrence of wildfire. The emerging scientific view is that fuels are not limiting to the occurrence of fires in the vast majority of forest types that are currently being affected by beetles in the western United States. In other words, in forests dominated by lodgepole pine and Engelmann spruce there is no shortage of flammable material, even in the absence of beetle outbreaks. These forests are characteristically dense and during droughts the risk of severe wildfire will be high, regardless of outbreaks. In fact climate is so important to fire risk that the effects of outbreaks appear to have comparatively little or no influence.

## 2. *Climate and the risk of fire*

There is compelling evidence that outbreaks have little or no effect on the risk of wildfires in these forests. There is also compelling evidence that drought conditions have a major effect on the risk of wildfires. Over the past decades we have seen an increase in large fires that have been associated with drought conditions. Furthermore, using various scientific methods numerous research groups have examined the history of lodgepole pine and spruce forests over the past centuries and have concluded that large and severe fires are the norm in these types of forests and that such fires have historically occurred during periods of droughts. This has been the case long before Colorado and Oregon were states and even before the United States was a country.

Over the past decades fire fighters have been using an extraordinary amount of resources and have been taking extraordinary risks to try to control wildfires—not because those fires have resulted from bark beetle outbreaks, but because they have occurred during drought conditions. It is climate that we should be focusing on if we want to assess and mitigate fire risk. If conditions are dry enough then the risk of fire is likely to be high and if conditions are not dry enough then the risk of fire is not likely to be high, regardless of the effect of outbreaks. Although lodgepole pine and spruce forests that are made up of live green trees may appear not to be flammable, the fact is that during drought conditions the risk of wildfire can be extremely high.

An important corollary of the fact that large and severe fires are the norm in these ecosystems is that fire hazard mitigation in these forests should not be mis-

taken for forest restoration. Although it may not be socially desirable, the occurrence of severe fires during drought in these forests is not abnormal, and instead represents the characteristic function of these ecosystems.

### 3. *Strategies for reducing fire risk to homes, communities and public safety*

Unfortunately, as a nation, we are increasingly building our homes in fire-prone ecosystems. Doing so is like building our homes in floodplains—we may be lucky for a while, but eventually the flood will come. Recent scientific research on fire hazard mitigation concludes that the greatest priority should be given to the wildland-urban interface, especially in the immediately vicinity of homes—an area known as defensible space. Forest Service experts point to a 40-meter zone (about 122 feet) around the home that determines a home's ignitability. Reducing flammable material in the immediate vicinity of structures and replacing flammable building materials such as wooden decks with non-flammable alternatives has been shown to effectively protect structures against fire damage. Likewise, as beetle-killed trees are likely to fall more often than live trees, strategically removing hazard trees in and around campgrounds, recreation areas, and certain infrastructure where property is at risk is integral to protecting public safety.

By design, traditional timber harvest is focused on producing economically valuable timber and wood fiber and not on reducing fire severity. This type of harvest will do little to reduce fire risk at any scale if it primarily removes large trees, because smaller trees, brush and branches often are the major carriers of a spreading fire. In fact, stands that had been harvested but in which small, non-merchantable material had not been removed prior to the 2002 Hayman fire in Colorado actually burned more severely than stands that had not been harvested. To be effective at reducing fire hazard to communities, tree-cutting must be executed in a way that removes all flammable material (not just economically valuable timber) and must be located in the immediate vicinity of homes and settlements. Treating forest lands far from communities is not likely to reduce the risk of fire to homes and neighborhoods.

Overall, it is going to be much less expensive, more effective and less ecologically damaging to focus fire-hazard reduction efforts around communities and homes than it would be to try to make a wholesale modification of forest structure over large landscapes. Pine branches touching wooden decks are much more relevant to fire risk than is the structure of remote forests. Replacing wooden shingles with a metal roof will do much more to protect a home than treating all beetle-affected forests in the Rocky Mountains. My concern is that by focusing treatments in remote forests, we will be using up limited funds and resources while leaving homes and communities at risk of wildfire. Doing so would be like beginning surgery on a patient before first having the correct diagnosis—we will not address the real problem and we may do more harm than good.

### 4. *Preventing outbreaks*

If a bark beetle infestation is relatively small and concentrated in a limited area, it may be feasible to reduce the population growth of beetles by removing infested trees from a forest stand or by thinning a stand to reduce stress on trees competing for limited nutrients, sunlight and moisture. For example, if a small stand of spruce is blown down by a windstorm and populations of bark beetles begin growing in fallen logs, then it may be feasible to remove all fallen, infested trees over a small area. However, given the climatic requirements for beetle population levels to reach epidemic levels, it is not known whether such a situation would lead to an outbreak. In other words, a small population of beetles is not sufficient for an extensive outbreak to occur. Conversely, under climatic conditions favorable for an outbreak, such as those of the past decade, outbreaks of bark beetles can erupt simultaneously in numerous dispersed stands across the landscape. Unfortunately, even if one growing population of beetles is successfully removed from one stand, under outbreak conditions beetles from other stands are likely to spread over the landscape. Given that climate typically favors beetle populations and stresses trees over very large areas, it is unlikely that all populations of beetles over an extensive region could be successfully identified and removed.

### 5. *Conclusion*

Although ongoing outbreaks understandably have led to widespread public concern about increased fire risk, the best available science indicates that outbreaks of mountain pine beetle and spruce beetle do not lead to an increased risk of fire in the vast majority of forests that are currently being affected. We should not let the effects of bark beetle outbreaks, as spectacular as they may be, distract us from the real risk. The real concern is that we have built homes, communities, ski resorts, and other infrastructure in inherently flammable ecosystems. The ongoing out-

breaks have not increased the risk of wildfire as much as they have drawn attention to the risk that has been there long before the outbreaks began. Forests of lodgepole pine and spruce-fir are prone to high-severity fires during drought conditions, regardless of the influence of bark beetle outbreaks.

There is a need to take effective steps to protect public safety and especially to protect homes and communities from fire risk that is associated with drought conditions. The best way of doing so is by removing flammable material from the immediate vicinity of homes and communities and by using fire resistant building materials, not by modifying forest structure in remote areas that have been affected by outbreaks. The former approach would be less expensive, much more effective at protecting public safety interests, and consistent with the best available science.

Senator UDALL. Thank you, Doctor.

Let me turn again to my State senator, Senator Gibbs. He has also been joined here, I should say, in Washington by Representative Christine Scanlan. Their districts overlap. In our State, Senator Risch, it is one State senator per 2 State representatives, give or take.

But I think the fact that they are both here shows the importance of this concern that is increasingly surfacing in the great State of Colorado, and I want to thank Senator Gibbs.

Senator RISCH. Senator Udall, my senator in Idaho promises me lower taxes and more services. Does your senator?

[Laughter.]

Senator UDALL. He does as well. He does as well. I will leave him to explain how he is going to do that. But again, I want to thank Senator Gibbs for his passion and commitment and great knowledge on this topic.

Senator Gibbs, the floor is yours.

**STATEMENT OF HON. DAN GIBBS, COLORADO STATE  
SENATOR, SENATE DISTRICT 16, DENVER CO**

Mr. GIBBS. Thank you, Chairman Udall, Mr. Chairman Wyden, Ranking Member Barrasso, Senator Risch, members of the committee. It is a great honor to come before you today.

My name is Dan Gibbs. I am a Colorado State senator, and it is a great honor to have my friend and colleague, Representative Christine Scanlan, with us here today, who has been a great champion on forest health issues throughout Colorado.

In addition to being a Colorado State senator, I am also a Type 2 wildland firefighter and Summit County's wildfire mitigation specialist. I have fought fires in Colorado and California, and I have seen firsthand the difference between fires in an area where lands have been proactively managed and those that have not.

Over the last 10 years, I have witnessed a transformation of our forests in the counties I represent. In Grand County, which gives rise to the headwaters of the Colorado River, a source of water and life for major cities and many western States, most of the lodgepole pine trees are dead. The bark beetle epidemic is changing Colorado and the West.

This transformation is immediately apparent to anyone spending time in our national forests. Visitors in my State often remark about the mountainsides of red trees, and I have to tell them because it is all dead. The mountain pine beetle has already killed 2.9 million acres of trees in Colorado. Current estimates indicate that every lodgepole pine tree will be dead within a decade.

The vast swaths of dead timber create fire threats and danger from falling trees. These risks create concerns for communities throughout the West, such as drinking water, critical infrastructure, wildlife, tourism, and recreation. In response, local, State, and Federal agencies, as well as private businesses, have joined together to address the growing devastated areas and threats they present.

For example, Colorado has adopted a number of innovative strategies, including the creation of public-private partnerships and cross-jurisdictional forest management techniques. But the costs of forest treatment and utilizing the woody material is high and represents a major challenge. In my view, this represents an emergency. It requires immediate action and more careful land management.

In the short term, the top priority needs to be the removal of hazard trees and ensuring that sufficient fire suppression resources are available when a fire does occur. The long-term response should be an emphasis on producing a future forest that contains greater age and species diversity and is more resilient.

Unfortunately, resources are limited. That is why myself and Representative Scanlan are pleased that Chairman Udall and Senator Risch have introduced the National Forest Insect and Disease Emergency Act of 2009. Let me explain how these provisions would help Colorado's emergency situation.

No. 1, the bill would designate insect and disease emergency areas. In Colorado, the Forest Service has identified 15 counties that are experiencing significant mortality from the bark beetles. Throughout the West, the Forest Service has identified 66 counties and similar levels of mortality that present a serious risk of fire of hazard trees.

No. 2, the bill prioritizes treatments in these emergency areas to reduce threats from dead trees and promote forest health. In the area in Colorado that I represent, which would also be designated as emergency areas, this would provide significant assistance to protect communities from fire and other threats I have mentioned.

No. 3, this bill would benefit Colorado by the use of Biomass Crop Assistance Program funds to help assist with the collection, harvest, storage, and transportation of biomass material.

No. 4, this bill would benefit Colorado by utilizing the streamlined national environmental policy provisions within the Healthy Forests Restoration Act for treatment projects in emergency areas.

No. 5, this bill would benefit Colorado by permanently authorizing the good neighbor authority for all western States. Many communities in my region are working cooperatively to reduce the threats of non-Federal public lands, but the provision would also help make this work for non-Federal land effective.

No. 6, this bill would permanently authorize stewardship contracting. There are many projects in Colorado that would benefit from this innovative technique.

Finally, this bill would not diminish or affect the right of private property owners. Such concerns are prevalent in the West, and this bill would make sure that private property rights are protected.

These provisions would provide tangible and important assistance to reduce the emergency threat of massive wildfires and help

promote a healthier, more sustainable forest. We in Colorado, like many other western States, are doing our part at the State and local level to help, but we need the assistance of this bill to augment these efforts and make them effective.

[The prepared statement of Mr. Gibbs follows:]

PREPARED STATEMENT OF HON. DAN GIBBS, COLORADO STATE SENATOR, SENATE  
DISTRICT 16, DENVER CO

Thank you Chairman Wyden, Ranking Member Barrasso, members of the committee. It is a great honor to come before you today. My name is Dan Gibbs, I'm a Colorado State Senator. I have with me Colorado State Representative Christine Scanlan, who is a long-time resident of Summit County Colorado and has worked hard to help Western lands and communities respond to forest health issues.

Over the last ten years, we've witnessed a transformation of our forest in the counties we represent. In Grand County, which gives rise to the headwaters of the Colorado River—a source of water and life for major cities and many western states—most of the lodgepole pine trees are dead.

The bark beetle epidemic is changing Colorado and the West. This transformation is immediately apparent to anyone spending time in the national forests. Visitors to our state often remark about the mountainsides of red trees, and we have to tell them it's because they are all dead.

The Mountain Pine Beetle has already killed 2.9 million acres of trees in Colorado. Current estimates indicate that every lodgepole pine tree in the state will be dead within a decade. The vast swath of dead timber creates fire threats and danger from falling trees. These risks create concerns for communities throughout the west, such as drinking water, critical infrastructure, wildlife, tourism, and recreation.

In response, local, state and federal agencies as well as private businesses have joined together to address the growing devastated areas and the threats that they present. For example, Colorado has adopted a number of innovative strategies, including the creation of public-private partnerships and cross-jurisdictional forest management techniques. But the cost of forest treatment and utilizing the woody material is high and represents a major challenge.

In our view this represents an emergency. It requires immediate action and more careful land management. In the short term, the top priority needs to be the removal of hazard trees, and ensuring that sufficient fire-suppression resources are available when a fire does occur. The long-term response should be an emphasis on producing a future forest that contains greater age and species diversity and is more resilient.

Unfortunately resources are limited. That's why we are pleased that Sen. Udall and Sen. Risch have introduced the National Forest Insect and Disease Emergency Act of 2009.

Let us explain how the provisions of this bill will help Colorado's emergency situation.

First, the bill would designate Insect and Disease Emergency Areas. In Colorado, the Forest Service has identified 15 Counties that are experiencing significant mortality from bark beetles. Throughout the west, the Forest Service has identified 66 counties with similar levels of mortality that present a serious risk of fire and/or hazard trees.

Second, the bill prioritizes treatments in these emergency areas to reduce threats from the dead trees and promote forest health. In the area of Colorado that we represent, which also would be in designated emergency areas, this would be of significant assistance to protect communities from fire and the other threats I have mentioned.

Third, the bill authorizes the use of Biomass Crop Assistance Program funds to help to assist with the collection, harvest, storage, and transportation of biomass material. It also allows vegetation removed from these emergency areas on National Forest Service land to be eligible for the incentives as a renewable fuel.

Fourth, the bill allows the use of the streamlined National Environmental Policy Act provisions of the Healthy Forests Restoration Act for treatment projects in emergency areas. In my region, this would significantly reduce the costs and delays in getting urgently needed projects underway and completed.

Fifth, the bill would permanently authorize the "Good Neighbor Authority" for all western states. Many communities in my region are working cooperatively to reduce the threats on non-federal public lands. This provision would help make this work on non-federal land effective.

Sixth, the bill would permanently authorize “stewardship contracting.” There are many projects in Colorado that would benefit from this innovative contracting option. As the bill makes these more effective, we can stretch limited resources and get more projects underway and completed.

Finally, the bill would not diminish or affect the right of private property owners. Such concerns are prevalent in the west, and this bill makes sure that private property rights are protect.

These provisions would provide tangible and important assistance to reduce the emergency threat of large-scale wildfires and help promote a healthier, more sustainable forest. We in Colorado, like many other western states, are doing our part at the state and local level to help. But we need the assistance of this bill to augment these efforts and make them effective.

#### THE NATURE OF THE EMERGENCY

Many dead tree stands pose grave threats to Colorado’s growing mountain communities and vital assets. Today, 1 million Coloradans live in the wildland-urban interface, where homes are adjacent to grasslands or forest.

In 2008, within the five-county epicenter of the infestation:

- 12 incorporated municipalities were within impacted forest, and another 11 adjacent to forest lands.
- 28 incorporated municipalities that derive most of their drinking water from sources that flow through dead and dying forests.
- 2,000 miles of roadways, including many sole evacuation routes, jeopardized by dead trees.
- 1,500 miles of hiking and biking trails spanning three national forests that are in danger of closure this year.
- 52 emergency communications sites at risk.
- The Colorado River, which supplies seven western states and major metropolitan areas including Denver, Las Vegas, Phoenix and Southern California with fresh drinking water.
- 633 miles of electrical transmission lines and 1,300 miles of electrical distribution lines—including major lines that feed power to the entire western United States—at-risk from falling trees and fire.

Tens of millions of people across the west depend on the electricity that travels across impacted lands, and most everyone in the country depends on the water that flows downstream from Colorado, and the food that water is used to grow. Let us make no mistake: the bark beetle epidemic poses an immediate threat to the United States’ national security.

The impact of a regional power and communications network failure resulting from fire would be catastrophic to the entire western United States. According to the TriState Generation and Transmission Association, if just one dead lodgepole collapses on the wrong transformer or power line, it could cause a fire that initiates an uncontrolled cascading power outage in Colorado and neighboring states.

According to Colorado State Forester Jeff Jahnke, the bark beetle affects more than 100 miles of WAPA, Tristate, Platte River Power Authority and Xcel transmission lines and an uncalculated number of smaller distribution lines. Electricity generation in western Colorado must cross many high-elevation areas to serve Front Range energy demands, and high-voltage transmission lines can be forced out of service by smoke or damaged from the extreme heat of wildfires. Shutting down transmission lines can threaten power in Denver and other Front Range communities, areas throughout Colorado, and neighboring states. More than 500 miles of high voltage transmission corridors—WAPA has a over 350 in USFS Region 2 being addressed in the joint EIS Xcel and Tristate have at least another 150—in both Colorado and southern Wyoming can be affected. And the number of miles of lower voltage distribution lines serving Colorado mountain communities is even greater. A cascading power outage would, at the very least, cost billions of dollars to correct.

The threat to our water is equally significant. The Colorado River’s headwaters are located in Colorado, and an estimated 75 percent of the Colorado River’s total flow originates in the state. The river’s tributaries and transmountain diversions—which cut through thousands of bark beetle-infested areas—serve nearly two million people in Colorado, and tens of millions across the west. Access to the river, which provides millions of acre feet of fresh water annually for agriculture, recreation and drinking in 13 western states, could be crippled by a severe wildfire stemming from Colorado’s tinder-dry lodgepoles. If the Colorado River became overburdened with refuse from a fire, the cost to the upper and lower basin states’ recreation economies, and the country’s agricultural system, is incalculable.

A fire originating from beetle killed forests would likely burn incredibly hot, increasing the potential for scorched earth. In turn, forest regeneration would take longer due to the destruction of organic matter, increased erosion and flood, and debris flows into our fresh water supplies—including the Colorado River—would greatly expand. This type of devastation is not unknown: the Hayman Fire, which burned more than 138,000 acres along the Front Range in 2002 caused millions of dollars in damage to Denver’s water supply in particular, and Colorado’s more generally. Indeed, cleanup efforts from the Hayman Fire requiring “substantial expenditures” continue to this day, according to the utility Denver Water.

Moreover, the specter of danger posed to the west’s fresh water supplies is far greater today than in 2002 when the Hayman Fire occurred due to the rise in dry and dead forestlands (2.2 million acres).

Additionally, with expanded urbanization comes an unprecedented risk to people living in both rural and urban settings. Local communities also face significant economic concerns, as the loss of Colorado’s scenic landscapes and injury to the state’s world-class ski resorts could eventually cause a decrease in all-important tourism dollars.

Put plainly, the bark beetle epidemic poses a very real threat to Colorado’s local communities and economies, but also national food and water supplies, as well as our national security.

#### LOCAL SOLUTIONS

Colorado lawmakers are committed to fighting the fire threat and restoring our forests. However, the need has simply outpaced our financial resources.

Likewise, expanded funding over the past two fiscal years has improved our ability to prevent fires before they occur, and suppress fires when they happen. But far more is needed to fulfill our priorities.

Community strategies for living within disturbance-driven ecosystems such as the lodgepole pine forests of northern Colorado must address the reliability and long-term protection of assets critical to our way of life. Essentially, in such environments policy makers are required to become more flexible and innovative. At the state level, we have undertaken vigorous efforts to mitigate the threat with a number of unique collaborations between state and local government and private industry.

Our creativity stems from necessity; Colorado possesses very limited resources to apply toward mitigating the infestation. As such, we have focused on passing enabling legislation to empower communities to write comprehensive and integrated fire preparedness plans; to improve information sharing between state, federal and local agencies; and to create incentives for private businesses that deforest impacted areas and utilize those resources.

As the scale of the infestation has clarified, policymakers have been able to strategically target what were once disparate legislative efforts. For example, this past legislative session, we passed an aggressive agenda that originated in a special interim committee. The integrated legislative package not only emphasized mitigating the threat, but provided new solutions to assist local and federal officials’ partner more effectively, and to encourage private industry to take advantage of economic growth opportunities that may exist.

The capstone of the General Assembly’s legislative efforts was a sweeping piece of legislation making \$3 million available for a series of initiatives to combat the epidemic. Moneys from the legislation will assist mountain and Front Range communities plan for forest health management activities by: addressing the population centers along the wildland-urban interface; expanding protection for Colorado’s watersheds, local communities and vital infrastructure; and providing grants for market-based solutions to reduce the overall threat posed by wildfire.

This new funding is critical, as we have demonstrated that even small state investments pay large dividends. Each state dollar receives a matching amount, so with just \$1 million in state funding, we’ve been able to treat \$5—\$6 million in forest land.

This year, additional efforts included the following:

- We expanded the incentives to utilize woody biomass for energy and other purposes.
- We directed the Colorado State Forest Service to develop state standards for certified and uncertified prescribed burners.
- We gave Forest Health Improvement Districts the flexibility to allow money generated to go toward wildfire mitigation.

Last year:

- We provided a 5-year exemption from business personal property taxes for qualified businesses that remove trees killed by bark beetles when they assist with forest restoration efforts on the affected land after the beetle-killed timber is removed. Also creates a fund to provide start-up money for new Colorado businesses that process and sell beetle-killed timber and products.
- We expanded the ability of counties to raise money to fight fires. Specifically, the bill removes the limit on property taxes that a county can collect—with voter approval—for forest fire fighting.
- We required the state forester to establish guidelines for Community Wildfire Protection Plans with input from state, local and federal government officials, and other interested parties.
- We streamlined and clarified the roles of state and local emergency personnel when fires occur, specifically allowing sheriffs to develop and update wildfire preparedness plans, and to specify what information should be included in a plan to be effective.

#### FEDERAL COLLABORATION

There are 22.6 million acres of forestland in Colorado. Of this acreage, nearly 70 percent is federally owned, including 49 percent managed by the U.S. Forest Service. Private landowners oversee an additional 28 percent. Fire knows no boundaries, so fire management actions must cross-jurisdictional to be effective.

Areas where expanded partnerships may flourish also exist, but state and local officials must have the appropriate authority to venture onto private land when necessary to squelch wild fires. Likewise, and within reason, private landowners must be empowered to protect their private land when it abuts state or federal property.

Finally, while the epidemic poses a serious challenge to Colorado, it also poses a unique economic development opportunity. The blue-tinged wood from beetle-killed timber creates a desirable aesthetic effect. If harvested early enough, wood from beetle-killed trees may be used for a variety of wood products, including furniture. The timber can also be ground into pellets that can provide a cheap, efficient, and green source of energy. Biomass can be used for both large-scale and small-scale power production.

Colorado has passed various laws creating incentives to help foster this industry. However, we believe that local timber harvesting contractors and wood processing businesses could still better help with management solutions if they had a long term guarantee of a viable market for their products. Additionally, these huge swaths of timber will only be viable for a discrete period of time, as nature and rot eventually take their toll on the integrity of the wood.

We would encourage Congress to create a permanent and viable market by continuing and expanding federal incentives for woody biomass, and creating a new incentive for other beetle-killed wood products.

#### CONCLUSION

Colorado has been doing our part in this crisis, and we stand ready to do more. We have undertaken vigorous efforts to mitigate the threat with limited resources through a number of unique collaborations between state and local government and private industry. Still, we are not able to address the infestation adequately without further help, and so we applaud Senators Udall and Risch in their effort to reduce the risk of catastrophic wildfire in America's West with the National Forest Insect and Disease Emergency Act of 2009.

Senator UDALL. Thank you, Senator Gibbs.

I want to turn to Senator Risch in 10 seconds. But I wanted to point out to my colleagues up here that not only is Senator Gibbs a committed sportsman and a firefighter, but he also chairs a full committee in the Colorado State Senate that is the equivalent of the House of Representatives Transportation Infrastructure Committee.

So as former State legislators, we know what can happen when you serve in one of those bodies. So, Senator Risch, the floor is yours.

Senator RISCH. That was very informative, and I think that probably you point out the counterintuitive thought that, indeed, the

issue of whether fire is going to burn or not is going to be the local climate conditions at the moment.

I guess I do take a little issue as far as—and I don't know whether you went this far, but it almost sounded like you said, well, it doesn't make any difference if the trees are dead or if they are alive. I probably would beg to differ with you if that was the conclusion that the studies that you cited reached.

I think most of us have been in a forest early afternoon or late afternoon when one of these things get going and come through like a freight train, you know, if they get a little wind behind them. It is hard for me to believe that a dead stand, particularly if it has still got needles on it, won't burn faster and hotter than a live stand will.

Now I can't help but throw in with the proposition that the whole thing is going to depend upon what the conditions are at the moment. But given conditions exactly the same, it is hard for me to believe that a dead stand isn't going to react more violently and more quickly than a live stand. I would like your thoughts.

Mr. KULAKOWSKI. Thank you for that question.

It does seem counterintuitive, and I want to stress that these conclusions are not only those reached by my own research group, but by several independent research groups at numerous different universities.

One thing that may help with this is I am not saying at all that stands made up of dead trees aren't susceptible to fires that are very large, very fast moving, and very severe. But what I am saying is that when we look at a stand of green trees, especially if that stand is lodgepole pine or spruce, those forests tend to be very dense. Under drought conditions, it is very probable that if a wild-fire starts, it is going to move very quickly, be very severe, and be very large.

Actually, as counterintuitive as it may seem, the studies that have looked at what happens when fires actually do burn in forests that have even red needles on them, the conclusions are that, indeed, the fires are no more extensive, no more severe than in live forests.

A couple of examples. In northern Colorado, we had an outbreak of spruce beetle that began in the late 1990s. In 2002, there was an extreme drought, and there were extensive forest fires across northern Colorado. Those fires included burned areas that were affected by bark beetle outbreaks. When we analyzed how extensive those fires were and how severe the fires were, we could not find any influence of the ongoing outbreaks.

Senator RISCH. It is interesting. Does that include the time of the year also? Because it seems to me, and admittedly, most fires get going in July or August, but it would seem to me, particularly in the early part of the year where you had a green forest—and again, it is hard to compare because it is finding a site exactly like another site. The only difference being a dead forest and a live forest would be difficult.

But it would seem to me early in the year where the trees had a lot of moisture in them in a live forest, that there would be at least some measurable significant difference between how a fire

would burn under those conditions. Again, admittedly, based on local conditions. Am I right, or am I wrong on that?

Mr. KULAKOWSKI. Yes. That is a difficult question to answer. The studies that I referred to are based on a couple of different methods. One is when wildfires have actually occurred in beetle-affected forests, scientists have gone in and analyzed what has actually happened. As you can imagine, we don't have the benefit of working with this in a laboratory to test exactly those types of questions. The other set of studies have used modeling to predict likely fire behavior in beetle-affected stands.

There was recently a study out of the University of Wisconsin in Madison, just came out this past year, that modeled fire behavior in beetle-affected stands. The conclusions of the study were very interesting because this study found that 2 things happen immediately following bark beetle outbreaks.

One is that the needles turn dry and red, which is what we all notice. But the second thing that happens almost at the same time is canopy bulk density is reduced, meaning the canopy thins out. There is less material in the canopy to burn even in the year or 2 immediately after that outbreak. Under those conditions, it is actually the thinning of the canopy that is brought about by the bark beetle outbreak that is more important to how wildfires spread than the foliar moisture content.

Senator RISCH. Interesting. Thank you.

Senator UDALL. Thank you, Senator Risch.

I continue to probe what I think are counterintuitive conclusions that many scientists have drawn, and in that spirit, I want to follow up with what Senator Risch was asking you.

At the end of your testimony, you conclude by saying that the premise of this bill rests on the increased fire threats posed by the dead trees. I would like to point out that I think in Senator Risch's and my minds, it rests on the premise that there is an increased potential for catastrophic damage from fires that may occur, and I want to make that clarification.

So given that premise, even if the number of fires remain the same, say, 100 on the Medicine Bow, for example, has the bark beetle outbreak increased the probability of those 100 fires being hotter, larger, and more potentially catastrophically damaging to forests, soils, watersheds, and communities? I want to underline those other elements here—soils, watersheds, and communities. We have talked a lot about the forest itself.

A follow-on question. If so, wouldn't fuels treatment reduce that severity? Doctor, I hope I didn't throw so many questions at you, it made it more difficult.

Mr. KULAKOWSKI. OK. I will do my best to answer that question.

Most of the research has examined what happens to fire risks in the years and decades immediately following outbreaks, and that body of scientific work has concluded that neither probability of wildfire nor severity of wildfire are increased as a result of bark beetle outbreaks.

Again, we can talk about this situation where we have the red needles on the trees, and we have just discussed that briefly. But then when we think about what happens after that? What happens after the needles fall off, the twigs start falling off? Eventually, we

have a situation that is analogous to trying to set fire to a row of telephone poles. There is simply nothing in the canopy to carry that wildfire.

So the one thing that I would offer is a little bit uncertain is what happens several decades into the future when all of the dead trees fall? So if we have an increased surface fuel load, what will that mean for the severity of fire?

Senator UDALL. I was going to follow up, but I don't want to cut you off.

Mr. KULAKOWSKI. OK.

Senator UDALL. OK.

Mr. KULAKOWSKI. Yes, and that part is, I think, least certain. There have been fewest scientific inquiries into that particular question.

Theoretically, we could speculate that the intensity of that fire could increase as a result of there being more dead fallen trees. But then the questions we have to ask are what is the likelihood of those fires reaching the canopy? As you know, living in Colorado, lodgepole pine forests tend to not have very much undergrowth. They tend to be fairly open in the understory, and the canopies, the green parts of the canopies tend to be high in the trees.

The result of that is that fires that spread on the forest floor tend to have a hard time reaching the canopy, making that jump up to the canopy. So an increased intensity of surface fire doesn't necessarily translate to the probability of ground fire.

Then, if I can, you had a multipart question. So I think the last part of it is you asked what kind of mitigation efforts.

Senator UDALL. Wouldn't the fuels treatment perhaps reduce that severity effect?

Mr. KULAKOWSKI. That is right. Would fuel treatments reduce the severity of those fires? Here again the thing that is important to consider, I think, is that not all fuel treatments are the same. It is important to remember that traditional timber harvest operations are not intended as fire hazard mitigation operations. Instead, the built-in goal is to produce timber and wood fiber.

There have been several studies in recent years that have looked at the efficacy of timber extraction in reducing subsequent fire risk. There was one study in Oregon that there was one initial fire that came through, and then there was a timber harvest operation. A scientific study into that found that regeneration of the forest actually decreased following the salvage operations, and the risk of subsequent fire also increased.

In Colorado, we had a major forest fire, the Hayman fire. There, similarly, when a group of scientists examined what influenced the extent and severity of that fire, again, unfortunately, the group of scientists concluded that timber harvests prior to the fire actually increased the severity of the fire.

So I am not saying it is not—I am not saying that it is impossible that we can somehow reduce the risk of high-intensity surface fire. But I think the scientific work that is out there on the subject would conclude that the way that we approach timber extraction, especially following disturbance, isn't very effective at that.

Senator UDALL. There are certainly those who would suggest there is a difference between timber harvesting and fuel reduction

and that those are different ways to think about the activities that take place in those areas at risk.

I have seen some scientific studies that show that once the dead trees fall to the ground, to pick up on one of the points you made, that all of that material creates an increased risk of hot, dangerous fires. We are going to get this jackstrawed structure. Specifically, I have seen one report whose lead author is Michael Jenkins, called “Bark Beetles, Fuels, Fires, and Implications for Forest Management in the Intermountain West”—it is dated 2008—that makes this point. In other words, makes the point that this material creates an increased risk of hot, dangerous fires.

Do you believe it would be prudent to address this aspect of the epidemic, especially around and near homes, communities, infrastructure, and watersheds, which is really where Senator Risch and I have focused our efforts and why this bill, we believe, is so important to protect that vital infrastructure.

Mr. KULAKOWSKI. Yes. I think the most important part of this bill, Senator Udall, is the concentration around homes and around communities and around infrastructure. I think here, even setting aside the question of the effect of bark beetle outbreaks, the reality is, is that in lodgepole pine forests, in spruce forests across the Rocky Mountain region, the risk of wildfire is tied to drought, and we have entered a period of prolonged drought, which means that the risk of wildfire is going to be high to those homes and communities, regardless of bark beetle outbreak.

So I think absolutely, yes, it makes sense to prioritize treatments around homes, around communities, and around infrastructure. But I would urge the committee to consider that those fuel treatments should be conducted regardless of the effect of bark beetle outbreaks.

Senator UDALL. I think Senator Risch and I will continue to probe your summaries and your conclusions.

Senator RISCH. Let me follow up. You know, I am somewhat familiar with how long a tree will stand after a fire or, for that matter, after a disease outbreak in red fir, Douglas fir. But I am not in pine. Is there a study on how long the tree will stand after it has been killed? A range, obviously. Not an exact, but a range.

Mr. KULAKOWSKI. Yes. In terms of lodgepole pine, I think the estimates we heard earlier in the previous panel were accurate, that the rate of tree fall is very rapid, and I wouldn't doubt the estimates put forth earlier.

Senator RISCH. It would be a shorter period of time than red fir, I would assume?

Mr. KULAKOWSKI. That I don't know.

Senator RISCH. Or cedar. Thank you.

Senator UDALL. Thanks, Senator Risch.

I will just note for the record, Dr. Kulakowski, we are going to continue to have this conversation that in the Hayman Fire, which we are very familiar with in Colorado. It was devastating. It was also part of a drought cycle. There had been a prescribed fire called the Polhemus prescribed burn. You may be familiar with it.

When the Hayman fire reached that prescribed burn area, it dropped to the ground almost immediately and was one of the reasons that fire ultimately died out after creating enormous damage.

Senator RISCH. Mr. Chairman, to follow up on that, in Idaho, when we have a fire, and we always do in the summertime. The fire boss, when you go into the tent there, will have a map of the previous fires and where they lie, what year they were, and all that sort of thing because the fire burns very differently when it hits an area that has previously either been harvested or been burned previously.

The rate is very much different, and the fire scientists that are on the fire will advise based on when that last fire took place.

Senator UDALL. I am tempted to get into a discussion about fuel load reduction versus the use of prescribed burns, but we may have to direct those questions to you.

I know Senator Gibbs has to catch an airplane, and I know I have gone way over my time. I know Senator Wyden is eager to ask a question. But if I could just ask Senator Gibbs 2 quick questions, and then I know we are going to excuse you and turn you loose.

Christine—Representative Scanlan and Senator Gibbs actually have to be formally excused from being in the legislature today. I don't know if that is how—

Senator RISCH. You can write them a note.

[Laughter.]

Senator UDALL. No, it comes from the speaker of the State house or the president of the State senate. I have no power in that regard.

Look, you talked about how the State has been engaged, and you mentioned how the bill could assist in the State's efforts. In your view, what threats are the highest priorities that need to be addressed in the immediate future and over the long term?

Mr. GIBBS. Yes. Thank you, Mr. Chairman.

Not only as a legislator, but also as a wildland firefighter, my concerns overall are life, property, and critical infrastructure for the areas I represent. You know, I would say I think the priority should be in areas where people live.

In Colorado, we have about 1 million Coloradoans that live within the wildland-urban interface, where the homes meet the forested areas. I represent communities that are heavily dependent on tourism. So I think that we need to look at the campgrounds, for example. We have had some that have closed down.

We heard from Under Secretary Harris Sherman earlier that he reflected that every day there could be 100,000 trees that are coming down. When you represent areas that are heavily dependent on tourism, and I have nine ski resorts in my district, that is problematic, to say the least.

I feel like the folks I represent want action right now, and I really think that, Chairman, your bill and Senator Risch's bill would really help achieve what we are missing at the Federal level, and that is really a long-term approach. I think making stewardship contracts permanent is very positive.

I represent areas where folks literally live right on the boundaries of U.S. Forest Service lands. So making good neighbor authorities permanent is crucial as well. So you can have that agreement with a land owner, as well as working with a State forest

service or a Federal Forest Service to really be proactive in taking care of defensible space. I think that should be a major priority.

So, those are some components. But I think really your bills will be really positive reflecting that.

Senator UDALL. Senator Gibbs, you imply and you actually were explicit in mentioning the private sector can play an important role in responding to this as well. Did you want to make any further comments about how the private sector might help us respond?

Mr. GIBBS. Most definitely. I mean, we need the private sector. In Colorado, we are losing our timber mills. In my district, we have Confluence Energy, which makes wood pellets. I mean, this is an amazing opportunity to turn a negative into a positive with creating biomass and actually creating energy, homegrown energy.

But what is unfortunate is Confluence Energy is shut down right now. We also have Rocky Mountain Pellet Company, which is up in Walden in Jackson County, which is shut down right now. The cost of shipping, especially lodgepole pine where the value is minimal because we are really looking at small-diameter tree stands, but the structural integrity is there if harvested within about a 5- to 10-year timeframe.

There could be great opportunities. We could even make cellulosic ethanol out of bark beetle kill. So, I do think there are great opportunities. But I mean, I am here before you today. But in 5 or 10 years, if I come back, and just imagine 2.9 or 3 million acres throughout the Rocky Mountain West, and those trees are coming down. You will have your constituents banging on your door, urging for emergency action right away. In my opinion, there will be fires in the future.

Depending on if those needles are still intact on those lodgepole pine trees, the fire severity may be different, and it may be easier to start a fire and may be harder once the needles come down. But I really think that we are dealing with an emergency situation right now. Not tomorrow, but right now. But I am really hopeful that we can help turn a negative into a positive with potentially creating jobs out of something really negative right now.

Senator UDALL. Thank you, Senator Gibbs.

I want to thank the chairman for being so gracious and giving me the opportunity to chair the committee, to sit here patiently while Senator Risch and I really dove into this important topic, which also does affect the State of Oregon.

Senator Gibbs, I know you have got to catch a plane. I want to excuse you. Dr. Kulakowski, hopefully, you can stay because I think Senator Wyden may well have some questions.

Again, thank you to the other 2 panelists for your patience.

Mr. Chairman.

Senator WYDEN. [presiding]. OK. Thank you. Look forward to working with you and our colleague from Idaho on this important measure.

Forrest Reinhardt, let us welcome you. You have been an integral voice of Young Life's Washington Family Ranch for a long, long time, working on public lands management. You have put an extraordinary amount of time into work in John Day, with the stakeholders on our legislation, S. 2963.

To you, Mr. Conrad, welcome. Thank you both for your patience. Why don't we say we will put your prepared remarks in the record in their entirety. I apologize for the hectic nature of this afternoon. So we will put your remarks into the record in their entirety, Mr. Reinhardt, and for you, Mr. Conrad.

I think for both of the witnesses from Colorado, we can excuse you both at this time. So we will consider you liberated as well, and we thank you both.

Mr. Reinhardt, go ahead.

**STATEMENT OF FORREST REINHARDT, PRESIDENT, VENTURE BEYOND, COTO DE CAZA, CA**

Mr. REINHARDT. Chairman Wyden and members of the subcommittee, thank you for allowing us to submit testimony regarding S. 2963 on behalf of Young Life, Derby-Smith Partners, and the Oregon Natural Desert Association.

Since the testimony has been submitted as written, I will just address one small subset in my oral testimony. You did a wonderful job of eloquently and briefly summarizing the benefits of this multifaceted proposal.

I wanted to note that we strongly support the proposal's equal-value land exchange between the BLM and the 3 neighboring land owners outlined in section 4 of the act. This consolidation will enhance the BLM's ability to effectively manage the area as wilderness and avoid conflicts between public and private land use.

It provides access to over 7,000 acres of the BLM lands previously inaccessible to the public, establishes new trailheads for camping, hiking, horseback riding, and secures access to backcountry campsites on nearly 4 miles of the John Day Wild and Scenic River.

Despite our strong support, we are concerned that the language in section 4 of the bill might be implemented in a way that does not meet the intent of the diverse stakeholders who have forged this effort. Specifically, there are 4 parcels adjacent to the Cathedral Rock area that are proposed for exchange from BLM to Young Life and Derby-Smith Partners as part of the equal-value exchanges.

It is our concern that the BLM may ultimately choose to retain and develop the parcels in a way that compromises the private land use instead of solving current problems of private lands trespass as envisioned in the act, which simply exacerbate the current problems.

As such, we respectfully request that you include language in section 4 of the bill that prioritizes the conveyance of these 4 parcels by the Secretary upon completion of the exchange. We would welcome the opportunity to work with your office on this important issue. It is our hope that such language will ensure that the implementation of the act is consistent with the intent of the various supporters.

Chairman Wyden, thank you again for allowing me to be here to testify and being invited. We strongly support the legislation. We look forward to working with your staff and committee to finalize the bill that will consolidate land management and permanently protect Cathedral Rock and Horse Heaven as wilderness.

[The prepared statement of Mr. Reinhardt follows:]

PREPARED STATEMENT OF FORREST REINHARDT, PRESIDENT, VENTURE BEYOND, COTO DE CAZA, CA

Chairman Wyden and Members of the Subcommittee, thank you for the opportunity to submit testimony regarding Senate Bill 2963 on behalf of Young Life, Derby-Smith Partners and the Oregon Natural Desert Association also known as ONDA. ONDA is a 1,400 member non-profit organization whose mission is to protect, defend and restore Oregon's high desert. Young Life is one of the largest Christian youth organizations in the United States and serves tens of thousands of children every year. Young Life and Derby-Smith Partners both own lands immediately adjacent to the proposed Wilderness areas. We are thankful for the support of Senators Wyden and Merkley in developing legislation to permanently protect Cathedral Rock and Horse Heaven as federally-designated wilderness areas.

Cathedral Rock and Horse Heaven are natural treasures that merit permanent protection as Wilderness. Located on the John Day Wild and Scenic River, the proposed Cathedral Rock and Horse Heaven wilderness areas are a tapestry of rolling hills, providing spectacular vistas of the river and the surrounding landscape. This unique wild area offers a profusion of desert wildflowers in the spring, along with recreational opportunities for boaters, hikers, horseback riders, hunters, botanists, and other outdoor enthusiasts. The area also provides valuable habitat for a variety of wildlife including Rocky Mountain elk, cougars, mule deer, bobcats, mountain bluebirds, prairie falcons and golden eagles.

The fragmentation of public and private lands is an enduring problem in the John Day basin. Because land ownership often looks like a checkerboard, it is not clear when you're on the ground where public land ends and private land begins. This creates confusion about access and inevitably results in management conflicts such as trespass and illegal hunting on private lands.

The proposal considered today is the work of diverse interests including neighboring landowners, county government officials, conservationists, and recreationists. As such the proposal accomplishes several important objectives including the: 1) permanent protection of Cathedral Rock and Horse Heaven as Wilderness, 2) consolidation of land ownership that will improve public and private land management, and 3) improved access to public lands.

The land exchanges and proposed Wilderness boundaries of these areas were set up in a way that greatly expands public access while respecting the needs of neighboring private landowners. The adjacent landowners are willing to work with BLM staff to ensure they have the access that they need to administrate the areas, even if that means occasionally crossing through private lands. Due to the historic confusion created by the fragmented parcels, this does mean that one of the two areas, the nearly 8,000-acre Cathedral Rock area, will be accessed only via the John Day River. This is not a new concept in the region. All three wilderness study areas located downstream of Cathedral Rock, including Northpole Ridge, Thirtymile, and Lower John Day, are also exclusively accessed by the river. In fact, the greatest demand on public lands in the John Day basin is for recreational use on the river corridor. Thousands of boaters and anglers float this stretch of the river every year. The Cathedral Rock proposal will expand public ownership by over four miles along the John Day River and thus open up a dozen new river campsites to the public.

At the same time, the nearby Horse Heaven proposed wilderness area consolidates over 8,000 acres in a way that will provide clearly-marked boundaries and two trailheads for parking and associated camping areas. This will create additional hiking and hunting opportunities and do so in a way that minimizes conflicts between public and private lands. It is the combination of the Horse Heaven and Cathedral Rock areas—one that features road access and another that features river access—that makes this a winning proposal.

We strongly support the proposed equal-value land exchanges between the BLM and three neighboring land owners outlined in Section 4 of the Act. This consolidation will enhance the BLM's ability to effectively manage the area as wilderness and avoid conflicts between public and private land use. It provides access to over 7,000 acres of BLM lands previously inaccessible to the public, establishes new trailheads for camping, hiking and horseback riding, and secures access to backcountry campsites on nearly four miles the John Day Wild and Scenic River.

Despite our strong support, we are concerned that the language in Section 4 of the bill might be implemented in a way that does not meet the intent of the diverse stakeholders who have forged this effort. Specifically, there are four parcels adjacent to the Cathedral Rock area that are proposed for exchange from the BLM to Young Life and Derby-Smith Partners as part of the equal-value land exchanges. It is our

concern that the BLM may ultimately choose to retain and develop the parcels in a way that compromises private land use and, instead of solving current problems of private lands trespass as envisioned in the Act, would simply exacerbate current problems. As such, we respectfully request that you include language in Section 4 of the bill that prioritizes the conveyance of these four parcels by the Secretary upon completion of the exchange. We would welcome the opportunity to work with your office on this important issue. It is our hope that such language will ensure that the implementation of the Act is consistent with the intent of the various supporters.

It is important to note that as part of the exchange proposal, Young Life has agreed to conservation easements on any lands found to have cultural values. As part of a long-term plan to protect and preserve cultural resources, Young Life has agreed to sign a memorandum of understanding for the inventory of and access to cultural resources. The easement language has been prepared in collaboration with the Oregon State Historic Preservation Society and the Prineville District BLM. The Confederated Tribes of Warm Springs Reservation is the proposed easement grantee.

We believe that this proposal represents the kind of solutions that are possible when diverse stakeholders come together to solve problems. You need look no further than the numbers to see the public benefits of this proposal. Prior to the exchange, the public can access 9,112 acres of their land via roads or the John Day River. Through this proposal, public access will be expanded to 16,484 acres. That nearly doubles the amount of public access in the area. Likewise, instead of the public having access to small chunks or narrow swaths of land that are not currently usable for activities such as hunting and hiking, the public will have access to two large blocks of land, each totaling several thousand acres. This is a win for Oregonians and we hope you will lend your support.

Chairman Wyden, we thank you for introducing Senate Bill 2963. We strongly support the legislation and we look forward to working with your staff and the Committee to finalize a bill that will consolidate land management and permanently protect Cathedral Rock and Horse Heaven as Wilderness.

That concludes my testimony. Thank you for your consideration of this bill.

Senator WYDEN. Thank you very much, and thank you for all your leadership with the Young Life effort. Very exciting. I will have some questions in a moment.

Mr. Conrad, welcome. I know you have been an awfully patient soul this afternoon, and we thank you for it.

**STATEMENT OF GREGORY E. CONRAD, EXECUTIVE DIRECTOR,  
INTERSTATE MINING COMPACT COMMISSION (IMCC), HERN-  
DON, VA**

Mr. CONRAD. As a grandfather helping to raise 3 grandchildren, I have learned that patience is a virtue.

Senator WYDEN. You are used to it. Very good.

Mr. CONRAD. Good afternoon.

Thank you for the opportunity to appear here before the subcommittee to present our views on S. 2830. I am appearing today on both behalf of the Interstate Mining Compact Commission and the National Association of Abandoned Mine Land Programs. The 30 States and tribes represented by these 2 organizations strongly support this important amendment to Title IV of the Surface Mining Control and Reclamation Act, otherwise known as the Abandoned Mine Lands program.

In testimony we presented to the committee on July 14 of last year at a legislative hearing on reform of the 1872 mining law, we noted that, nationally, abandoned mine lands continue to have significant adverse effects on people and the environment. As State and tribal governments, we continue to aggressively pursue programs and partnerships to address hard rock AML problems through a variety of State and Federal funding sources.

For States with active coal mining operations within their borders, the most consistent source of AML funding has been the title IV grants under the Surfacing Mining Act. Section 409 of the act allows States to use these grants at high-priority non-coal AML sites, and that work is generally limited to safeguarding hazards to public safety, such as closure of mine openings.

In December 2006, Congress amended title IV of the Surface Mining Act to, among other things, distribute certain AML funds to States in an amount equal to those previously allocated under SMCRA but never appropriated. However, while section 409 was not changed or amended in any way, the Interior Department, through both a Solicitor's Opinion and Final Rule has now interpreted SMCRA to prohibit this enhanced funding from being used for non-coal projects.

This is a significant blow to States such as New Mexico, Utah, and Colorado that have previously used SMCRA AML funds to address many of the more serious hard rock AML problems. At stake for these States is about \$9 million annually, and without access to these funds, New Mexico will have to forego an average of 200 non-coal AML closures each year. Colorado will have to postpone some 350 closures, and Utah will have to shelve upwards of 500 closures.

As was noted in Chairman Bingaman's remarks introducing S. 2830, the bill would remedy the Interior Department's unfortunate interpretation of the 2006 amendments, and as such, we strongly support the bill. That interpretation not only disregards the fact that section 409 was left unamended by Congress, it also is inconsistent with assurances repeatedly given to the States and tribes by OSM during the consideration of the legislation that non-coal work could continue to be undertaken with these AML funds.

The interpretation would also have the unacceptable result of requiring States and tribes to devote funds to lower-priority coal sites while leaving dangerous non-coal sites unaddressed.

OSM has argued that prior balance replacement funds are fundamentally distinct from section 402(g) moneys distributed from the fund. This, according to OSM, is due to the fact that these prior balance replacement funds are paid from the U.S. Treasury and have not been allocated under section 402(g)(1).

This is a distinction of convenience and has no basis in reason or law. The fact is these funds were originally allocated under section 402(g)(1), are due and owing pursuant to the operation of that section, and did not change their color simply because they are paid from a different source. Without the operation of section 402(g)(1) in the first place, there would be no unappropriated State and tribal share balances.

Furthermore, there was never an intent to condition or restrict the previously approved mechanisms and procedures that States and tribes were using to apply these moneys to high-priority coal and non-coal problems. To change the rules based on such a clever invention is inappropriate and inconsistent with law.

The urgency of advancing this legislation has been heightened, Mr. Chairman, by statements in OSM's proposed budget for fiscal year 2011. Therein, OSM is proposing to further restrict the ability of States to expend AML funds on non-coal reclamation projects.

This will apparently occur as part of a legislative proposal that the administration intends to aggressively pursue in the 111th Congress.

We are uncertain exactly what OSM has in mind with respect to this aspect of the legislative proposal, but we suspect it has to do with clarifying the very issue that is the subject of S. 2830. For all we know, it could be even further reaching.

For the same reasons that Congress needs to clarify this misinterpretation for non-coal AML work, it should also do so for the acid mine drainage, or AMD, set-aside program. Section 402(g)(6) has, since 1990, allowed a State or tribe to set aside a portion of its AML grant in a special AMD abatement account to address this pervasive problem.

We therefore urge the committee to amend S. 2830 to correct the current policy interpretation by Interior and allow the use of unappropriated State and tribal share balances for the AMD set-aside.

In support of our position on S. 2830, we also request that you include for the record the attached resolution adopted by the western Governors that urges the continued use of funds collected or distributed under title IV of SMCRA for the reclamation of high-priority, hard rock abandoned mines.

Thanks for the opportunity to submit this statement today. We look forward to working with the subcommittee to further this legislation.

[The prepared statement of Mr. Conrad follows:]

PREPARED STATEMENT OF GREGORY E. CONRAD, EXECUTIVE DIRECTOR, INTERSTATE MINING COMPACT COMMISSION (IMCC), HERNDON, VA

My name is Gregory E. Conrad and I serve as Executive Director of the Interstate Mining Compact Commission (IMCC). I appreciate the opportunity to appear before the Subcommittee today to present our views on S. 2830, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects. I am also appearing today on behalf of the National Association of Abandoned Mine Land Programs. Both organizations strongly support this critical amendment to SMCRA.

The Interstate Mining Compact Commission (IMCC) is an organization of 24 states located throughout the country that together produce some 95% of the Nation's coal, as well as important hardrock and other noncoal minerals. Each IMCC member state has active mining operations as well as numerous abandoned mine lands within its borders and is responsible for regulating those operations and addressing mining-related environmental issues, including the reclamation of abandoned mines. Over the years, IMCC has worked with the states and others to identify the nature and scope of the abandoned mine land problem, along with potential remediation options.

The NAAML is a tax-exempt organization consisting of 30 states and Indian tribes with a history of coal mining and coal mine related hazards. These states and tribes are responsible for 99.5% of the Nation's coal production. All of the states and tribes within the NAAML administer abandoned mine land (AML) reclamation programs funded and overseen by the Office of Surface Mining (OSM) pursuant to Title IV of the Surface Mining Control and Reclamation Act (SMCRA, P.L. 95-87).

In testimony we presented to the Committee on July 14th of last year at a legislative hearing on reform of the 1872 Mining Law, we noted that nationally, abandoned mine lands continue to have significant adverse effects on the environment. Some of the types of environmental impacts that occur at AML sites include subsidence, surface and ground water contamination, erosion, sedimentation, chemical release, and acid mine drainage. Safety hazards associated with abandoned mines account for deaths and/or injuries each year. Abandoned and inactive mines, resulting from mining activities that occurred over the past 150 years, are scattered throughout the United States. The sites are located on private, state and public lands.

Over the years, several studies have been undertaken in an attempt to quantify the hardrock AML cleanup effort. In 1991, IMCC and the Western Governors' Association completed a multi-volume study of inactive and abandoned mines that provided one of the first broad-based scoping efforts of the national problem. Neither this study, nor any subsequent nationwide study, provides a quality, completely reliable, and fully accurate on-the-ground inventory of the hardrock AML problem. Both the 1991 study and a recent IMCC compilation of data on hardrock AML sites were based on available data and professional judgment. While the data is seldom comparable between states due to the wide variation in inventory criteria, they do demonstrate that there are large numbers of significant safety and environmental problems associated with inactive and abandoned hardrock mines and that remediation costs are very large.

Across the country, the number of abandoned hardrock mines with extremely hazardous mining-related features has been estimated at several hundred thousand. Many of the states and tribes report the extent of their respective AML problem using a variety of descriptions including mine sites, mine openings, mine features or structures, mine dumps, subsidence prone areas, miles of unreclaimed highwall, miles of polluted waterways, and acres of unreclaimed or disturbed land. Some of the types of numbers that IMCC has seen reported in our Noncoal Mineral Resources Survey and Report and in response to information we have collected for the Government Accountability Office (GAO) and others include the following gross estimated number of abandoned mine sites: Alaska—1,300; Arizona—80,000; California—47,000; Colorado—7,300; Montana—6,000; Nevada—16,000; Utah—17,000 to 20,000; New York—1,800; Virginia—3,000; Washington—3,800; Wyoming—1,700. Nevada reports over 200,000 mine openings; New Mexico reports 15,000 mine hazards or openings; Minnesota reports over 100,000 acres of abandoned mine lands and South Carolina reports over 6,000 acres.

What becomes obvious in any attempt to characterize the hardrock AML problem is that it is pervasive and significant. And although inventory efforts are helpful in attempting to put numbers on the problem, in almost every case, the states are intimately familiar with the highest priority problems within their borders and also know where limited reclamation dollars must immediately be spent to protect public health and safety or protect the environment from significant harm. In this regard, we reference a statement we submitted to your Committee on December 22, 2008 regarding the American Recovery and Reinvestment Act (ARRA) and the potential for funding AML cleanup projects to create green jobs and stimulate the economy.

Today, state agencies are working on hardrock abandoned mine problems through a variety of limited state and federal funding sources. Various federal agencies, including the Environmental Protection Agency, Bureau of Land Management, U.S. Forest Service, Army Corps of Engineers and others have provided some funding for hardrock mine remediation projects. These state/federal partnerships have been instrumental in assisting the states with our hardrock AML work and, as states take on a larger role for hardrock AML cleanups into the future, we will continue to coordinate with our federal partners. However, most of these existing federal grants are project specific and do not provide consistent funding. For states with coal mining, the most consistent source of AML funding has been the Title IV grants under the Surface Mining Control and Reclamation Act (SMCRA). Section 409 of SMCRA allows states to use these grants at high priority non-coal AML sites. The funding is generally limited to safeguarding hazards to public safety (e.g., closing mine openings) at hardrock sites.

In December 2006, Congress significantly amended the SMCRA AML program to, among other things, distribute funds to states in an amount equal to that previously allocated under SMCRA but never appropriated. However, while Section 409 was not changed or amended in any way, the Interior Department, through both a Solicitor's Opinion (M-37014) and rule (73 Fed. Reg. 67576), has now interpreted SMCRA to prohibit this enhanced funding from being used for noncoal projects. This is a significant blow to states such as New Mexico, Utah and Colorado that have previously used SMCRA AML funds to address many of the more serious hardrock AML problems.

As you noted in your remarks introducing S. 2830, Mr. Chairman, your bill would remedy the Interior Department's unfortunate interpretation of the 2006 Amendments and as such we strongly support the bill. That interpretation not only disregards the fact that section 409 was left unamended by Congress, it is also inconsistent with assurances repeatedly given to the states and tribes by OSM during the consideration of the legislation that noncoal work could continue to be undertaken with these AML funds. The interpretation would also have the unacceptable result of requiring states and tribes to devote funds to lower priority coal sites while leaving dangerous noncoal sites unaddressed. While OSM will argue that this may im-

fact the amount of funding available to uncertified states to address high priority coal problems, Congress did not seem overly concerned with this result but rather deferred to its original framework for allowing both high priority coal and noncoal sites to be addressed.

In its final rule implementing the 2006 amendments to SMCRA (at 73 Fed. Reg. 67576, et seq.), OSM continued to abide by its argument that “prior balance replacement” funds (i.e. the unappropriated state and tribal share balances in the AML Trust Fund) are fundamentally distinct from section 402(g) moneys distributed from the Fund. This, according to OSM, is due to the fact that these prior balance replacement funds are paid from U.S. Treasury funds and have not been allocated under section 402(g)(1). This is a distinction of convenience for the Interior Department’s interpretation of the 2006 Amendments and has no basis in reason or law. The fact is, these funds were originally allocated under section 402(g)(1), are due and owing pursuant to the operation of section 402(g)(1), and did not change their “color” simply because they are paid from a different source. Without the operation of section 402(g)(1) in the first place, there would be no unappropriated (i.e. “prior”) state and tribal share balances. The primary reason that Congress appears to have provided a new source for paying these balances is to preserve a balance in the AML Trust Fund to 1) generate continuing interest for the UMW Combined Benefit Trust Fund and 2) to insure that there was a reserve of funding left after fee collection terminates in 2021 to address any residual high priority historic coal problems. There was never an intent to condition or restrict the previously approved mechanisms and procedures that states and tribes were using to apply these moneys to high priority coal and noncoal problems. To change the rules based on such a clever invention is inappropriate and inconsistent with law.

The urgency of advancing this legislation has been heightened, Mr. Chairman, by statements in OSM’s proposed budget for Fiscal Year 2011. Therein, OSM is proposing to further restrict the ability of states to expend AML funds on noncoal reclamation projects. This will apparently occur as part of a legislative proposal that the Administration intends to aggressively pursue in the 111th Congress. While the primary focus of that proposal will be the elimination of future AML funding for states and tribes that are certified under Title IV of SMCRA (which we adamantly oppose), OSM’s explanation of its proposal also contains the following language: “Similarly, the proposal will require that payments to noncertified States are only used for high-priority coal problems.” We are uncertain exactly what OSM has in mind with respect to this aspect of the legislative proposal, but we suspect it has to do with clarifying the very issue that is the subject of S. 2830. For all we know, it could be even farther reaching.

For the same reasons that Congress needs to clarify this misinterpretation for noncoal AML work, it should also do so for the acid mine drainage (AMD) set aside program. Section 402(g)(6) has, since 1990, allowed a state or tribe to set aside a portion of its AML grant in a special AMD abatement account to address this pervasive problem. OSM’s recent policy (and now regulatory) determination is denying the states the option to set aside moneys from that portion of its grant funding that comes from “prior balance replacement funds” each year to mitigate the effects of AMD on waters within their borders. AMD has ravaged many streams throughout the country, but especially in Appalachia. Given their long-term nature, these problems are technologically challenging to address and, more importantly, are very expensive. The states need the ability to set aside as much funding as possible to deal with these problems over the long term. We therefore urge the Committee to amend S. 2830 to correct the current policy interpretation by Interior and allow the use of unappropriated state and tribal share balances (“prior balance replacement funds”) for the AMD set aside, similar to the use of these balances for noncoal work. Suggested amendatory language is attached to our statement.\*

Over the past 30 years, tens of thousands of acres of abandoned mine lands have been reclaimed, thousands of mine openings have been closed, and safeguards for people, property and the environment have been put in place. There are numerous success stories from around the country where the states’ AML programs have saved lives and significantly improved the environment. Suffice it to say that the AML Trust Fund, and the work of the states pursuant to the distribution of monies from the Fund, have played an important role in achieving the goals and objectives of set forth by Congress when SMCRA was first enacted—including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal and noncoal mining. Passage of S. 2830 will further these congressional goals and objectives.

\*See Appendix II—Statement of National Association of Abandoned Mined Land Programs.

In support of our position on S. 2830, we also request that you include for the record the attached resolution (No. 07-8)\* adopted by the Western Governors that urges the continued use of funds collected or distributed under Title IV of SMCRA for the reclamation of high priority, hard-rock abandoned mines. This resolution is in support of the Western Governors' policy statement B.6.

Thank you for the opportunity to submit this statement on S.2830. We welcome the opportunity to work with you to complete the legislative process and see this bill, as amended, become law.

Senator WYDEN. Thank you, Mr. Conrad.

Mr. Reinhardt, let us talk about the question of trespass in particular. Are there examples of how trespass in the area might affect Young Life's ability to conduct your important youth camps and manage the Washington Family Ranch effectively?

Mr. REINHARDT. Yes, Mr. Chairman, as you noted, the existing land patterns are a very broad checkerboard of private and public lands, most of which are not contiguous. Therefore, the hopscotching processes whereby the public would be attempting to get to public lands to rightfully hunt on those public lands is next to impossible and usually results in them, the public ending up trespassing and getting close to the camp.

One particular incident about 2½ years ago that really prompted us reengaging on this opportunity was we had some hunters who ended up actually within the center area of the large camp that exists, the Young Life's Wild Horse Canyon, during hunting season with guns while a camp was going on. When confronted to let them know they were not on public lands, they were thoroughly convinced they were on public lands and quite argumentative with the staff.

It sent the kids running in a bit of hysteria, as you might imagine, seeing hunters within a matter of about 100 yards with guns showing up. It certainly wasn't part of the program that we planned. So that is just one of many examples where we have had challenges.

Senator WYDEN. What would be your assessment of roaded access to Cathedral Rock wilderness? Where would the various private land owners be in regard to that issue?

Mr. REINHARDT. The private land owners have a unique set of circumstances and conditions along what is called "Muddy Road." It is a very limited-access county road. It is actually part of the old Dalles to Canyon City toll road from the 1860s, and it has no base under it. It is basically a 2-lane—or excuse me, a 2-track jeep trail that goes back through there.

So, the actual physical access is a tremendously challenging physical access. We have had a number of folks who have ended up stranded on that road, and we have had to manage taking care of that.

But more specifically, to the private access issues, the trespassing becomes a challenge because it is very difficult for folks who are in that area to know when they are on public land and when they are on private land. There is very little demarcation that allows that certainly from the BLM.

Senator WYDEN. Is it fair to say that the deal falls apart without certainty for the private owners?

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\* Resolution has been retained in subcommittee files.

Mr. REINHARDT. Yes. I would say that, and I would say not only the private owners, I would argue or suggest that for Jefferson County, who initiated the concern, because of the requirements to improve the road that they would likely be under, they noted that they would likely change their support if there was public access on that road to Cathedral Rock.

Senator WYDEN. Tell me about the potential new additions. You and other community members are talking about this, certainly substantial interest in it. Can you give us any information, any additional information about the new parcels of land for exchange that are being proposed?

Mr. REINHARDT. Yes, Senator.

The additional proposal of land actually has been in the works for—the research has been in the works for about a year and a half to include those other parcels close to the Antone ranch. It is the same members in the exchange. We are not adding any new private members to the exchange.

Since we were doing that research at the same time, same BLM district, same Forest Service district, same watershed, we felt it was an opportunity to solve 2 problems at one time and actually accomplish a greater good by adding more land to the wilderness area at the same time up at Horse Heaven. Have spent a good deal of time at the district office, both with Forest Service and the BLM, doing the preliminary work to set the stage for that opportunity.

Senator WYDEN. I think you have really done a terrific job, and I thank you for it.

Mr. Conrad, you are getting spared largely because I have got 3 meetings I am supposed to be in between now and 5 p.m.

Mr. CONRAD. I understand.

Senator WYDEN. We will follow up, the staff on both sides will follow up with you and work closely with you on it. I know that this has been frustrating because of the earlier delay and so much taking place today in the Senate.

But thank you both for your patience. Mr. Reinhardt, there is great interest in our home State in what you all are trying to do. As a longtime fan of Young Life, really appreciate the leadership.

Mr. REINHARDT. Thank you very much.

Senator WYDEN. Look forward to working with you closely. Mr. Conrad, we will be following up with you.

With that, the subcommittee is adjourned.

[Whereupon, at 4:42 p.m., the hearing was adjourned.]

## APPENDIXES

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### APPENDIX I

#### Responses to Additional Questions

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[Responses to the following questions were not received at the time the hearing went to press:]

##### QUESTIONS FOR HARRIS SHERMAN FROM SENATOR BARRASSO

*Question 1.* In your testimony, you mentioned many nationwide baseline accounts for forest management that may be utilized for bark beetle mitigation. However, the scope of the bark beetle disaster requires dedicated funding and management. What funding is the Forest Service prepared to allocate specifically to bark beetle mitigation in Wyoming, Colorado, Idaho, Montana, and South Dakota in Fiscal Year 2011? Please indicate the line items where this funding will be made available and the specific amounts.

*Question 2.* In your testimony, you indicated that the Department wants to “fully take advantage of” good neighbor authority with state governments. Could you explain how expanded good neighbor authority would help address bark beetle issues West-wide?

*Question 3.* Please provide the Committee with full documentation produced by the National Incident Management Organization team assigned to evaluate the bark beetle infestation in USFS Rocky Mountain Region.

a. Please explain why this team’s analysis excluded Shoshone National Forest.

*Question 4.* I was disappointed in your testimony that the Forest Service plans to handle the bark beetle epidemic are still being hatched. You stated that the agency continues to develop cost estimates and management plans that may be implemented sometime in the future. This is unacceptable. This epidemic has been growing for years. Please explain the specific management strategy for bark beetle mitigation in Wyoming, Colorado, Idaho, Montana and South Dakota in Fiscal Years 2010 and 2011.

*Question 5.* The Forest Service owns 9.2 million acres in Wyoming, 3.4 million of those acres are Wilderness and 3.3 million acres are inventoried as roadless. We’ve got 3.5 million acres of bark beetles to deal with, and the infestation doubles each year. The Forest Service cannot simply ignore its management responsibility based on arbitrary boundaries. We have to save communities, watersheds, and wildlife habitat from bark beetles. Is the Forest Service prepared to manage its lands as necessary for community and watershed protection, regardless of arbitrary roadless area boundaries?

*Question 6.* If the Forest Service continues management at the rate of the last decade, it will take 58 years to treat all acreage currently at high risk for wildfire. We don’t have that kind of time. What is the Department’s strategy to increase the annual treatment rate nationwide to reduce fire risk?

*Question 7.* In your testimony, you indicated that the Forest Service has discussed reforms necessary to increase efficacy of stewardship contracting. Please list the reforms that have been discussed in detail and provide an explanation of whether or not each reform discussed requires authorization by Congress.

*Question 8.* Canadian scientists and politicians are suggesting that the current bark beetle outbreak in Canada will reduce the timber volume available to harvest resulting in a decrease in Canada’s lumber shipments to the United States for up

to a century. If not Canada or the federal forests in the United States; where do you suggest this country's builders get their lumber to meet the future housing demand over the next century?

QUESTIONS FOR HARRIS SHERMAN FROM SENATOR MURKOWSKI

As I recall you testified before this Committee and delivered some fairly negative testimony on S.1470 Senator Tester's Forest Jobs and Recreation Act of 2009. Your written testimony expressed similar concerns with Senator Wyden's S. 2895, Eastside Oregon forestry bill.

I came across an article that said: "The Obama Administration could support the logging mandate in Montana, Senator Jon Tester's wilderness bill as a 'pilot project,' said U.S. Agriculture Secretary Tom Vilsack."

That same article reported that "at the time, Agriculture Undersecretary Harris Sherman said the logging targets were 'unworkable' for the agency and could set a precedent in which each national forest is managed differently by Congress."

*Question 1.* Can you explain what a "pilot project" is and what changes from S. 1470 the Administration will make to that "pilot project" to make it acceptable to Secretary Vilsack?

*Question 2.* Now that the Secretary has announced that S. 1470 is an acceptable "pilot project", is it your view that the Tester proposal can be implemented without legislation?

*Question 3.* Could this just be done by having the Secretary wave his administration wand to deem these other bills acceptable too?

*Question 4.* Do you think the same changes to Senator Udall's bill converting it into a pilot project would make this bill we are hearing today acceptable to the Secretary?

*Question 5.* If the Secretary can just turn the Tester logging mandates into a "pilot project" and find that an acceptable investment; can he do the same for S. 2895 or for S. 2798 Senator Udall's National Forest Insect and Disease Emergency Act of 2009?

*Question 6.* As I recall you testified before this Committee and delivered some fairly negative testimony on S.1470 Senator Tester's Forest Jobs and Recreation Act of 2009. Several weeks ago after you disparaged Senator Tester's bill, the Secretary then came out and said it could be implemented as a pilot project. Last week your written testimony expressed similar concerns with Senator Wyden's S. 2895, Eastside Oregon forestry bill. Yet today your testimony on the Colorado bill is less harsh.

All three of these bills are more similar than they are different; please help us understand your testimony and seemingly evolving thinking on these types of bills?

*Question 7.* If I heard you correctly; you said you're developing your strategy for dealing with the nearly complete collapse of the Lodgepole pine ecosystem in the Intermountain West as we speak. This fiscal year is half over and the agency received its budget more quickly this year than in most years in the last decade. I hope you understand that many Senators find the notion that an insect epidemic has been raging in this area for the last 4 or 5 years and has almost completely run its course yet the Forest Service is just getting around to trying to figure out what to do is more than a little disturbing.

If as you suggested, more than 100,000 trees are falling down every day in the Routt-Medicine Bow and Arapaho-Roosevelt National Forests aren't you concerned for the people who hike and hunt and recreate in the Roadless Areas and Wilderness Areas?

*Question 8.* The Shoshone National Forest has approximately a million acres of insect impacted Lodgepole pine, yet recently the Forest Supervisor informed some in Congress that they would be treating only 13,000 acres this year. That suggests that fuel reduction work would be completed by about the year 2141.

Is that pace of treatment acceptable to you?

*Question 9.* Does this casual approach to this unprecedented forest disaster suggest that the Forest Service has given up on managing large swaths of the land they have been entrusted to manage?

*Question 10.* Recently my staff completed an analysis of the number of acres in fire condition class 2 & 3 compared to the number of acres managed through prescribed burning, commercial timber sales, or stewardship contracting. That analysis suggests that in most Regions half or more of the acres in each region are at high risk to catastrophic fires (113 million acres out of the 193 million acres entrusted to the Forest Service). It shows that if the 2009 management levels are carried on into the future that it would take more than a century in most regions to mitigate the fire risk. Specifically it would take Region One 203 years to manage their Fire

Risk Condition Class 2 & 3 Acres; 121 Years for Region Two; 73 Years for Region Three; 188 Years for Region Four; 250 Years for Region Five; 89 Years for Region Six; and 107 Years for Region 9.

The Forest Service is supposed to, according to its original Organic Administration Act: 1) to improve and protect the forests; 2) to secure favorable water flows; and 3) furnish a continuous supply of timber for the use and necessities of citizens of the United States.

Can you show how you are accomplishing any of the three prime directives given the data from this decade compared to resource health and production data from the first 70 years of the agency having taken on the responsibilities articulated in the 1910 Organic Administration Act?

*Question 11.* Given the Agency's \$4 to \$5 billion per year budget over the last decade can you provide the Committee with an estimate of the timber value lost to fires and insects since the National Fire Plan was signed in 2002?

*Question 12.* Can you provide an estimate of the value of the water that was degraded as a result of wildland fires on the National Forest or from insect epidemics?

*Question 13.* Can you provide an estimate of the number of acres of Threatened and Endangers Species habit that has been negatively impacted as a result of wild fires including resulting invasive species impacts?

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QUESTION FOR GLENDA OWENS FROM SENATOR BARRASSO

*Question 1.* In 2006, Congress enacted changes to the Surface Mining Control and Reclamation Act. The President and Secretary Salazar supported the final compromise when they served in the Senate. The AML compromise was a bipartisan agreement achieved after more than a decade of negotiations. Everyone gave a little to reach a solution that worked for all parties.

a. Why are you walking away from an agreement you and the President supported?

b. Why should the people of Wyoming, Montana, Louisiana, the Crow Nation, the Hopi Nation, or the Navajo Nation ever trust the Administration if it breaks deals that it previously supported?

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QUESTION FOR DOMINIK KULAKOWSKI FROM SENATOR WYDEN

I recently introduced a bill to promote thinning in the Eastside forests of Oregon to restore the forests there, reduce hazardous fuels, and protect old-growth, and I worked closely with a number of top scientists in developing the bill to ensure that it was consistent with the best available science. As you understand it, are the roles for mechanical thinning different in the context of bark beetle infestations of lodgepole pine and spruce, on the one hand, and dry ponderosa pine forests, on the other?



## APPENDIX II

### Additional Material Submitted for the Record

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[Due to the large amount of materials received, only a representative sample of statements follow. Additional documents and statements have been retained in sub-committee files.]

#### STATEMENT OF THE COLORADO TIMBER INDUSTRY ASSOCIATION, ON S. 2798

On behalf of the Colorado Timber Industry Association, representing Colorado's forest products companies, including sawmills, loggers, and truckers, please accept the following testimony for the Hearing Record on S. 2798, the National Forest Insect and Disease Emergency Act of 2009.

The interaction of western bark beetles, fuels and fire in forest systems is inherently complex and much remains unknown. Mountain pine beetle killed ponderosa and lodgepole pine typically topple over within 2-10 years, creating heavy fuel loads. Such heavy fuel accumulations represent challenging wildfire control scenarios, and if the larger diameter material dries out sufficiently, as has occurred frequently in the past decade, wildfire severity and intensity is greatly increased (Kolb 2009).

Typically in the northern Rocky Mountains, very few fires account for most of the total area burned during a long time period, e.g., one or two centuries (Turner et al, 1999). In Yellowstone National Park, researchers found that severe, high intensity fire was more likely to occur in stands of advanced successional stage and in stands which experienced high-intensity prior infestations by mountain pine beetles and mistletoe (Turner et al, 1999).

In Montana, several Indian tribes are using active forest management as well as rapid salvage and sanitation harvesting to stem bark beetle epidemics and reduce the probability of catastrophic wildfire effects in their forests (Kolb 2009). The mitigation of potentially adverse bark beetles and fire effects is maximized when treatments occur at landscape scales and integrate the spatial arrangement of forest types, stand conditions, treatment units, and prescriptions (Jenkins et al 2008).

After examining the 2007 Monumental and North Fork Fires in central Idaho, researchers found that fuels treatments modified wildfire intensity and that burn severity to vegetation and soils within the areas where fuels were treated was generally less compared to neighboring areas where fuels were not treated. Researchers also concluded that fuel treatment location and juxtaposition and the treatment of surface fuels, ladder fuels, and crown fuels (in that order of importance) are major determinants of both wildfire intensity and burn severity (Graham et al 2009).

Looking ahead to 'The Next Forest', the greater the percentage of host trees that are similar in age and size, the greater the probability of bark beetles successfully attacking and colonizing them at the same time (Kolb 2009). Conversely, increasing the diversity of tree species and decreasing the size of similar tree age and size patches of host trees makes for a more difficult environment for bark beetles and reduces the ability of epidemics to develop (Kolb 2009).

The Colorado Timber Industry Association strongly supports S. 2798 and commends Senator Mark Udall for his leadership on this important bill. The bark beetle epidemics in Colorado and other western states are catastrophic, and will require tremendous resources to plan and implement projects to mitigate the effects, restore the national forests, and protect communities and people.

S. 2798 will greatly assist the Forest Service by providing mechanisms that will allow them to more efficiently and effectively focus their on-the-ground response to catastrophic bark beetle epidemics in Colorado and other western states. We urge the Senate Energy & Natural Resources Committee to advance this legislation as soon as possible.

In addition to the provisions to establish and manage Insect and Disease Emergency Areas, other important provisions in the bill will—designate any biomass removed from Insect and Disease Emergency Areas as 'renewable biomass', extend

Good Neighbor Authority to the affected States, permanently authorize Stewardship Contracts, and exclude multiyear Stewardship Contracts from cancellation liability requirements. These important provisions will contribute to the Forest Service's ability to treat national forest lands within the affected States.

We have one recommendation. One of the purposes of the bill is "to ensure that increased resources are available within each designated insect and disease emergency area." However, the bill does not contain any provision to actually "ensure" those "increased resources." Addressing the bark beetle epidemics in Colorado and other western United States will be very expensive. We are very pleased that the US Department of Agriculture targeted \$74 million toward the bark beetle issue in FY 2010. However, that funding will not begin to fully address the problems, and adequate funding will again be an issue in FY 2011 and subsequent years. Just like fire funding, funding for bark beetle response should not come from normal program funding. These catastrophic epidemics should be treated like other major disasters, and Congress should respond with the resources required to address a national emergency. We urge the Committee to work with the Administration to develop a cohesive strategy, including identification of needed work plus the amount and source of funding, to address the bark beetle epidemics in Colorado and other western states.

Thank you for this opportunity to submit testimony.

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NORTHWEST COLORADO COUNCIL OF GOVERNMENTS,  
*Silverthorne, CO, October 22, 2009.*

Hon. MARK UDALL,  
*U.S. Senate, Hart Office Building, Suite SH-317, Washington, DC.*

DEAR SENATOR UDALL, Northwest Colorado Council of Governments is in support of the draft National Forest Insect and Disease Emergency Act of 2009 for the following reasons:

- Act addresses both wildfire and falling tree hazards.
- Act addresses all components of communities including human life, homes, businesses, utility corridors, communications sites, roads, trails, recreation sites, and water structures.
- Act specifically addresses headwaters of water supplies.
- Act establishes Insect and Disease Emergency Areas on national forest system lands excluding designated Wilderness and Wilderness study areas.
  - Provides for priority treatments for hazardous fuels and hazard trees.
  - Provides assistance to State and local governments and private land owners for hazardous fuels and hazard trees.
  - Gives priorities for initiatives involving the harvesting of renewable biomass.
- Act makes permanent existing good neighbor and stewardship contracting authorities.
- Act includes twelve Western states.
- Considers any woody biomass removed from a designated emergency area as renewable biomass under Clean Air Act.
- The Secretary may apply provisions in the Healthy Forest Restoration Act of 2003 to hazardous fuels and hazard trees in designated emergency area.
- The Secretary may not obligate funds to cover the cost of cancelling a multiyear stewardship contract until the date on which the contract is cancelled.
- Act does not modify the National Environmental Policy Act yet utilizes provisions in the Healthy Forest Restoration Act of 2003 to speed analysis.

We fully understand and support that this draft bill is purposely narrow in its scope to focus on emergency mitigation of the current insect and disease situation in the West which is our highest priority. We encourage you not to broaden and thereby weaken the draft bill into a hybrid between emergency mitigation and forest health.

We want to especially thank you for the services of Doug Young of your staff who has done a great job in addressing the needs of our member jurisdictions.

Sincerely,

GARY SEVERSON,  
*Executive Director.*

## STATEMENT OF THE SOCIETY OF AMERICAN FORESTERS, ON S. 2798

On behalf of the Society of American Foresters (SAF), the national scientific and educational organization representing the forestry profession with over 14,000 members, please accept the following testimony for the Hearing Record on S. 2798, the National Forest Insect and Disease Emergency Act of 2009. As an organization chartered to advance the science, education, technology, and practice of forestry for the benefit of society, the SAF strongly supports S. 2798 and commends Senator Mark Udall and Senator James Risch for their bipartisan leadership on this important bill. S. 2798 is a simple, common sense bill that could be easily implemented by land management agencies to more-quickly address problems associated with extensive bark beetle infestation in the western United States. We urge the Senate Energy & Natural Resources Committee to advance this legislation as soon as possible.

As millions of acres of forests across the western United States are infested, dead and dying of mountain pine beetle and other insects and diseases, a great deal of work will be needed to remove dead and dying trees to protect public safety, roads, trails, power lines, watersheds and protect communities from catastrophic wildfire. Further, by preventing uncharacteristically hot wildfires, we can encourage the establishment of a new forest by protecting forest seed sources, preventing cooked soils and other damage that hinders or prohibits forest regeneration.

Given current federal land management laws, regulations and case law, there is virtually no way this work can be done in a timely manner. In fact, the Forest Service will only be able to address the direst of needs even if unlimited funding were devoted to this problem. S. 2798 will greatly aid the Forest Service by reducing the amount of time and resources needed to plan and implement projects to protect life, property and other important forest values.

Again, we commend you for the simple, common sense approach of this bill, but also have some recommendations:

1. Extend the authorities and designation in the bill to include Bureau of Land Management (BLM/public lands) lands. Across the west, many national forests are intermixed with BLM land and treating both land ownerships is critical (for example, 22% of Colorado's forestland is managed by the BLM and over 320,000 acres of forestland in Idaho is managed by the agency).
2. Authorize 20-year stewardship contracts. Given the landscape-scale restoration work needed to restore forest health, 20-year stewardship contracts could serve as an important tool for land management agencies. These long-term contracts could encourage larger projects while also providing more certainty and consistency for forest contractors.
3. Ensure appropriate funding of this legislation.
4. Finally, we also ask that some focus be placed on green forests that have not yet been infested to prevent mortality from bark beetles. Published scientific and case studies have shown that in some forests, if aggressive thinning to a prescribed density is completed, the forest can survive attacks from bark beetles. This will be important to protecting existing habitat and other forest values for the future as a diverse, multi-aged forest is much more resilient than the even-aged forests we see today.

Thank you for the opportunity to submit testimony.

TROUT UNLIMITED,  
*Arlington, VA, May 5, 2010.*

Hon. JAMES E. RISCH,  
*483 Russell Senate Office Building, Washington, DC.*

Hon. MARK UDALL,  
*317 Hart Senate Office Building, Washington, DC.*

RE: S. 2798, the National Forest Insect and Disease Emergency Act of 2009

DEAR SENATORS RISCH AND UDALL: I am writing on behalf of Trout Unlimited and its 140,000 members nationwide regarding S. 2798. Trout Unlimited recognizes the challenges posed by large-scale bark beetle infestation in the West, and believes that it is important for management approaches to be based on sound science, public involvement and environmental review.

Trout Unlimited supports the underlying desire to remove dead and dying trees where it makes ecological and economic sense to achieve those goals. In the West, the high levels of insect and disease killed and damaged trees are creating new challenges on many national forests. We support the goal of reducing the risk these trees pose to communities, recreational areas, and transportation and utility cor-

ridors. However, we are concerned with S. 2798's overly broad criteria for defining emergency areas, the lack of public involvement in designating emergency areas, and the lack of a sunset provision.

The legislation calls for the establishment of insect and disease emergency areas. The establishment parameters of these emergency areas are extremely broad and vague, providing extraordinary discretion to the Secretary in creating them. The definition only requires the areas to have increased risk to catastrophic fires or increased threats by hazard trees to utility corridors, communication sites or other infrastructure. These broad criteria would apply virtually anywhere in the western United States. We recommend adding additional specificity to better circumscribe emergency area designation and to focus efforts on areas surrounding communities and infrastructure as opposed to the backcountry.

We are also concerned about the lack of public involvement in mapping emergency areas. Local involvement in the mapping and designation is important. Such participation is important for a smooth and efficient NEPA process and public involvement that will occur when particular treatments are proposed.

Another concern is in how this bill might be applied to other situations in the future. There does not appear to be any sunset provision or date. This opens the possibility that the provisions of this bill could be used in the future to circumvent environmental protections in unwarranted ways.

The bill excludes designated wilderness and recommended wilderness from emergency areas. Trout Unlimited supports these exclusions, but they are not enough to protect important habitats. Inventoried roadless areas and other locations that harbor critical values need to be excluded. At a minimum they need to be categorized as areas requiring special consideration and review before being open to "treatment". Other such important habitats include Wild and Scenic River corridors, research natural areas and areas within 300 feet of perennial or intermittent streams. The rationale for including the stream corridors in the exempted areas is the need for wood recruitment into those stream systems. One way to help ensure that critical habitats are adequately protected is to include Healthy Forest Restoration Act protections for old growth forest stands, older and larger trees, threatened and endangered species, and other resources.

Finally, from a fisheries conservation standpoint, two of the most important ways to help native trout cope with fire is to remove roads in order to reduce sedimentation, and remove culverts that block fish passage so that fish may move to other habitats in the occurrence of a fire and then re-colonize the stream when conditions have improved. To the extent that these activities may be advanced through this bill, fisheries will be made more resilient to the effects of fire.

We appreciate both of your efforts to protect communities and vital infrastructure in the forests heavily impacted by beetle kill. There is a great deal of work to be done, much of it urgent. By creating opportunity for public involvement, applying the best available science, and maintaining appropriate protections for critical habitats this work may be done in a manner that benefits communities and ecosystems.

Sincerely,

STEVE MOYER,  
*Vice President for Government Affairs.*

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STATEMENT OF VAIL RESORTS, ON S. 2798

Thank you for the opportunity to provide written testimony on the National Forest Insect and Disease Emergency Act of 2009 (S. 2798). Vail Resorts supports this legislation and would like to thank Senator Udall and Senator Risch for their work on this important legislation.

We would also like to take this opportunity to thank Chairman Wyden and the Subcommittee on Public Lands and Forests as well as the full Energy & Natural Resources Committee including Chairman Bingaman and Ranking Member Murkowski for their work on the FLAME Act that is now law. Beginning to untangle fire suppression costs from the rest of the USFS budget is a critical step to let USFS focus resources on forest health.

Vail Resorts is the premier mountain resort company in the world operating five of the 10 most visited ski resorts in the United States which account for 10% of United States skier visits. Vail Resorts operates its resorts on National Forest System lands under special use permits from the United States Forest Service (USFS). Our resorts value the partnership we have with the Department of Agriculture and the USFS on the district, forest, regional and national level. This partnership is critical to the day-to-day operations of our resorts and we look forward to continuing to work closely with the dedicated men and women of the USFS. Additionally, the

Department and the USFS should be commended for the recent decision to commit additional resources to USFS Region Two to address forest health needs.

While our resorts are fortunate to be home to diverse species of trees (including aspen, spruce, and fir), the extent of the Mountain Pine Beetle (MPB) activity in aging lodgepole pines at our resorts necessitates an increased level of forest health efforts. In carrying out these efforts, in conjunction with the USFS, Vail Resorts is committed to the safety of our guests and the responsible stewardship of the environment. To that end the identification and removal of hazard trees is an on-going initiative. Examples of hazard trees include:

- Trees within the wildfire defensible space of resort structures.
- Trees with the potential to dead-fall or blow-down onto lift lines, buildings, or trails.

Vail Resorts would like to thank the USFS for working closely with our mountain crews to facilitate the timely removal of hazard trees presenting safety issues to our guests and infrastructure. The importance of this work cannot be overstated.

In addition to hazard tree removal, other forest health efforts are aimed at promoting increased species and age diversity through selective tree thinning, small patch cuts, and forest restoration work where the MPB has had or will have the greatest impact. Working closely with the USFS, we have consolidated this work into updated vegetation management plans that are in various stages of environmental review and implementation.

Through our charitable giving, employee engagement, and environmental stewardship program, Vail Resorts Echo, we have also engaged our guests to actively support restoration work on the forest through a partnership with the National Forest Foundation Ski Conservation Fund. Our guests have the opportunity to support the fund with \$1 when they purchase lift tickets, ski passes, or stay in our lodges. The National Forest Foundation uses these contributions for on-the-ground conservation work in the National Forests.

In June, 2009 Vail Resorts was invited to share its views on the MPB with the U.S. House Subcommittee on Water and Power as well as the Subcommittee on National Parks, Forests and Public Lands. At that hearing we stated that:

- The MPB outbreak in the West has created forest health challenges beyond the capabilities of any single stakeholder and increased partnerships are essential to achieve the desired outcomes.
- The USFS, operating within relevant laws and regulations, has demonstrated a great willingness to work with stakeholders in a collaborative and flexible manner to facilitate the response to MPB related forest health challenges.
- Opportunities to respond to the MPB include supporting forest products infrastructure, biomass energy, providing the Forest Service with increased flexibility to respond to the MPB, and reforestation.

In our view, S. 2798 seeks to proactively address the above issues. It focuses on the impacts that forest insects and disease can have on our local communities as well as the important role the forests fill as recreation sites and local, regional, and even national watersheds.

Thank you again for the opportunity to express our support for the National Forest Insect and Disease Emergency Act of 2009.

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STATEMENT OF THE NATIONAL ASSOCIATION OF ABANDONED MINED LAND PROGRAMS,  
ON S. 2830

My name is Michael Garner. I am the AML Program Director with the Maryland Department of the Environment and currently serve as the president of the National Association of Abandoned Mined Land Programs (NAAML). We appreciate the opportunity to submit this statement for the record of the legislative hearing on S. 2830, a bill to amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects. We strongly support this critical amendment to SMCRA.

The NAAML is a tax-exempt organization consisting of 30 states and Indian tribes with a history of coal mining and coal mine related hazards. These states and tribes are responsible for 99.5% of the Nation's coal production. All of the states and tribes within the NAAML administer abandoned mine land (AML) reclamation programs funded and overseen by the Office of Surface Mining (OSM) pursuant to Title IV of the Surface Mining Control and Reclamation Act (SMCRA, P.L. 95-87). Since the enactment of SMCRA by Congress in 1977, the AML program has re-

claimed thousands of dangerous sites left by abandoned coal mines, resulting in increased safety for millions of Americans.

The Association was greatly encouraged with the passage of the 2006 Amendments to SMCRA. The 15-year extension coupled with increased funding has provided the states and tribes with the ability to focus on the protection of the public health and safety while ensuring restoration of abandoned mines nationwide. The reauthorization of the AML program by Congress did not in any way change the provisions that allow AML funds to be used to ameliorate either coal or non-coal mine public health and safety hazards. However, OSM has adopted final rules implementing the 2006 Amendments (73 Fed. Reg. 67576), based on a Departmental Solicitor's Opinion (M-37104), that would prohibit some of this funding from being used to address many of the most serious non-coal AML problems.

Therefore, we strongly support S. 2830, which makes very minor changes to SMCRA to correct a misinterpretation by the U.S. Department of the Interior. S. 2830 will return states to their longstanding role under SMCRA of directing abandoned mine grant funds to the highest priority needs at either coal or non-coal abandoned mines.

The NAAMLIP has worked closely with the Interstate Mining Compact Commission and the Western Governors' Association in providing information to quantify the non-coal AML cleanup effort. While the data is seldom comparable between states due to the wide variation in inventory criteria, they do demonstrate that there are large numbers of significant safety and environmental problems associated with inactive and abandoned non-coal mines and that remediation costs are very large.

Some of the types of numbers that have been reported by IMCC in response to information we have collected for the General Accountability Office (GAO) and others include the following: Number of abandoned mine sites: Alaska—1,300; Arizona—80,000; California—47,000; Colorado—7,300; Montana—6,000; Nevada—16,000; Utah—17,000—20,000; Washington—3,800; Wyoming—1,700. Nevada reports over 200,000 mine openings and Minnesota reports over 100,000 acres of abandoned mine lands.

States and Tribes are very familiar with the highest priority non-coal problems within their borders and also have limited reclamation dollars to protect public health and safety or protect the environment from significant harm. States and Tribes work closely with various federal agencies, including the Environmental Protection Agency, the Bureau of Land Management, the U.S. Forest Service, and the U.S. Army Corps of Engineers, all of whom have provided some funding for non-coal mine remediation projects. For states with coal mining, the most consistent source of AML funding has been the Title IV grants received under the Surface Mining Control and Reclamation Act (SMCRA). Section 409 of SMCRA allows states to use these grants at high priority non-coal AML sites. The funding is generally limited to safeguarding hazards to public safety (e.g., closing mine openings) at non-coal sites.

The urgency of advancing this legislation has been heightened, Mr. Chairman, by statements in OSM's proposed budget for Fiscal Year 2011. Therein, OSM is proposing to further restrict the ability of states to expend AML funds on noncoal reclamation projects. This will apparently occur as part of a legislative proposal that the Administration intends to aggressively pursue in the 111th Congress. While the primary focus of that proposal will be the elimination of future AML funding for states and tribes that are certified under Title IV of SMCRA (which we adamantly oppose), OSM's explanation of its proposal also contains the following language: "Similarly, the proposal will require that payments to noncertified States are only used for high-priority coal problems." We are uncertain exactly what OSM has in mind with respect to this aspect of the legislative proposal, but we suspect it has to do with clarifying the very issue that is the subject of S. 2830. For all we know, it could be even farther reaching.

In written statements that we presented to the Committee in November of 2007, the Association prioritized two issues of highest concern to us. One involved the restriction noted above regarding the use of unappropriated state and tribal share balances for noncoal AML work. The second involves a similar restriction on the use of these unappropriated balances for the Acid Mine Drainage (AMD) set-aside program under SMCRA. Congress expanded this program in the 2006 Amendments to allow states and tribes to set-aside up to 30% of their grants funds for treating AMD now and into the future. AMD has ravaged many streams throughout the country, but especially in Appalachia. The states need the ability to set aside as much funding as possible to deal with these problems over the long term. Again, OSM has acted arbitrarily in their interpretation of the reauthorizing language by limiting the types of funds the state may use for the set-aside program. We have proposed

amendatory language that would correct this misinterpretation and allow the states to apply the 30% set-aside to their prior balance replacement funds. (Suggested amendatory language is attached to our statement.)

In summary:

- Since the inception of SMCRA in 1977 and the approval of state/tribal AML programs in the early 1980's, the states and tribes have been allowed to use their state share distributions under section 402(g)(1) of the AML Trust Fund for high priority noncoal reclamation projects pursuant to section 409 of SMCRA and for the set-aside program for acid mine drainage (AMD) projects.
- In its rules implementing the 2006 Amendments, OSM has stated that these moneys cannot be used for noncoal reclamation or for the 30% AMD set-aside.
- Pursuant to Section 411(h)(1) of the 2006 Amendments, the states and tribes assert that these moneys should also be available for noncoal reclamation under section 409 and for the 30% AMD set-aside. There is nothing in the new law that would preclude this interpretation. Policy and practice over the past 30 years confirm it.

Over the past 30 years, tens of thousands of acres of abandoned mine lands have been reclaimed, thousands of mine openings have been closed, and safeguards for people, property and the environment have been put in place. Be assured that States and Tribes are determined to address the unabated hazards at both coal and non-coal abandoned mines. We are all united to play an important role in achieving the goals and objectives as set forth by Congress when SMCRA was first enacted—including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal and noncoal mining. Passage of S. 2830 will further these congressional goals and objectives.

I appreciate the opportunity to submit this statement for the record with respect to the legislative hearing on S. 2830, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects.

We welcome the opportunity to work with you to complete the legislative process and see this bill, as amended, become law.

ATTACHMENT.—SUGGESTED AMENDMENT TO S. 2830 TO INCLUDE THE AMD SET-ASIDE ACCOUNT

(AMENDMENTS ARE IN BOLD AND ITALICS)

A BILL

To amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal *and acid mine drainage* reclamation projects.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ABANDONED MINE RECLAMATION.

(a) Limitation on Funds.—Section 409(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239(b)) is amended by inserting “or section 411(h)(1)” after “section 402(g)”. *Section 402(g)(6)(A) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)(6)(A)) is amended by inserting “or section 411(h)(1)” after “paragraphs (1) and (5)”.*

(b) Use of Funds.—Section 411(h)(1)(D)(ii) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1240a(h)(1)(D)(ii)) is amended by inserting “section 402(g)(6)” before “section 403” and inserting “section 409” after “section 403”.

NEW MEXICO ENVIRONMENTAL LAW CENTER,  
Santa Fe, NM, March 22, 2010.

Hon. JEFF BINGAMAN,  
Chairman, Senate Resources Committee, 703 Hart Senate Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: The New Mexico Environmental Law Center (“NMELC”) strongly supports passage of S. 2830 and appreciates your efforts to ad-

vance this proposed legislation to clarify the intent of Congress under Title IV, the Abandoned Mine Land ("AML") program of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA").

S. 2830 makes only minor changes to SMCRA, correcting the Office of Surface Mining of the Department of the Interior's misinterpretation of an important discretionary provision of the law. Enactment of S. 2830 will give back to New Mexico and other states discretion under SMCRA to direct abandoned mine grant funds to the highest priority needs, both coal and non-coal. As it now stands, the Department of Interior's narrow interpretation of SMCRA's AML provision subverts the congressional intent underlying that provision and delays or stops entirely remediation of abandoned non-coal mines in New Mexico.

Section 409 of SMCRA (30 U.S.C. 1239) allows the States to use AML funds to address high priority abandoned mines, both non-coal and coal mines. Although New Mexico has abandoned coal mines that need reclamation, well over 90% of its approximately 15,000 abandoned mine hazards are located at hard rock mines, including uranium mines. In the past several decades, all fatalities associated with abandoned mines in New Mexico occurred at non-coal mines. During the last 6 years, before the Department of Interior's reinterpretation of AML, New Mexico had the discretion to divide its annual \$1.5 million grant between coal (55%) and non-coal (45%) projects.

Prior to the Department of the Interior's reinterpretation of SMCRA's AML provision, New Mexico's regulatory agencies were free to exercise their best judgment in balancing the need to reclaim abandoned coal mines with the need to address significant health and safety threats posed by non-coal mines. The impact of the Interior Department's interpretation on New Mexico's attempt to remediate the most serious abandoned mine problems is significant. While New Mexico's annual AML grant increased to over \$4 million, three million can only be spent on coal projects only and the remainder can be spent on either coal or non-coal projects. As a result, necessary projects at dangerous abandoned hard rock mines are being delayed and funds that would have been applied to remediate these dangers are being diverted to lower priority abandoned coal mines.

This unnecessary and unwarranted loss of flexibility comes at a particularly significant time for New Mexico. New Mexico's regulatory agencies are conducting an inventory of abandoned uranium mines. These uranium mines have had, and continue to have, adverse impacts upon the lives of nearby residents, particularly the Navajo people. In fact, this endemic problem has just begun to receive national attention—such as the hearings before the House Oversight and Government Reform Committee and the dramatic series of articles that appeared in the Los Angeles Times and other national media. The availability of AML money would provide New Mexico with a unique opportunity to finally address some of the sites that have caused (and continue to cause) great harm to Navajo and other Native American communities. Under the current Interior Department restrictions, the possibility of addressing the long-standing need for remediation of these uranium mines is severely limited.

The NMELC urges the Committee to correct the Department of the Interior's misinterpretation of SMCRA and restore the discretion and flexibility New Mexico's regulatory agencies need in order to address serious threats to human health and the environment that many abandoned non-coal mines pose.

Thank you for your consideration of these comments.

Yours Truly,

DOUGLAS MEIKLEJOHN,  
*Executive Director.*

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STATEMENT OF HON. BILL RICHARDSON, GOVERNOR, STATE OF NEW MEXICO,  
ON S. 2830

Thank you for the opportunity to present a statement on this important topic.

We appreciate the efforts of Chairman Bingaman and this Committee to propose legislation that will clarify the intent of Congress under Title IV, the Abandoned Mine Land (AML) program, of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The State of New Mexico strongly supports S. 2830. This bill will make only minor changes to SMCRA to correct a misinterpretation of SMCRA by the Office of Surface Mining of the Department of the Interior. S. 2830 will return New Mexico and other states to their longstanding role under SMCRA of directing abandoned mine land grant funds to the highest priority needs at either coal or non-coal abandoned mines.

New Mexico has a long and distinguished history of both coal and hard rock mining. Centuries of mining have left a legacy of thousands of mine openings and other mine hazards that pose serious threats to public health and safety. We estimate that there are more than 15,000 unreclaimed mine hazards across New Mexico. Expanding populations and increasing recreational uses are increasing the exposure to abandoned mine dangers. An example of the AML problem is the numerous abandoned uranium mines located primarily in areas of Native American habitation in northwestern New Mexico.

The primary funding source for AML projects in New Mexico has been Title IV of SMCRA. SMCRA includes provisions for the safeguarding of abandoned coal mines and high priority non-coal mines. Funding from the fees collected on coal production has helped New Mexico address some of our most hazardous abandoned mines. Since the inception of the SMCRA AML program, New Mexico has addressed approximately 4,000 mine features and reclaimed over 700 acres of mine-disturbed land.

Section 409 of SMCRA (30 U.S.C. 1239) allows the States to use AML funds to address high priority non-coal abandoned mines as well as coal mines. While New Mexico still has abandoned coal mines that need reclamation, well over 90% of New Mexico's 15,000 mine hazards are located at abandoned hard rock mines. In the past few decades, all of the fatalities associated with abandoned mines in New Mexico have occurred at non-coal mines; sadly, another fatality occurred last year at an abandoned non-coal mine in New Mexico. With our SMCRA grants, New Mexico has balanced the need to reclaim abandoned coal mines with the need to address the significant and immediate health and safety threats posed by numerous non-coal mines. In the 6 years prior to the 2006 amendments, New Mexico's \$1.5 million annual grant was roughly split between coal (55%) and non-coal (45%) projects.

In December 2006, Congress passed the Tax Relief and Health Care Act of 2006 which included a re-authorization of the AML fee on current coal production and other amendments to the SMCRA Title IV program. One of the major changes was the distribution to the States and Tribes of "state share" funds that had been previously allocated to the States under SMCRA, but had never been appropriated by Congress. For New Mexico, this amounts to approximately \$20 million in additional AML funds distributed over a 7 year period, and presents a tremendous opportunity to address many of the high priority coal and non-coal abandoned mine threats.

Under SMCRA, the "state share" funds were available for use by the States at abandoned coal mines and, under Section 409, also at high priority abandoned non-coal mines. In the 2006 legislation, Congress did not amend Section 409. However, the Interior Department issued an opinion in December 2007 prohibiting the additional AML funds from being used at non-coal abandoned mine projects. The Office of Surface Mining followed with a rule, adopted on November 14, 2008, which codified the Interior Department's interpretation.

The new interpretation flies in the face of Congressional intent. Had the funds been appropriated to the State when they were originally allocated to the State, there would have been no question that these funds could be used for either coal or non-coal projects. Congress did not amend Section 409 of SMCRA in the 2006 amendments. However, the Interior Department has latched onto Congress' use of a new funding source to distribute the previously allocated funds to claim that the intent changed.

Since the beginning of the AML program, New Mexico, Utah and Colorado have balanced the need to reclaim abandoned coal mines with the need to address the significant health and safety threats posed by numerous non-coal mines. With these funds, New Mexico successfully completed a number of innovative projects that were recognized by OSM. In the Cerrillos Hills between Santa Fe and Albuquerque, we closed dozens of non-coal mines along trails in a park and protected park visitors from mine hazards while showcasing the mining history. This project received a national award from OSM. New Mexico also received the highest national award from OSM for the Real de Delores project in the Ortiz Mountains which safeguarded mine openings within one of the oldest gold mining districts in America.

The impact of the Interior Department's interpretation is significant. While New Mexico's annual AML grant increased to over \$4 million, three million can only be spent on coal projects only and the remainder can be spent on either coal or non-coal projects. As a result, needed projects at dangerous abandoned hard rock mines have been delayed and funds diverted to lower priority abandoned coal mines.

This loss of flexibility also comes at a particularly significant time for New Mexico. Under Governor Bill Richardson's direction, the State is using a variety of funding sources to conduct an inventory of abandoned uranium mines, many of which are located in areas occupied by Native Americans in northwestern New Mexico. The impacts of these uranium mines on the nearby residents, particularly the Nav-

ajo people, have received national attention and have been the subject of hearings before the House Oversight and Government Reform Committee. New Mexico is working cooperatively with the Navajo Nation and the U.S. EPA to coordinate work on abandoned uranium mines in areas near the Navajo Indian Reservation. With the new AML money available, we have a unique opportunity to finally address some of these sites which have caused great harm to the Navajo communities. With the Interior Department's restrictions, our options become much more limited, because the money for non-coal projects is much more limited. We hope you will prevent that reduction in funds for eliminating hazardous non-coal risks.

S. 2830 will allow New Mexico and other western states to address some of the highest priority threats to public health and safety from non-coal mines while continuing to address the inventory of priority coal mines. Allowing more funds to be spent on non-coal mines may also result in more jobs. Our experience has been that non-coal AML projects are much more likely to attract partners and additional funding thus increasing the size of the project and the number of jobs generated. The uranium mine assessment project mentioned above is an example. New Mexico began the project with limited SMCRA funds and has attracted private, state and other federal funds to more than triple the size of the project.

This legislation has broad support in New Mexico from the mining industry, the environmental community and public officials. At the 2010 New Mexico Legislative Session, both houses of the New Mexico Legislature passed Memorials that requested the Congress to expedite legislation to allow uncertified states to use SMCRA funds on non-coal abandoned mine reclamation. (See attached House Memorial 34 and Senate Memorial 30). Both Memorials passed all Committees and full chambers without a single dissenting vote. Mr. Chairman and members of the Committee, we thank you for this opportunity to present New Mexico's position on S. 2830. We urge the Committee to correct the misinterpretation of SMCRA and restore the flexibility needed by the States. We look forward to working with the Committee in the future.

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STATEMENT OF JON J. INDALL AND ADELA M. DWAN, COUNSEL, URANIUM PRODUCERS OF NEW MEXICO, ON S. 2830

The Uranium Producers of New Mexico ("UPNM") is a group of uranium exploration and development companies that are working to permit uranium mining and milling operations in New Mexico in the next two to four years. Current members of "UPNM" include Laramide Resources Ltd., Neutron Energy, Inc., Rio Grande Resources Corporation, Strathmore Resources (U.S.) Ltd., and Uranium Resources, Inc.

Senate Bill 2830 requests that Congress amend the Surface Mining Control and Reclamation Act of 1977 ("SMCRA") to clarify that the allocated funding for SMCRA can be used by uncertified states for non-coal reclamation projects. This amendment is important to New Mexico to begin the remediation of abandoned mines and to create needed jobs.

New Mexico has a long and notable history of both coal and hard rock mining. When the Atomic Energy Commission ("AEC") created the Uranium Procurement Program in the 1950's, many companies in New Mexico answered the call for uranium to fuel the federal government's defense needs for nuclear weapons. A uranium mining industry was created almost over night. New Mexico became the largest uranium producing state in the nation, with over 380 million pounds produced for the nuclear weapons program and subsequently for nuclear power reactors. Today, the uranium industry in New Mexico is reemerging to once again help meet our country's increasing demands—this time to provide the uranium that will be essential to growing a nuclear energy supply in the United States.

The Uranium Procurement Program initiated by the AEC was very successful and resulted in the operation of numerous mines throughout New Mexico, mainly in Cibola and McKinley Counties. Unlike today, there were few standards and no mine closure requirements. As the Procurement Program met its production goals in the mid 1960's, most of the small operators gave way to the larger companies and the small company and individuals' mine sites were abandoned with little or no thought to reclamation. These uranium sites, along with a number of other hard rock abandoned mines, make up a legacy of abandoned hard rock mines in New Mexico. Since these mines were created to fulfill an urgent national defense priority, the federal government has a responsibility to assist in reclaiming the abandoned mines in New Mexico and other western states.

The primary source of funding Abandoned Mine Land ("AML") projects in New Mexico has been the Surface Mining Control and Reclamation Act of 1977 ("SMCRA") program. Under this program, New Mexico has successfully addressed

approximately 4,000 mine features and reclaimed over 700 acres of mine-disturbed lands. New Mexico has successfully balanced the use of its SMCRA funds to accomplish reclamation on both coal and non-coal reclamation sites. The state needs to continue this important work, and the additional federal funding that would be made available by the enactment of S. 2830 would allow us to do so.

In December 2006, Congress amended SMCRA to allow the distribution of reclamation funds to states in an amount equal to that previously authorized to the states under SMCRA. Despite the uncontroverted fact that Congress did not amend the ability of states to use these funds for non-coal, hardrock mines, the Department of the Interior ("DOI") made such a determination. Senate Bill 2830 is now necessary to once again amend SMCRA to clarify that the appropriated funding can be used for non-coal reclamation sites.

The UPNM has worked closely with the Mining and Minerals Division ("MMD") of the New Mexico Energy, Minerals and Natural Resources Department on various state projects related to SMCRA. The MMD has identified a total of 137 abandoned uranium mines in New Mexico. In cooperation with MMD, UPNM funded the surveying of the first 21 of these sites located on state, federal and private lands. The MMD has since contracted the surveying of an additional 35 sites.

The purpose of surveying the abandoned mines is to allow the MMD to prioritize these sites for reclamation. With 56 of the 137 abandoned mines now surveyed, New Mexico is ready to begin the actual clean-up warranted at these sites. This not only means the creation of shovel-ready jobs but also the beginning of a resolution to a fifty-year legacy left behind in New Mexico, as a result of the federal government's call for uranium for its nuclear defense needs dating back to the 1960's.

Although the many stakeholders in New Mexico do not always agree on hardrock mining issues, there is overwhelming agreement that New Mexico needs the SMCRA funding to help address the legacy of abandoned mines in our state. The New Mexico State Senate and House of Representatives both recently passed memorials urging the New Mexico congressional delegation to collaborate to do what is necessary to amend SMCRA. The New Mexico Mining Association and the Association of Commerce and Industry have also written letters to the delegation supporting the amendment. The McKinley County Commission also recently passed a resolution in support of amending SMCRA. These memorials, letters and the resolution are attached for your review and the record.

The UPNM appreciates the opportunity to present this statement in support of S. 2830 and would also appreciate a recommendation from this Subcommittee to move Senate Bill 2830 forward.

Thank you.

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STATEMENT OF GREG DYSON, EXECUTIVE DIRECTOR, HELLS CANYON PRESERVATION COUNCIL, ON S. 2895

Thank you for extending Hells Canyon Preservation Council an invitation to provide testimony regarding the Oregon Eastside Forest Restoration, Old Growth Protection, and Jobs Act (S. 2895) at the Subcommittee hearing held on March 10, 2010. We strongly support the concepts behind this bill, however cannot fully support it as written. Attached please find our letter to Senator Wyden articulating our concerns in detail.\* We reiterate below our key concerns in order to highlight specific changes that could be made to the bill to gain support from HCPC and from a broader representation of the conservation community.

First, one of our most serious concerns continues to be the removal of the administrative appeals process during the Interim Period. We know from decades of first-hand experience using this process that it is an invaluable tool for avoiding litigation. We feel very strongly that this process provides a forum in which the agency must justify its decision, seriously consider our legal and ecological concerns and discuss potential solutions. Eliminating administrative appeals is counterproductive, particularly given that one of the main objectives of the bill is to reduce courtroom battles over logging projects.

Moreover, if appeals are eliminated, this bill would create national inconsistency for how the public and the Forest Service address projects on federal public lands. The National Forest system is just that—a national system—and establishing a public participation framework applicable only to National Forests in eastern Oregon establishes a precedent for breaking down National Forest policy.

Second, for consistency with the bill's language and purpose, we recommend removing the second half of the sentence in Section 9(c)(1)(D) to simply read "each

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\*Letter has been retained in subcommittee files.

applicable recommendation of the advisory panel.” As written, the clause allows the Forest Service unfettered discretion in determining which of the advisory panel’s recommendations to apply and which to ignore during the Interim Period.

Third, we also feel very strongly that the inclusion of specific acreage targets during the interim period, as set forth in Section 9(c)(5)(A), will create unrealistic expectations from local industry that the drafters of this bill will come to regret only after it is too late to reverse. Why not let the Science Panel determine how many acres, where, and by what means should any logging occur?

Fourth, an explicit 3-year deadline for the expiration of the Interim Period should be included in Section 9(c). The bill currently offers no concrete deadline, and without one, our decades of experience tell us that this period could easily last upwards of 5 years.

Fifth, Ecological Restoration Projects, as described in Section 9 of the bill, have potentially conflicting mandates. In Section 9(b)(2) we recommend changing the “shall” to “should” to help ensure that timber production is a by-product of restoration projects, and not a rationale for developing the projects.

Sixth, strengthening the definition of “decommission” in Section 3 to read “. . .the conduct of a restoration activity to return the road to a natural state” will go much farther in effectuating the desire to address ecological damage associated with temporary roads than the current definition. The definition as written merely requires the Forest Service to return “temporary” roads to a “more natural state”—that being a state “more” natural than the one to which it was altered, or in other words a state that is simply less unnatural.

Lastly, we strongly urge changes in the bill adopting a far more cautious approach to biomass. While biomass is still relatively new and un-researched it should remain limited to small-scale, local projects.

In summary, we suggest these specific changes to the bill:

- Interim Period Appeals, Section 9(c)(2)—delete this subsection entirely.
- Interim Period Agency Discretion, Section 9(c)(1)(D)—delete the second half of this clause so it reads in its entirety “each applicable recommendation of the advisory panel.”
- Interim period Acreage Targets, Section 9(c)(5)(A)(i)(I), (II) & (III)—delete these subsections entirely.
- Interim Period Time Frame, Section 9(c)(1)—delete the first half of this subsection that starts: “Until the date on which the Secretary initiates mechanical treatments. . .” Instead, begin this section with: “For a period of 3 years from the date of enactment of this Act, the Secretary shall prepare, approve, and implement interim projects . . .” Also, delete Section 9(b)(3)(B).
- Ecological Restoration Projects, Section 9(b)(2)—change “shall” to “should.”
- Definition of Decommission, Section 3(4)—delete the word “more.”
- Biomass, Section 12(b)(4)—strike “after a period of 10 years” and after “based on supply conditions” add “or Best Available Science.”

As we have already noted, we fully support many of the concepts behind this bill. It could lead to a fundamental change in the way our Oregon eastside National Forests are managed—in a way that benefits all those involved with this ongoing debate. We very much appreciate the time and effort that has gone into the drafting of this bill. HCPC is one of the few on-the-ground conservation groups in eastern Oregon, and we look forward to being part of this process as it moves forward.

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STATEMENT OF THE SIERRA CLUB, ON S. 2895

Chairman Wyden and Members of the Subcommittee:

On behalf of the Oregon Chapter of the Sierra Club and the more than 1.3 million members and supporters of the Sierra Club nationwide, we thank you for the opportunity to submit testimony on S. 2895, the Oregon Eastside Forest Restoration, Old Growth Protection, & Jobs Act. For more than a century Sierra Club has worked to explore, enjoy, and protect America’s wilderness, forests, and public lands. Today, there are 65 Sierra Club Chapters and more than 425 Sierra Club Groups across the country.

With over 20,000 members living in Oregon, the Sierra Club has a strong interest in the management of the National Forests of Central and Eastern Oregon. Our staff and membership in Oregon have consistently worked to ensure sound science-based management of the National Forests covered by this legislation and have focused efforts on protecting old growth forests and roadless areas. We support the creation of forest based restoration jobs that also promote the recovery of healthy populations of threatened and endangered species, address the excessive network of

roads created through past management, and to preserve biodiversity and ecosystem resiliency in the face of climate change.

Over the years, we have been involved in a number of Senator Wyden's efforts to protect Oregon's old growth forests in Oregon. We support some of the goals of this legislation, but believe that key sections as currently written will run directly counter to the some of the bill's stated restoration goals. We provide the following comments in the interest of improving Senator Wyden's current proposal, and in hopes of modifying the legislation to address our concerns.

#### MANDATING ANNUAL ACREAGE TARGETS

While the bill promotes the use of the best available science to guide management decisions, it mandates annual acreage targets during both the interim period and for each covered National Forest thereafter. Annual acreage targets will force individual forest managers to plan and implement projects based on this mandate, rather than on actual restoration needs. This approach will burden taxpayers, as the Forest Service will be obligated to plan and implement annual landscape scale projects regardless of whether Congress funds the implementation of the proposal or whether restoration projects actually bring in enough revenue to pay for the Forest Service's costs. Particularly during the interim period, these acreage mandates will be focused on mechanical entry into forests and the removal of sawlogs, activities which create unreasonable expectations within the timber industry for steady and increased levels of logs from National Forests, expectations which may not be able to be met in the time allotted. For these reasons, we suggest the removal of specific annual acreage targets, mandated levels of mechanized activity, and language emphasizing sawlog production over other values. The bill should not dictate a desired result but should allow the best available science to guide which restoration approaches are prioritized in each national forest based on local needs.

#### USING THE BEST AVAILABLE SCIENCE

In 1994, the Eastside Scientific Society Panel issued a report to Congress and the President (Henjum, et al; The Wildlife Society, Technical Review 94-2, August 1994) which outlined the key strategies that were necessary to protect and restore old growth forests and healthy watersheds. The Forest Service adopted some of these recommendations on what was supposed to be an interim basis in what became known as the 'Eastside Screens.' The scientific recommendations in the Eastside Scientific Society Panel's Report in 1994 are just as pressing and relevant today as they were then. While the bill incorporates some of this science, it is silent on others. The bill directs a new science panel to finish its report in less than six months, but does not provide enough direction to them to meet this ambitious time line. Rather than rushing a new process, we believe the science panel created by this legislation should be explicitly directed to incorporate and build upon recommendations of the Eastside Scientific Society Panel Report of 1994, and include: protecting large trees and old growth stands from logging, protecting significant roadless areas 1000 acres or larger, limiting mechanical entry into intact forests, curtailing grazing and preventing post-fire salvage logging.

#### ADMINISTRATIVE APPEALS

During the interim period covering some 300,000 acres and three or more years, this bill removes an important mechanism that the public uses to resolve disputes with the Forest Service — administrative appeals. Administrative appeals are a fundamental reflection of the strength of the democratic process, facilitating dialogue rather than litigation. The Sierra Club has found that administrative appeals do allow a meaningful way for the public to resolve concerns over projects without having to go to directly court. During the interim period, the bill entirely removes the right for the public to administratively appeal logging projects, including those conducted after fires, in old growth stands and significant roadless areas. We believe this will lead to more litigation, not less. We strongly suggest that administrative appeal rights be retained for all projects during the interim period.

#### RIPARIAN AREA PROTECTION

We appreciate that the bill incorporates the PacFISH and INFISH riparian buffers. We do have some concerns because as implemented now, PacFISH and INFISH currently allow some harmful activities in sensitive riparian areas. Further, the extent of riparian areas on the landscape is arguably greater than PacFISH and INFISH provide. The buffers for non-fish bearing streams and perennial streams are generally inadequate to ensure the health and recovery of these systems. We

suggest that this legislation start with PacFISH and INFISH as a floor with the opportunity to administratively expand riparian buffers under the recommendations of the science panel, make compliance with those standards mandatory, and incorporate the direction that has been provided by the NOAA Fisheries the Fish & Wildlife Service through existing biological opinions on anadromous and inland fish.

#### ROAD NETWORK

Based on our experience on the ground and familiarity with the best available science, the benefits of logging in a forest are often outweighed by the negative effects on soils, hydrology and aquatic systems from ground disturbing mechanical activities and road construction. We are very concerned that widespread use of mechanical treatments and 'temporary' roads will have extensive and persistent impacts on soils. Even if the use of a road is claimed to be temporary, the effects of building the road and its presence often last for decades. Temporary roads may be temporary as to their use, but it is well established that the impacts of such roads are not temporary on the hydrology and water quality of affected watersheds. A road should only be called temporary if its effects on the land are actually determined to be temporary based on the best available science. Decommissioning of all temporary roads must be part of completing the restoration project. If it is part of a later project, we think it highly unlikely that the decommissioning will be completed. We further support strategic and robust efforts to reduce the permanent road network and suggest legislating more specific goals and benchmarks in this bill to make this a reality.

#### NATURAL PROCESSES & EMERGENCIES

There is no scientific consensus on what constitutes "emergency status" or "uncharacteristic" events, particularly in the face of altered ecosystems and a changing climate. Legislating this type of language will undermine the work of the science panel to soberly assess restoration needs and priorities on the landscape, paints natural processes in a negative light, begs the question of when the situation will no longer be an emergency, and may encourage managers to take actions counter to the legislation's stated goals. For these reasons, we suggest that terminology designating the situation in the forests as an "emergency," as well as the designation of emergency conditions, should be removed or very tightly constrained to ensure that any project needing more analysis than a categorical exclusion would not be covered.

#### JOB CREATION

Economists are increasingly realizing that our forests have value as sources of clean water, salmon habitat, recreation and carbon storage. The Sierra Club believes that any new approach to create jobs in national forest restoration must not focus solely on the economics of supporting the logging industry, but also on enhancing non-timber values and diversifying the restoration economy as a whole. To this end, policies should be enacted to deliberately create a diverse array of businesses in eastern Oregon through systematic and long-term investments in ecological restoration activities. If the focus is primarily on generating logs for the mill, then the boom and bust cycle of timber prices and housing starts will continue to create economic uncertainty as they have for decades. This legislation should create clear targets on improving fish passage, restoring degraded riparian areas, reducing the dense road network and removing invasive species, in order to stimulate the creation of new businesses within a diverse restoration economy. In addition to these activities, within the wildland urban interface, the focus should thinning brush and small diameter trees. Outside of those interfaces, a greater focus should be placed on utilizing both prescribed and wildland use fire policies to re-introduce natural processes where ecosystems have been significantly altered.

#### CONCLUSION

The passage of S. 2895 would mark a significant shift in management of Oregon's eastside National Forests. The Sierra Club believes it is important to codify interim rules in place since 1994 that protect large diameter trees and riparian areas. However, we believe this legislation's emphasis on mechanical entry into forests and maintaining mill infrastructure through sawlog production, combined with mandated annual acreage targets and removal of administrative appeals for what could become several years, will undermine the important ecological restoration goals this bill contains.

We believe that through the removal of annual acreage mandates, the retention of administrative appeal rights and the more explicit incorporation of existing eastside science will go a long way towards addressing our concerns.

STATEMENT OF RUSSELL HOEFELICH, VICE PRESIDENT AND OREGON DIRECTOR, THE NATURE CONSERVANCY, ON S. 2895

We applaud Senator Ron Wyden for his leadership in bringing together a diverse group of Oregonians to craft pioneering legislation that will put people to work restoring Eastern Oregon's forests. We commend the leaders of conservation and industry groups for their hard work and willingness to set aside differences to chart a better future for our eastside forests.

The Oregon Eastside Forests Restoration, Old Growth Protection and Jobs Act (S. 2895) is a pioneering and historic effort by long-standing adversaries to put the past behind them and to work together for a positive solution. This legislation focuses energy and attention where it belongs—on the significant consensus that exists for implementing on the ground restoration activities on Oregon's Eastside national forests.

The Nature Conservancy strongly supports the proposed legislation as a sound approach to forest and stream restoration that will result in healthier habitats for fish and wildlife over millions of acres of public land, while also creating more jobs in rural communities.

In Eastern Oregon, millions of acres of dry forests and riparian areas are ecologically unhealthy. The Act establishes key principles and guidance to address past conflicts and respond to the needs of today, and establishes a restoration and recovery road map for the future to improve the health of our eastside national forests, watersheds, and economy that will:

- Focus management on restoration—The primary goal of the Act is to make landscape-scale forest and riparian restoration the primary goal of federal management on Eastern Oregon's nine million acres of federal forests.
- Base management decisions on sound science—The bill requires that restoration activities consider the best available science. Management decisions will be guided by forest-wide ecological assessments, and the recommendations of a scientific advisory panel tasked with reviewing and providing guidance on restoration strategies and projects.
- Protect old growth—The legislation establishes protections for older trees and encourages forest management activities that will contribute to ensuring old growth characteristics can eventually predominate in Eastside forests.
- Provide immediate near-term timber supply—Eastside mills are struggling, with lack of timber supply playing a key role. By creating an interim period that focuses on restoration projects with sawlogs as an attribute, mills will have increased access to a stable timber supply.
- Maintain timber infrastructure—Meaningful forest restoration at the scale envisioned requires a stable timber industry, a difficult undertaking without the surety of a diverse timber supply base that includes federal forests. A key goal is to maintain infrastructure sufficient to achieve restoration goals, reflected in nearly every aspect of the legislation.
- Ensure riparian and aquatic protection and restoration—Eastside watersheds have been degraded, and greater protection is needed to support key species and habitats and ensure clean water. This legislation establishes clear direction to guide aquatic and riparian restoration efforts, and also recognizes the need to reduce impacts from existing roads.
- Promote collaboration—Collaboration is often a key attribute of reaching agreement on the restoration of specific forest landscapes—where they exist, this legislation supports and emphasizes collaborative efforts, where they do not, it incentivizes and encourages their creation.

Once the bill is enacted, it will be critical to ensure that funding is made available to implement it. Given the rare and landmark nature of the agreement, Eastern Oregon should be a priority for federal forest restoration funding. We believe the focus on collaboration and sound science will reduce the costs to plan and implement restoration projects that produce saw logs as a byproduct. Forest restoration in Eastern Oregon provides an opportunity to demonstrate increased cost-effectiveness.

The Nature Conservancy has an extensive history of working on collaborative and scientific approaches to forest restoration in Oregon. The Eastside Forest Restoration bill will help us and our partners apply lessons learned from these efforts and expand them to a larger scale. Examples include:

- The Northwest Fire Learning Network is a collaborative effort among The Nature Conservancy, U.S. Forest Service, Bureau of Land Management, state and local agencies, businesses, landowners, scientists, community groups and others to restore fire-adapted ecosystems. The Network seeks to foster partnership, planning and innovation to accelerate the restoration of fire-adapted forests throughout the Pacific Northwest, including key efforts at the Upper Deschutes Basin, Sprague watershed, and Applegate watershed.
- The Ashland Forest Resiliency project is a collaborative, community-based initiative to restore healthy conditions to 7,600 acres of public forest within a larger 22,000-acre area of public forest that includes the Ashland Creek watershed. The project goals are to reduce the risk of large-scale wildfire; help large, old trees survive fire, insects and disease; restore a healthy forest ecosystem; and provide clean drinking water, recreation and wildlife habitat. Strong accountability and performance measures are incorporated in the project and will be monitored by a diverse group of local stakeholders. The Nature Conservancy is providing technical and scientific support to the project.
- The Conservancy participated in the Birds and Burns Research Network at our Sycan Marsh Preserve in Lake County in cooperation with the U.S. Forest Service and others. The award-winning project advanced our understanding of the impacts of forest management and controlled burning on cavity-nesting birds.
- The Forest Landscape Restoration Act, a top priority for the Conservancy, was signed into law as title IV of the Omnibus Public Land Management Act of 2009. The Act encourages collaborative initiatives based on the best available science to plan and prioritize landscape-scale forest restoration projects. The Act also authorizes \$40 million per year to supplement local resources and leverage non-federal support to make large-scale, long-term forest restoration projects feasible.
- The Conservancy helped convene and facilitate four restoration collaboratives in Oregon and also assisted the teams with technical GIS support.

The Nature Conservancy is a leading conservation organization working around the world to protect ecologically important lands and waters for nature and people. To date, the Conservancy and its one million members have been responsible for the protection of more than 18 million acres in the United States and have helped preserve more than 117 million acres in Latin America, the Caribbean, Asia and the Pacific. In Oregon, the Conservancy owns or manages 47 nature preserves and has helped protect over 500,000 acres of important habitats, with support from 21,000 member households.

Thank you for this opportunity to provide testimony, and we want to extend our appreciation to Senator Wyden and his staff for leading the effort.

#### STATEMENT OF SUSAN BATTERSON AND JT BATTERSON, ON S. 2963

Chairman Wyden and Members of the Subcommittee, thank you for the opportunity to submit testimony regarding Senate Bill 2963.

We own forty acres of land immediately adjacent to land included in the proposed land exchange, including land that would be designated as a new wilderness area. Our land is the former site of the Horse Heaven Mine on Gosner Road, which at one time was one of the country's largest producers of mercury and which currently includes a small residence our family uses as a vacation retreat. The property is approximately seventeen miles due east from Ashwood, Oregon, Township 10 South, Range 18 East, Section 12, in Jefferson County.

Unless the bill is amended as we suggest below, the land exchange proposed in Senate Bill 2963 and the preliminary plans of certain stakeholders for the development of trailhead, parking and camping facilities to service the Wilderness area would adversely impact the use and enjoyment of our property and implicates serious issues of public health and safety. The purpose of our testimony is to outline those concerns and request that the bill be amended to address them.

#### HORSE HEAVEN MINE HISTORY

To provide context for our testimony, following is a brief history of our property and the land around it.

In 1931 Raymond Whiting Jr. and Harry Hoy spent a summer at the current Horse Heaven Mine site prospecting for cinnabar. They discovered a viable source on the lower half of Horse Heaven Mountain and as a result Ray Whiting Sr. and Charlie Hayes started the development of the first level of the mine. Whiting and Hayes owned and operating the mine from 1931-1934, producing an estimated 2,200

flasks of mercury. In 1934 the mine was sold to Sun Oil Company. Sun Oil Company operated the mine until 1958. The mine was the second largest mercury producer in the country with the estimated production at 17,214 flasks of mercury. The mine had 10 levels and went back into the side of Horse Heaven Mountain approximately 1,500 feet in various directions.

The original owners of the Horse Heaven Mine acquired 2,400 acres of land. The entire 2,400 acres were sold to Sun Oil Company in 1934. After the mine ceased operations, Sun Oil Company sold the mine and the 2,400 acres to Tom MacDonald. Subsequently, 40 acres where the mine actually sits today were deeded to Ray Whiting Jr. He and his wife Clyde Whiting lived at the mine site year round from 1965-1983. In 1986 the mine was deeded to Susan Batterson (daughter of Ray Whiting), who is the current owner today along with her son JT Batterson.

In 2001 the Oregon Department of Environmental Quality (ODEQ) took interest in environmental and human safety issues that the mine presented. The remains of the mine and its operations consists of large mine tailing piles, old building structures, mine shafts and large pits in the side of Horse Heaven Mountain where the tunnels have collapsed. Studies were conducted and ODEQ issued a Record of Decision, Remedial Action Plan in December 2005. The primary remedial actions were to limit access to the site, cap a furnace area and implement measures to limit overland migration of mine waste offsite. In addition to other remedial actions, one remedy implemented was the entry of an Easement and Equitable Servitude to restrict access to and use of the property in order to prevent the public from moving the tailings offsite (either intentionally or unintentionally on shoes or clothing).

The only current water source for our property (the primary water source since 1932) is a spring located approximately one mile to the southwest on Young Life property that is to be transferred to the BLM pursuant to the bill. The spring is connected to our property through steel pipes. Due to the history outlined above, we are not able to drill for water on our property.

#### PLANS FOR TRAILHEAD, PARKING AND CAMPING

Although not explicitly part of the bill, some proponents of the land exchange and creation of the Wilderness areas have begun planning for the construction of improvements to facilitate access to the Wilderness areas. Preliminary maps associated with the legislation reflected those plans by including in the land exchange the transfer of a certain portion of property from Young Life to BLM that would not be designated as wilderness. The proponents of the bill preliminarily planned to use that property for the construction of a trailhead, parking and camping area to serve as an access point for the Wilderness areas. Those proposed facilities would have been located approximately 1,200 feet from the residence on our property.

We have worked with the bill's proponents to identify an alternative location for the trailhead, parking and camping facilities, and believe that a consensus is developing around a location approximately 1.25 miles west of the site that concerns us. We would approve location of the facilities at that alternative location.

#### CONCERNS REGARDING SENATE BILL 2963 AND PLANS FOR RELATED DEVELOPMENT

Our primary concerns are as follows:

##### 1. *Public Health and Safety*

The property exchange and wilderness designation, as well as the plans of certain promoters of the exchange, contemplate that the 40 acre parcel immediately to the southwest of our property will be developed as a publicized public access trailhead and campground with enough parking to accommodate horse trailers. Although the Site Closure Report prepared for the ODEQ remedial action contemplates an occasional resident, hiker or camper in the area, it did not contemplate the development of a permanent, publicized public facility adjacent to the property. The remedial action implemented at the mine site relies heavily on restricting access to that area in order to limit exposure to the mercury and arsenic found on the site. It would be unwise to place a public access trailhead and campground so close to the site. The Site Closure Report is attached as Exhibit 1 to this testimony.

We note as well that the mine tunnels on our property are known to be an important maternity and hibernation resource for the Townsend's Big Eared Bat, which are identified as a sensitive species in Oregon.

##### 2. *Access to Water*

We need to preserve access to the spring and piping that provides water for our property, including the ability to use motor vehicles to reach the spring and the pipeline to perform maintenance on the system. An additional, related concern is that the contemplated trailhead, parking lot and campground would sit directly

above the pipe that connects the spring to our property, potentially impairing its use and maintenance.

### *3. Use and Enjoyment of Our Property*

A residence at the current mine site is used by family members for periods throughout the year. If the proposed trailhead, parking and campsites are located in the 40 acres adjacent to the southwest corner of our property, it would significantly impact the privacy of the family members that currently use the site for a personal retreat.

#### PROPOSED SOLUTIONS

Through a family representative and legal counsel, we have begun working with the offices of Senator Wyden and Representative Walden, participants in the land exchange and the Oregon Natural Desert Association to identify solutions to the concerns we have raised above. It is our sincere desire to be able to support Senate Bill 2963, with amendments that protect public health and safety and our own private property interests. The solutions include the following, which we respectfully request be included in amendments to the bill and the Subcommittee's report:

1. To protect public health, public safety and my family's use and enjoyment of our property, the contemplated trailhead, parking lot and campground should not be located in the forty-acre parcel immediately adjacent to the southwest corner of our property. This week, representatives of my family and other stakeholder made separate visits to the area to evaluate alternative sites for the proposed facilities. Additionally, we have begun discussions with Young Life about the possibility of purchasing the subject property from Young Life, for the purpose of excluding it from the land exchange and preserving it as a buffer against the public lands. In no event, however, should that property be developed as initially contemplated.

2. We have begun working with Young Life to formalize a legal agreement regarding rights to the water and access to the spring and piping that constitute the only source of water for our property. We request that the legislation provide that BLM would take Young Life's property subject to the agreement between Young Life and us, and that we be permitted to use motor vehicles to access the spring and pipes for maintenance purposes notwithstanding any general prohibitions against the use of motor vehicles in wilderness areas. At a minimum, we need to retain the ability to use a backhoe to maintain the water facilities.

Chairman Wyden and Members of the Subcommittee, we thank you for taking these matters into consideration. We look forward to working with the stakeholders, your staff and the Committee to address these matters in a way that protects public health and safety, as well as our private property rights.

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#### STATEMENT OF BOB FREIMARK, SENIOR POLICY ANALYST, THE WILDERNESS SOCIETY, ON S. 2963

The Wilderness Society is a national, non-profit conservation group with about 500,000 members and supporters. The mission of The Wilderness Society is to protect wilderness and inspire Americans to care for our wild places. Since its establishment in 1935, The Wilderness Society has advocated for protecting America's wild, special lands such as Cathedral Rock and Horse Heaven.

S. 2963, the Cathedral Rock and Horse Heaven Wilderness Act designate two new wilderness areas (approximately 16,000 acres) as part of the National Wilderness Preservation System. The bill also directs three land exchanges to occur between private parties and the federal government.

The Wilderness Society supports S. 2963. We do have a legislative language recommendation for improving the water rights section of the bill which is detailed below.

S. 2963 will permit the public to better access and enjoy the Wild and Scenic John Day River by blocking up ownership through land exchanges enabling additional access to the river. The legislation also creates a large block of wilderness quality land, while helping eliminate trespassing occurring both on the current BLM lands, and the private landowners land. The two wilderness designations include a diversity of habitat types including grasslands, riparian areas, shrub steppe and forests. They also provide important habitat for threatened summer steelhead and Chinook salmon as well as other sensitive species including the John Day pincushion, Western Toad, pygmy rabbits, and Ferruginous hawks. The wilderness proposal provides

important wintering habitat for mule deer and Rocky Mountain elk. Over four miles of the Wild and Scenic John Day River would be added to public ownership. The land exchanges would be subject to appraisal (using Uniform Appraisal Standards) and will be equal value. The land consolidation will enhance the wilderness qualities of the wilderness designations, and will improve the manageability of the lands involved.

#### RECOMMENDATION

The water rights section is in Sec. 3(c)(6) and reads, "STATE WATER LAWS-Nothing in this section constitutes an exemption from State water laws (including regulations)." We recommend modifying the legislation to more standard legislative language. It should read as "As provided in paragraph 4(d)(7) of the Wilderness Act, nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.").

#### CONCLUSION

The proposed Cathedral Rock and Horse Heaven Wilderness areas could be outstanding additions to the National Wilderness Preservation System with the completion of the land exchanges authorized by the bill. The land exchanges will benefit the public by consolidating public ownership and providing the public with high resource value lands such as the John Day River properties. We thank Senator Wyden for his leadership on this proposal, and offer our support of having this legislation signed into law.

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