

**PERSPECTIVES ON THE MANAGEMENT OF  
FEDERAL AND STATE LAND: TESTIMONY  
BY GOVERNOR GARY R. HERBERT (R-UT),  
CHAIRMAN OF THE WESTERN GOV-  
ERNORS' ASSOCIATION**

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**OVERSIGHT HEARING**

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS  
AND ENVIRONMENTAL REGULATION

OF THE

COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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Tuesday, May 21, 2013

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**OVERSIGHT HEARING ON “PERSPECTIVES ON  
THE MANAGEMENT OF FEDERAL AND  
STATE LAND: TESTIMONY BY GOVERNOR  
GARY HERBERT (R-UT), CHAIRMAN OF THE  
WESTERN GOVERNORS’ ASSOCIATION”**

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**Tuesday, May 21, 2013  
U.S. House of Representatives  
Subcommittee on Public Lands and Environmental Regulation  
Committee on Natural Resources  
Washington, D.C.**

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The Subcommittee met, pursuant to notice, at 10:35 a.m., in room 1324, Longworth House Office Building, Hon. Rob Bishop [Chairman of the Subcommittee] presiding.

Present: Representatives Bishop, Lummis, Labrador, Amodei, Stewart, Daines, Cramer, DeFazio, and Garcia.

Mr. BISHOP. All right, the Chair notices the presence of a quorum on our Subcommittee on Public Lands and Environmental Regulation. We are meeting here today to hear testimony from The Honorable Gary Herbert, who is the Governor of Utah, and also the Chairman of the Western Governors’ Association.

Under the rules, the opening statements are limited to the Chairman and the Ranking Member. However, I ask unanimous consent to include any Member’s opening statement in the hearing record if submitted to the clerk by the close of business today.

[No response.]

Mr. BISHOP. And hearing no objections—I will give an opening statement first, and then—Representative Grijalva is delayed slightly. When he gets in here we will just go to him for any opening statement he has at that time.

Before we begin, though, if I could turn to Representative Cramer, I understand you have a guest. If you would like to introduce him, we would turn to you for that.

Mr. CRAMER. Thank you, Mr. Chairman. Aaron Kilgore is spending the morning with me. Aaron and I share a common concern for foster care in our country. And Aaron and I just met this morning; he is spending the day with me. My wife and I were foster parents and are now the parents of a 6-year-old as a result of that. And Aaron is a success story that is currently in foster care, but spending today with me in Washington. So grateful to have Aaron with us. Thank you, Mr. Chairman.

Mr. BISHOP. Thank you for that, Representative Cramer. And we appreciate Mr. Kilgore for being here with us. And I am happy to have you guys here. If you would actually like to come any closer—all right.

[Laughter.]

Mr. BISHOP. I knew the air conditioning was broke in my apartment, but I didn’t think it was quite that bad.

**STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF UTAH**

Mr. BISHOP. I am happy to welcome Gary Herbert, who is here. He is the 17th Governor of the State of Utah. Before he became Governor he served as Lieutenant Governor under Jon Huntsman, and assumed the Governorship when Mr. Huntsman was called to be the United States Ambassador to China. Before that he was also a county commissioner, which means he actually has real experience, even though it was Utah County. And in 2012, Governor Herbert was elected by the other western Governors to serve as the Chairman of the Western Governors' Association.

So, this is an independent organization that represents the 19 States and 3 territories of the West. The focus of the WGA is to identify and address key policy and governance issues that cover natural resources, the environment, and other inter-governmental operations. And it is in that position and capacity that we have invited him to talk to us today.

The purpose of this hearing will be to hear directly from a proven leader regarding our current land management systems, whether or not it is working. So, Governor Herbert has been at the forefront of the public lands policy and management debate for decades, and his perspective is highly valuable, timely, and I think critically important.

In his role as the Western States Chairman, Mr. Herbert has also experienced the good and the bad and the ugly of Federal land management, and these experiences will assist this Subcommittee as we conduct our oversight of the Federal land management agencies and craft needed reforms.

His leadership through a myriad of State-centered solutions to public lands is extremely significant. He recently created the Office of Outdoor Recreation to the Sage Grouse Conservation Recovery Plan and to the partnership of the Public Lands Initiative. All of those have been initiatives that Governor Herbert has begun for the State of Utah.

He has implemented, I think, what are considered dynamic and innovative reforms that have improved range in species health, and have established long-term prosperity and provided for a balanced approach to our public lands in the State of Utah.

So, his testimony, his participation today in the hearing, I think will elevate or at least illustrate the States' innovative approaches and shine a light on maybe some of the impediments that States have that could actually produce a better product for the citizens of the West.

[The prepared statement of Mr. Bishop follows:]

PREPARED STATEMENT OF THE HONORABLE ROB BISHOP, CHAIRMAN, SUBCOMMITTEE  
ON PUBLIC LANDS AND ENVIRONMENTAL REGULATION

Gary R. Herbert is serving as the 17th Governor of the State of Utah. Before he became Governor, Mr. Herbert served as Lieutenant Governor under Jon Huntsman, Jr. from 2005–2009. Mr. Herbert assumed the governorship following Mr. Huntsman's appointment by President Obama to serve as the United States Ambassador to China. In 2012, Governor Herbert was elected by the citizens of Utah to serve his first full, 4-year term.

In 2012, Governor Herbert was elected by other western Governors to serve as the Chairman of the Western Governor's Association. The Western Governor's Association is an independent organization that represents the Governors of 19 States and

3 U.S. territories. The focus of WGA is to identify and address key policy and governance issues that cover natural resources, the environment, and other intergovernmental operations.

The purpose of the hearing will be to hear directly from a proven leader regarding our current land management system and whether or not it is working. Governor Herbert has been at the forefront of the public land policy and management debate for decades and his perspective is highly valuable, timely, and critically important.

In his role as Governor and WGA Chairman, Mr. Herbert has experienced the good, the bad, and the ugly of Federal land management. These experiences will assist the Subcommittee as we conduct oversight of Federal land management agencies and craft meaningful and needed reforms.

Mr. Herbert's leadership has produced a myriad of State-centric solutions to public land management. From the recently created Office of Outdoor Recreation to the State's sage grouse conservation and recovery plan to our partnership on the Public Lands Initiative, Mr. Herbert and the State of Utah are implementing dynamic and innovative reforms that improve range and species health, enable long-term economic prosperity, and provide for a balanced use of our public lands.

Mr. Herbert's testimony and participation in today's hearing will elevate the State's innovative efforts, shine light on Federal impediments to their progress, and continue the theme that a sensible reassessment of public land management is needed in our country.

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Mr. BISHOP. With that, when Mr. Grijalva arrives, I will allow him, at whatever point that is, to give a statement, if it is, and I would also ask that, before we actually begin, if Mr. Stewart would like to say one word in the introduction of his Governor.

Mr. STEWART. Yes, Mr. Chairman.

Mr. BISHOP. OK. You are recognized for that.

Mr. STEWART. Thank you, Mr. Chairman. And I apologize. And Governor, welcome. One of the great blessings and privileges of finding myself in this situation is to have met people like you and to see your leadership Governor. And on behalf of many of us from the State of Utah, we thank you for the things that you have done and the things that you represent.

To other members of the Committee or to other participants, I want to tell you that Governor Herbert's primary focus in his role as Governor is education, energy, which is something, of course, that this Committee is very interested in, jobs, and the ability of the States to be able to have the latitude and freedom to solve their own problems.

As a result of this—and I am sure this has been said and will be said again, but it is worth repeating—that Utah is recognized as the best State for business and careers in the Nation by Forbes Magazine, and also has been ranked as the best State in which to live.

So, Governor, thank you for that and your leadership in helping us to achieve those types of recognition and success.

But now, very briefly, Mr. Chairman, if I could, just to the issue, with 60 percent of land in Utah owned by the Federal Government, Governor Herbert has a unique perspective on the management of Federal and State lands. And the difference between State and the federally managed lands is often very stark. State-managed lands are continually shown to be more healthy ecologically, and more valuable, commercially. And in the case of Federal land management, natural resources of land is unused and unmanaged. And, as a result, the ecosystems are often sick and dying, which is, again, another topic that we have discussed at some length in these committees.

But many in Washington fail to understand that it is what many of us—those of us living in the State understand, and living in the West—we love the natural beauty that surrounds us. That is why we choose to live there. But we do not simply see it as a resource that should be exploited without consideration of this natural wonder. Like every State, however, which has control over its own natural resources, the State of Utah believes that the best managers of the natural resources within the State are those who can call that State home, and have lived on the land for multiple generations.

And I think that is the key, that idea that we love the places in which we choose to live, and I think we will be the best shepherds of those, versus someone in Washington, D.C., perhaps, who has never even set foot in our State.

We are fortunate in Utah to have a Governor who understands this, and understands it well, and the ability of the people and the State to develop their own initiatives and create their own plans to utilize our abundant natural resources.

And so, once again, Governor, I thank you for your being here with us today. Thank you for your service not only to our State, but to our Nation. And we look forward to hearing more from you.

Mr. BISHOP. Thank you. With that, Governor, your written testimony is already part of the record. We would recognize you now.

You have a clock in front of you that starts going down to 5 minutes. Oh, and that is the buzzer to begin.

Governor HERBERT. Begin.

[Laughter.]

**STATEMENT OF THE HON. GARY R. HERBERT, GOVERNOR,  
STATE OF UTAH**

Governor HERBERT. Well, thank you. Thank you, Mr. Chairman, and thank you, Congressman Stewart, for those kind words. And I am honored to be here with you. We are going to talk about some important things here today.

I am the Governor of the great State of Utah, and I am proud of that, and honored to serve. I also serve as the Chairman of the Western Governors' Association, as has been mentioned, 19 States. I am not speaking in that capacity today, but I certainly do have insight on what is happening in the West that is uniquely so.

Sometimes the East Coast doesn't recognize the difference of the West Coast, and particularly the Intermountain West. And so I think we can give some insight. Utah has got a perspective, because we have so much public land in our State—it is approaching 70 percent—and less than 1 in 4 acres in the State of Utah is privately owned land. So we have some unique challenges that we face in the State of Utah.

I also believe you are wise in listening to the States. Governors are doing some pretty good things—on both sides of the aisle, I would add—around this State in managing their respective jurisdictions. And I think as we kind of compete with each other we learn from each other and develop best practices.

And today we want to talk about best practices, and particularly when it comes to the management of the public land. And I think all of us want to get the best outcome and the best results when

it comes to the management of those treasures that we have we call the public lands.

One of my core principles is the doctrine that States can and should find their own solutions, tailored for their own unique circumstances. This principle applies to most policy issues, including public lands. Sadly, we seem to have strayed far from the vision of States as independent and robust policy innovators. A balance of powers between the States and the Federal Government is not only right and proper, but essential if we are to ever find solutions to the complex problems that we face as Americans.

Utah strives to have a good working relationship with the local offices of the Federal land management agencies, and certainly works with the agencies on many range and forest improvement efforts. However, the concept of Federal-State partnerships is becoming more and more like Bigfoot sightings, something frequently reported but rarely seen. That is a big problem in States like Utah, where nearly 70 percent of the land owned is—or managed by the Federal Government.

Unfortunately, Federal land ownership and good management are not necessarily synonymous. In fact, sometimes I wonder if they are not antonyms. For example, the National Park Service and the U.S. Forest Service have a combined maintenance backlog of roughly \$15 billion. Meanwhile, many of us in the West have expressed concern that Federal forest lands are experiencing serious environmental stresses. These forests are overgrown, and they exhibit symptoms of an unhealthy ecosystem.

Further worsening the situation, litigation-caused delays, combined with disease, bark beetles, and other insects, have turned millions of acres of prized national forest into ready-to-burn tinder box. This became very real for me, as Governor here, not too long ago when we had a fire down in the southern part of our State. I was alerted I needed to go down, and we got in the helicopter and flew down to Iron County in southern Utah to find a forest fire that was out of control, gone into town off the Forest Service land, and burned a few structures.

As I met with the Forest Service people and said, “Hey, what happened,” they said, “Well, this was a forest that needed some burning, some fire, and we happened to have Mother Nature send us a lightning strike, so we let it burn. That was good. It will regenerate the forest and take some of the overgrowth and the underbrush out of the way. But it got away from us.”

I said, “How long has it been burning?” “Oh, about 40 days.”

And I say, “Well, why did you let it burn?” “We needed to have the fire.”

And I said, “Well, why didn’t you just pick a better time? Rather than wait for a lightning strike to start the fire, why did you not pick a better time and location where we could have managed the fire better?”

And the answer came back to me. “Governor, you don’t understand. This is wilderness. We can’t just go in and torch it and do a prescribed fire. We have got to wait for Mother Nature to send us a lightning strike.”

Well, that is puzzling to me. I don't think that is the best way to manage our forests. We are, in fact, the gardener, and I think we can do a better job.

Regrettably, Federal land agencies have demonstrated over and over again the inability to nimbly or creatively respond to current challenges facing our forests or our range lands. Just as Henry Ford offered the first customer a choice of any color car that they wanted, as long as it was black, Federal land management agencies today provide States flexibility in land management as long as they do it exactly the way Washington tells them.

By way of contrast, State and local entities have long demonstrated the ability to manage lands and solve problems in a timely, responsible fashion. I believe there are a number of important lessons that the Federal Government could learn from these locally led efforts.

My written testimony covers a number of areas. But for the sake of time, let me just skip down—and I see I am running out of time here, but let me just talk about—I would like to talk about Sage Grouse, maybe have a chance, Mr. Chairman. But let me just talk about something I think if we really care about solving the problem—

Mr. BISHOP. Governor, let me—so we can start the timing, let me use my first 5 minutes of time to allow you to finish that testimony, if I could.

Governor HERBERT. Well, OK. I will hurry here.

Mr. BISHOP. Go ahead.

Governor HERBERT. One area that, for example, I will use as an illustration—I am going to give you—I don't come here to complain without giving a solution. The Sage Grouse. We all understand the importance of protecting endangered species. In Utah we have worked for over a year to bring all stakeholders together, work with our land management folks and our Department of Natural Resources, and see if we can find a way to create habitat to protect the Sage Grouse. It is something that has been put off by the Forest Service people for good and noble reasons.

But we stepped forward and said we have got a plan. We have about 12 different areas or locations. Some of it is nestled around private land. We came up with a program, after getting input from all stakeholders, that will protect 94 percent of the Sage Grouse. It is a reasonable and rational approach, and it doesn't unnecessarily inhibit the ability that we need to have to develop on our public lands our natural resources, and particularly our energy industry. So it was a win-win, all the way around.

We get through this, we think we have got a good thing going, only to have the Federal Government tell us, "No, not good enough. We are going to impose upon you our own plan, which is less effective and less efficient, doesn't protect any more, and probably protects less Sage Grouse. And, by the way, we are running out of time, so we are just going to do it." You know, that is not a good partnership approach. Partnership means we are kind of on equal footing, working together. To see this rejected is really disheartening.

And let me just say, too, again, as we talk about this, this is something—a quote from the former Mayor of Missoula and a Dem-

ocrat Speaker of the Montana Legislature, Daniel Kemmis. Some of you may know him. He said this: “The national government has lost its ability to effectively manage the West in a way that assures access, proper management, let alone the sustainability of western communities.”

So, I think there is a bipartisan criticism here of can we, in fact, find a better way to do things? Well, I think we can. And I am here to support the Chairman and what we are calling the Great Bargain. And that is to find a State-based solution to land management, and see if we can’t enact legislation which is the proverbial win-win. If we really want to solve a problem, we ought to be able to come together and find ways to do that.

And so, this grand bargain is designed to promote a more efficient management system. I am a proud supporter of this. It is going to bring all people together, and we are going to recognize that there are some places that need protection. Some of our beautiful vistas and venues ought to be, in fact, set aside and actually create wilderness, where there is many other areas that ought to be opened up for, in fact, development, multiple use. That is the charter of the BLM. And protect our farmers and our ranchers, and open it up for our industry folks to develop our natural resources. And heaven knows, we have an energy demand in this country and in this world that is growing exponentially.

Well, Utah and our public land areas has a role to play in helping fulfill that deficit of energy. And this grand bargain is designed to eliminate the disputes and provide protections where we need to have it, and allow for development where it needs to be done. This can be done by some significant land swaps and ability for us to, in fact, aggregate land where it needs to be, either for protection or for development.

Again, for those who really are looking for a solution, I believe this is one that really has some merit, and I applaud and support Chairman Bishop in his effort of this grand bargain.

From the days of our pioneer forefathers, Utahans have been finding Utah solutions to Utah problems. I am here today to assert our right and our intention to continue to do so. The reality is that people don’t flock to Utah from all over the world because the lands are federally managed. They flock to Utah because Utah lands are unique, precious, and visually and even spiritually stunning. These lands will be just as precious and valued if they are managed by State or local entities, maybe more so. The last thing Utahans would support would be policies that permanently impaired its incredible landscapes and resources.

It is time to revitalize, replace outdated Federal land policies. The new era of public lands will be one in which State and local entities take on a greater role, and will use their skill, flexibility, and innovation to meet the recreation, environmental, and energy needs of the 21st century. States like Utah will continue to be at the vanguard of this new era of public land management.

Thank you for your time today, and I would be happy to answer any questions that any of you may have. Thank you.

[The prepared statement of Mr. Herbert follows:]

PREPARED STATEMENT OF THE HONORABLE GARY R. HERBERT, GOVERNOR OF THE  
STATE OF UTAH AND CHAIRMAN OF THE WESTERN GOVERNORS' ASSOCIATION

Good morning. I am Gary R. Herbert, Governor of the great State of Utah. I also currently serve as the Chairman of the Western Governors' Association, although for today's purposes, I am not speaking on behalf of that organization.

Thank you, Chairman Bishop and Ranking Member Grijalva, for holding this important hearing. I appreciate you inviting me to share with you and members of this Committee some thoughts on management concepts for public lands.

One of my core principles is the doctrine that States can and should find their own solutions, tailored to their unique circumstances. This principle applies to most policy issues, including public lands. Sadly, we have strayed far from this vision of States as independent and robust policy innovators. No one understands State challenges and demographics better than the people who reside and govern there. No one is more committed to the most effective use of limited resources for the best possible outcome, for both our lands and our citizens, than those who will directly live with the consequences of those decisions.

I understand that the citizens of the rest of this great Nation have an interest in the natural resources found within Utah, and the rest of the West. However, a balance of powers between the States and the Federal Government is needed in public land policy if we are ever to find solutions to the complex problems we face as Americans.

Utah strives to have a good working relationship with the local offices of the Federal land management agencies, and certainly works with the agencies on many range and forest improvement efforts. The concept of Federal-State partnership is becoming more and more like Big Foot—frequently touted, but rarely actually seen in the flesh.

#### **Federal Land Management Challenges**

Federal land ownership and good management are not inherently synonymous. In fact, I sometimes wonder if they are antonyms. For example, National Parks have an estimated \$11 billion maintenance backlog. The U.S. Forest Service has its own multi-billion dollar backlog. Meanwhile, millions of acres of national forests have fallen victim to bark beetles and other insect and disease plights and are at risk to catastrophic wildfire. At the same time, a good portion of our Federal grazing lands throughout the West are in poor condition. All of these conditions have resulted in an increase in the number and complexity of wildfires, leading further to exponentially higher suppression costs.

Unfortunately, Federal land management agencies operate within a statutory and regulatory framework that keeps them from effectively addressing rapid declines in range and forest health. Similarly, Federal land management decisions today are paralyzed by litigation. Often, special interest groups use the judicial process to simply delay in an attempt to either wear out or bankrupt the opposition. This leads to further gridlock and the infamous “analysis paralysis.”

While examples of Federal inefficiency and mismanagement abound, let me be clear that these failures are typically not attributable to the efforts of competent and hard-working Federal employees. Instead, most of these failures are symptomatic of outdated and non-functioning Federal land management policies and processes.

In short, the Federal land management apparatus is massive. It's bureaucratic. And it is too rigid.

Just as Henry Ford offered his first customers a choice of any color car they wanted as long as it was black, Federal land management agencies today provide States flexibility in land management—as long as they do it the way Washington tells them. It is becoming increasingly apparent that the current Federal land management process is outdated—like a Model T.

Given these realities, many observers have concluded that today's Federal land management policy is a vestige of the past that has outlived its usefulness. Its top-down, one-size-fits all structure is an outdated regulatory and governing framework that fails to meet the needs of 21st century America.

Clearly, the status quo isn't working as well as it is capable. There is room for improvement.

The time has come for the Nation to undertake a sensible reassessment of current land ownership and management patterns. Indeed, I believe we are, as Chairman Bishop likes to say, on the cusp of a “paradigm shift” in public lands management.

#### **A Paradigm Shift—Time for Change**

A growing number of individuals across the West are realizing that the current paradigm of a remote and centralized administration of vast amounts of western

landscape has reached its limits. For example, Daniel Kemmis, the former Mayor of Missoula and Democrat Speaker of the Montana legislature, has argued that over the last half-century, *“the national government has lost its ability to effectively manage the West in a way that assures access, proper management, let alone the sustainability of western communities.”*

A steadily growing number of westerners from both sides of the political fence are realizing that their communities, economies and their ecosystems would be better served by working together in a collaborative, bottom-up fashion outside the existing centralized governing framework. As westerners and many astute observers increasingly turn away from the top-down, Washington-led public land management regime, it is important that the new models of public land management that arise to take their place are based on a local, collaborative-based approach.

For a number of reasons, Utah is an ideal leader in charting this new approach to public land management. For one, Utahns deeply care about, and intuitively know the value of the State’s lands and resources. And, as the often-recognized “best managed State” in the Nation, Utah is well positioned, both administratively and economically, to bring effective management practices to many of the public lands within its boundaries.

#### **State Land Management**

State management of public lands is not a new concept. The 50 States have substantial land holdings, including an estimated 57 million acres of State forests, 20 million acres of State wildlife areas, and roughly 12 million acres of State parks. An estimated 36 percent of New York State, 29 percent of Alaska, and 16 percent of New Jersey is State owned.

Although States rely on a variety of organizational structures, each has created management agencies—such as State forestry, wildlife management, and park agencies—to manage their lands. Like the Federal land management agencies, the State agencies base management of their lands on their distinct missions and responsibilities.

Utah, the 13th-largest State in the United States by area, features a diverse and ruggedly beautiful landscape. Of its 54 million acres, roughly 37 million of them are owned or managed by the Federal Government. Roughly 21 percent of the State is privately owned, and 10 percent is owned by the State.

States have long demonstrated the ability to manage their lands and resources in a responsible fashion. Many management issues involve multiple jurisdictions—lands owned privately, by State agencies and by Federal agencies. Private lands are managed in an effective manner which creates sustainable use. State land agencies can engage in meaningful public input, and make decisions in a reasonable amount of time.

Unfortunately, once the Federal land management agencies become involved, the complications intensify, and effective solutions become nearly impossible to achieve in a timely manner. Additionally, the increased amount of centralized control exerted by Washington D.C. leads to ineffective decision-making processes at the local level. Let me share just a few Utah-based examples.

#### **Forestry—Fire Management**

Many of the western Governors have been concerned for some time that Federal forest lands throughout the West are experiencing serious environmental stresses that affect the health and vitality of these ecosystems. These forests are overgrown and they exhibit all the symptoms of an unhealthy ecosystem. In a saner world, these conditions would demand urgent attention.

In 2010 only about 30 percent of the total U.S. Forest Service budget was allocated to manage our national forests. In the mid-1980s, that number was closer to 70 percent. Most of the agency’s budget is spent on fire suppression, administrative support, research, and other programs. Forest Service officials have estimated that planning and assessment consume 40 percent of total direct work at the national forest level.

As an example of confused leadership, a few years back, the Forest Service was interested in employing a technique known as a “prescribed burn” as a tool to reduce the fuel load within a wilderness area in southwestern Utah. Prescribed burns are an effective tool for preventative fire management, and are typically only initiated under the cooler conditions found in the fall. Believing that it could only allow prescribed burns to be initiated naturally in wilderness areas, the Forest Service allowed a lightning-caused fire to burn when it occurred in an area scheduled for a prescribed burn. Of course, the lightning was generated as part of a summer thunderstorm. After burning slowly for some time, the fire eventually grew dramatically under the summer conditions, and destroyed several structures near a small Utah

town. When I asked the fire managers why the prescribed burn was not concluded earlier, under the usual, more-favorable conditions, the response was that a human-caused initiation was not allowed in wilderness. I asked the Regional Supervisor to review this authority, and he eventually concluded that the Service did have the ability to initiate prescribed burns by hand, and reduce the fire risk accordingly.

#### **State Solutions—Utah Style**

##### **Management of Wildlife and Rangelands—New Solutions**

Private landowners have demonstrated the ability to manage lands and natural resources in Utah effectively. Deseret Land & Livestock (DL&L) is a 205,000-acre privately owned ranch in Utah. Approximately 30 years ago DL&L adopted a holistic management plan using time-controlled grazing. The changes in management have healed stream corridors, improved ground cover, increased water infiltration and provided a wildlife conservation program that is recognized for its success worldwide. DL&L has been named as a globally important bird area by the Audubon Society, because over 280 species of birds have been documented on the ranch. These additional ecological services have been provided for wildlife while simultaneously doubling the number of livestock using the property. The increase in livestock enabled DL&L to go from an economic loss to economic prosperity, and has preserved the landscape from possible development.

The State of Utah is now sponsoring an effort to implement the same type of management that has been so successful at DL&L on 150,000 acres of public and private land nearby. Necessary partners are the U.S. Forest Service, Bureau of Land Management, private landowners, and the school trust lands to implement the same type of management. The proposal is known as the Three Creeks Project. Unlike the situation at DL&L, progress on duplicating the program is extremely slow, however, it is currently undergoing a lengthy NEPA analysis. If approved, the time-controlled grazing program will be fully implemented in 2014, and improved rangeland conditions will follow rapidly. The State of Utah is a strong advocate for this type of superior management, as it is critical for the sustainable management of public lands. This methodology provides for the ecological health of the land, and allows enhanced revenues to be generated from the land. Increased economic opportunity allows local citizens to retain the vital connection with the land. BLM and Forest Service should be required to give these ideas great weight, and rapidly expedite all necessary environmental and economic reviews.

##### **Management of the Greater Sage-Grouse—Local Plans for Protection**

The U.S. Fish and Wildlife Service determined in 2010 that the greater sage-grouse is warranted for listing under the provisions of the Endangered Species Act, but has put off the listing action due to higher priorities. The greater sage-grouse is a species that lives in the vast sagebrush habitat found in 11 States in the West, including Utah. Given this geographical diversity, the protection and management of the greater sage-grouse cries out for solutions specifically tailored to the local situation, and for solutions that are not blind to the character and the needs of local communities. Each of the 11 Western States with sage-grouse has been working on a State plan, or other protective mechanisms for sage-grouse.

Utah began finding such solutions 15 years ago for greater sage-grouse by empowering local working groups composed of State and local officials, private landowners, and Federal agencies to determine the factors affecting the species locally, and to generate solutions. Utah has invested millions of dollars over the last 15 years, in partnership with Federal agencies such as the Bureau of Land Management and the Natural Resources Conservation Service, for habitat restoration and rehabilitation work which has demonstrably improved the status of the bird in Utah.

Utah's Conservation Plan for Greater Sage-grouse was finalized in April of 2013. The Conservation Plan creates a balanced suite of protections which are designed to encourage a cooperative spirit of conservation, yet allow economic conditions to thrive as well. The State's Plan provides protection for 94 percent of the birds in Utah, and contains clear objectives and goals designed to not only stabilize population trends in Utah, but to also seek an increase in the population trends. These goals and objectives are based on solid scientific evidence, but do require the enthusiastic support of local government, private citizens and the Federal agencies in order to succeed. Many aspects of the Plan are the equivalent of those protections employed by the Fish and Wildlife Service in the event of a listing.

Yet the BLM and the Forest Service now advise us that the protection of the species may require each of them to consider protective stipulations designed to be an independent response to the 2010 listing decision. The Fish and Wildlife Service indicated in a recent letter to the State that the Service, contrary to the State's Plan, would work with the BLM and the Forest Service to seek protections for a par-

ticular area within Utah—which protections would cover an additional 1.5 percent of the birds in Utah. If adopted, these independent provisions, on their own, will *not* be sufficient to conserve the bird, will antagonize the effort to earn the necessary protections on private lands, and will only serve to toss the cooperative spirit of a joint response on its head.

Of equal significance, the Fish and Wildlife Service and the BLM have altered direction in terms of support for these State plans. Secretary Salazar, at a meeting in December 2011, clearly stated that the State-written Conservation Plans were the preferred method for the protection of sage-grouse, and that the Federal agencies in Interior would work cooperatively to support State plans. Specifically, the States were lead to believe that BLM management of sage-grouse habitat would conform to State plans while the BLM was working on long-term plans, and that BLM plan revision efforts would favorably consider the State plans in their process to provide protections for the species now underway. This has not proven to be the case to this point in time.

BLM and the Service now assert that the effort to review the State plans, and amend the interim guidance is not favored, because the schedule is too tight to accommodate such a review. As a result, BLM will not be adopting the newer, more accurate State data as part of the NEPA review, and will be relying on outdated data as the fundamental basis for its analysis.

The State of Utah has begun the implementation of its Conservation Plan. The State continues to seek a partnership with the BLM, NRCS, Forest Service and the Fish and Wildlife Service in this effort. However, it is becoming increasingly clear that the drive to finish the BLM plans by an arbitrary date is driving the BLM to use outdated information, among other fundamental flaws. The Congress should consider an extension of time to allow the States, The Fish and Wildlife Service, the BLM and the Forest Service, to rationally conclude this conservation planning and species status review process.

#### **First Outdoor Recreation Office**

Outdoor recreation provides many benefits to Utah's economy. It has stimulated the growth of an outdoor products and sporting goods industry in Utah, creating jobs and generating public revenue. It is a primary driver of Utah's large tourism industry. It attracts employees and businesses to Utah. Companies cite our quality of life, natural beauty, and varied outdoor recreational amenities as key factors in their decision to relocate to Utah.

Southern Utah is a mecca for outdoor recreationists, who enjoy pursuits ranging from river rafting and boating to rock climbing, and backpacking. Many areas offer the opportunity to get farther into the region's backcountry by horseback, bike, or all-terrain vehicle. The remote La Sal, Abajo, and Henry mountain ranges punctuate the landscape of this region. Southwest Utah has long been a destination for those looking for relaxation and recreation.

Utahns have long recognized the value and importance of sound conservation and ensuring sustainable recreational access. To secure the significant benefits of outdoor recreation to Utah, and ensure that great recreational opportunities are available in perpetuity, I convened a stakeholder process last year to develop a detailed and substantive Utah Outdoor Recreation Vision. I was pleased to implement the primary recommendation of that vision earlier this spring when I signed legislation creating the Nation's first State office of outdoor recreation.

#### **Utah State Parks**

Utah, like many other States, has a multi-decade experience demonstrating its ability to manage lands for multiple purposes. For example, Utah's State Park system began in 1957 with four heritage parks: Camp Floyd (near Lehi), Sugar House Park (now no longer a State park), Utah Territorial State house in Fillmore, and this is the Place Monument in Salt Lake City. Today, there are 43 Utah State Parks located throughout the State. The Utah Division of State Parks and Recreation in the Utah Department of Natural Resources manages over 95,000 acres of land and over a million surface acres of water.

Utah's State parks are popular. There were 4.8 million visits to Utah's State parks in 2011, which generated \$67 million in revenue. A Utah State University study showed that Utahns highly value their State park system, and a large majority of those surveyed reported that they had visited several parks. About 75 percent said they had visited a park in the past year and, on average, residents made about four visits a year to State parks.

#### **SITLA**

Another example of Utah's track record of success with land management can be seen in how State entities have managed those lands set aside for the benefit

of the State's schoolchildren. The Utah School and Institutional Trust Lands Administration (SITLA) was created to manage 12 real estate trusts granted to the State of Utah by the United States at statehood. SITLA currently manages a 3.5 million-acre real estate portfolio (7 percent of Utah's land area) for the financial benefit of the 12 beneficiaries. Given the incentive of an improved education system for Utah's children, these lands are well-managed. SITLA has grown the permanent trust fund from \$95 million in 1995 to over \$1.5 billion in 2012, and as the fund grows, the interest flows annually to fund Utah's schools. In 2012 alone SITLA distributed \$34 million toward public education.

The mission of the agency can support viable methods for the support of conservation and wise development of the resources. For example, SITLA has created a mitigation bank for prairie dogs on its lands. Developers seeking credits for the use of prairie dog habitat near cities in rural Utah can move prairie dogs to these locations. SITLA has also created habitat preserves for rare plants as required.

#### **Regulation of Hydraulic Fracturing**

Finally, I'd like to take a moment to address the recently proposed rules from the BLM to further regulate the oil and gas production process known as hydraulic fracturing.

Within Utah, the approval process for oil, gas and water wells administered by the State's Division of Oil, Gas and Mining (DOG M). DOGM's regulatory charge, which includes all permitting, inspection, compliance, and enforcement efforts, is to ensure the responsible development of Utah's resources with due regard for and protection of the environment. The professional staff of DOGM has the local knowledge and expertise to address the technical and scientific challenges posed by Utah's unique geology and geography. BLM has been making use of this expertise.

Because of this expertise, in all its history, Utah has never had a single recorded instance of hydraulic fracturing fluids polluting Utah's waters. Recently, in response to the public's desire for further transparency DOGM instituted a rule to require disclosure of the chemicals used in the hydraulic fracturing process. State regulations are effective, and require transparency, yet the State and the industry are now again faced with unnecessary duplicative Federal regulations.

A nationwide hydraulic fracturing regulation may have noble intent, but will be no more effective in achieving better oversight of hydraulic fracturing operations than the existing State regulations. While new Federal rules, perhaps from the EPA, could potentially provide standards for pollution control, it is clear that new BLM rules cannot be expected to improve the program, and could very well slow processes and add unnecessary costs.

Mr. Chairman, I would suggest that the only threat to our technology dominance and the ability of our country to become energy independent is a Federal Government that believes it should justify itself by issuing unnecessary rules. The proposed BLM HF rules are a perfect example of a solution-in-search-of-a-problem mentality.

#### **Grand Bargain**

Perhaps the best example of a State-based solution to land management is the effort initiated by Chairman Bishop to enact legislation providing for designations of conservation units, and the consolidation and exchange of both State and Federal lands to promote more efficient land management. Some in the State have begun to call this effort the "Grand Bargain." I am a proud and staunch supporter and proponent of this effort.

Public land disputes, particularly wilderness designation, have occurred in Utah for many decades. With rapid population growth, widespread energy development, and increased recreational use on public lands, these disputes will continue and potentially grow more divisive and serious unless people of goodwill find collaborative solutions that balance economic needs with environmental protection.

To be successful, I believe this "Grand Bargain" will need to incorporate a few important principles, including:

- The process to find common ground must be bottom-up, not imposed from the top-down by the president, Congress, or State leaders. Local leaders and local interests must be fully engaged in the process, not simply observe as bystanders.
- The process must be fully collaborative, with all willing stakeholders and interest groups involved. No stakeholder will get everything they want, and all must be willing to negotiate and compromise, but it is important that all are at the table.
- The solution must incorporate economic benefits, including possibly SITLA land exchanges, increased tourism opportunities, energy development, land privatiza-

tion, infrastructure needs and, to the extent possible, certainty about land use status.

- The solution must also incorporate meaningful and appropriate environmental protection, including conservation designations that protect fragile and pristine areas for future generations.

I, along with Congressman Bishop and many other Utahns, believe the timing is right for a large deal. Events have converged to provide Utah a unique opportunity to accomplish something truly remarkable—protect Utah’s wild places and enhance outdoor recreation, while at the same time, strengthening Utah’s economy and increasing much needed school funding.

### Conclusion

From the days of our pioneer forefathers, Utahns have been finding Utah solutions to Utah problems. I am here today to assert our right and responsibility to continue to do so.

Utahns have a history of working together to solve tough problems. It’s part of our character. With good will, respect, creativity, and simple hard work, we will sustain Utah as the premier location—the right place—for outdoor recreation, smart conservation, and responsible energy development.

The reality is that people don’t flock to Utah from all over the world because its lands are federally managed. They flock to Utah because Utah lands are unique, precious, and visually and even spiritually stunning. These lands will be just as precious and valued if they are managed by State or local entities. The last thing Utahns would support would be policies that permanently impaired its incredible landscapes and resources.

It is time to revitalize and replace outdated Federal land policies. The new era of public lands will be one in which State and local entities take on a greater role and will use their skill, flexibility, and innovation to meet the recreation, environmental, and energy needs of the 21st century.

States, like Utah, will continue to be at the vanguard of this new era of public land management.

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Mr. BISHOP. Thank you. I appreciate you being here and representing the Western Governors’ Association and your testimony so far. We will turn to questions. Let me go with Mr. Cramer. If you have questions—I don’t need to be yielded to right now—if you have questions?

Mr. CRAMER. I have none. I would just yield to the Chairman.

Mr. BISHOP. Let me take that chance later. Mr. Amodei, you were here next.

Mr. AMODEI. I would yield to the Chairman also.

Mr. BISHOP. You were supposed to say great things about me. You realize you have screwed up again here.

[Laughter.]

Mr. BISHOP. Mr. Daines, do you have questions for our witness?

Mr. DAINES. I do. And, Chairman Bishop, you are the greatest Chairman on the Hill, just so you know.

[Laughter.]

Mr. BISHOP. I didn’t quite hear that. Would you repeat it again for the record?

Governor HERBERT. Is that a motion on the floor?

Mr. BISHOP. Thank you.

Mr. DAINES. OK. Well, Governor, it is truly great to have you here. And as a fellow westerner, I share your frustration as well as I applaud your pragmatic view here, of driving solutions going forward.

I was struck by your statement early on about the doctrine that States can and should find their own solutions tailored to their own unique circumstances, and I applaud that doctrine. And we believe that in the State of Montana, as well.

In your testimony you spoke about the mismanagement of some Federal lands by some Federal agencies. In particular, the lack of management in our national forests. We witnessed that problem firsthand in Montana. In fact, we spent \$113 million last year fighting forest fires. It was the worst fire season in 100 years. And yet, our timber sales are stopped because of frivolous litigation.

Just a month ago in Seeley Lake, Montana, the Colt Summit project was halted by a suit from the Friends of the Wild Swan and the Alliance for the Wild Rockies, and others. So we spent a lot of money litigating, that the taxpayer often times is paying for. In fact, we paid more than \$1.2 million in attorney fees for these cases. And now we are approaching potentially a huge fire season coming in 2013.

So, I would like to get your point of view around what the role of litigation has been in terms of halting good forest management.

Governor HERBERT. Well, thank you. And greetings to the great State of Montana. And your former Governor, Governor Schweitzer, a very strong advocate for State control of public lands management, a good Democrat.

Litigation is used as a tool to stop things from happening. If you don't get your way, then let's sue. A good example of that is what we call our resource management plans. In the State of Utah we have seven of them. They are kind of in regions. And the intent is to get together and bring all the stakeholders, have local input, and say, "How are we going to manage these lands out there? What should be protected and maybe taken off limits? What should be developed?" And not only what should be developed, but in what manner? Even if you get energy, it might be that there is energy capability here, but you have to use lateral drilling, it won't just use a straight up-and-down derrick, again, to protect and have minimal surface interruption.

So, again, that process is a good one. And we have done that. And sometimes it takes, if you can believe it, 6 to 8 years. I know things don't move that slow here, in Congress, but 6 to 8 years to develop a resource management plan seems to be a very long time, a chance to get everybody's input. And yet, we have seen, once we have got those things done and we think, OK, we have got a pathway that everybody has agreed to, moving forward, we end up having somebody that says, "Well, I don't like it." Next thing you know, they file a lawsuit, find some kind of technicality to delay, delay, delay, delay. And we have seen that in the Uintah Basin in Utah, where in fact we lost 77 leases that had been agreed to and pulled out because of an administration change, more than anything else, and spawned because of litigation.

So, again, if we don't like what we get in the discussions and the willing participation of negotiation, it seems that litigation is the choice to stop and delay and procrastinate and put off actually getting a resolution to issues.

Mr. DAINES. Well, speaking of procrastination, you all have a vote this week on the Keystone Pipeline. It took the Canadians 7 months, worked 4½ years, and counting.

Governor HERBERT. Yes. It is disappointing. Again, we see it on—it is on many areas. It is not only where people use litigation, but they will sue over endangered species, they will sue over—in

our case, in Utah, and I expect in other States too, where wilderness is an issue, they will say, "Well, this is not a road." And the reason they will say it is not a road is because, by definition, wilderness is roadless. And so people wonder. Why are we having the disputes in Utah over our R.S. 2477 roads and rights of way? It is because, if we want to have wilderness, they have got to be roadless.

And rather than willingly discuss and negotiate, which is what we are trying to do in Utah, we have people say, "No, we are not going to define anything here as a road, no matter what." And so, we end up in litigation and lawsuit, which is delay, delay, delay. And on R.S. 2477, the delay tactic actually works, because the evidence is dying off. Some of our old farmers and ranchers, you know, are not going to be around the next few years, and so we don't have the ability—have primary evidence being given about the validity of this particular road. So litigation is a tool of choice for delay.

Mr. DAINES. I have got just a short amount of time. Could you touch on the hydraulic fracturing, the contrast between the approval process on State land or private land versus Federal land?

In Montana we issued 329 permits on private lands, while just 29 Federal permits were issued. It has just become very obstructionist on Federal lands. What is it like in Utah?

Governor HERBERT. Sure—

Mr. BISHOP. If you can do that in a half-minute, and we will take it out of your next time.

Mr. DAINES. All right. Thank you, Chairman.

Governor HERBERT. Well, hydraulic fracturing has been around for a long time. This is not a new technology, but it is certainly one that is being perfected, and certainly being utilized. And because of it, in fact, we are, in fact, having great success, particularly with natural gas, where some would say it is a cleaner fuel, it is inexpensive, affordable, cleaner. It is what the public wants.

I think—and nobody is arguing for not having oversight. There needs to be some oversight. The question is whether the Federal Government should do it or whether States should do it. Why have an extra redundant level of oversight that you don't need to have? In Utah we have had not one instance of any kind of pollution at all because of hydraulic fracturing. We have significant oversight, and I think States are really at the level that should be, in fact, having the oversight.

I know there is a new proposal here that has just came out about a week ago, which we haven't had a chance to study all the ramifications, but States are doing it right, and ought to be the primary oversight responsibility for hydraulic fracking.

Mr. BISHOP. Thank you. Mrs. Lummis?

Mrs. LUMMIS. Thank you, Mr. Chairman, and welcome, Governor Herbert. I am just delighted that you are here, because you are speaking the language of Western States, and experience that you have had on the ground with successful management.

I note, turning to your Sage Grouse experience, that Secretary Salazar, in a statement in December of 2011, said that State-managed plans were to be the preferred method for protecting Sage Grouse. And yet it seems that now they are taking a different tact.

What will happen with all of the work that you have put into your State Conservation Plan for Sage Grouse if it is not implemented?

Governor HERBERT. Well, I assume that our efforts will just go into the File 13, the circular file, and a lot of effort from good people, stakeholders on all sides of the issue, will be just thrown out.

Mrs. LUMMIS. Can you give a little more background on how you pulled everybody together and what kind of recommendations were set for implementation before the Federal Government stepped in?

Governor HERBERT. Sure. Again, Kathleen Clarke, who some may remember was the BLM Director—

Mrs. LUMMIS. Yes, yes, director.

Governor HERBERT [continuing]. Here in the Bush administration, certainly has a plethora of background and experience to help us in Utah and help guide this discussion, but she works for the Department of Natural Resources now in Utah, and is over our Public Lands Management Office, which reports to me.

Her instructions were to bring the stakeholders together and say, "Look, our goal is to protect the Sage Grouse so that it is not listed." We lose control, again, with it being listed, and that has all different kinds of ramifications, mostly all negative, when that happens. So if we care about the Sage Grouse, and we do, let's see what we can do to protect it and add to its numbers.

And so, she brought all the stakeholders, all the smart people that know Sage Grouse, and said, "What can we do?" We found we have 12 major habitats in the State of Utah. What could we do to protect them? And they came together with folks and said this would be a good program which would increase the numbers of Sage Grouse and protect—again, if you go 100 percent of the State, it protects 94 percent of all the existing Sage Grouse and provides opportunities for them to have little baby Sage Grouse and increase the numbers.

And so, it seemed like a good plan. We spent about a year on it. To have it just kind of summarily dismissed is really frustrating. But this has been a collaborative effort by environmental groups, biologists, Sage Grouse wildlife experts, and public land management experts, which we thought was the win-win, protect the Sage Grouse, and did not overly disturb our economic opportunities on our public lands and other areas of need.

Mrs. LUMMIS. Governor, I want to switch subjects a little bit, because you also had in your testimony an example of something that is near and dear to my heart, and that is ranch management, which allows for wildlife conservation and livestock grazing. You mentioned the 205,000-acre DL&L Ranch in Utah as a model for grazing management. They increased their carrying capacity for livestock, as well as have become a worldwide model for wildlife conservation.

And yet, when you tried to replicate the success of the DL&L, you ran into the Federal road block. Could you explain what you were trying to accomplish and what you encountered?

Governor HERBERT. Well, again, I think under the goal of trying to find best practices which will give us the best outcomes as we manage lands, our forests, and our flora and fauna, the Deseret Land & Livestock private organization is just stellar. And you can

go up and take a look at it and see where the private people—how they have managed the lands, and how robust it is. I mean the deer and the antelope do play there, and the growth is remarkable.

And you go on those lands and you see just—it is vibrant—you go right across the street on the public land you think, “Wow, this is kind of like No Man’s Land. Nothing happening over here, it is desolate.” And it just shows the difference between the land management practices. So we have to learn from them and try to incorporate it on the public land, let’s learn from the private sector.

Let’s learn from those good practices and incorporate them as part of our public land practices. There is no reason why we should be “Well, I don’t want to do that because somebody else is doing it” or, “This comes from the private sector,” or a Republican proposes it or a Democratic proposes it. We ought to just look for the best practices and incorporate them in how we manage our public land.

Mr. BISHOP. OK, thank you. Mr. Stewart, do you have questions?

Mr. STEWART. Yes, Mr. Chairman, thank you. Once again, Governor, thank you. You mentioned something and I think Mr. Cramer did, as well. I am not going to take the time to explore it today, but I wish we could, and that is how the Federal courts have been abused, and the lawsuits. And when we see environmental groups seeming to team with the EPA in bringing lawsuits and then having what seems to be a pre-determined outcome and of course it generates revenue for them. And, as Mr. Cramer mentioned, the lawsuits that are filed, and it makes it impossible to timber even the dead wood. Having been involved with that in my previous career, it is really quite concerning, but a topic for another day.

I would like to ask you—and maybe we together could help clarify some points—I know that throughout—beginning in Utah, but throughout the West there is this real mood and a real effort to—Transfer of Public Lands Act, for example—of helping to allow the States to reclaim some of these lands that in any other State would be under State control, under private control. And there is some confusion about what that would mean if that were to happen, and I think, again, maybe we could ask some questions and just clarify.

Is Utah trying to get control of the national parks and, say, congressionally designated wilderness? Is that Utah’s intention?

Governor HERBERT. Absolutely not. In fact, the bill that you referenced to, Congressman Stewart, has to do with a better management practice. But we, in fact, exclude all the national parks, the 33 wilderness areas, monuments, which we say should remain in the domain of the Federal Government.

Mr. STEWART. And that is good for people to know, because I think there is some confusion on that, and that is a claim that is often made which, of course, is inaccurate. What about the fear of some that the Federal lands would just be sold to the highest bidder? Would that be your intention, as the Governor of the State of Utah?

Governor HERBERT. Absolutely not. Utah is a public land State. I expect it will always be a public land State. It is not a negative to have public lands. It does inhibit some opportunities. But it just needs to be managed better. That is, I think, all we are saying.

We actually, in the bill, again, referenced—if we privatize, if we sold off any land and privatized it, 95 percent of the proceeds are given to the Federal Government. There is no incentive to sell off any public lands and privatize them, where we have to give the money to the Federal Government.

In fact, part of the bill that was passed requires us to, in fact, convene a group of stakeholders on all sides of issues and look for further areas that need protection in the State of Utah on our public lands.

Mr. STEWART. OK. Thank you for helping to clarify that. And so the fears that some have that Federal lands would be privatized under this bill, that is just really not—

Governor HERBERT. Unfounded.

Mr. STEWART. Yes, thank you. And then, maybe the final concern—and this one is a little more—a little more depth to this, and that is some argue—and again, I think there is some merit to their argument—and that is, what if the State were to reclaim control over these lands? Do you have the financial resources? Do you have the bandwidth within your agencies? Do you have the expertise to manage these lands, if the State were to be able to control them? Or is that something that is just beyond your capability of doing?

Governor HERBERT. Well, certainly we are capable of doing it. Again, I think it was alluded to—and I hate to brag—but Utah is a well-managed State, been recognized. If not the best, one of the best. We have a surplus in our account, we balance our budgets, our economy is growing at two-and-a-half times the national average. Our unemployment rate is down to 4.7 percent. We know how to manage. And we are doing so—in ways that, again, I think would be the envy of many States, and certainly would be a good example for here in Washington.

That being said, the resources that come off the public lands is about \$450 million a year. And the expense of being put into the resources in Utah are about \$219 million a year. So, with the additional \$225 million, we would certainly have the money to do it. As well, I would argue, that we are closer to the land. We have certainly the same motivational interest in protecting it, part of our tourism and travel business. We would just spend the money more efficiently, more effectively, and get a better bang for the buck. We certainly can do it, and we would have the resources to do it if, in fact, those lands were returned to Utah for management.

Mr. STEWART. So, I appreciate that, Governor. I mean to reemphasize that, with the royalties and other payments that would come with jurisdiction over those lands, you would have the financial ability to manage those lands.

Governor HERBERT. Without changing anything currently done. Now, with better management, I think we could improve the return on the investment there and have even more money to put back in the public lands.

Mr. STEWART. Well, and finally—my time is up—but that would eliminate some concerns such as we are experiencing now, where the Federal Government is collecting royalty payments that are actually owed to the States. That is the States' money, and the Federal Government is collecting that money and using the excuse of sequester not returning that money, which is nothing short of

thievery, in my opinion. And if the States were to have control over that, I dare say you would not dare do such a thing.

Governor HERBERT. Well, thievery might be a little strong for me, but it certainly is a misunderstanding of the law.

Mr. STEWART. Yes.

Governor HERBERT. And it is generated here, and we have sent a letter, actually, the Western Governors, saying to the Interior Department, "Take a look at that. We think this is not right, for you to ask us to give back money we already have been given."

Mr. STEWART. Well, I appreciate—you said it more graciously than I did. But if I get in trouble in the future, I will just say I had a misunderstanding of the law, then, right?

Governor HERBERT. OK, there you go.

Mr. STEWART. And with that, Chairman, I will yield back.

Mr. BISHOP. Thank you. Mr. DeFazio, do you have some questions?

Mr. DEFAZIO. I do, Mr. Chairman.

Mr. BISHOP. Ready?

Mr. DEFAZIO. Thank you.

Mr. BISHOP. Thank you.

Mr. DEFAZIO. I thank the gentleman. I missed your oral testimony, but I have read your written testimony. And in there you talked about the importance of recreation. And obviously, we have similar opportunities in our State. And I have been very critical of the fee program for accessing Federal lands. First it was incredibly complicated and you had to buy different permits for every different forest. We got a little bit simplified, but it is still problematic between agencies and in between management units.

And so, I have concerns about that. And I also have concerns where the Feds—how much of that recreation fee is getting reinvested into the resource that people are using when they buy the permit.

So, I saw that you had a stakeholder process and developed a Utah outdoor recreation vision. And if you—are there specific—I don't have that, but I mean, were there provisions in there about Federal access, recreation fees, special use fees? Did you get into any of that at all?

Governor HERBERT. Well, somewhat. We just passed legislation—and I think we are the first State in America to actually create an outdoor recreation department—with the sole purpose of promoting outdoor recreation in the State of Utah. We have tourism and travel, and we have economic development already set up.

Mr. DEFAZIO. Interesting.

Governor HERBERT. But as a subpart of that, we want to concentrate on outdoor recreation. We recognize that we have a great opportunity in Utah with beautiful vistas and venues, uniquely so in Utah, that ought to be promoted. And we have economic opportunity there. So, starting this outdoor recreation department, which would take in all forms of recreation, not only just on our national parks and our Forest Services, but all encompassing, I think is going to be a significant step in the right way of making sure we protect and preserve access to some of these beautiful areas.

And we are putting together stakeholders, again, to see how have we been doing in the past, where we didn't have an outdoor recre-

ation department, and how can we do things better in the future. We work with a lot of outdoor retailers. As you may or may not know, we have the largest outdoor retailers convention in Salt Lake City. They meet with us twice, once in the summer, once in the winter. Largest outdoor retailers convention in America comes to Salt Lake City. They have a vested interest. They like to come there and test out their products in our outdoor recreational areas.

So, we are trying to find ways to improve. And I think this outdoor recreation department is going to be a significant—

Mr. DEFAZIO. Well, I believe we are going to have hearings here next month on the recreation fees. And if you have any specific recommendations, given the focus of the State on how it impacts your State, it would be useful to have before that hearing.

One other quick question. I noticed that Utah does assess royalties on hard rock mineral extraction. And somewhere between, as I understand it, 2.6 percent to 10 percent, depending upon the mineral being extracted. There is some controversy here, whether or not the Federal Government should charge similar royalty fees. I mean the State assesses those fees and I think you must feel there is a good reason for that.

As long as these other lands are in Federal ownership, don't you think the Feds should do something similar?

Governor HERBERT. Well, taxation, really, is what it is, it is always—

Mr. DEFAZIO. Yes, but you are doing it in Utah to benefit the citizens of Utah on Utah's public land. Shouldn't we do it to benefit the citizens of America on Federal public land?

Governor HERBERT. Well, what I was going to say is taxation policy certainly is a debatable issue, and how much is too much and how little is too little—

Mr. DEFAZIO. Right.

Governor HERBERT [continuing]. And what should we do to raise revenue to run government. Clearly, the Federal Government has got its own set of problems. When you are borrowing \$.40 out of every dollar you spend, there is not enough revenue to cover your expenses. So I guess you have got to look in every place you can.

At the same time, as we do that, let's not destroy the industry. We don't want to kill the goose that is laying the golden egg.

Mr. DEFAZIO. Right, but you don't have any lack of activity on exploitable parcels of lands in Utah because of the royalty.

Governor HERBERT. We have—

Mr. DEFAZIO. I mean people are still interested in going there and developing those sites.

Governor HERBERT. Well, it is not just the royalty, it is the combination of everything. If you have delay—it takes, on average, to get a permit on the Federal Government side, about a year, according to Western Energy Alliance. For a State permit it takes about 30 days. Time is money.

Mr. DEFAZIO. Right.

Governor HERBERT. And if you look at the migration of people that have opportunities on public land development in Utah migrate to North Dakota, where they are having a significant boom, as we all know, in the Bakken there, because it is all private land. And so—

Mr. DEFAZIO. Right, but we are talking about hard rock minerals here, where there is a well-established, very archaic Federal mining law, and it isn't quite as fraught as some of these others.

But anyway, thank you for that. I appreciate it. Thank you, Mr. Chairman, for the time.

Mr. BISHOP. Thank you. Governor, if I could maybe ask a couple of questions here, and then we will go and see if there are other questions by other members of the panel.

You have mentioned the so-called Grand Bargain that we are still working through. I appreciate your references to that. I am not really crazy about that name. Maybe Bishop's Brilliant Bill would be a better one to come up with—

Governor HERBERT. Bishop's Brilliant Bill. I could go with that one, too.

Mr. BISHOP. Yes, yes, OK. Do you see that as in any way at odds with the Transfer of Public Lands Act that the State is working on?

Governor HERBERT. No. In fact, I think they are complementary. Again, the question I ask anybody who is concerned about this issue: Do you want to find a solution? Do you want to resolve the conflict? Let's not be like the attorney that says, "Hey, why resolve the conflict? I get paid each and every day that there is more conflict." And we have some out there that, in fact, use the conflict, and there is some that don't want us to resolve it, probably the extremes on all sides of the issue, the extreme voices out there.

But for the 80 percent of us that are reasonable and rational people, we want to have a solution to the problem. And we can get together and find those areas that need to be preserved.

We also know there are areas that ought to be developed in a multiple-use fashion. And we ought to get together and swap land so we can aggregate parcels where we can serve and protect, as well as develop. And that is the win-win for everybody. We have been fighting over this in Utah for 25 years. It is time to stop the fight and go on to something more productive with our time, and find the proverbial win-win. I believe the land swap, the land exchange, and Bishop's bright, wonderful bill, is a step in the right direction.

So, I am ready for a Grand Bargain that is the proverbial win-win.

Mr. BISHOP. And we still have a ways to go to develop that. But I do appreciate it, because for many years those of us in the West have been saying, "Look at the language in our enabling acts, and we are being treated unfairly." And vis a vis other States. And we have found out over the years that, basically, the courts and Congress don't care that we are being treated unfairly. So there has to be a different approach to what is going on.

And I would like you just to talk a minute about what the State is trying to do with your new group that you have brought together. And do you see, in the paradigm of this group, the concept that development of resources cannot work with conservation of resources?

Governor HERBERT. And when you say "the new group"?

Mr. BISHOP. Your—the outdoor—

Governor HERBERT. Outdoor recreation department?

Mr. BISHOP. Yes.

Governor HERBERT. Well, again, it is the opportunity for us to promote outdoor recreation is what that purpose is, and to see what we can do to expand opportunity, and the economic benefit that comes, and of course, the enjoyment that comes to the people who were able to access our stunningly beautiful vistas and venues in Utah that are very unique.

And so, there is an economic motivation, but we have got to find people that will come together to find the way to optimize those opportunities. Just fighting doesn't do it. You know, it is interesting for me to observe—and you would understand this, Congressman Bishop—that over the 25 years fighting over, say, wilderness, the only wilderness that has been created in Utah in those 25 years is the Washington County Lands Bill, which was Senator Bennett and Congressman Matheson worked together, and others; and the wilderness that was created with your help to make sure we didn't have any nuclear-spent rods being deposited out on Indian reservations.

Other than that, it has just been a total failure of any creation of wilderness. And for those who advocate more wilderness, this is an opportunity for us to bring people together, identify those areas that need preservation and protection, and yet open up opportunities and get rid of the litigation, the delay, and the frustration that comes from a litigation, and find a solution that everybody benefits.

Mr. BISHOP. In the short 1 minute that is left here on this round, anyway, I mean, we have got parks, we have got monuments. Thirty-six percent of Utah is already in some kind of special conservation designation. Does energy development occur in these sensitive areas, or does it tend to be in other places?

Governor HERBERT. Well, they tend to be in other areas, you know. Again, and around the country, at least, certainly it is in the private lands where we get the majority of this taking place. And because of the frustration, the time and delay that you have to—the hoops you have to jump through on public lands. Hopefully, we could streamline that.

Again, I am an advocate for public lands, we just need to find better ways to optimize the management and utilization of the public lands to the benefit of the taxpayers of America.

Mr. BISHOP. I think in your testimony about the permitting times, State versus Federal, as well as the fracking regulations, State versus Federal you have shown how there is a value in the private sector being involved in the States.

I am running out of time here. Mr. Cramer, do you have other—

Mr. CRAMER. I do not, Mr. Chairman, other than to just say thank you, Governor. And we can use more people in North Dakota, if there is anybody else out of work in Utah. But we are very appreciative of your leadership and your testimony today.

Governor HERBERT. Well, thank you, and wanted to be here with you.

Mr. BISHOP. Thank you. We just—we wish you the same amount of Federal lands that we have.

[Laughter.]

Mr. BISHOP. Mrs. Lummis, do you have other questions?

Mrs. LUMMIS. I do, Mr. Chairman. Returning to the issue of hydraulic fracturing, as you are aware, the BLM has proposed hydraulic fracturing rules. You have said that is a solution in search of a problem. Can you explain what you mean by this?

Governor HERBERT. Well, I guess I get frustrated when I hear people say, "Have you seen the YouTube video?" Somebody turns on the faucet and lights the water on fire. Well, it has nothing to do with hydraulic fracturing. You can find anything you want, probably, on YouTube. But even our own studies here at the Federal Government, the BLM, shows there is not one incident of any pollution of water because of hydraulic fracturing.

We in Utah are very concerned about water. Water is the life blood of our State. It is the only limiting factor I have to growth in Utah, which is the third or fourth fastest-growing State in America. So I am very concerned and protective about our water supplies, and making sure that we don't do something that will have short-term gain and long-term pain.

So, with our hydraulic fracturing, again, sometimes—and I am no expert on this engineering aspect of it, but I have heard them talk about our fracturing—fracking taking place 10,000 feet below the water aquifers. We have significant oversight. There are some proprietary issues with the industry. They don't want you to know what the solution is, but we have the ability to get that information and make sure they are doing things appropriately and correctly. And I think oversight is certainly something that should happen. I just believe it should happen at the State level.

And to have an extra layer of oversight does not benefit anybody, other than it costs more money and time. It is not just the money, it is the time and the delay, which could be, under certain scenarios that have been proposed, another year's delay time. And it is just impractical for industry to have to go through those hoops.

So again, we ought to have oversight. I think it should remain at the State level. And we certainly want to make sure we protect our water supply, which we are doing. And that is why there is no instance—no, none, nada, zero—of any kind of pollution in the State of Utah with hydraulic fracturing.

Mrs. LUMMIS. Thanks, Governor. I have one more question, and it is very broad, so I hope you will just expound on it. I want to talk about the Endangered Species Act, its effect on your State, what western Governors are doing together to address it, and also, since the ESA's authorization has long since lapsed, some of us in Congress would very much like to have it reauthorized in a way that will really produce a result.

As you are aware right now, about 1 percent of species are recovered under the Endangered Species Act. Now, most of us would consider a 1 percent success rate to be a massive failure. So there has to be a better way. And I would like you to talk a little bit about it. If you could help us and guide us to find a way to improve our track record with regard to the recovery of species, what would that look like?

Governor HERBERT. Well, I am not certain what that plan would be. It just so happens it is of interest to the western Governors, and so it is going to be a discussion item at our annual convention conference in Park City on the 28th through the 30th of June. And

we will get input from the Governors and see what the respective States have, as far as maybe some suggestions.

What I do find frustrating is the Endangered Species Act is used as a tool to stop things from happening. It is almost like it is secondary to want to protect the species that is endangered. It is “we want to use this as a tool to stop energy development extraction industry, motivate so that we have to move ranching and farming in different locations”.

So it is used like something to hit somebody over the head with. We ought to be saying, if we have an Endangered Species Act, “What is the common-sense approach to, in fact, protect the species?” Again, I have used the Sage Grouse as an example.

But you can go down in southern Utah—we have had the desert tortoise, for example, were not even native to Utah, somebody brought it in years ago and it proliferated, now it is an endangered species, and it has just killed land. It is like a reverse taking. You have got desert tortoise on your land, you can’t develop it, can’t do anything with it. And all of a sudden, what would be significant value of real estate is now worth nothing. And it is inappropriate, and people have been hurt.

We have down in another part of southern Utah prairie dogs. Prairie dogs are like furry rabbits. And they breed in significant numbers. Because they are on a protected list, not only have they ruined a golf course, which really pains me to the quick, but it is now going into private lands and subdivisions and just devastating real estate values because we are not able to address in a commonsensical way this proliferation of prairie dogs.

I mean it goes on and on. It is not just animals. It is flora, as well as fauna. And we just need to come up with a common-sense approach and say if we really care about the endangered species, let’s work together on it, but let’s not use it as a stick to beat up industry and other people, because we don’t want them to access—extraction or develop energy.

Mrs. LUMMIS. Governor, thank you very much for being here.

Mr. BISHOP. Do we have others? Do you—

Mrs. LUMMIS. You know, I would just say, Mr. Chairman, if there is—I don’t know if we have the budget for it, but how it would be wonderful if this Subcommittee could meet with Western Governors in Park City in conjunction with their meeting, especially on the ESA issue. I feel—

Mr. BISHOP. Cynthia, the ski season is over.

Mrs. LUMMIS. What is that?

Mr. BISHOP. The ski season is over.

Governor HERBERT. We have good golfing, good fishing, a good hiking, camping—there is a lot to do.

Mr. BISHOP. I know. It is all in the first district, too, yes.

Governor HERBERT. Well, it is in the first district.

Mr. BISHOP. Let me ask you a couple more questions before I let you go, Governor. We have a State trust lands program in the State of Utah. In your experience, does the trust model—because we have talked about that in other areas, in other parts of the West—does the trust model and the responsibility to manage lands for financial returns conflict with the multiple-use benefits?

Or, for example, what about the access for hunting and fishing and camping and recreation on State lands versus Federal lands?

Governor HERBERT. Well, as you know, Congressman Bishop, that the problem with our trust lands is they are scattered, they are a patchwork. And so they are not contiguous. So you might have opportunities to develop a trust land location, but you might not have good access to it. Or you may not have critical mass to make it economically feasible. But if you could take and aggregate those trust lands, which are designed to fund education and for the school children of Utah, if you could aggregate those, you could, in fact, optimize—certainly increase dramatically—the return on your investment on those lands.

Mr. BISHOP. Where we have been able to do that, has there been a story of success using those—

Governor HERBERT. Oh, yes. When we had the Grand Staircase, one of the things that former Governor Leavitt was able to do was to trade out some lands and have some economic benefit for the aggregation. Now, it is kind of there is the good news and the bad news in that.

But, clearly, as we aggregate lands together, it makes them more economically viable to develop whatever. It is better for natural gas, it is better for coal, it is better for all kinds of energy. It is better for ranching, farming. There is a lot of other kind of industry capabilities out there, but you can't just have one little isolated spot here and then skip for hundreds of miles and have another isolated spot. You have got to aggregate the property to get it to maximize the return.

Mr. BISHOP. Let me ask you one more kind of a generic question again here. You are here because you are Chair of the Western Governors' Association, which means that the other, what, 19-plus-3 territories' Governors are all part of that group, Republicans and Democrats.

Governor HERBERT. Yes.

Mr. BISHOP. Are the views you are telling me right now fairly consistent with what your other western Governors are experiencing in their States?

Governor HERBERT. Yes, particularly those with public lands. Not everybody in the Western Governors' Association has the high percentage—it starts at North Dakota, South Dakota, down to Texas. For example, Texas, our big, big State in the continental 48, I was down there not too long ago and I said, "Hey, how do you do your transportation issues," and we were talking about transportation. They talked about how they get up their line of sight and get in a helicopter, and I said to them, "What do you do about your public land issue?"

And they said, "What public land issue?" "Don't you have public lands in Texas, a big State like you?" "Oh, we have got some, about 3 or 4 percent."

I said, "3 or 4 percent? Do you know how much land—public land we have in Utah?" And they said, "Well, it must be a lot, or you wouldn't ask the question." I said, "It is a lot. Guess."

And they said, "Well, a lot. How about 25 percent. That would be a lot." I said, "Well, that would be a lot, wouldn't it?" I said, "It is higher." "Is it higher than 25 percent?" I said, "It is higher."

So, they doubled it and went to 50 percent. "Fifty percent? That would be a lot." And I said, "Yes, but it is still too low." When I told them it was close to 70 percent, they said to me, "How do you get anything done," I said, "Bingo. That is exactly the unique challenge."

So, they are part of our Western Governors' Association, but that Midwest doesn't have it. North Dakota has just 9 percent. Came in as a State the same time we did, the same enabling act, same language. We have got 70, they have got 9. It makes a significant difference in how you approach economic development of your State with that much public land in it.

So, I think—when I say the "Intermountain West," we are pretty well all the same, Republican, Democrat, and we have certainly a philosophy of State rule, State closer to the issue, better in touch with what needs to happen in our backyard. We think we are in a better position to manage than is the Federal Government, which is just remote. Not that they are not well-intentioned, they are just not on the ground like we are.

Mr. BISHOP. I thank you for that. Are there any other questions, issues?

[No response.]

Mr. BISHOP. I appreciate you being here. I hope also that there may be other Members who have written questions for you. We would ask you to be responsive to those written questions. We will keep the record open for approximately 10 days before we do that.

I appreciate you coming in, especially the last comment you made. We mentioned earlier that 36 percent of Utah was in some kind of protected status, Federal land that was protected. That equates to 12 million acres. There are only 11 million acres of private property in the State of Utah. So it puts that in some kind of balance.

And I appreciate the testimony that you have given here today because you have told us that there are other ways. We have sometimes battled with unilateral decisions that have been made on public lands. You have illustrated the Deseret livestock concept, which we are trying to replicate with Three Creeks up in Rich County. What we find is that as good as this private partnership has been, the Forest Service is still dragging their feet on actually implementing that somewhere else on public lands at the same time.

You have illustrated the problem that you have had with Sage Grouse, a problem that goes back to the 1990s, when we started. But specifically, you have your plan ready, you are ready to go, and then the Federal Government is putting the brakes on it arbitrarily. And in the economic development fracking issue, there is a better way. And States have shown that better way. And sometimes we, as a system, should learn that decentralized ability of making decisions is probably one of the better ways of making those kinds of decisions.

So, I appreciate you coming here on behalf of the Western Governors' Association. I appreciate your testimony. If there is nothing else before the Committee—

Governor HERBERT. Before the gavel is down, let me invite you to come, all of you. Bring the whole Committee to Park City on

June 28th, 29th, and 30th. We would love to have you, we will just roll out the red carpet. It would be interesting for this Committee to hear from Governors, Democrats and Republicans, about these issues and see if we can't find a better way to manage the public lands. Clearly, we can find a better way. What we are not doing now is not the best. We can do better.

Mr. BISHOP. Thank you very much. With that, the Subcommittee stands adjourned. I appreciate you being here.

[Whereupon, at 11:36 a.m., the Subcommittee was adjourned.]

### [Additional Material Submitted for the Record]

#### PREPARED STATEMENT OF THE HONORABLE RAÚL M. GRIJALVA, RANKING MEMBER, SUBCOMMITTEE ON PUBLIC LANDS AND ENVIRONMENTAL REGULATION

Chairman Bishop, Governor Herbert, and members of the Committee—thank you for holding this hearing today. By my count this is the third hearing we have had about State control of Federal lands this year. I'm beginning to wonder if we are moving towards legislation or just continuing to bash Federal land managers and Federal laws.

Governor Herbert has been generous in coming to our Subcommittee hearing to discuss his perspectives. He is the second Governor to testify before the Subcommittee in this Congress. In reviewing his written statement, I was surprised that he didn't talk more about his State's efforts to gain title to Federal lands within Utah.

The Utah legislature, like Arizona, adopted legislation requiring the Federal Government to cede title of Federal lands to the State. Governor Jan Brewer vetoed the legislation in Arizona citing concerns with the constitutionality of the provision and potential impact on State budgets. I don't always agree with Governor Brewer but this is one area where we see eye-to-eye.

Public lands are for the benefit of all Americans, and we have a responsibility to make sure future generations are able to enjoy them as well. That's why we manage them to balance the interests of the millions of people that use them. The various Federal laws that guide the management of our forests, streams, and wildlife areas are complicated. There is no doubt about that. But they are complicated by design.

Despite the rhetoric we hear from the other side of the dais, multiple-use means managing for a variety of purposes, not just extraction. When Congress came up with the concept of multiple-use, its intent was to make sure Federal land managers considered ALL uses. We have to recognize the importance of hunting, fishing, grazing, recreation, and conservation, as well as extraction and other commercial uses.

State land management—particularly school trust land management is a much more simplistic effort. The only mandate is to generate the maximum amount of revenue. This often leads to a strict focus on commercial use and even privatization of public assets. In many cases, including in Utah, the State has sold land for development. Sure this injects a little revenue into the State's budget, but it also means the land can't be managed for any other future purpose. This is not what Americans want to happen to their public land. They want clean, protected watersheds. They want parks and preserved open spaces, places to fish, places to hunt, and places to ride their mountain bikes.

They want to make sure our cultural heritage doesn't become a strip mall. Federal land management laws are there to make sure the American people get all of these things.

I look forward to engaging more with the Governor on this issue and will have a number of questions.

I yield back my time.

LETTER SUBMITTED FOR THE RECORD BY BRIAN HAWTHORNE,

PUBLIC LANDS POLICY DIRECTOR,  
BLUERIBBON COALITION, POCATELLO, IDAHO,  
MAY 21, 2013.

The Honorable ROB BISHOP, *Chairman*,  
*Subcommittee on Public Lands and Environmental Regulation*,  
*U.S. House of Representatives*,  
*1324 Longworth House Office Building*,  
*Washington, D.C. 20515*.

RE: Oversight Hearing on “Impediments to Public Recreation on Public Lands”

Dear Chairman Bishop,

Thank you for chairing the May 7, 2013, Oversight Hearing on “Impediments to Public Recreation on Public Lands.” Watching these hearings on the webcast isn’t what we would normally call exciting television, but we were glued to our monitors for this hearing and found ourselves nodding in agreement with most of the panelists.

The recreation permit process as currently implemented on Bureau of Land Management (BLM) and U.S. Forest Service (FS) managed lands is overly bureaucratic, expensive for both agencies and the public, and often applied in an unfair and arbitrary manner. Efforts to encourage the agencies to modify and streamline the process have failed, even when those efforts were supported by agency policy. The current Special Recreation Permit (SRP) process no longer serves the public interest or supports the goals and objectives of land management plans. The recreation permit process must be revised.

While the May 7 Hearing was appropriately focused on commercial recreation permits, it is important that the Subcommittee members understand that the exact same bureaucratic process must be navigated by social recreation clubs.

Indeed, if you and Ranking Minority Member Grijalva decided to form a hiking club and wanted to announce a short hike somewhere on BLM lands in Utah or Arizona, both of you could be subject to severe fines and penalties if you failed to adequately navigate the agency’s permit process beforehand.<sup>1</sup>

We believe legislation is needed that will modify and streamline the Special Recreation Permit/Special Use Permit to better serve the public interest and support the goals and objectives of land use planning. We believe legislation is necessary to increase efficiency and efficacy of the process to permit various recreation activities on public land and National Forests. Specifically, this legislation should direct the Secretary of Agriculture and the Secretary of the Interior to make the following changes:

- Historic and regularly permitted social events of 50 persons or less held by non-commercial clubs or organizations that occur on roads, trails and areas designated for public use should be categorically excluded from special recreation permit requirements.
- Historic and regularly permitted competitive events of over 50 persons by non-commercial clubs or organizations that occur on roads, trails and areas designated for public use should be approved based on prior or expedited analysis, so that little or no new analysis is required for the permit process.
- Nonprofit social recreation clubs should be recognized as distinctly different from commercial operations, outfitter and guide businesses, ski areas and other private for-profit enterprises.
- Recognizing that an increased level of partnering with public lands users will become necessary as budgets tighten, there is a need to leverage the resources available from clubs and organizations that hold events on national forests and public lands. Competitive event SRP applicants should be credited for work performed, such as trail maintenance, and the credit applied toward any fees associated with the permit.
- Cost Recovery is applied arbitrarily and does not make any meaningful impact on the agencies ability to economically and efficiently process recreation per-

<sup>1</sup> BLM’s implementation of its Special Recreation Permit regulations has extended far beyond requiring permits for commercial operations or large events such as Burning Man, mountain man rendezvous or large youth encampments, such as Boy and Girl Scouts, and the Campfire Girls. Many BLM offices will require an SRP application for groups of 2 or more persons that issue any sort of public announcement of any type of gathering on public lands. Please see Appendix A for a full analysis of the Bureau of Land Management’s permit process.

mits. Congress should remove the authority for Cost Recovery on recreation permits.

- Congress should amend the National Landscape Conservation System Act 2009, to expressly require that a diverse range of recreational activities are a “value,” and that recreation opportunity should be enhanced within the management planning process.

We deeply appreciate your interest and leadership on this topic and look forward to working alongside the Subcommittee and other engaged interests improving this aspect of our public lands management.

APPENDIX A—A REVIEW OF THE BUREAU OF LAND MANAGEMENT’S (BLM) SPECIAL RECREATION PERMIT (SRP) DIRECTIVES

**The Bureau of Land Management’s (BLM) Special Recreation Permit (SRP) directives are overly bureaucratic, expensive for both agencies and the public, and often applied in an unfair and arbitrary manner.**

On October 31, 2002, the Bureau of Land Management formally amended its Special Recreation Permit (SRP) regulations. The new directives extend far beyond requiring permits for large group activities or events, such as the Burning Man, mountain man rendezvous, amateur rocket and hot air balloon events, and/or large social gatherings of reunions, religious groups, or large youth encampments, such as Boy and Girl Scouts, and the Campfire Girl.

Recreation permits are supposed to be a tool for managing recreation use; reducing user conflicts; protecting natural and cultural resources; informing users; gathering use information; and obtaining a fair return for commercial and certain other uses of public land. The permitting process has become so complicated and costly that most “nonprofit club events” simply cannot comply with the requirements. In addition, historic and popular competitive events that have been occurring without problems have recently been subjected to arbitrary fees. In some areas, the application process to obtain an SRP is being used to prohibit and/or severely restrict otherwise allowable activities. Even where internal solutions are proposed by regulation or individual units, they have been challenged or applied inconsistently. A legislative solution is needed.

**Discussion**

BLM’s recreation permitting directives give wide discretion to the agency insofar as how each State or district office implements the permitting process. National regulations establish general “triggers” regarding when permits are required. However, just because you “trip” one of the requirements doesn’t necessarily mean a permit will be required.

Regulations allow land managers to approve club rides via a Letter of Agreement. Sadly, few such agreements exist, and some managers require permits for some activities that “trip” one of these requirements, but not for all. This results in arbitrary application of the permit process.

For lands managed by the Bureau of Land Management: if you have 50 vehicles, mountain bikes or “heartbeats” (e.g. 50 hikers or 25 equestrians) your activity is supposed to require a permit. (FS allows 75 vehicles/horses/hikers etc). But some States, field offices and local district offices have lowered the number. For example, BLM in Utah now requires a permit for groups as small as 25. As a result, public lands visitors must contact each individual field office or ranger district to find out if their activity requires a permit.

If the event is “advertised” to the general public, that would trigger the permit requirement no matter how many vehicles or “heartbeats” actually attend the event. Some offices require a permit if the advertisement is simply in a club newsletter or on a club Web site, even if such is intended to simply notify club members of the event. This has resulted in land managers requiring a permit for “club rides” of as few as two vehicles.

If you charge a fee you must apply for a permit even if the fee is only to cover costs associated with the event or the fees are going to be donated to a charity. National regulations require permits for all commercial and competitive use, and one of the defining factors for both competitive and commercial use is whether any fee is charged. Sadly, the land managers make no distinction between charity fundraisers and commercial operations. Any and all fundraising activity is considered commercial and must be under permit.

As we mentioned above, just because you’ve “tripped” one of those rules of thumb, it doesn’t necessarily mean you’ll need a permit. But if you do, this is a brief description of what the permitting process will entail:

- At minimum, 180 days in advance of your event, a club will need to at least fill out an application and pay the minimum permit fee and/or a permit processing fee (if such a processing fee is set by the District Office). National regulations have set a minimum permit fee of \$90. This minimum fee is applied to use fees, which means that if the total use fees for an event were \$50, you would still pay \$90.00 total; if the use fees were \$100, you would pay the minimum fee of \$90 plus \$10.00, not \$90 plus \$100.00.
- In addition to your permit, you must also include a detailed “operating plan” for your event. Some local offices require maps and other information as well.
- Insurance and other stipulations are usually required.
- The agency is supposed to respond to your permit application within 30 days, but doesn’t have to let you know if a permit will be granted until 30 days before the event. Each District Office does SRPs differently, so it is necessary to contact the local Outdoor Recreation Specialist.
- All too often, the agency requests additional information, usually only days before the event is to be held. Thus, those groups that do attempt to comply with the permitting rules often find themselves scrambling at the last minute to comply with additional requirements.
- If the agency conducts over 50 hours of work to process a permit, there exists a mechanism by which to “recover” the costs associated with the event. Cost recovery can make the cost of obtaining a permit too expensive. Many units attempt to use cost recovery as a tool to make up for budget, staff or performance shortfalls and/or as a way to avoid issuing a formal denial of the application.

**Just a few Examples of the Bureaucratic Nightmare in Action (Includes BLM and U.S. Forest Service):**

*Item: Pennsylvania Snowseekers*

The Pennsylvania Snowseekers applied for a permit for their annual poker run to benefit the Susan G. Komen Breast Cancer Foundation. The application was completed correctly, received by the FS within the required deadline, and the event consisted of only 66 participants. The FS did not respond to the Snowseekers with a denial or an approval. Perhaps mistakenly, the Snowseekers interpreted the lack of response as tacit approval, held the event and raised over \$1,700.00 for Breast Cancer. A full week after the successful event, the FS sent the Snowseekers a denial! Two members of the Snowseekers were subsequently ticketed by the FS.

At the hearing in Erie Federal Court, the judge had no choice but to find the Snowseekers in violation of FS regulations and imposed a small fine (\$25.00). While ruling, however, the judge admonished the FS for not processing the permit in a timely manner and not finding a way to address concerns regarding this event outside the Federal courtroom.

*Item: Utah Snowmobile Association (USA)*

Every February, the Skyline Sno-Riders Club from Fairview, Utah, hold a charity fundraiser on private property. This year, Skyline’s President received a phone call from the local Forest Service office inquiring about the size of the group and concerned that a permit might be required.

Even though any activity on Forest Service land was separate from the charity ride and no fee for activity on FS lands was being charged, the FS was concerned that the charity event might ‘spill over’ onto FS lands. The FS stated that any group over 75 would require a permit.

Seeking to maintain good relations with the FS, the Utah Snowmobile Association stepped in and began the permit process. However, when USA sought insurance from the list of approved Forest Service carriers, none of them offered a policy that complied with the FS’s requirements, thus, USA was unable to legally obtain a permit.

*Item: Utah Trail Machine Association (UTMA)*

For 26 years, the UTMA has held an annual ride down the very popular 10-Mile Wash. UTMA is a great club with lots of volunteer projects and charity events to their credit. Sadly, the 10-Mile Wash Ride is no longer a UTMA event because BLM’s permit process simply made it too expensive. The choice was either to operate the ride as a true commercial venture or spend the UTMA’s entire yearly budget on permit and insurance fees.

*Item: Hurricane ATV Jamboree*

The Hurricane ATV Jamboree applied for a 5-Year Special Recreation Permit on BLM land for a small ATV Jamboree in Southern Utah. The BLM is planning to charge the Jamboree for necessary environmental analysis, but tells them that the

cost will depend on the response of a radical anti-access group, the Southern Utah Wilderness Alliance. BLM claims challenge by this extreme group would nearly double the cost of the permit.

*Item: New Mexico 4-Wheelers*

The New Mexico 4-Wheelers was sent a letter from Utah BLM, Monticello Field Office threatening to impose "penalties or fines" for violation of SRP regulations for a May 2004 trip on the popular and scenic Hotel Rock Trail.

The New Mexico 4-Wheeler's event consisted of 2 vehicles. The New Mexico 4-Wheelers had put a notice of the ride on their Web site, thus triggering the same permit requirements imposed on a real for-profit commercial enterprise.

BLM'S EMAIL TO NEW MEXICO 4-WHEELERS

From: XXXXXXXXXXX@ut.blm.gov  
Received: 19 May 2004 21:34:50 -0000  
Delivered to: nm4w.org-secretary@nm4w.org  
Subject: Trips

I have noted that Web site nm4w.org advertises organized trips on public lands within the Monticello Field Office area. Last October, Chuck Peeples was listed as a point of contact for an event for Hole in the Rock and you were listed for the event held May 6-9 on the Hotel Rock Trail.

At this time, New Mexico 4-Wheelers do not hold a Special Recreation Permit (SRP) with the Bureau of Land Management (BLM), Monticello Field Office. An SRP is required for all commercial and/or organized events to be held on public lands (43 CFR 2930). Failure to comply with permitting requirements could subject you and your organization to penalties and fines.

If you would like more information on applying for an SRP or have any further questions, please feel free to call me. XXXXXXXXXXX Recreation Permit Assistant Monticello Field Office.

