

**CURRENT PUBLIC LANDS, FORESTS, AND  
MINING BILLS**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON PUBLIC LANDS, FORESTS,  
AND MINING  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

TO

RECEIVE TESTIMONY ON THE FOLLOWING BILLS: S. 182, TO PROVIDE  
FOR THE UNENCUMBERING OF TITLE TO NON-FEDERAL LAND  
OWNED BY THE CITY OF ANCHORAGE, ALASKA, FOR PURPOSES OF  
ECONOMIC DEVELOPMENT BY CONVEYANCE OF THE FEDERAL RE-  
VERSION INTEREST TO THE CITY

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NOVEMBER 20, 2013



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

**WEDNESDAY, NOVEMBER 20, 2013**

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

The subcommittee met, pursuant to notice, at 3:41 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Joe Manchin presiding.

### **OPENING STATEMENT OF HON. JOE MANCHIN, U.S. SENATOR FROM WEST VIRGINIA**

Senator MANCHIN. The Subcommittee on Public Lands, Forests, and Mining will come to order.

This afternoon, the subcommittee will consider 11 bills. These bills deal with the Federal lands matters from around the country, including in Alaska, Colorado, California, New Mexico, Oregon, and Arizona. Several of these bills have national policy implications. Some of these bills are noncontroversial, and a few of them are very controversial.

We have a lot to cover this afternoon with a limited amount of time. In addition to statements from committee members, we are joined by Chairman Wyden. Ranking Member Murkowski will be to offer opening comments on the legislation before us today.

Furthermore, we are also joined by Senators John McCain, Barbara Boxer, Tom Udall, Michael Bennet, and Representative Buck McKeon.

On our second panel, we'll be hearing from the Forest Service and the Bureau of Land Management. We do have a third panel of outside witnesses to testify on various bills before us today.

I want to thank you all for joining us and I kindly ask that you keep your remarks as brief as possible in the interest of time.

With that, I would like to turn to our ranking member, Ranking Member Senator Barrasso for any opening comments that he may have.

[The prepared statements of Senators Feinstein and McCain follow:]

PREPARED STATEMENT OF HON. DIANNE FEINSTEIN, U.S. SENATOR FROM  
CALIFORNIA, ON S. 771

Chairman Wyden, Ranking Member Murkowski, and Committee members, I strongly support S. 771, the “Soledad Canyon Settlement Act,” and urge the committee to pass this important legislation as soon as possible.

This legislation would resolve a fourteen-year-old mining dispute between the City of Santa Clarita and CEMEX USA, ending years of negotiations with a comprehensive and fair solution supported by both affected parties.

Since 2004, Senator Boxer and I have been working with the City of Santa Clarita and CEMEX USA to find an appropriate balance to this complex issue that would not only solve a long-term dispute, but would also protect the economic interests of CEMEX, meet the long-term needs of the Santa Clarita community, and facilitate the preservation of irreplaceable natural resources. This bill does just that—and I believe it will bring a satisfactory conclusion to this issue.

BILL SPECIFICS

The “Soledad Canyon Settlement Act” would cancel CEMEX’s 20-year contracts with the Bureau of Land Management (BLM) to mine 56 million tons of aggregate from the Soledad Canyon site, located immediately east of the City of Santa Clarita, and permanently withdraw this area from mining. The bill also directs BLM to sell roughly 10,000 acres of public lands near the City of Victorville that were previously identified for disposal in BLM’s 2006 West Mojave Land Management Plan and use the proceeds to compensate CEMEX. Furthermore, the bill provides the option for Santa Clarita to contribute to the compensation paid to CEMEX to lessen federal costs and eliminate any possible shortfall.

BACKGROUND

CEMEX’s mining contracts were granted in 1990. A lot has changed since then.

First, the City of Santa Clarita has grown dramatically over the past two decades and remains one of the fastest growing cities in California. In 1990, Santa Clarita’s population was approximately 110,000 people, and today, the population has almost doubled to 203,000, with an additional 70,000 residing in nearby unincorporated areas.

Second, the Upper Santa Clara River where the proposed mine is located, has been identified by federal and local land use agencies as an environmentally significant resource and a critical wildlife linkage. Though the ecological significance of the area was unknown when the contracts were approved, this compelling new information, including information from the Department of the Interior, should not be ignored.

Third, a 2012 statewide aggregate sustainability report prepared by the California Department of Conservation places serious doubt on whether the proposed mine is indeed necessary. According to the report, the State has already permitted 34% of the projects needed to meet aggregate demands for the next 50 years and 74 billion tons of non-permitted aggregate resources have been identified which could be permitted over the next half century if necessary. These additional resources represent six times the anticipated statewide demand for aggregate.

Additionally, the proposed mine would have significant traffic and air quality impacts on a region already facing congestion and air pollution challenges. For example, at full operation the proposed mine would require 1,164 additional truck trips daily onto State Route 14—that equates to one more large truck on the greater Los Angeles metropolitan roadway system every two minutes.

Given the significant changes in the surrounding community over the last 23 years and what we have learned about the project’s ecological and environmental impacts, it seems unlikely that the federal government would issue these contracts if given the choice today. Through the legislation now before the Committee, Congress has the opportunity to make a better, more informed choice.

CONCLUSION

The “Soledad Canyon Settlement Act” is a reasonable compromise for solving a difficult problem. It is the product of years of negotiations between the Santa Clarita and CEMEX. The bill enjoys the support of not only Santa Clarita residents, but the State of California. I urge you to support this legislation.

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, ON S. 339

Mr. Chairman, I appreciate your holding a today's hearing on S. 339, the Southeast Arizona Land Exchange and Conservation Act of 2013. I am proud to have introduced this legislation with my colleague, Senator Jeff Flake.

This bill would transfer about 2,400 acres of Forest Service land to the Resolution Copper Mine, which would expand the mine's subsurface activities—making it the largest copper operation in North America. With these added lands, the mine is expected to generate an estimated 1,400 jobs along with 2,300 related jobs through economic development in the area, including the struggling Town of Superior, Arizona. It will produce about 25% of our domestic copper demand for the next 50 years and have an economic impact of about \$61.4 billion over its operational lifetime.

In return, the Forest Service and the Bureau of Land Management would acquire about 5,000 acres of environmentally sensitive lands throughout the state and place them under federal protection. These lands include important birding areas, several large parcels that include one of the remaining old growth mesquite forests in the country, and property near the Lower San Pedro River, one of the last free flowing rivers in the southwest United States.

This is a tremendous opportunity for the State of Arizona and the nation. This legislation was first introduced in 2005 when Resolution Copper began drilling into the decommissioned Magma Mine and installing infrastructure. Over the past 8 years, Congress held 6 hearings on this proposal and at each hearing local-elected officials and the Arizona business communities continue to signal their support for the mine's expansion. Last week, Resolution Copper moved forward and filed its Mine Plan with the Forest Service, which makes public its operational designs and subjects the mine to a full environmental review under the National Environmental Policy Act (NEPA) and to federal policies on tribal consultation. In my view, Congress should not delay this land exchange any longer.

Arizona is the largest copper-producing state in the nation, which is why support for this legislation remains strong in my home state. I hope that those who remain concerned about the land exchange will take the opportunity to read the legislation, understand the protections afforded to the Apache Leap rockface, and review the Mine Plan that's been filed.

Again, I thank the Chairman and the Subcommittee for their consideration of this legislation and I urge my colleagues to support its passage in the Senate.

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

Senator BARRASSO. Thank you, Mr. Chairman. I welcome each of our witnesses today, including Senators Boxer and Udall, Bennet, as well as Representatives McKeon and Tipton.

Senator MANCHIN. I'm sorry.

Senator BARRASSO. We have a full agenda of public lands bills before us today, so I'll be brief.

I would like to note that Senator Tester's bill to reform the process for setting cabin-user fees on public lands, I'm cosponsoring this bill, along with many of my colleagues on this committee. This bill is needed to restore fairness and predictability to the pricing structure within the recreation-cabin program.

I'm also pleased we are hearing S. 1479, Senator Lee's catastrophic wildfire bill. The year 2013 has been an active fire season, having burned over four-million acres, and we tragically lost 19 wild-land firefighters in Arizona. These catastrophic wildfires and the resulting loss of life illustrate the need for more active forest management. That's why I'm cosponsoring S. 1479.

Senator Lee's bill would expedite and reduce the regulatory hurdles that exist on grazing and timber projects to removing hazardous fuel loads. As a doctor, I appreciate the fact that an ounce of prevention is worth a pound of cure.

I will soon introduce my own forest-management legislation to get at the issue of actively managing our forests and improve forest

health. We need a legislative nationwide solution to address the systematic and systemic problems, including planning and NEPA and litigation. These problems are preventing the Forest Service and the Bureau of Land Management from removing excessive timber and increasing forest health.

On the agenda today, we also have the Southeast Arizona Land Exchange and Conservation Act, commonly referred to as the Resolution Copper/Land Exchange. I'll defer to my colleague, Senator Flake, who has been working on the details of this bill for many years.

I know Senator McCain wanted to be with us today also to testify, but, unfortunately, his schedule would not permit it.

This has been one of the most scrutinized land-exchanges to come before the committee with 6 congressional hearings and numerous public meetings in town halls. Based on all the facts, I strongly support this bill.

Finally, some of the bills we're considering today lock up more Federal land from responsible development through special land designations, including wilderness designations. Mr. Chairman, we need to look closely at these proposals and make sure there is a balance between environmental protection and the resource development on our public lands. Thank you, Mr. Chairman.

Senator MANCHIN. Thank you, Senator. At this time, I will turn to Chairman Wyden for remarks.

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

The CHAIRMAN. Thank you, Chairman Manchin. I'm going to be very, very brief. We've got lots of colleagues here who want to discuss important measures, and I want to thank you for your yeoman service chairing the subcommittee.

As you know, I chaired this subcommittee back in the days when I had a full head of hair and rugged good looks, and you've got your hands full. You've got a lot of bills today. There are a number that are noncontroversial, some with a bit of controversy, but I know you and Senator Barrasso are going to address these very responsibly.

I want to just touch very briefly on two pieces of legislation that are important to Oregon. Today, you are going to be looking at two bills that I've introduced with Senator Merkley, the Oregon Coastal Land Conveyance Act, S. 1414, and the Canyon Mountain Land Conveyance Act, S. 1415.

These are bills that would transfer public lands to the Coos and Cow Creek Tribes, respectively, providing each tribe with a reservation. These bills are necessary to enable the tribes to exercise their authority as sovereign entities and to write historical wrongs.

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and the Cow Creek Band of the Umpqua Tribe are two federally recognized tribes that are without land bases.

Governing historic lands is an important way for a tribe to exercise its sovereignty and become self-sufficient. Without land, a tribe cannot properly grow its economy, retain its cultural or religious heritage, or protect the interests of its members.

When tribes are empowered, they create jobs for Indians and non-Indians alike, and I expect these land transfers to enable the tribes to become more self-sufficient and to be in a position to create good-paying jobs for Oregonians.

I also want to welcome two Oregonians who have made the trip across the country to testify on behalf of the bills. Chairman Robert Garcia and Mike Rondeau are two tribal leaders who I want to thank for the extensive work that they have put into developing this legislation with Senator Merkley and I.

Finally, Mr. Chairman, let me say I especially appreciate, in addition to those Oregon-specific bills, the work that you all are doing on S. 1341, the Cabin Fee Act. As you know, there's been an effort for a number of years—Senator Barrasso, Senator Risch know this as well—with all of the stakeholders.

I'm very hopeful that because of this hearing and your continued good work and the bipartisan support here that we can move to a resolution of any remaining issues with respect to the cabin-fee legislation, and move it to markup.

I thank you very much, and I apologize to colleagues for having to leave, but I've taken a look at all of your bills and we're going to be working very closely with each of you, and I thank you, Senator Manchin, Senator Barrasso.

Senator MANCHIN. Mr. Chairman, thank you very much. Senator Heinrich, do you have any statement?

**STATEMENT OF HON. MARTIN HEINRICH, U.S. SENATOR FROM NEW MEXICO**

Senator HEINRICH. I want to thank you, Chairman, for considering the Columbine-Hondo Wilderness Act during today's hearing.

Columbine-Hondo is one of the most treasured places in New Mexico, as my colleague, Senator Udall, will attest. Part of the Sangre de Cristo Mountains, the area sits at the base of an extinct supervolcano known as the Questa Caldera. With habitat for elk, mule deer, mountain lions, black bears and big-horned sheep, the region is an absolutely prime destination for sportsmen.

It is home to the headwaters of the Red River and the Rio Hondo, both major tributaries to the Rio Grande. The snowmelt from its peaks provide critical irrigation water to local acequia associations.

For millennia, these mountains, rivers and wildlife have supported human communities. The first evidence of human habitation stretches back 11,000 years, and nearby Taos Pueblo has been continuously inhabited for more than 1,000 years.

Spanish settlers first came to the area in the Sixteenth Century, and Hispanic families had relied on these mountains for their traditional way of life ever since.

Today, Columbine-Hondo is a central attraction for visitors to Taos County, where outdoor recreation and tourism drive the local economy. Statewide, 68,000 New Mexicans work in the outdoor-recreation industry, and recreation is responsible for \$6.1 billion in economic activity every year.

People come to these mountains to hike, camp, hunt, fish and spend time with their families, and, invariably, they leave Taos County with their wallets a little lighter.

Permanent protection through this legislation will ensure that future generations have the same opportunities in Columbine-Hondo that we have today.

This legislation has incredibly broad community support, including Taos Pueblo, local governments, sportsmen, business owners, land-grant heirs, acequia parciantes, conservationists, mountain bikers, veterans and many more.

This legislation has been a true community effort, and I want to thank all the members of the Taos community who have worked so hard for decades to make this a reality.

Thank you, Mr. Chairman, I'll be happy to yield back my time. Senator MANCHIN. Thank you, Senator. Senator Udall.

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

Senator UDALL. Thank you, Mr. Chairman. Good afternoon to all of you here, and it's great to see two of my colleagues from the House on this side of the Capitol.

I, too, am pleased that there are so many excellent public land bills on the agenda today. I have the great honor of serving as the National Parks Subcommittee Chairman on this committee, and I'm also an avid outdoorsman.

So I appreciate the need to respect and protect the land while ensuring that the public can enjoy the resources and recreational opportunities that our marvelous public lands provide.

I'm especially pleased that there are two Colorado bills on the agenda today. My bill, the Lake Hill Administrative Site Affordable Housing Act, would convey 40 acres of land that's no longer suitable for management by the U.S. Forest Service to Summit County, so that the county can build much needed affordable housing while supporting a new Dillon Ranger District administrative building nearby.

Those of you who know the ski industry and ski communities know that affordable housing is often desperately needed, including for Forest Service employees, and that's the case in Summit County.

This is a simple bill. It has the support of all stakeholders, including Summit County itself and the Forest Service. The companion bill is being led in the House by Representative Polis.

I have also joined with Senator Bennet to introduce the second Colorado bill, the Hermosa Creek Watershed Protection Act. This act would protect water supplies and boost recreation in Congressman Tipton's district of southwestern Colorado, and it would do so by giving special protected status to over, I think, 100,000 acres of pristine land while carefully preserving existing uses, including water, grazing and recreation.

Southwestern Colorado is a stunning place. It has bountiful outdoor opportunities, and this bill is the result of a number of years of careful work with a diverse array of stakeholders who help make the bill reflect the values that make southwestern Colorado such a special place to live.

I want to finish on two notes. I've said it many times on the committee, and I'll repeat it again. I really do believe we don't inherit the land from our parents. We borrow it from our children. So we

have a sacred responsibility to use the land responsibly and preserve it where we can.

I'll end on this note, I want to acknowledge the two Coloradans that are here today, my friend, Congressman Tipton, and Senator Bennet. We'll hear from both of them in a few minutes.

Their presence indicates that wilderness and other public lands issues are really not partisan in Colorado. It's really about what the local communities want, and that's the case with the Hermosa Creek bill and my San Juan Wilderness Bill, which the committee reported earlier this year out of our committee.

So, again, I want to welcome all my colleagues. Thank you, Mr. Chairman, for holding this hearing.

Senator MANCHIN. Thank you, Senator and Senator Risch.

**STATEMENT OF HON. JAMES E. RISCH, U.S. SENATOR  
FROM IDAHO**

Senator RISCH. Very briefly, thank you, Mr. Chairman, for holding this hearing. I want to acknowledge the Chairman, who has left, but appreciate his acknowledgement of our bipartisan bill on the Cabin Fee Act. We look forward to moving that forward and appreciate his interest in it. Thank you for holding the hearing. Thank you.

Senator MANCHIN. Thank you.

We'll start with our panel right now, and Senator Boxer.

**STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR  
FROM CALIFORNIA**

Senator BOXER. Mr. Chairman, thank you so much, my friends, both sides of the aisle.

I'm going to talk really fast because this first bill is a little bit more interesting and complicated and I need your help on it.

I don't expect you to read this. It's too far away, but it'll help me. Before you put it up, let me just explain, before you put it up.

The first bill is S. 771, the Soledad Canyon Settlement Act. Basically, we have a situation where, back in 1990, the Bureau of Land Management issued contracts now held by CEMEX USA to mine 56-million tons of sand and gravel on 400 acres immediately outside of the city of Santa Clarita. I'll go into why this has become an unbelievable nightmare for the community.

I'm so glad that Buck McKeon is here. We are all united—the State of California, the city of Santa Clarita, Buck and I—that we need to fix this problem—and Senator Feinstein as well.

So here's what our bill does. It resolves a 1-year mining dispute between Santa Clarita and CEMEX. It cancels the 20-year-long mining contract between the two. It withdraws the Soledad Canyonsite from future mining. It fairly compensates CEMEX for the value of the canceled contracts.

It preserves a positive quality of life for the residents and businesses. It preserves fragile natural habitat and ecological resources.

Again, it has the support of CEMEX, the city of Santa Clarita, State of California, the environmental community, Republicans and Democrats alike.

Now, let me tell you about the Santa Clarita Valley. Some of you may have visited, and Buck McKeon could tell you chapter and verse. The population has more than doubled since the mining contracts were awarded, and, you know, that's important. It was very different when they signed the contract.

It's the third largest city in Los Angeles behind LA and Long Beach is Santa Clarita. It ranks top 5 percent of largest statewide municipalities, and it's the fastest growing city in California. They don't want this mine.

The mining company is willing to go away if they get a fair deal, and that's what our bill does.

So you can go to the next chart.

Three studies show how important it is to stop this, studies done by BLM, National Park Service and U.S. Forest Service. So I won't go into the details, but they have found this is not a good idea to move forward.

Let me say this to you, I'm very frustrated by the BLM. I'm not happy. I'm sad and frustrated. Their reason for opposing this bill is because it sets a precedent, while a lot of things we did around here a long time ago set a precedent, you know, the first time we decided to do a national park under Teddy Roosevelt. You can go back, pick your favorite program or your least favorite one, originally, they set a precedent.

This is a good deal for everyone involved. Now, how do we pay for it to give CEMEX, buy them out? We sell a parcel of land that is already on the auction block for BLM. So it's beautiful. We sell it. We pay CEMEX. They go away. The city's happy. The people are happy. The environment's happy. Buck McKeon is really happy. I'm really happy. Hopefully, you would be happy.

So I want to say you're going to hear from the BLM they don't like this bill. There's just one thing they do in their testimony that really irks me, so I wanted to draw it to your attention. They quote from an old letter written by the State that says they support the mine, but they ignore the latest letter that says they don't support the mine and they support this bill. So I wanted to put that on the table.

I will work with you closely, so will Buck McKeon. So I hope we can get this done, despite the opposition of the administration.

The last bill, very quickly, is S. 483. We'll show a picture of it. Berryessa Snow Mountain National Conservation Area is absolutely gorgeous. The bill in the house is Mike Thompson's, 350,000 acres designated as national conservation areas or NCAs.

The bill has tremendous support. It's one of the most beautiful areas of my State—my State has many beautiful areas—ecologically diverse, rich in biodiversity. It will put Berryessa Snow Mountain Region on the map for a tourist destination, which is important for our economy and for jobs. The bill has strong local support.

I thank you so much. I could go on, but I won't because I am so knowing how everybody is crunched for time. But I will stand by—working with you, Mr. Chairman—to push these bills forward, if we can. Thank you so much.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA,  
ON S. 771 AND S. 483

Mr. Chairman, Ranking Member, and members of the Subcommittee, thank you for holding today's hearing and for allowing me the opportunity to testify in support of two bills on today's agenda that I have written: S. 771, the Soledad Canyon Settlement Act, and S. 483, the Berryessa Snow Mountain National Conservation Act.

S.771, THE SOLEDAD CANYON SETTLEMENT ACT

I would like to begin my remarks in support of S. 771, which resolves a fourteen-year-old mining dispute between the City of Santa Clarita and the mining company, CEMEX USA. This bill is a reasonable compromise that solves a difficult problem. Since 2004, I have been working with the affected parties to not only solve a long-term dispute, but also protect the economic interests of the contract holder, meet the long-term needs of the community, and facilitate the preservation of fragile natural resources.

[Chart #1]

S.771 cancels CEMEX's mining contracts with the Bureau of Land Management (BLM) to mine sand and gravel from the Soledad Canyon site immediately east of the City of Santa Clarita, and permanently withdraw this area from mining. The bill also directs BLM to sell federal lands previously identified for disposal, and use the proceeds to fairly compensate the mining company.

[Chart #2]

The rapidly changing dynamics of this community no longer make this area conducive to a large mining operation. Since BLM awarded the mining contracts in 1990, the size of the city has increased 33 percent and the population has more than doubled, making Santa Clarita the fastest growing city in the State of California.

[Chart #3]

If the Soledad Canyon Mine opens, Santa Clarita Valley would see considerable increases in traffic congestion, as well as harmful impacts to the air quality—exceeding California's air quality standards. My constituents are concerned that going forward with the mine would affect their quality of life, leading to increased noise pollution, adverse affects on real estate values, and hindering local economic growth.

[Chart#4]

The proposed Soledad Canyon mining site sits within an area identified by BLM itself (the same agency that issued the mining contracts), as well as the National Park Service, and the U.S. Forest Service as important for natural resource preservation, habitat connectivity, and biodiversity. Mr. Chairman, the federal government should not allow this mine to be developed, especially in light of its own concerns about the importance of preserving the environmental integrity of Soledad Canyon and the Santa Clara River.

After years of extensive negotiation, my bill has the support from CEMEX, the City of Santa Clarita, the environmental community, Senator Dianne Feinstein, Congressman Buck McKeon, and most recently, the State of California with John Laird, the Secretary for Natural Resources saying, "The City of Santa Clarita will greatly benefit from improved quality of life derived from large-scale mining operations moved to a more appropriate location." Mr. Chairman, I whole-heartedly agree, and I would like to submit his support letter to the record. Both the State's and CEMEX's support shows enough mining resources exist elsewhere, without the need for the Soledad Canyon mine. In addition, I would like to add Senator Feinstein's statement in support of this bill into the record as well.

[Chart #5]

S. 483, THE BERRYESSA SNOW MOUNTAIN NATIONAL CONSERVATION AREA ACT

Mr. Chairman, I am also here to testify on behalf of another bill that I have sponsored, S. 483, the Berryessa Snow Mountain National Conservation Act. Congressman Mike Thompson has joined me as a sponsor of this legislation in the House.

S. 483 designates 350,000 acres of existing federal lands, stretching over 100 miles throughout parts of Lake, Mendocino, Napa, Solano, and Yolo Counties of northern California as a National Conservation Area, or NCA.

My bill does not add any new lands to the Federal government—the lands included in this NCA are already managed by the U.S. Forest Service, Bureau of Land Management, and Bureau of Reclamation. The NCA designation would require the federal agencies to develop guiding principles and goals, in consultation with stake-

holders and the public, to improve multi-agency coordination on wildlife preservation and habitat restoration, preventing and fighting forest fires, combating invasive species and water pollution, and enhancing recreational opportunities. The NCA will allow these agencies to have a coordinated approach and more easily share resources.

*[Chart #6]*

The proposed NCA region is one of the most beautiful and ecologically diverse areas in California, including the existing Snow Mountain, Cache Creek, and Cedar Roughs Wilderness Areas. The area's rich biodiversity is home to dozens of rare plant life found nowhere else in the world, as well as a variety of wildlife, such as bald and golden eagles, black bear, mountain lion, and tule elk. The topography contains numerous creeks, ridges, and canyons among its many pristine and diverse landscapes.

*[Chart #7]*

This bill will put the Berryessa Snow Mountain region on the map as a destination for families and recreation enthusiasts, and it permanently protects this area for future generations to enjoy. Even though the region is one of the most beautiful and diverse, it is also one of the least known regions of California. An NCA designation will raise the area's profile, reaching out to more diverse audiences, allowing people from all walks of life to better appreciate this truly amazing and awe inspiring area.

Creation of this proposed NCA has strong local support. It is the culmination of concerned citizens taking the initiative to care for the beautiful areas in their communities, and I am proud to support their work and commitment.

Mr. Chairman, once again, thank you for the opportunity to speak in support of my two bills, S.771, the Soledad Canyon Settlement Act, and S. 483, the Berryessa Snow Mountain National Conservation Area Act. I stand ready to work with you to advance these very important pieces of legislation, and I urge my colleagues for their support.

Thank you.

Senator MANCHIN. Thank you, Senator, for that. Senator Udall.

**STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM  
NEW MEXICO**

Senator UDALL. Thank you, Chairman Manchin, and also Ranking Member Barrasso, for giving me the opportunity to speak today, and it's great to be here with so many colleagues and with my cousin and with my new, hardworking senator, Senator Martin Heinrich.

I'm proud to sponsor this piece of legislation with my colleague from New Mexico, a hardworking member of this subcommittee. Senator Heinrich gave an excellent opening statement that will allow me to shorten my statement a little bit because I agree with everything he said, and so he's educated you and I'm sure won you over.

The Columbine-Hondo Wilderness Act was first introduced in the 112th Congress by then Chairman Bingaman and myself. Since that time, support for the proposal has only continued to grow.

Designated as a wilderness study area in 1980, the Columbine-Hondo Region of the Sangre de Cristo Mountains of northern New Mexico contains conifer forests, alpine grassland and some of the highest peaks in the State.

This is habitat and home to mule deer, elk, black bear, mountain lions, big-horned sheep, pika, marmots and other wildlife.

Local support for the bill is very strong. In fact, we've heard no opposition to this bill. Local communities support this legislation because protection of the Columbine-Hondo will ensure quality habitat for hunters and anglers.

I'll bet as soon as we get it done, Senator Heinrich will be up there hunting. He's an avid hunter.

It's going to preserve traditional land uses—and, as was said earlier, the traditional land use goes back hundreds of years—and attract additional tourism to the area.

Community members also recognize the great value in protecting their watershed. The Columbine-Hondo contains the headwaters of the Rio Hondo and Red River, both major tributaries of the Upper Rio Grande.

The pristine streams of the Columbine-Hondo provide quality surface water for the downstream agricultural communities of Valdez, Arroyo Hondo, Arroyo Seco, San Christobal and Questa. These waters also support much of the rest of the State as tributaries to the Rio Grande.

S. 776 would designate approximately 45,000 acres of Forest Service land as wilderness. Additionally, the bill would amend the boundary of the neighboring Wheeler Peak Wilderness to encompass additional sensitive lands, including an alpine lake, while establishing a more easily identifiable boundary adjacent to existing roads and trails.

These modifications increase the overall size of the Wheeler Peak Wilderness by approximately 650 acres for a total of approximately 19,550 acres.

The bill further directs the conveyance of specific National Forest System land to the town of Red River and the Village of the Taos Ski Valley. This land contains a municipal wastewater treatment plant, several plants, a cemetery, a local park and a segment of a town road.

Conveyance of these parcels will allow for a streamlined management of these facilities by local governments and will reduce the Forest Service's responsibility to manage non-forestry-related lands.

And I'd like to thank, as Senator Heinrich did, the coalition of groups and communities that have worked over the past several years on the protection of the Columbine-Hondo. This has really been a grassroots effort, and it's remarkable to see, and I thank them for their time and efforts on S. 776. It's a strong piece of legislation with full local support.

One of the individuals who has put in a lot of time on this piece of legislation is Max Trujillo. He's here with us today, and he's representing the New Mexico Wildlife Federation.

Again, Chairman, thank you very much, and members of the subcommittee, for considering this important piece of legislation, and I encourage full support for the bill. Thank you. Yield back.

Senator MANCHIN. Thank you, Senator. Senator Bennet.

**STATEMENT OF HON. MICHAEL BENNET, U.S. SENATOR  
FROM COLORADO**

Senator BENNET. Thank you, Chairman Manchin and Ranking Member Barrasso, for holding today's hearing. It's nice to see a committee actually doing its work in the U.S. Congress. I congratulate you for that.

I'd also like to thank Chairman Wyden for his leadership and both of you for allowing me to come testify in support of S. 841, the Hermosa Creek Watershed Protection Act.

I just want to extend a special thanks to you, Mr. Chairman, for your indulgence in allowing two members from the Colorado delegation to offer their support from the witness table today. It demonstrates the fundamental bipartisanship of this bill.

Congressman Scott Tipton has been a steadfast partner on this bipartisan legislation, and I'm very glad he is here today. I also want to acknowledge my senior senator, Mark Udall, for his leadership on this legislation as well.

The Hermosa Creek Watershed is a beautiful parcel of land up the road from Durango in the southwest corner of our State.

Over 4 years ago, a diverse group of local citizens got together to talk about the future of the land. Sportsmen came to the watershed to fish for native Colorado cutthroat trout and for backcountry elk hunting. The mountain bikers came to enjoy single-track riding on trails known throughout the country, in fact, known throughout the world.

The local water districts love Hermosa because it provides drinking water for the city of Durango, and workers in the timber and mining industries stress that some of the watershed could contribute to extractive development in the future. Their discussion 4 years ago was about developing a long-term plan to manage the area so everyone could enjoy and benefit from it.

Over Memorial Day weekend of 2011, that group invited my family and me to take a walk through the watershed and join their discussion. That hike led to an agreement to work together on the bill that's before the committee today, a balanced bill that manages the watershed so it contributes to the local economy long into the future.

The Hermosa Creek legislation governs the entire 108,000-acre watershed and includes provisions to allow for multiple uses like timber harvesting for forest health and access for off-road-vehicle enthusiasts and for mountain bikers.

The bill also adds nearly 40,000 acres to the National Wilderness Preservation System. I know it's of particular importance to the Chairman that we allow hunting and fishing access, that access is preserved as it is today, lands that provide unique and important opportunities for solitude and reflect.

I'm proud to report the bill has the unanimous bipartisan backing of the two county commissions involved, San Juan and La Plata Counties in Colorado.

The bill has the support of the Hermosa Creek Work Group, ranging from hard-rock miners to wilderness advocates. It has the support of the Colorado Snowmobile Association and the Colorado Off-Highway-Vehicle Coalition. The support ranges all the way to Trout Unlimited and the Back Country Hunters and Anglers. You may have some controversial bills in front of you today, Mr. Chairman, but this is not one of those.

I'd like to submit all those letters of support from those organizations and others into the record.

Mr. Chairman. With your permission, I'd like to submit those letters for the record.

Senator MANCHIN. Absolutely.

Senator BENNET. Thank you, Mr. Chairman.

This bill represents a community-driven process through and through, Republicans, Democrats and Independents working together to cement a long-term plan for the community's future.

I want to thank Senator Udall again for his tireless leadership on this bill, Congressman Tipton for introducing a companion measure in the House and for continuing to work so well with the community.

To conclude, Mr. Chairman, the Hermosa Creek Watershed truly represents some of the best Colorado has to offer. It deserves a management plan that balances all of the land's competing uses and gives the local community certainty into the future.

I hope the committee will recognize these worthy goals and see fit to move this bill forward in this process. Thank you for allowing me to testify this afternoon.

Senator MANCHIN. Thank you, Senator.

Representative McKeon.

**STATEMENT OF HON. BUCK MCKEON, U.S. REPRESENTATIVE  
FROM CALIFORNIA**

Mr. MCKEON. Chairman Manchin, Ranking Member Barrasso, other Senators of the committee, thank you for allowing me the opportunity to appear before you today to speak in behalf, in favor of Barbara Boxer's bill, S. 771.

Senator Boxer and I have worked before on a wilderness bill that was very beneficial to our State, and I really appreciate her moving forward on this bill, something that's caused a lot of consternation for my constituents for 20 years now.

I also want to thank Mayor Bob Kellar from the city of Santa Clarita and Mayor Pro Tem Laurene Weste for making the trip out here to Washington to be a part in this hearing, the city manager, other members of their staff and people who are working together to bring this bill to reality.

Mr. Chairman, the Soledad Canyon Mine operated by CEMEX is located just outside the city of Santa Clarita. In fact, the city now owns the surface rights to that property.

A little background, I moved out to this valley in 1964. There were about 10,000 people living out there. One stop light, whole valley. Now, there's about a quarter-of-a-million people. It's, as Senator Boxer said, a very rapidly growing area.

When this mine was first awarded, when the contracts were let, it was out in a remote region. A lot of homes built around the area now that would be impacted by the traffic, by the air congestion. There are concerns about the water. We get our water, a lot of it from an aquifer below the valley. So it's a big problem for the area.

Over the years, I have introduced several bills that would fix the problem. The first one just wiped out the contracts. That didn't go too far.

But over the years, we've worked to try to bring all of the parties together that are involved. The city of Santa Clarita would like the mine to go away. CEMEX does not want to be a bad neighbor.

They're concerned—I don't know of anybody in the valley that would support a mine going forward, this particular mine. They're united in the opposition to it.

There's concern about health. People have called me, oh, they say, I have asthma, what this is going to do to my ability to breathe, what it's going to do to our property values. There's just a lot of concern, and I'm sure you hear these things—

Senator MANCHIN. On your testimony, if you would also, if you have any idea of the value they're asking—

Mr. MCKEON. Maybe they haven't—They don't have it scored it.

Senator MANCHIN. OK.

Mr. MCKEON. So what they're—

Senator MANCHIN. If you can help us with that, it would be helpful for the committee to know.

Mr. MCKEON. I think the plan is that once it gets through this hearing—

Senator MANCHIN. It might help it get through, if we know how much money we're talking about.

Mr. MCKEON. Through the hearing.

Senator MANCHIN. Oh, I got you.

Mr. MCKEON. Then you could, the committee could request or Senator Boxer could request to have it scored.

Senator MANCHIN. Sure.

Mr. MCKEON. The hope is that we can get the score down low enough that CEMEX will—when the other property is sold, the value that comes from that property will be divided, and if there's money left over, CEMEX will take less money and the city is willing to put in money. They would like to get it down to no cost.

The last bill that I introduced in the House last year, Senator Flake knows we don't have earmarks over there, and because of that the chairman of the committee over there said that it isn't earmarked because it just benefits my district.

So I can't reintroduce the bill over there. Hopefully, if we can get the right score here and if you work it out and get it passed over here, then if it scores the way we think, then I should be able to get it through because the earmark wouldn't—there would be no cost to it, so it would not—I think that's the way it works, Senator Flake, when there's no costs, there's no earmark.

But, anyway, I appreciate you letting me talk to you about the bill. I'm in full support. I want to work with Barbara Boxer, Senator Boxer to help her in any way I can make this happen because for our district, you know, all politics is local. I think we all understand that, and, to me, this is our biggest issue within the district.

Thank you very much.

[The prepared statement of Mr. McKeon follows:]

PREPARED STATEMENT OF HON. HOWARD P. "BUCK" MCKEON, U.S. REPRESENTATIVE FROM CALIFORNIA, ON S. 771

Chairman Manchin, Ranking Member Barrasso, and Senators on the Subcommittee on Public Lands, Forests, and Mining, I appreciate the opportunity to appear before you to share my interest in finding a solution to an issue that has caused considerable consternation for my constituents for over two decades. I also want to thank Mayor Bob Kellar, and Mayor Pro Tem Laurene Weste of the Santa Clarita City Council for coming to Washington to take part in this hearing.

Mr. Chairman, the Soledad Canyon Mine, operated by CEMEX, is located just outside the city of Santa Clarita, California, in the 25th Congressional District. Under two current contracts held by CEMEX, they are authorized to extract approximately 56 million tons of sand and gravel.

Residents of my congressional district and city leaders have expressed concerns about a large mine operating close to where my constituents live. They fear the effects of pollution, increased truck traffic, and environmental health issues on their families and community. Throughout my time in Congress I have worked endlessly to find a solution. I have engaged with civic leaders, residents of my district, environmental leaders, the County of Los Angeles, and CEMEX.

Mr. Chairman, allow me to give a bit of background on the situation that has arisen in my district. In 1990 two privately held valid federal contracts were awarded to Transit Mixed Concrete. Southdown, the parent company of Transit Mixed Concrete, was acquired by CEMEX in 2000, resulting in CEMEX holding the Federal contracts.

The Bureau of Land Management approved a mining plan of operations and prepared a draft environmental impact statement with respect to the Soledad Canyon Mine, which was released on May 6, 1999. The environmental impact statement was subsequently modified to address growing concerns among Santa Clarita residents about the impact mining operations in Soledad Canyon had on air quality and health, truck traffic, and declining property values in Santa Clarita. The final environmental impact statement was released to the public on June 2, 2000, with a list of eight alternatives for mining the Soledad Canyon site.

Under the California Environmental Quality Act, the County of Los Angeles completed the Environmental Impact Report in 2001 and subsequently voted in 2002 to deny the permit, citing the right and responsibility of the county to impose reasonable environmental and resource protection and regulation on mining in Soledad Canyon.

Numerous lawsuits were filed between 2002 and 2004 involving the city of Santa Clarita, the county of Los Angeles, the Center for Biological Diversity, and CEMEX. A Consent Decree resulted from the settlement of CEMEX Inc. v. County of Los Angeles in 2004. The Consent Decree contains the mitigation agreement between CEMEX and the county of Los Angeles, which lists 40 conditions that CEMEX is required to meet in order to mitigate the environmental, health, traffic, endangered species, and safety concerns raised by the county, local residents, and the city of Santa Clarita.

Mr. Chairman, as I mentioned before I have worked throughout my entire Congressional career to bring all parties together to work out a deal that is mutually beneficial to everybody. I have introduced seven bills on this issue, each of which take a different approach to dealing with the mine.

In the 106th Congress I introduced H.R. 3060 which would have withdrawn specified lands from the operation of Federal mining and mineral leasing laws and would have nullified any existing permits issued on those lands. The same bill was introduced as H.R. 679 in the 107th Congress. In the 108th Congress I introduced H.R. 3529, the Soledad Canyon Mine Lease Cancellation Act. This legislation would have canceled the two mining permits for the Soledad Canyon Mine and would have prohibited the Secretary of the Interior from issuing permits for mining above historical levels in Soledad Canyon.

In the 109th Congress, I introduced H.R. 5471, the Soledad Canyon Mine Leases Adjustment Act. This legislation would have canceled the two mining permits for the Soledad Canyon Mine; directed the Secretary of the Interior to provide additional financial and mineral production opportunities in exchange for the economic value invested to that date on the two permits; and would have prohibited the Secretary of the Interior from issuing permits for mining above historical levels in Soledad Canyon.

In the 110th Congress, I introduced H.R. 5887, the Soledad Canyon Mine Act. This legislation would have authorized the Secretary of the Interior to cancel the two mining contracts, prohibited future mining in Soledad Canyon, provided a means for CEMEX to recover just compensation for the cancellation of the contracts, provided the Bureau of Land Management with the necessary tools to verify the expenses incurred by CEMEX and would have provided relief to CEMEX for such expenses, and provided for a dispute resolution process.

In the 111th Congress, I introduced H.R. 4332, the Soledad Canyon High Desert, California Public Lands Conservation and Management Act of 2009. This legislation had a similar set of actions as H.R. 5887 but added two notable ones: it provided a mechanism to offer for sale—by competitive bidding—lands identified for disposition near Victorville, California; and to acquire environmentally sensitive land and collect the proceeds of the sale of lands near Victorville, California.

And finally, in the 112th Congress I introduced H.R. 6469, the Soledad Canyon Mine Mitigation and Relocation Act of 2012. This legislation would have begun a study of the legal and administrative steps, including obtaining sufficient funding, necessary to carry out the goals of the Soledad Canyon High Desert, California Public Lands Conservation and Management Act of 2009, H.R. 4332.

I mention each of these in order to illustrate how the tug and pull of all parties influenced the legislative process. Each party gave ideas to further perfect legislation that would finally solve this vexing issue that affects the residents of my district. I believe because of all of our joint efforts we have reached a critical mass on this issue. It is time for a solution, once and for all. I am looking forward to the Senate acting on legislation that would take the mine out of commission and lift this two-decades long burden off the backs of my constituents.

Thank you again for allowing me time to discuss an important issue in my district and I look forward to answering any additional questions you may have.

Senator MANCHIN. Thank you, Representative, and Representative Tipton. I want to also say that we have been joined by two of our committee members, Senator Lee and Senator Flake, and they'll be speaking after Representative Tipton. I'm very sorry that I missed you on the beginning, sir. Apologize.

**STATEMENT OF HON. SCOTT TIPTON, U.S. REPRESENTATIVE  
FROM COLORADO**

Mr. TIPTON. Thank you very much, Chairman Manchin and Ranking Member Barrasso, for convening today's hearing, and certainly a pleasure for me to be here with a couple of my former House colleagues and Senator Heinrich and Senator Flake as well as neighbors in our nearby states.

I appreciate your holding the hearing on today's bill on S. 841, the Hermosa Creek Watershed Protection Act of 2013. I appreciate the opportunity to be able to provide testimony today on behalf of the House side on this bill and certainly to have worked with our senators, Senator Bennet and Senator Udall, on a very bipartisan piece of legislation which is very important to those of us who live in Colorado and particularly southwestern Colorado.

I've been sponsor now of H.R. 1839, which is the House companion version of this legislation.

The Hermosa Creek Watershed Protection Act of 2013 will generate long-term management plans for the Hermosa Creek Watershed area and the protection of the Hermosa Creek Special Management Area.

This has long been treasured by the local community and by the countless visitors who visit the area and explored all the region has to offer.

This legislation has truly been locally driven and has broad community support because the bill has been carefully crafted to preserve the Hermosa Creek Watershed and multiple-use recreation opportunities it provides and has received the endorsement of numerous local stakeholders, including snowmobilers, anglers, hunters, mountain bikers and other outdoor enthusiasts, elected officials, grazing-permit holders, miners, water users and southwest Colorado residents.

Under the Hermosa Creek Watershed Protection Act of 2013, much of the land will remain open to historic uses, including mountain biking, motorized recreation, hunting, fishing and selective timber harvesting. Grazing will be permitted in the entire watershed.

This legislation ensures that areas currently open to snowmobiling on the Molas Pass will remain open for future use. This will benefit outdoor-recreation enthusiasts and continue to provide an important source of economic activity for our area. If this bill is not passed, then snowmobiling will cease in this region following the 2013–2014 winter season.

This act also contains important provisions that allow for active land management in areas designated by the bill as necessary to control wildfires, insect infestations and disease outbreaks.

The Region 9 Economic Development District of Southwest Colorado strongly supports this legislation and believes this act will retain and create better jobs, foster economic growth and sustainability for an area where tourism and recreation is absolutely critical, and assist with improving the overall quality of life in southwest Colorado.

I've requested a similar legislative hearing on this act in the House, and I'm committed to working with Senator Bennet and Senator Udall and community stakeholders to address any outstanding issues, so that we can move this bill forward and protect the watershed and recreation opportunities in the Hermosa Creek area. Together, we can preserve this special place for future generations.

Again, Mr. Chairman, I'd like to thank you for holding this hearing and the opportunity to be able to testify before you. I yield back.

[The prepared statement of Mr. Tipton follows:]

PREPARED STATEMENT OF HON. SCOTT R. TIPTON, U.S. REPRESENTATIVE FROM  
COLORADO, ON S. 841

Thank you Chairman Manchin and Ranking Member Barrasso for convening today's hearing and including S.841, the Hermosa Creek Watershed Protection Act of 2013. I appreciate the opportunity to provide testimony today on this important bill. I am pleased to have worked with Senator Bennet on this bipartisan effort and to be the sponsor of H.R. 1839, the House companion of this legislation.

The Hermosa Creek Watershed Protection Act of 2013 would generate a long-term management plan for the Hermosa Creek Watershed Protection Area and the Hermosa Creek Special Management Area. Hermosa Creek is one of Colorado's most beautiful scenic areas, and has long been treasured by the local community and by countless visitors who have explored all that the region has to offer. This legislation has truly been locally-driven and has broad community support. Because the bill has been carefully crafted to preserve the Hermosa Creek watershed and the multiple use recreation opportunities it provides, it has received the endorsement of numerous local stakeholders including snowmobilers, anglers, hunters, mountain bikers and other outdoor enthusiasts, elected officials, grazing permit holders, miners, water users and Southwest Colorado residents.

Under the Hermosa Creek Watershed Protection Act of 2013, much of the land will remain open to historic uses, including mountain biking, motorized recreation, hunting, fishing and selective timber harvesting. Grazing will be permitted in the entire watershed. This legislation ensures that areas currently open to snowmobiling on Molas Pass will remain open for future use. This will benefit outdoor recreation enthusiasts and continue to provide an important source of economic activity for the area. If this bill is not passed, then snowmobiling will cease in this region following the 2013/2014 winter season.

This act also contains important provisions that allow for active land management in areas designated by the bill as necessary to control wildfires, insect infestations and disease outbreaks.

The Region 9 Economic Development district of Southwest Colorado strongly supports this legislation and believes this act will retain and create better jobs, foster economic growth and sustainability for an area where tourism and recreation is ab-

solutely critical, and assist with improving the overall quality of life in Southwestern Colorado.

I have requested a similar legislative hearing on this act in the House and am committed to working with Senator Bennett and community stakeholders to address any outstanding issues so that we can move this bill forward and protect the watershed and recreation opportunities in the Hermosa Creek area. Together we can preserve this special place for future generations. Thank you Mr. Chairman and I yield back.

Senator MANCHIN. Representative, thank you so much for that. At this time, I want to go to my colleague, Senator Lee.

**STATEMENT OF HON. MIKE LEE, U.S. SENATOR FROM UTAH**

Senator LEE. Thank you very much, Mr. Chairman. As anyone who lives in a State dominated by the Federal Government knows all too well, those states are forced to play by a different set of rules. Issues that in other states would be resolved quickly and by local government officials have to wind their way often through Congress in order to be resolved. This fact makes this committee's work vitally important to communities in Utah and across many states in the West.

So I'd like to thank the Subcommittee Chairman Senator Manchin and also Ranking Member Barrasso for holding today's hearing. I also want to thank the witnesses for providing the testimony here.

I'd like to take a moment to speak about the state of wildfire protection and, in particular, about S. 1749, the Catastrophic Wildfire Prevention Act, which I've introduced along with Senators Barrasso and Flake.

Wildfires are a part of life in Utah and in other parts of the western United States. To a certain extent, they're inevitable, but there are policies that Congress can and should enact that would reduce the risk of large-scale, catastrophic wildfires.

Efforts by industry and land-management agencies to reduce fuel loads in critical areas are commonplace policies that can protect at-risk communities and support rural economies. However, these efforts are often delayed or prevented because of lawsuits filed by environmental groups seeking only to prevent active management at any cost.

In a recent case that bears a striking resemblance to many filed in my home State of Utah, environmental groups sued to stop a forest-thinning project in Montana on the basis that it could harm endangered species. Their argument was so absurd that it caused the district court judge assigned to the case to opine as follows: Plaintiff's complaints are based solely on relatively insignificant alleged procedural missteps by the Forest Service, and they point to no actual or even reasonably potential harm that the project will cause to any of the relevant species.

Unfortunately, this abuse is as commonplace as it is successful in preventing reasonable land management. Similar lawsuits filed pursuant to the National Environmental Policy Act are equally harmful to public land management.

The results of these lawsuits and years of poor management are clear. Millions of acres of forest are piled high with dead and dying trees. Rural economies are suffering because of massive reductions

in timber sales, and species that rely on healthy forests are losing habitat with each catastrophic fire.

When you consider all this with the fact that we spend upwards of \$1 billion a year fighting wildfires, it's clear that we can do better.

By streamlining the approval process for certain types of management projects, the Catastrophic Wildfire Protection Act would bring reasonable reform to a small portion of the active management portfolio of Federal land management agencies. It's a single part of a comprehensive effort to bring sensible reform and active management back to our Nation's forestry policies.

I look forward to working on these issues in the future, and I appreciate the committee discussing them today. Thank you very much.

Senator MANCHIN. Thank you, Senator. Senator Flake.

**STATEMENT OF HON. JEFF FLAKE, U.S. SENATOR  
FROM ARIZONA**

Senator FLAKE. Thank you, Mr. Chairman. I'd like to briefly mention two bills on the agenda today, as just mentioned by Senator Lee, S. 1341. Oh, I'm sorry. Two other ones. He mentioned the firefighter bill.

We all know all too well in Arizona the problems here. We had 19 firefighters killed this summer from the Granite Mountain Interagency Hotshot Crew. We ought to be proactive wherever we can for wildfire prevention, and so I appreciate the efforts in this legislation introduced by Senator Lee here.

S. 1341, Cabin Fee Act, that's one that has caused some issues in Arizona as well, and I hope that that can be remedied and I hope this legislation goes a long way to doing that.

Let me speak for a couple of minutes on S. 339, the Southeast Arizona Land Exchange and Conservation Act. I'm pleased to co-sponsor this along with my colleague Senator McCain, and with—under unanimous consent, I'd love to introduce his statement into the record.

Senator MANCHIN. Without objection.

Senator FLAKE. This legislation received bipartisan support in the House. Congressman Gosar and Congressmen Kirkpatrick, Franks, Schweikert and Salmon. With bipartisan support it was reported out of the Natural Resources Committee.

This bill would authorize and direct the exchange of approximately 2,400 acres of Forest Service land for approximately 5,300 acres of environmentally sensitive land. Twenty-four-hundred acres would be conveyed to Resolution Copper Company for the development of an underground copper mine near Superior, Arizona.

It's estimated that 1,400 direct jobs will be created and 2,400 indirect jobs. It's estimated that \$61.4 billion will come in economic benefits with an estimated \$20 billion in the tax base. Approximately 25 percent of the U.S. annual copper demand could be satisfied by this mine.

Fifty-three-hundred acres of conversation land include approximately 3,050 acres in addition to the San Pedro Riparian National Conservation Area, 940 acres to La Cienegas National Conserva-

tion Area. This includes migratory bird corridors, an important habitat for a variety of species.

The administration generally raises two principal concerns about the legislation in its testimony. One, the timing of NEPA, including the analysis of water issues, and, No. 2, tribal consultation.

I'd like to raise 4 points for the committee to consider, which I believe speak to those issues.

First, from what I understand, the administration has not raised this pre-conveyance NEPA policy when testifying on other bills before the committee. I do not believe the committee should hold this bill to a different standard based on an administration policy that appears to be inconsistently applied.

Resolution Copper initiated the completeness review that marks the beginning of the NEPA process when it filed its mine plan of operations on November 15th. This will include a review of the proposed mine activities or operations and feasible alternatives on the company's private lands.

As I understand it, the connected-actions analysis is discussed in the Forest Service handbook and CEQ regulations, and the mine plan of operations in NEPA will include a detailed analysis of Resolution Copper's proactive water-management policies which exceeds State requirements.

The company has banked or stored large supplies of renewable water supplies from the central Arizona project. The State will soon reallocate other supplies. Some Indian water-rights settlements could also present an opportunity for the company to lease additional water supply.

Finally, NEPA would lead to further government-to-government consultation. Given the large areas of reservation land and Indian trust lands as well as Federal lands and the proximity of these parcels of non-Indian communities, there are bound to be disagreements.

We've seen such issues crop up with regard to water rights and off-reservation gambling, among other things. Yet, Arizonans seem to find a way to work through these disagreements in a collaborative fashion that represents the interests and, at times, the conflicting interests of all parties.

In conclusion, I remain optimistic that there is a path forward that honors and respects the ties of the Apache people to this land while also furthering the interests of those who would like to see the mine move forward in the area. This is Arizona's Copper Triangle. Mining has been commonplace here for more than a century.

I thank the Chairman for holding the hearing and yield back.

[The prepared statement of Senator Flake follows:]

PREPARED STATEMENT OF HON. JEFF FLAKE, U.S. SENATOR FROM ARIZONA, ON S.  
339

The Southeast Arizona Land Exchange and Conservation Act (S.339/H.R.687) would facilitate the transfer of approximately 2,400 acres of Forest Service land in exchange for approximately 5,300 acres of privately held parcels. With the 2,400 acres, the Resolution Copper Company ("Resolution Copper" or the "Company") seeks to develop one of the largest deposits of copper in North America. In turn, the Forest Service and the Bureau of Land Management (BLM) would add large swaths of environmentally important land to their inventory, including approximately 3,050 acres to the San Pedro Riparian National Conservation Area and 940 acres to the Las Cienegas National Conservation Area.

The mine would provide a significant boon to the local economy and the state, where the unemployment rate hovers around 8 percent. The Company expects that its investment will create approximately 1,400 direct jobs with an additional 2,300 in derivative employment. What's more, Resolution Copper expects to generate more than \$61 billion in economic benefits, while adding \$20 billion to the tax base. All the while, the Company will produce an estimated 1 billion pounds of copper per year, equivalent to approximately 25 percent of the U.S. annual demand. Meanwhile the conservation parcels, some of which are managed by The Nature Conservancy and the National Audubon Society, represent tremendous value to the federal government. They include rare riparian areas, migratory bird corridors, and important habitat for a variety of species.

Due to the fact that exchange involves two different federal agencies, congressional action is necessary. As such, it falls to this Committee and ultimately Congress and the President to decide whether the benefits of moving forward with the land exchange are in the public interest. I believe they are, which is why I cosponsored this legislation with Senator McCain. Likewise, a bipartisan group of members in the House of Representatives, including Representatives Gosar and Kirkpatrick, cosponsored a companion bill, and a bipartisan group favorably reported that measure out of the House Committee on Natural Resources.

The Administration and others, however, contend there are a few obstacles to reporting this measure. Principal among those is the timing of the required National Environmental Policy Act (NEPA) analysis, including a review of the potential impact on water quantity and quality, as well as tribal consultation. In response, I would encourage this Committee to consider the four following factors that speak to those concerns:

*The Administration has not raised its pre-conveyance NEPA "policy" when testifying on other bills before this Committee*

The Forest Service and BLM both testify that "[i]t is the Administration's policy that NEPA be fully complied with to address all federal agency actions and decisions, including those necessary to implement congressional direction."<sup>1</sup> Notably, both agencies raise this pre-conveyance NEPA policy as one of their "principal concerns" with the legislation. Yet, a review of similar bills that this Committee has heard belies that point, as the Administration has noticeably avoided referencing such a concern with other land exchange or conveyance legislation. In considering this legislation, I do not believe this Committee should hold this bill to a different standard based on an Administration policy that appears to be inconsistently applied.

*Resolution Copper initiated the completeness review that marks the beginning of the NEPA process on November 15, when it filed its mine plan of operations*

The Company filed its mine plan of operations on November 15, 2013. It is my understanding that filing this detailed document has initiated a "completeness review" that marks the beginning of the NEPA process, which will include a review of the proposed mine operation and feasible alternatives that contemplate reasonable action on the Company's private land. Moreover, the Forest Service testimony confirms that the bill requires the Secretary of Agriculture to complete the environmental review "before Resolution Copper's commencement of commercial mineral production on the land it would acquire in the exchange."<sup>2</sup>

*NEPA will include a detailed analysis of Resolution Copper's proactive water-management plan, which exceeds State requirements*

Resolution Copper has taken proactive measures to address its water needs that exceed the requirements under Arizona law. For example, as responsible stewards, the Company has developed an aggressive water-management plan that includes reuse of water and extensive banking of renewable water supplies through the Central Arizona Project ("CAP"). Those banked or stored supplies will be delivered to the mine via a pipeline. In addition, the forward-looking leadership of Arizona's elected leaders and water managers affords the Company a number of additional opportunities to further augment its existing water portfolio.

<sup>1</sup> Statement of Leslie Weldon, Deputy Chief, National Forest System, Forest Service submitted to the Senate Subcommittee on Public Lands, Forests and Mining on page 5 (Nov. 20, 2013); Statement of Steven A. Ellis, Acting Deputy Director, Bureau of Land Management, Department of the Interior submitted to the Senate Subcommittee on Public Lands, Forests and Mining on page 2 (Nov. 20, 2013).

<sup>2</sup> Statement of Leslie Weldon, Deputy Chief, National Forest System, Forest Service submitted to the Senate Subcommittee on Public Lands, Forests and Mining on pages 3-4 (Nov. 20, 2013)

For example, the Arizona Department of Water Resources and the Department of the Interior are preparing to reallocate Non-Indian Agricultural (NIA) supplies of water to mining companies in the State. This water reallocation was made possible through the Arizona Water Settlements Act and the corresponding Arizona Water Settlements Agreement. An announcement about those reallocations is expected by the end of the year. Likewise, the Company can continue to pursue excess water supplies from the CAP, or even enter water leasing arrangements with those tribes in Arizona that have congressionally enacted water settlements that permit the marketing of certain CAP water supplies.

*The initiation of the NEPA process means that additional tribal consultation will occur*

The initiation of the NEPA process, as triggered by the filing of the mine plan of operations, will also usher in further government-to-government consultation with Native American communities. Arizona is home to twenty-two federally recognized Indian tribes. Given the large areas of reservation land and Indian trust lands, as well as federal lands, and the proximity of those parcels to non-Indian communities, there are bound to be disagreements. We have seen such issues crop up with regard to water rights and off-reservation gaming, among others. Yet, Arizonans seem to find a way to work through those disagreements in a collaborative fashion that respects the interests (at times conflicting interests) of all parties.

In conclusion, I remain optimistic that there is a path forward that honors and respects the ties of the Apache people to this land, while also furthering the interests of those who would like to see the mine move forward in an area (Arizona's Copper Triangle) where mining has been commonplace for more than a century.

Senator MANCHIN. Thank you, Senator. At this time, we are going to have our second panel, the administrative witnesses, Mr. Steve Ellis and Ms. Leslie Weldon.

I want to thank you all for both being here, and we look forward to your testifying. Mr. Ellis, if you would like to start, I think we'd be happy to hear from you.

**STATEMENT OF STEVEN A. ELLIS, ACTING DEPUTY DIRECTOR,  
BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE IN-  
TERIOR**

Mr. ELLIS. Thank you, Mr. Chairman. Members of the subcommittee, I want to thank you for the opportunity to testify on 8 bills here this afternoon of interest to the Department of Interior.

I'm Steve Ellis. I'm the Idaho State Director for the Bureau of Land Management. I'm in Washington, DC, serving temporarily as the BLM's Deputy Director for Operations.

I'll briefly summarize our positions on these bills and ask that the entirety of our statements be included in the record, Mr. Chairman.

Senator MANCHIN. Without objection.

Mr. ELLIS. S. 182, the Anchorage Land Conveyance Act, provides for the conveyance of Federal reversionary interest on 3 parcels of land to the city of Anchorage. It's our understanding that the city would like to sell these parcels. It's something prohibited by the mandates that transferred these lands, and the BLM could support the bill if amended to ensure the payment of fair market value for the reversionary interest.

The Southeast Arizona Land Exchange and Conservation Act, S. 339, provides for land exchange between the Forest Service, a private company and the BLM.

In general, we defer to the Forest Service, as it relates primarily to Forest Service managed lands and the associated valuation issues.

The department has several concerns with the exchange, including concerns pertaining to the timing of the NEPA analysis and the tribal consultation.

S. 483 designates nearly 350,000 acres of Federal land in northern California as the Berryessa Snow Mountain National Conservation Area. This includes Lake Berryessa and the remote Cache Creek Wilderness that harbors rich biological diversity.

The department supports S. 483 as it applies to the lands managed by BLM and the Bureau of Reclamation. We look forward to working with the sponsors in the committee on some minor modifications.

S. 771, Soledad Canyon Settlement Act, directs the department to cancel the two Federal mineral contracts in Soledad Canyon, California. It also requires the department to sell 10,000 acres of public land in southern California to compensate the contract holder and the U.S. Treasury for lost royalties.

The department opposes S. 771 which would use public resources to buy out valid contracts. The department is also concerned about the precedents created by the sale of public lands to compensate a private entity. The department looks forward to continuing a dialog about the issues we raised in our testimony.

S. 841, the Hermosa Creek Watershed Protection Act, primarily concerns lands administered by the Forest Service, and we will defer to the Department of Agriculture on those provisions.

S. 841 would also withdraw Department of Interior lands near Durango from mineral leasing, conveys certain public lands to La Plata County and releases a portion of the West Needles Contiguous Wilderness Study Area from further study.

The department supports S. 841 as it concerns Department of Interior Lands and would welcome an opportunity to work with the committee on technical amendments.

S. 1414, the Oregon Coastal Land Conveyance Act and S. 1415, the Canyon Mountain Land Conveyance Act would together provide that roughly 32,000 acres of BLM-managed lands in western Oregon be held in trust on behalf of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians and the Cow Creek Band of Umpqua Tribe of Indians.

The BLM welcomes the opportunity to work with Congress on the transfer of lands into trust status and supports the goals of S. 1414 and S. 1415. We'd like the opportunity to work with the sponsor and the committee to address various issues, including access rights and timber harvest.

Finally, S. 1479, the Catastrophic Wildfire Prevention Act would modify policies related to hazardous fuels reduction treatments in an effort to reduce the risk of wildfire.

The Department of Interior supports the goals of enhancing restoration for public forest and range lands in mitigating the risk of fire. However, the department opposes S. 1479, which would limit appropriate environmental review and public involvement in Federal actions.

Thank you, Mr. Chairman, for the opportunity to testify. Glad to answer any questions you may have.

[The prepared statement of Mr. Ellis follows:]

PREPARED STATEMENT OF STEVEN A. ELLIS, ACTING DEPUTY DIRECTOR, BUREAU OF  
LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

S. 182

Thank you for inviting the Department of the Interior to testify on S. 182, the Anchorage Land Conveyance Act. The bill provides for the conveyance of the Federal government's reversionary interest in three parcels of land in downtown Anchorage, Alaska. The Bureau of Land Management (BLM) can support S 182 if amended to ensure the payment of fair market value for the conveyance of reversionary interest in these parcels to the City of Anchorage, consistent with previous legislative proposals.

*Background*

The BLM regularly transfers lands to local governments and nonprofits for a variety of public purposes. These are typically accomplished under the provisions of the Recreation and Public Purposes Act (R&PP) or through direction supplied through Acts of Congress. The R&PP Act is an extremely popular vehicle utilized by the BLM to help states, local communities, and nonprofit organizations obtain at no or low cost lands for important public purposes. Examples include parks, schools, hospitals and other health facilities, fire and law enforcement facilities, courthouses, social services facilities and public works. Because these lands are transferred at far below market value, R&PP conveyances and many legislated conveyances include a reversionary clause requiring that lands be used for public purposes or revert to the Federal government. Over the years, the BLM has addressed many requests to release the Federal government's reversionary interest in such lands and has consistently required the payment of fair market value for the reversionary interest.

Between 1922 and 1982, the BLM issued title for three parcels of land to the City of Anchorage for public purposes. These were done under various authorities both administrative and legislatively directed by Congress. Each of the deeds transferring title to the City of Anchorage included a reversionary clause. At the present time, the parcels are used for a variety of purposes including the original City Hall, a small public park, a city parking facility and other governmental purposes.

It is our understanding that the City of Anchorage is interested in the economic development potential of each of these parcels of land and would like to be able to sell them commercially, something that is prohibited by the administrative and legislative mandates that transferred the lands to Anchorage. The parcels, all in downtown Anchorage, range in size from a quarter-acre to just under two acres.

S. 182 would convey the remaining reversionary interest of the United States in these three parcels of land identified in the bill to the City of Anchorage at no cost and requires that Anchorage pay all costs associated with the conveyance.

The BLM supports the goal of conveying the reversionary interest on these parcels to the City of Anchorage. As with previous such proposals, we recommend amending the legislation to ensure the payment of fair market value for the reversionary interest and to ensure that the city's acceptance of the reversionary interest is voluntary. The value of the reversionary interest would be established through an appraisal by the Department of the Interior's Office of Valuation Services. Upon receiving that appraisal, the city could make a decision on purchasing the reversionary interest on any or all of the parcels, thus owning the land outright. All costs associated with this conveyance, including the appraisal, would be the responsibility of the City of Anchorage.

We note that Section 3(a) contains a broad waiver provision, which may be unnecessary. We would like to work with the sponsor and the committee to ensure that any barriers to completion of the transfer are addressed.

*Conclusion*

Thank you for the opportunity to testify. We look forward to working with the sponsor and the Committee to address the needs of the City of Anchorage.

S. 339

Thank you for the opportunity to present testimony on S. 339, the Southeast Arizona Land Exchange and Conservation Act. The legislation provides for the exchange of a 2,422-acre parcel of U.S. Forest Service-managed land to a private company in exchange for a number of parcels within the State of Arizona for management by the U.S. Forest Service (FS) and the Bureau of Land Management (BLM). Three of the private parcels are identified for transfer to the Secretary of the Interior.

In general, the Department of the Interior (DOI) defers to the FS on issues directly related to FS-managed lands and associated valuation issues. We believe that

the intent of the legislation is to facilitate an exchange of land with Resolution Copper Mining, LLC. Resolution Copper has indicated its intention to develop a copper mine near Superior, Arizona, and wishes to acquire the 2,422-acre FS parcel overlying the copper deposit as well as the Federal subsurface rights.

*Conveyance of Parcels to the Bureau of Land Management*

S. 339 provides for the conveyance of three parcels to the Secretary of the Interior to be managed by the BLM. The parcels identified are located in Gila, Pinal, and Santa Cruz Counties and include:

- 3,050 acres along the lower San Pedro River near Mammoth, Arizona;
- 160 acres within the Dripping Springs area near Kearny, Arizona; and
- the 940-acre Appleton Ranch parcel adjacent to the Las Cienegas National Conservation Area near Sonoita, Arizona.

We would note that the maps for these three parcels are inaccurately described in the legislation and we would like to work with the sponsor and the Committee to correct those descriptions.

The lower San Pedro parcel is east of the town of Mammoth, Arizona, and straddles the San Pedro River. The acquisition of these lands would enhance key migratory bird habitat along the San Pedro River. S. 339 provides for the lower San Pedro parcel to be managed as part of the BLM's existing San Pedro Riparian National Conservation Area (NCA) designated by Public Law 100-696. The lower San Pedro parcel lies along the same riparian corridor as the NCA, but it is at least 60 miles downstream (north) of the existing NCA and has substantially different resource issues and needs. If this parcel is conveyed to the Secretary of the Interior and incorporated into the NCA, the Department recommends that the existing 80 acres of adjacent BLM-managed public land likewise be included within the NCA to facilitate the efficient and effective management of this important riparian corridor.

The legislation also proposes to transfer 160 acres in the Dripping Springs area near Kearny, Arizona, to the Secretary of the Interior. This private parcel is an inholding within a larger block of public lands and has important resource values, including sensitive Desert Tortoise habitat.

Finally, the bill provides for the transfer of the 940-acre Appleton Ranch parcel to the Secretary of the Interior. This parcel is located on the southern end of the BLM's Las Cienegas NCA. These lands lie within the "Sonoita Valley Acquisition Planning District" established by Public Law 106-538, which designated the Las Cienegas NCA. That law directs the Department to acquire lands from willing sellers within the planning district for inclusion in the NCA to further protect the important resource values for which the Las Cienegas NCA was designated. These lands are part of a significant wildlife corridor. The acquisition of these lands advances important conservation goals associated with this unique and special natural resource.

*General Concerns*

The Administration has several concerns with the Southeast Arizona Land Exchange and Conservation Act and cannot support S. 339 as written. Two of the Administration's principal concerns with the legislation pertain to the timing of NEPA analysis and tribal consultation.

S. 339 requires the Forest Service to prepare an environmental review document under the National Environmental Policy Act (NEPA) after the land exchange is completed rather than in advance of the exchange. It is this Administration's policy that NEPA be fully complied with to address all federal agency actions and decisions, including those necessary to implement congressional direction.

In addition, increasing and improving tribal consultation with Indian tribes by all federal agencies is a key accomplishment of this Administration, and concerns have been raised by Indian tribes nationwide that the legislation is contrary to laws and policies and Executive Orders that direct federal land management agencies to engage in meaningful government-to-government consultation with interested Indian tribes, and to protect and preserve sites sacred to Native Americans. This consultation framework includes the recent Memorandum of Understanding among the Departments of Defense, Interior, Agriculture, Energy and the Advisory Council of Historic Preservation Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites, which was signed on December 4, 2012.

Many of the lands to be exchanged in this legislation hold significant cultural value to Indian tribes. In particular, the Apache Leap area, the Oak Flat Campground, and Devil's Canyon are culturally significant to the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation. For the San Carlos Apaches, and the Yavapai, this area is a place of ancient settlements and burial sites. Tribal members

still go to these areas to pray, conduct ceremonies, and gather medicines and ceremonial items.

The Administration is concerned that any consultations under S. 339 would not be meaningful under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," because the legislation limits the Secretary of Agriculture's discretion regarding the land exchange. Engaging in government-to-government consultation prior to the Secretary of Agriculture's public interest determination would better allow for meaningful consultation and coordination with interested tribes.

Section 4(i) of S. 339 expresses the intent of Congress that the exchange be completed within one year. Based on our experience with exchanges, we believe the amount of time provided in S. 339 is insufficient to review and finalize the necessary environmental documents, mineral report, and appraisals, as well as to conduct the final verification and prepare title documents. We are also concerned that one year may not be sufficient to complete analysis of any historic and sacred sites in the exchange area as required by the Native American Graves Protection Act and the National Historic Preservation Act.

Preparation of a mineral report is a crucial first step toward an appraisal of the Federal parcel because the report provides important information about the Federal mineral deposit. The bill does not address access to confidential exploration and development data and company analyses on the mineral deposits underlying the Federal land in order to ensure a timely and accurate appraisal. Such information is essential for the mineral report, particularly in the context of this exchange, because of the size of the proposed mining operation and the proposed mining technique.

Section 6 of S. 339 provides for an annual value adjustment payment to the United States if the cumulative production of locatable minerals exceeds the projected production used in the appraisal required by section 4. This provision recognizes that an accurate projection of future production as part of the appraisal process will be difficult to develop, and provides a mechanism for additional payments to the United States if the actual production exceeds the projected production. The Department generally defers to the FS on the specific provisions of section 6 of the bill. However, we note that this section creates a new fund in the U.S. Treasury for the deposit of these value adjustment payments. The Department believes that these funds should be dedicated to Federal land acquisition in the same manner as the initial land equalization payments provided for in section 4(e)(2)(C) of the bill. Because these funds are to compensate for a possible initial inadvertent under-appraisal of land values, it is appropriate that the value when captured be used in the same manner as if it had been included in the initial appraisal.

Finally, there are a number of issues of a more technical nature, including appropriate map references, which we would welcome the opportunity to discuss as this legislation moves forward.

#### *Conclusion*

Thank you for the opportunity to testify. The exchange proposed in S. 339 is complex. The Departments of Agriculture and of the Interior seek to assure that the Federal Government's interest is appropriately protected in any final legislation and tribal interests are considered.

S. 483

Thank you for inviting the Department of the Interior to testify on S. 483, the Berryessa Snow Mountain National Conservation Area Act. The Department supports S. 483 as it applies to lands managed by the Bureau of Land Management (BLM) and Bureau of Reclamation (Reclamation) and defers to the U.S. Department of Agriculture regarding lands within the National Forest System. We look forward to working with the sponsors and the Committee on minor modifications to the legislation.

#### *Background*

The proposed 350,000-acre Berryessa Snow Mountain National Conservation Area (NCA) is one of the most biologically diverse regions in northern California. The area is an outdoor wonderland, rich in natural and cultural features. Visitors can enjoy a variety of outdoor recreational opportunities, including hunting, fishing, hiking, mountain biking, horseback riding, backpacking, whitewater rafting, camping, rock climbing, and kayaking.

Located less than one hundred miles from the Sacramento and San Francisco metropolitan regions, the proposed NCA stretches from Lake Berryessa in the south to the majestic Snow Mountain Wilderness in the north and encompasses the remote Cache Creek Wilderness. The ease of access, minimal travel time, and prox-

imity to major population centers of the Central Valley and the Bay Area make this rugged area a “backyard destination” for approximately ten million people.

The biological richness of the region is unlike any found in California. The landscape rises from near sea level in the south to over 7,000 feet in the north, supporting such diverse ecosystems as the blue oak woodlands near Putah Creek in the south and the sub-alpine habitat within the Snow Mountain Wilderness. The proposed NCA is also home to a wide variety of native and rare plants such as Sargent’s cypress and serpentine willow and provides habitat for dozens of iconic California birds and animals including bald and golden eagles, black bears, mountain lions and herds of wild tule elk.

S. 483 would designate nearly 350,000 acres of federal land in northern California as the Berryessa Snow Mountain NCA, primarily in Lake, Napa, and Yolo Counties. The proposed NCA would also include federal land in Mendocino and Solano Counties. Approximately 180,000 acres are managed by the Forest Service, 141,000 acres by the BLM, and 28,000 acres by Reclamation.

Each of the NCAs designated by Congress and managed by the BLM are unique. However, these designations typically have certain critical elements in common, including withdrawal from the public land, mining, and mineral leasing laws; limiting off-highway vehicles to roads and trails designated for their use; and language that charges the Secretary of the Interior with allowing only those uses that further the conservation purposes for which the unit is established. Furthermore, these Congressional designations should not diminish the protections that currently apply to the lands. This bill honors these principles, and we support the NCA’s designation as it applies to lands managed by the Department of the Interior.

A central part of the area covered by the proposed Berryessa Snow Mountain NCA will be Lake Berryessa, impounded by Reclamation’s Monticello Dam, which is the principal feature of the federal Solano Project. The Solano Project is operated for multiple purposes, with operations and maintenance responsibility on the project provided pursuant to an Operation, Maintenance and Replacement contract between Reclamation and the Solano County Water Agency. Because of the multi-purpose nature of the Solano Project, and the multiple beneficiaries it serves, Reclamation supports the reference in Section 5(a)(1) to the Reclamation Act of 1902, and its relevance to the management responsibilities on Reclamation at Lake Berryessa. Reclamation also supports language in Section 7 of HR 1025 stating that nothing in the act modifies, changes, or supersedes any contract or agreement approved or administered by the Bureau of Reclamation or Solano County Water Agency or their contractor and Solano Irrigation District. As a keystone for outdoor recreation within the NCA, Reclamation would like to ensure that Lake Berryessa continues to be managed for a diverse range of recreation opportunities as provided for in Reclamation’s 2006 Record of Decision for the Lake Berryessa Visitor Services Plan.

The BLM would like the opportunity to consider possible minor boundary modifications for manageability. Additionally, we recommend language to provide for BLM land tenure adjustments, if they further the protective purposes for which the NCA is designated. Finally, we would like the opportunity to work with the Sponsor and the Committee on other more minor and technical amendments.

#### *Conclusion*

Thank you for the opportunity to testify in support of S. 483 the Berryessa Snow Mountain National Conservation Area Act.

#### S. 771

Thank you for the opportunity to testify on S.771, the Soledad Canyon Settlement Act. The bill directs the Secretary of the Interior (Department) to cancel two valid existing Federal mineral contracts in Soledad Canyon, California, and to compensate the contract holder for the value of its cancelled contracts with public funds. S. 771 also requires the Department to sell public lands in southern California to provide compensation to the contract holder for the cancellation of the contracts and partial compensation to the U.S. Treasury for lost royalties. The Department opposes S. 771, which would use taxpayer funds and public resources to buy out valid contracts that the contract holder has not fulfilled. The Department is concerned about the precedent of buying out valid contracts with taxpayer funds, loss of royalties to the U.S. and State Treasuries, and the sale of public lands to compensate a private entity.

#### *Background*

Soledad Canyon, 30 miles north of downtown Los Angeles, contains several hundred million tons of valuable mineral materials. As one of the largest sand and gravel deposits in the region, the State of California Mining and Geology Board has des-

ignated the Soledad Canyon deposit as a “Regionally Significant Construction Aggregate Resource” in recognition of its importance to the residential, commercial, industrial, and infrastructure development of the San Fernando Valley and Santa Clarita area in southern California. Soledad Canyon has been mined for more than 40 years. The project site, which is estimated to contain 356 million tons of sand and gravel resources, has been impacted by significant ground disturbing activities and contains stock piles of mineral material and abandoned processing equipment from previous mining operations. Two active aggregate mine sites are currently operated on private land between the Soledad Canyon mine and the City of Santa Clarita.

Much of the mineral estate in the Soledad Canyon area is managed by the Bureau of Land Management (BLM). The Mineral Materials Act authorizes the BLM to sell mineral materials at fair market value in conformance with publicly developed agency land use plans, with additional analysis and public participation under the National Environmental Policy Act (NEPA) prior to project approval. In the 1980’s, the Soledad Canyon mine site was the subject of a mineral trespass. As a result of litigation associated with the trespass action, the BLM held a court-directed competitive sale in 1990 for the site. The BLM awarded CEMEX (through its predecessor, Transit-Mixed) two competitive contracts to mine 56 million tons of Federal subsurface sand and gravel in Soledad Canyon over a 20-year period under the Minerals Materials Act. Once underway, the project would produce and deliver concrete as well as asphalt. In 2000, following public involvement under BLM’s land use planning and NEPA processes, the BLM published an Environmental Impact Statement for the sand and gravel project at Soledad Canyon and signed the Record of Decision approving the project with mitigation measures. The City of Santa Clarita acquired surface ownership of the site after the contracts were awarded to CEMEX.

The minimum royalties to the Federal government from the two CEMEX contracts (56 million tons) total \$28 million, based on the original 1989 bid amount of \$0.50 per ton. The first 10-year contract is for 14 million tons with minimum royalties of \$7 million, while the second 10-year contract is for 42 million tons with minimum royalties of \$21 million. The contracts require periodic reappraisal of the royalty value after the first four years of the contracts. As such, actual royalties could be approximately \$123 million, based on current royalty rates in the range of \$1.50 per ton. Royalty values fluctuate based on fair market values, regional aggregate supply, and related factors.

The City of Santa Clarita opposes the mining project; residents have expressed concerns about impacts on air quality, traffic congestion, quality of life and natural resources. Santa Clarita’s city center is located about 10 miles southwest of the Soledad Canyon mine site. A ridgeline blocks views of the mine site from residential and commercial areas in the City of Santa Clarita, as well as from State Highway 14. The nearest residences are located about 1.5 miles from the site.

Multiple appeals and lawsuits by the City of Santa Clarita and others have challenged the project; each time, the United States has prevailed and the BLM’s project approval has been upheld. The last remaining lawsuits were resolved in 2008, removing remaining legal barriers to the project. To date, CEMEX has elected not to fulfill its valid existing contract obligations in deference to the City of Santa Clarita’s concerns.

S. 771 directs the Department of the Interior to cancel the two Federal contracts for sand and gravel material with CEMEX in the Soledad Canyon area, near the City of Santa Clarita, California. The bill prohibits future mineral material disposal on these lands and requires the Department to compensate CEMEX for the fair market value of the cancelled contracts, less the projected lost royalties to the Federal government over the first 10-year period of the contracts. Compensation would be obtained by selling approximately 10,000 acres of BLM managed public lands near Victorville, California, at fair market value, with right of first refusal given to the City of Victorville and the County of San Bernardino. If revenue from the sales of the public lands near Victorville, California is insufficient to fully compensate CEMEX for the fair market value of the sand and gravel material to be mined under their contracts, the City of Santa Clarita would provide the Department with compensation equal to the difference.

The Department has several concerns with S. 771. The value to the U.S. Treasury of the Federal sand and gravel resources attributable to these contracts is substantial: as noted earlier the approved project for 56 million tons of sand and gravel has a minimum royalty value of \$28 million, with a projected royalty as high as \$123 million, based on periodic fair market re-appraisals. By cancelling these contracts, the legislation deprives the U.S. Treasury (and to a lesser extent, the State of California, which receives 4% of the royalty) of the full value of the contracts which includes these royalty payments. Furthermore, the Treasury would not be fully com-

compensated for the lost revenue that would be generated from royalties due to the Federal government because the legislation only accounts for the amount of sand and gravel that is produced during the first 10 years of the two 10-year contracts. Because the legislation also prohibits future mineral materials mining on the lands, sale of the remaining 300 million tons of aggregate and future Federal royalties, estimated at a minimum of \$450 million, would be forgone under the bill as well despite remaining under Federal ownership. There are also substantial concerns about the precedent that would be set by liquidating non-renewable Federal assets to partially settle a dispute that would, in a normal course, be handled between the two disputing parties.

Additionally, the bill obviates the BLM's land use planning and NEPA process and decision, which has been upheld by the Federal courts and identified sand and gravel leasing as an appropriate use of the public resources at, and around, the existing mine. The elimination of this aggregate deposit from use would result in a shortage of aggregate supplies to the northern Los Angeles County region. This region has a 50-year demand for 476 million tons of aggregate with only 77 million tons of permitted aggregate resources, which is less than 10 years of aggregate supply. If Soledad Canyon is not mined, the permitted supply of aggregate resource would drop to less than five years. Aggregate resources, which are heavy and bulky, would need to be transported from greater distances.

Finally, S. 771 directs the Department to sell 10,000 acres of public land near Victorville, CA to provide the compensation to CEMEX and the U.S. Treasury. These public lands are located approximately 70 miles east of Soledad Canyon in San Bernardino County. There are valid, existing rights and authorized uses located on the Victorville public lands, including 85 mining claims and 34 rights-of-way. Approximately 25 percent of the Victorville lands are currently encumbered with mining claims. The disposal of 10,000 acres of public land in the Victorville area would forever prevent those public lands or resources from being used for the benefit of the greater public.

#### *Conclusion*

Thank you for the opportunity to provide testimony on S. 771. I will be glad to answer any questions.

#### S. 841

Thank you for the opportunity to testify on S. 841, the Hermosa Creek Watershed Protection Act. The legislation primarily concerns land designations within the San Juan National Forest. The Department of the Interior defers to the Department of Agriculture on provisions pertaining to lands administered by the U.S. Forest Service. Sections 7, 8, and 9 of the bill concern lands administered by the Department of the Interior (Department). These sections would withdraw approximately 13,000 acres of BLM-managed lands from mining and mineral leasing laws; convey approximately 111 acres of BLM-managed land to La Plata County, Colorado; and release approximately 461 acres of the West Needles Contiguous Wilderness Study Area. The Department supports these sections with amendments to ensure manageability.

#### *Background*

In southwestern Colorado, the BLM administers more than 664,000 acres of public lands through the Tres Rios Field Office. These lands provide a wide variety of uses, ranging from livestock grazing and mineral exploration to world class recreational opportunities and critical wildlife habitat. The BLM works closely with the State of Colorado, tribal governments, counties and cities, as well as local communities to ensure the sustainable management of these lands and their multiple uses.

The following is a discussion of the bill's provisions which apply to lands managed by the Department of the Interior.

#### *Section 7, Durango Area Mineral Withdrawal*

The area surrounding the City of Durango, Colorado, contains many popular recreation areas situated on Federal lands, including Animas Mountain and Perins Peak (8,557 acres), Lake Nighthorse (3,281 acres), and Horse Gulch (708 acres). Section 7 of S. 841 would withdraw approximately 13,000 acres across these three areas from location, entry, and patent under mining laws as well as disposition under laws relating to mineral leasing, geothermal leasing, or mineral materials. There are no active leases or mining claims in these areas, and the Department supports this withdrawal. S. 841 would also withdraw these areas from all entry, appropriation, or disposal under public land laws. To ensure the BLM retains discretionary authority to manage any potential future land transfers or conveyances of the with-

drawn lands, the Department recommends deleting the withdrawal provision concerning disposal under public land laws under Section (a), Subsection (1).

*Section 8, La Plata County Land Conveyance*

Section 8 of S. 841 directs the Secretary of the Interior to convey a parcel of approximately 111 acres managed by the BLM to La Plata County for uses consistent with the Recreation and Public Purposes Act (R&PP) and subject to valid existing rights. La Plata County, in southwest Colorado, has submitted an application to the BLM for conveyance of a parcel of land under the R&PP for the purpose of developing a new multi-event and fairgrounds facility.

The R&PP Act authorizes the Secretary of the Interior to lease or convey public lands at nominal costs for recreational and public purposes, including for educational facilities. The Department generally supports appropriate legislative conveyances at no cost if the lands are to be used for purposes consistent with the R&PP Act, and if the conveyances have a reversionary clause to enforce this requirement.

The Department supports the conveyance of these lands for important public purposes. Under the bill, the County would pay all costs associated with the transaction. Currently, a gravel pit is in operation on the parcel under a mineral materials contract, and the bill would require conveyance of the land following expiration of that contract in February 2019. Since the land proposed for conveyance is currently encumbered by Federal oil and gas leases and would be conveyed without consideration, the BLM recommends all minerals be reserved to the United States. The BLM would like to work with the sponsor on a boundary modification to enhance manageability of both the conveyed parcel and the lands retained by the BLM, and avoid creating an isolated parcel remaining under BLM administration. We would also like to work with the sponsor on additional amendments to the bill language, particularly regarding the addition of a reversionary clause and conservation easement to protect cultural resources in the area.

*Section 9, Release of Wilderness*

Study Areas Section 9 of S. 841 provides for the release from Wilderness Study Area status of approximately 461 acres of the West Needles Contiguous Wilderness Study Area. This WSA is bordered on the west by a State Highway and on the east by the Durango-Silverton Narrow Gauge Railroad (a popular tourist route), making the remnant WSA a challenge to manage for non-impairment. In 1983, Public Law 98-141 transferred portions of the West Needles Contiguous WSA to the Forest Service, which are now part of the Weiminuche Wilderness. The remaining BLM-managed acres continue in WSA status. The area proposed for release by the legislation would leave 499 acres of BLM-managed lands in WSA status, creating interim management difficulties associated with narrow portions of WSA land, recreational use conflicts, and artificial management boundaries. This area is valued by local recreationists for many uses, including winter snowmobiling, fishing, camping, and hiking. The BLM recommends the release of the entire 960-acre West Needles Contiguous WSA. This will benefit the BLM's ongoing management of the area as well as reduce public confusion as BLM continues to manage the area for its resource values.

*Conclusion*

The Department supports sections 7, 8, and 9 and would like to work with the sponsor and the Committee on these amendments. Thank you again for the opportunity to discuss this legislation, and I would be glad to answer any questions.

S. 1414 AND S. 1415

Thank you for the opportunity to testify on S. 1414, the Oregon Coastal Lands Conveyance Act and S. 1415, the Canyon Mountain Land Conveyance Act. S. 1414 would provide that approximately 14,804 acres of BLM-managed lands in western Oregon be held in trust on behalf of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians. S. 1415 would provide that approximately 17,826 acres of BLM-managed lands in western Oregon be held in trust on behalf of the Cow Creek Band of Umpqua Tribe of Indians. The bills would also require the Department of the Interior to reclassify an equal number of acres of public domain lands as Oregon and California (O&C) lands to compensate for the loss of O&C lands transferred by the bills. The Department of the Interior welcomes opportunities to work with Congress on the transfer of lands into trust status and supports the goals of S. 1414 and S. 1415. The BLM would like the opportunity to work with the sponsor and the Committee to address various issues related to the bill, including access rights, utility and facility encumbrances, and timber harvest.

*Background*

Both the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians and the Cow Creek Band of Umpqua Tribe of Indians have expressed their desire to acquire culturally significant tracts of land in the region as well as forest lands to be managed for the financial benefit of tribal members. The BLM strongly believes that open communication between the BLM and tribes is essential in maintaining effective government-to-government relationships, and the BLM has a positive working relationship with the tribes in the area.

In western Oregon, the BLM currently manages roughly 2.2 million acres of Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands under the O&C Lands Act of 1937. Under the Act, 18 O&C counties receive yearly payments equal to 50 percent of receipts from timber harvests on public lands in these counties. Since 2000, the BLM has made payments to the 18 O&C counties based on the authorities provided for in the Secure Rural Schools Act, which has been reauthorized through FY 2014. The BLM's FY 2014 Budget request also includes a proposal for a five-year reauthorization of the Act.

## S. 1414

S. 1414 would provide that seven tracts of land currently managed by the BLM, totaling 14,804 acres, be held in trust on behalf of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians (the Tribes). The bill directs all right, title, and interest of the United States to the identified lands, subject to valid existing rights, to be held in trust for the benefit of the Tribes.

These parcels are located in western Oregon's Coos, Douglas, Benton, and Lane Counties, and include tracts such as the Coos Head, Talbot Allotment, and Umpqua Eden parcels, which are of particular cultural significance to the Tribes, as well as areas such as the Lower Smith River and Tioga tracts, managed for timber production.

While the transfer would be subject to valid existing rights, we would like to work with the sponsor on certain access concerns. Withdrawals on several parcels included in the bill for uses such as power site classifications and water power designations would need to be revoked before the lands could be transferred. Multiple roads and related facilities currently maintained by the BLM are included in the areas identified for transfer, and continued access to these areas is important for public safety. Additionally, S. 1414 includes lands identified for transfer that were acquired with funding from the Land and Water Conservation Fund (LWCF) Act of 1965. The BLM would like to work with the sponsor to ensure that these lands are available in perpetuity for the use and enjoyment by the public, consistent with the requirements of the LWCF Act. The BLM would like to work with the sponsor to clarify these and other technical issues associated with boundary modifications and access.

Finally, the lands identified for transfer contain 6,236 acres of critical habitat for the northern spotted owl. The lands also include areas of critical habitat for the marbled murrelet and other threatened species. The BLM notes that transfer of these lands could impact recovery of these species, and would like to work with the sponsor to clarify language related to the protection of wildlife.

## S. 1415

S. 1415 would provide that approximately 17,826 acres of BLM-managed land in Douglas County, Oregon, be held in trust on behalf of the Cow Creek Band of Umpqua Tribe of Indians (Tribe). The bill directs all right, title, and interest of the United States to the identified lands, subject to valid existing rights, to be held in trust for the benefit of the Tribe. The lands identified for transfer would be used to restore and expand the historic and economic base for the Tribe in southwestern Oregon. The parcels are scattered and interspersed with private lands, and include many areas popular with hunters, anglers, and campers.

While the transfer would be subject to valid existing rights, the BLM has access concerns related to some parcels. The lands identified for transfer contain numerous rights-of-way, as well as several mining claims. A number of parcels were acquired through donation with the expectation that they would be available in perpetuity for public use and enjoyment. Additionally, withdrawals for uses such as power site classifications and recreation areas would be affected. The BLM would like to work with the sponsor on language to maintain recreational and administrative access to certain areas within the identified parcels.

These lands also include populations of the Federally threatened Kincaid's Lupine and roughly 14,600 acres of critical habitat for the northern spotted owl. The BLM notes that transfer of these lands could impact recovery of these species. The identi-

fied parcels also include numerous sites of cultural and historical importance. The BLM would like to work with the sponsor to clarify language related to the protection of wildlife and cultural resources.

#### *O&C Forestry*

Because many of the lands to be conveyed by both S. 1414 and S. 1415 have been identified for potential future timber sales, the BLM believes that the conveyance of these lands would reduce the quantities of timber that could be offered in future timber sales, resulting in a potential reduction of timber revenues to the United States and to the O&C counties.

The bills would require the BLM to identify sections of public domain lands to be reclassified as O&C lands within 18 months. It is our understanding that the sponsor intends the bill to transfer or reclassify only BLM-managed lands. The BLM would like to work with the sponsor to clarify language in section 7 accordingly. In order to identify and reclassify public domain land, the BLM would need to complete a variety of actions, including appraisal, survey, and environmental analyses. The timeframes provided in the bill to complete this work are insufficient considering the workload, staffing and costs involved. Additionally, the BLM is concerned that lands of approximately equal acreage, habitat condition, productivity, and land use allocation are unavailable for reclassification within the affected planning areas. The BLM would like to work with the sponsor on a timeline that would add flexibility and language providing specificity regarding the lands to be reclassified and their subsequent management.

#### *Conclusion*

The Department of the Interior welcomes opportunities to work with Congress on the transfer of lands into trust status and supports the goals of S. 1414 and S. 1415. We look forward to working with the sponsor and the Committee to address the various issues we have outlined in this testimony, as well as other minor technical issues.

S. 1479

#### *Introduction*

Thank you for the opportunity to provide the Department of the Interior's views on S. 1479, the Catastrophic Wildfire Prevention Act.

This bill seeks to reduce the risk of catastrophic damages resulting from wildland fire by defining new forest and fuels treatments policies on public lands managed by the Bureau of Land Management (BLM) and on National Forest System lands managed by the U.S. Forest Service. The Department of the Interior supports the goals of enhancing restoration for public forests and rangelands and mitigating the risks of wildland fire by working more effectively with our partners. However, the Department opposes S. 1479, which would limit appropriate environmental review and public involvement in federal actions in its effort to expedite restoration treatments, as well as commercial grazing and timber harvesting.

#### *Background*

The BLM is committed to sustaining the health, diversity, and productivity of forests and woodlands, which together comprise 58 million acres of public lands managed by the BLM. The mounting effects of insect infestations, disease outbreaks, prolonged drought, climate change, invasions of harmful non-native species, and the accumulation of fuels generate increased risks of catastrophic losses, including risks to life and property that may result from wildfire. These increasing pressures, coupled with increasing demands for uses of the public lands, may also result in the loss of natural and cultural resources, loss of wildlife habitat, and loss of recreational opportunities on the public lands, and may further accelerate the proliferation of non-native species.

Phases I and II of the National Cohesive Wildland Fire Management Strategy represent an unprecedented collaborative planning and risk analysis that builds on successes of the past while incorporating a new collaborative approach to restoring and maintaining resilient landscapes, creating fire adapted communities, and managing wildfire response in a complex environment. The DOI agencies' approach to hazardous fuels reduction is integrated and coordinated across land ownership and is responsive to challenges that include insect infestations, non-native species invasion, and other complex problems. The BLM has also completed a Programmatic EIS and Environmental Report for Vegetation Treatments in 17 Western States to further the goals of the Cohesive Strategy, providing for overarching National Environmental Policy Act (NEPA) analysis to better enable the implementation of hazardous fuels reduction projects using a range of tools.

The BLM takes seriously its responsibilities for protecting people, property, and resources from wildland fire, and uses a proactive approach to treat hazardous fuels. In FY 2012, the Department of the Interior completed about one million acres of hazardous fuels reduction treatments. Over 468,000 acres of these treatments were conducted by BLM, including thinning, salvage, and prescribed burns. While these accomplishments are substantial, the BLM recognizes that significant challenges remain in achieving our restoration goals.

The BLM approaches these goals within the context of the agency's land use planning and NEPA processes. These open, public processes provide opportunities for stakeholder involvement and agency analysis of a range of alternative actions and their likely impacts on the affected environment. The BLM is committed to using available tools to ensure that this process proceeds efficiently and that analyses consider appropriate data.

Because the factors that cause increasing hazardous fuel loads cross jurisdictional boundaries, the Department has increasingly adopted a landscape approach to resource conservation and hazardous fuels treatments. The BLM routinely works with partner agencies, organizations, and landowners to engage in land and watershed restoration, community preparedness, and hazardous fuels reduction activities on Federal, state, and private lands. DOI agencies employ an integrated approach to wildland fire management, including the prioritization of hazardous fuels treatments to mitigate the potential risk of wildfires, and we look forward to working with the Committee, the States, and at-risk communities to restore public forests and rangelands and mitigate the risks of wildland fire.

While the Administration is very supportive of reducing wildfire risk, the Department does not believe that S. 1479 will reduce wildfire potential or mitigate the risk of severe damages from wildfire, as the bill does not reflect the Department's or BLM's most current methods for conducting assessments and determining management practices. The Department of the Interior is committed to protecting lives, public land resources, and property from wildland fire. The BLM achieves these goals by using science-based tools for assessing conditions, establishing utilization standards, and analyzing alternatives. Additionally, the public input the agency receives on proposed actions for managing particular resources is critical for adequately assessing the efficacy of alternative management solutions. While the BLM supports the use of targeted grazing and other fuels reduction treatments to mitigate the risks associated with wildland fire, we are concerned that the bill would provide for the application of such treatments in inappropriate circumstances and without adequate review.

S. 1479 would limit the effectiveness of the agency's land use planning and NEPA processes by limiting opportunities for public comment and involvement, eliminating the requirement for alternatives analysis, and allowing for projects inconsistent with existing land use plans. The bill imposes strict deadlines for public review and environmental analysis and deems a project NEPA compliant if the agency does not meet the deadlines. The 30- and 60-day deadlines for environmental analysis provided for in the bill would limit the BLM's ability to perform important analyses that inform its decisions and would not permit a thorough response to all substantive comments received on a proposed authorized wildfire prevention project, including those that are relevant to the environmental analysis. The public comment process allows for the identification of potential issues with the proposed action, and also provides a forum for addressing public concerns and generating greater public buy-in for the proposed action. By involving the public in this manner, and by analyzing a full range of alternatives, the BLM is often able to generate mutually beneficial and lasting partnerships that help the agency to meet the goals set out in its plans. The BLM is also concerned that deeming EAs for grazing and timber harvest to be sufficient for 10 and 20 years, respectively, would not allow the BLM to consider shorter durations where appropriate.

Additionally, S. 1479 would apply to fuels reduction projects, including timber harvest, in Wilderness Study Areas (WSAs). Under the Federal Land Policy and Management Act (FLPMA), the BLM manages WSAs in a manner that does not impair their suitability for potential future designation as wilderness by Congress. The Department is concerned that S. 1479, if enacted, could allow fuels reduction projects in WSAs that are not permitted under FLPMA and are inconsistent with the nonimpairment standard, such as projects requiring motorized and mechanized equipment or the construction of temporary roads.

S. 1479 presents several problems more broadly within the Department of the Interior.

Catastrophic wildfire is a serious threat to threatened and endangered species, as well as to communities and the public; the U.S. Fish and Wildlife Service works very closely and cooperatively with the land management agencies to reduce the

risk of catastrophic wildfire. FWS is not aware of any case in which compliance with the Endangered Species Act has been a bar to wildfire response or hazardous fuels reduction. As a general matter, the Department considers Section 7 of S. 1479 to be generally redundant to existing mechanisms of reconciling fuels management and species conservation and unnecessary in consideration of limited resources.

The language included in Section 7 of S. 1479 would be in direct conflict with the language of the ESA and Congressional direction that listing determinations will be based solely upon the best available scientific information informing out consideration of the statutory listing factors relating to the risk of extinction.

*Conclusion*

The Department of the Interior supports the use of fuels reduction projects to prevent the loss of life and property and damage to public land resources that can result from wildland fire. However, the Department opposes S. 1479 due to provisions that limit our ability to reduce the risk and impacts of wildfire with the best available science, decrease opportunities for public involvement and environmental analysis, shorten timeframes for analysis, and allow timber harvest in WSAs. We appreciate the importance of this issue and look forward to working with the sponsors and the Committee on processes and policies that will result in more effective implementation of hazardous fuels reduction projects and restoration of forest health. Thank you for the opportunity to testify, and I would be glad to answer any questions.

Senator MANCHIN. Thank you, Mr. Ellis. What we'll do is we'll have Mrs. Weldon, then if any of our panel, if any of our members here have any questions for—is that OK?

Ms. Weldon, thank you.

**STATEMENT OF LESLIE WELDON, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE**

Ms. WELDON. Thank you very much. Thank you, Mr. Chairman and members of the committee. My name is Leslie Weldon. I am the Deputy Chief for National Forest System in the U.S. Forest Service, and I really appreciate the opportunity to share the views of the Department of Agriculture regarding many of the bills discussed today.

I'd like to begin with S. 1479, which proposes to expedite forest management projects related to hazardous fuels reduction and protecting endangered species.

The USDA acknowledges the need to increase the pace and scope of forest restoration, but opposes S. 1479 because of the numerous provisions which would reduce environmental analysis, resource protections and the opportunities for public participation in agency decisionmaking.

There are many programs within the Forest Service now that are working to reduce the risk of catastrophic wildland fires. These include integrated resource restoration, collaborative forest landscape restoration, a hazardous fuels reduction program, Federal and cooperative forest health programs, stewardship contracting, Good Neighbor Authority and our State fire assistance programs as well as others.

In fiscal year 2012, the Forest Service was able to treat a total of two-million acres. Hazardous fuels treatments also produced 2.8-million green tons of wood biomass used for energy and nearly 500-million board feet of wood products.

We'd like to thank the members for their interest in this important topic, and we'd like to work with the committee on these strategies.

S. 339 the Southeast Arizona Land Exchange and Conservation Act conveys a 2,422-acre parcel on the Tonto National Forest containing a potentially sizable copper ore body to Resolution Copper in exchange for 5 parcels to the Forest Service and 3 parcels to the BLM.

The department cannot support the bill as written, but is looking forward to working with the sponsor and the committee to resolve concerns.

Those two principal concerns with the bill are that, first, it would require the agency to prepare an environmental review document under NEPA after the land exchange is completed.

It would also have land exchanged in subsequent mining activities that do have the potential to impact landscape that's considered sacred to a number of federally recognized Indian tribes without environmental review or consultation. We'd like to work with the sponsors to work through these issues.

There are also a number of technical concerns with the bill that we would like to work with the committee to resolve. Some of those have to do with timeframes and some of the appraisal provisions.

Next, I'd like to discuss the Cabin Fee Act of 2013. S. 1341 would replace CUFFA on the National Forest System and revise the procedures for determining the amount the holder of a special-use permit for a private cabin on National Forest must pay to occupy and use the underlying public property.

The bill would require the agency to place cabin lot values in 11 categories based on an appraisal and complete remaining appraisals within 2 years of enactment. It would also provide for an additional payment on the sale or transfer of a cabin.

The department supports S. 1341 and appreciates the efforts of the committee. This provision would assume that the recreation residence permit holders would have some protection from steeply escalating annual permit fees, and it would reduce the agency's re-appraisal costs.

The Columbine-Hondo Wilderness Act, S. 776, would designate 45,000 acres of the Columbine-Hondo Wilderness Study Area as part of the National Wilderness Preservation System.

This bill would make a boundary adjustment to the Wheeler Park Wilderness Area, and we would like to work with the committee to explore other options to address some of the mountain-biking issues that have come up within this proposal.

In addition, the bill would direct the conveyance of parcels of National Forest System land, 43 acres across 5 parcels, to the town of Red River and the Village of Taos Ski Valley without consideration and would authorize the conveyance of two parcels to private parties totaling approximately three-tenths of an acre to National Forest System land for fair market value.

The department supports S. 776 if amended to make the provisions related to conveyances of National Forest Service land consistent with appropriate consideration.

The Hermosa Creek Wilderness Protection Act of 2013 would designate 107,000 acres of the San Juan National Forest as the Hermosa Creek Watershed Protection Area and protect water resources within Hermosa Creek Watershed. It would also require

the creation of a management plan for the special watershed management area.

This designation would be consistent with the current forest plan and the department supports S. 841.

We thank Senators Bennet and Udall for their collaborative approach and recognize the local involvement that has contributed to the wide support of this bill.

The Berryessa Snow Mountain National Conservation Act would establish approximately 350,000 Berryessa Snow Mountain National Conservation Area with approximately 180,000 acres managed by the Forest Service, 141,000 by the BLM and 28,000 acres by the Bureau of Reclamation.

The department welcomes the opportunity to work with the bill's sponsor and the committee to address coordination of planning, management requirements and location-of-boundary issues. We defer to the Department of Interior for their remarks on the bill.

The department appreciates the hard work that has gone into this bill by the sponsors and in the community outreach and the willingness of the local community to work with the Forest Service.

S. 1305, the bill to convey the Forest Service Lake Hill Administrative Site in Summit County, Colorado, would convey a 40-acre parcel to Summit County, Colorado.

As a condition of conveyance, the county would pay for all administrative costs associated with the conveyance, and the proceeds would go to assist with Forest Service facilities. The department supports.

The last two bills, the S. 1414 and S. 1415, which Steve has just addressed, we are deferring to the Department of Interior for their positions on these bills.

Thank you very much, and I'll answer any questions.

[The prepared statement of Ms. Weldon follows:]

PREPARED STATEMENT OF LESLIE WELDON, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

S. 339

Chairman Manchin, Ranking Member Barrasso and members of the Subcommittee, thank you for the opportunity to appear before you today to provide the Department of Agriculture's views on S. 339, the "Southeast Arizona Land Exchange and Conservation Act of 2013." S. 339 would direct the Secretary of Agriculture to convey federal land for use as an underground copper mine in exchange for environmentally sensitive non-federal land in Arizona. We defer to the Department of the Interior on provisions relating to lands to be managed by the Bureau of Land Management (BLM).

S. 339 would direct the Secretary of Agriculture to convey to Resolution Copper Mining, LLC (Resolution Copper), a 2,422 acre parcel of land on the Tonto National Forest. The federal land to be conveyed, known as Oak Flat, contains a potentially sizeable copper ore body and adjoins an existing copper mine on private land owned by Resolution Copper. In exchange, Resolution Copper would convey five parcels of land to the Forest Service and three parcels of land to BLM. The total non-federal acreage that would be conveyed by Resolution Copper is 5,344 acres, all of which are in Arizona.

The Bill calls for an equal value exchange in section 4(e). If the value of the federal land (including the ore body) to be conveyed exceeds the value of the parcels to be acquired, the Bill would allow for a cash equalization payment by Resolution Copper in excess of twenty-five percent. Under current law, cash equalization payments may not exceed twenty-five percent (section 206(b) of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b))). A cash equalization payment resulting from the exchange would be deposited in the Sisk Act account to be used,

upon appropriation by Congress, for acquisition of land for addition to the National Forest System within the State of Arizona.

Section 6(b) of the Bill would require Resolution Copper to make value adjustment payments if, as the mine is developed, production of the mine exceeds expectations documented in the appraisal. Those funds would be deposited in a special account in the Treasury to be used, upon appropriation by Congress, for maintenance, repair, and rehabilitation projects on BLM and National Forest System lands. The Department's position is that any value adjustment payments should be used for land acquisition.

The Bill also would provide for the sale of: a 30 acre parcel of land currently being used as a cemetery; a reversionary interest and reserved mineral rights in a 265 acre parcel; and 250 acres near the Superior Airport at market value to the Town of Superior. Sale proceeds would be deposited in the Sisk Act account to be used, upon appropriation by Congress, for acquisition of land to the National Forest System in Arizona.

S. 339 would require Resolution Copper to pay all costs associated with the exchange, including any environmental review document. The Bill provides that it is the intent of Congress that the exchange be completed not later than one year after the date of enactment.

At the request of Resolution Copper, the Bill would require the Secretary, within 30 days of such request, to issue a special use permit to Resolution Copper to carry out mineral exploration activities under the Oak Flat Withdrawal Area, from existing drill pads located outside the area, if such activities would not disturb the surface of the Area. At the request of Resolution Copper, within 90 days, the Bill would require the Secretary to issue a special use permit to Resolution Copper to carry out mineral exploration activities under the Oak Flat Withdrawal Area (but not within the Oak Flat Campground), if the activities are conducted from a single exploratory drill pad which is located to reasonably minimize visual and noise impacts to the Campground.

S. 339 would require the Secretary of Agriculture to complete an environmental review document after the exchange, and after the above-noted activities were permitted to take place, but before Resolution Copper's commencement of commercial mineral production on the land it would acquire in the exchange. Specifically, once the land exchange is consummated, and these lands are in the private ownership of Resolution Copper, Resolution Copper is authorized to submit a mine plan of operation to the Secretary. Thereafter, the Secretary must complete an environmental review document within three years that is limited to section 102(2) of the National Environmental Policy Act of 1969 (NEPA). The environmental document would be used as the basis for any federal action or authorization related to the proposed mine and mine plan of operations of Resolution Copper, including the construction of associated power, water, transportation, processing, tailings, waste dump, and other ancillary facilities. After the exchange, Resolution Copper may need to use the adjoining National Forest System land for ancillary activities related to the mining development, such as rights-of-way for electric lines, pipelines, or roads.

The Bill would add five parcels of land totaling almost 1,200 acres to the National Forest System. Most of these parcels include riparian areas which are somewhat rare in Arizona. One of the parcels that would be acquired adjoins the Apache Leap area on the Tonto National Forest. Additionally, as a condition of the land exchange, Resolution Copper would surrender its rights to commercially extract minerals under Apache Leap.

While the Department understands and appreciates the potential economic benefits and the value of the lands to be acquired by the American public, the Department cannot support the Bill as written but is looking forward to working with the Sponsor and the Committee. The principal concern is that the Bill would require the agency to prepare an environmental review document under NEPA after the land exchange is completed. Also of concern is the fact the Bill would immediately authorize mining exploration activities under an area that is considered sacred to a number of federally recognized Indian tribes (the Western Apache, including the San Carlos Tribe and of the Fort McDowell Yavapai Nation, and certain other tribes in Arizona and New Mexico) without a review or study or consultation with Tribes.

NEPA is a forward looking statute setting out procedural obligations to be carried out before a federal action is taken. It requires that, before taking a discretionary decision, the federal agency consider the environmental impacts of a proposed major federal action and alternatives of such action. It is this Administration's policy that NEPA be fully complied with to address all federal agency actions and decisions, including those necessary to implement congressional direction.

The purpose of the requirement in the bill that the agency prepare a limited NEPA review after the exchange, when the land is in private ownership, is unclear

because the bill provides the agency limited discretion to exercise. An environmental review document after the exchange would preclude the U.S. Forest Service from developing a reasonable range of alternatives to the proposal and providing the public and local and tribal governments with opportunities to comment on the proposal. In addition, the U.S. Forest Service does not have an understanding of the impacts the proposed mine will have on local or regional water supplies, water quality, or possible dewatering of the area. No studies or assessments of the water supplies have been conducted. That is information which could and should be obtained by the Forest Service with NEPA analysis before the exchange. A NEPA analysis after the exchange would not allow the Forest Service to recommend alternatives since the exchanged parcel would already be in private ownership.

The Bill should be amended to require the preparation of an environmental analysis before the land exchange is completed. The purpose of preparing an environmental analysis before consummating the land exchange would be to analyze the effects of the transfer of the federal land to Resolution Copper, any activities that are reasonably foreseeable to occur on the transferred land (including mineral development), and the acquisition of the non-federal land resulting from the exchange. The agency would use the environmental analysis to make a decision on whether and how to proceed with the exchange and what mitigation conditions would be required to mitigate the identified impacts.

The legislation states that it is Congressional intent that the exchange be completed within one year. Based on our experience with complex land exchanges, this is clearly an insufficient amount of time to complete the exchange. Given the requirement of mineral reports, appraisals, title documents, environmental analysis and government to government consultation with local Indian Tribes, a two to three-year timeframe is much more realistic.

The agency also understands that a number of federally recognized Indian tribes and regional and national tribal organizations are concerned that the S. 339 circumvents various laws, policies, and Executive order that directs the Federal land managing agencies to engage in formal consultation with the interested Indian tribes. Indian tribes have also raised important concerns that the Bill is contrary to various policies and Executive Orders that Federal land managing agencies protect and preserve sites that are sacred to Native Americans. The Forest Service understands that the land is considered sacred by the tribe and holds significant traditional and historic value. Because of these expressed concerns and because this specific site has been the focus of historic Government protection it is important that this Bill provide for the process of formal tribal consultation to ensure both tribal participation in cultural impact analysis and protection of this site.

We hold in public trust a great diversity of landscapes and sites held sacred by Indian tribes. Last year, the Department and the Forest Service issued the "Indian Sacred Sites Policy Review and Recommendations". The Report acknowledges that consultation "with Tribal governments is legally mandated and integral to the agency's trust responsibility to tribes. Among the laws that specifically require consultation are the Archeological Resources Protection Act (ARPA), Native American Graves Protection and Repatriation Act (NAGPRA), and the National Historic Preservation Act (NHPA)." On December 5, 2012, the Departments of Defense, Interior, Agriculture, and Energy, and the Advisory Council on Historic Preservation entered into a Memorandum of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites to improve the protection of and tribal access to Indian sacred sites through enhanced and improved inter-departmental coordination and collaboration. The MOU is based on the requirements of Executive Order 13007, Indian Sacred Sites, and provisions of the National Historic Preservation Act.

The Bill would require the Secretary to prepare a management plan for Apache Leap. Further, the federal lands to be exchanged (Oak Flat) hold significant cultural values to Indian Tribes. Although the Bill would require government-to-government consultation, any consultation would not be considered meaningful under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments", because the bill as introduced, limits the Secretary's discretion regarding the land exchange. The focus of the consultations would likely be the management of those areas over which the agency would have discretion, namely, the federal land adjacent to the mine and Apache Leap.

For example, the Secretary would not have discretion over the conveyance or on-site management of the Oak Flat site, which under the legislation would be conveyed to Resolution Copper. The San Carlos Apache Tribe considers the Oak Flat area to be a sacred site. They have expressed concerns that block cave mining would cause subsidence that would impact the fundamental religious nature of the site. They have also expressed concerns regarding potential impacts on water quality.

They have detailed in correspondence to Secretary Vilsack, the importance of traditional acorn gathering and religious ceremonies which still occur on this site. The Department has a responsibility to consider the Tribes' concerns and these can only be adequately addressed if a pre-exchange environmental analysis is the first step.

There is no doubt that the lands that would be acquired and managed by the U.S. Forest Service under S. 339 have important resource values that should be protected. It is also clear that the economic benefits from the production of copper could be significant in creating family wage jobs in tough economic times. However, it is important to more fully understand the scope of the project before proceeding and address potentially significant environmental concerns and sites of high importance to local Tribes. In addition to the concerns expressed in testimony, the Department would like to work with the Committee on a number of significant technical concerns.

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

S. 483

S. 483 would establish the 350,000-acre Berryessa Snow Mountain National Conservation Area (NCA), with approximately 180,000 acres of lands managed by the U.S. Forest Service, 141,000 acres managed by the Bureau of Land Management (BLM), and 28,000 acres managed by the Bureau of Reclamation (BOR). It also would require the Secretary of Agriculture and the Secretary of the Interior to establish a 12-member advisory council that would provide recommendations with respect to the preparation and implementation of a management plan for the proposed NCA.

The Berryessa Snow Mountain region of northern California is one of the most biologically diverse, yet lesser known regions of the state. This large, complex area contains a variety of natural and cultural features as well as many outdoor recreational opportunities. The diverse habitats in these regions are home to many native and rare plants, as well as wildlife species such as bald eagles, mountain lions and black bears.

The Department welcomes the opportunity to work with the bill sponsor and the Committee to address coordination of planning, management requirements, and location of boundaries. This bill would provide a good opportunity to use our Service First authority. That is, using the Service First authority, the Forest Service, BLM and BOR can coordinate the planning and management of this area. The Department appreciates the hard work put into this bill by the sponsor in community outreach and willingness to work with the Forest Service. We defer to the U.S. Department of the Interior regarding the designation of lands within the purview of the BLM and BOR.

S.776

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today to provide the Department of Agriculture's (USDA) views on S. 776, a bill to establish the Columbine-Hondo Wilderness in the State of New Mexico, to provide for the conveyance of certain parcels of National Forest System land in the State, and for other purposes.

USDA supports S. 776, if amended to make the provisions related to the conveyances of National Forest System lands consistent with the department's testimony.

S. 776 would designate the 45,000 acre Columbine-Hondo Wilderness Study Area as part of the National Wilderness Preservation System. The bill would also make a boundary adjustment to the Wheeler Peak Wilderness Area. In addition, the bill would direct the conveyance of parcels of National Forest System land to the town of Red River and the village of Taos Ski Valley without consideration. These parcels contain sewage treatment plants, recreational facilities and private buildings that are authorized under special use permits. The bill also would authorize the conveyance of two parcels to private parties, totaling approximately 0.3 acres of National Forest System lands, for fair market value.

*Section 101-Designation of the Columbine-Hondo Wilderness*

The Department supports the addition of the Columbine-Hondo Wilderness Study Area on the Carson National Forest as part of the National Wilderness Preservation System. The 45,000 acre Columbine-Hondo area is located in the Carson National Forest and was designated as a Wilderness Study Area in 1980 and was recommended for Wilderness designation in the Forest Plan in 1986. This alpine area is part of the southern end of the Sangre de Christo Mountain Range and truly has outstandingly remarkable features including Gold Hill and Lobo Peak both rising

above tree line over 12,000 feet. It is a scenic backdrop for skiers at Taos Ski Valley as well as the communities in Taos County. It is an area popular with summer hikers and fishermen because of its stunning views, steep canyons, clear cold streams and accessible trail system.

In the intervening years since the Forest Plan recommendation, two of the steeper trails within the proposed Wilderness Area have been used by highly skilled mountain bikers. Upon designation, these trails would no longer be available for mountain bike use.

*Section 102-Wheeler Peak Wilderness Boundary Modification*

In order to address the loss of mountain biking opportunities with the creation of the Columbine-Hondo Wilderness, mountain bike and wilderness interests have proposed adjusting the Wheeler Peak Wilderness boundary to allow for mountain bike use. The modification also adds acreage to the Wheeler Peak Wilderness for a net addition of 650 acres. While the Department applauds the collaborative efforts between interest groups, we would like to work with the Committee to explore other options to address mountain biking opportunities as this proposal may present unforeseen management challenges.

*Section 201-Town of Red River Land Conveyance and Section 202-Village of Taos Ski Valley Land Conveyance*

While the Department understands the interests of local communities in acquiring parcels which are considered vital to community infrastructure and development, the Department has concerns with the proposed conveyance of these parcels without consideration. As a matter of general precedent, the Department supports conveyances only where the Federal Government receives appropriate consideration. The Town of Red River and the Village of Taos Ski Valley plan to develop permanent infrastructure on the parcels proposed for conveyance. The Department recommends conveying the parcels for community purposes for market value and that the proceeds be deposited into the Sisk Act fund. Additionally, the legislation would provide for the reversion of the property to the United States, at the election of the Secretary, if the conditions under Sections 201(d) and 202(d) are violated. We would like to work with the Committee to address concerns with the reversionary language.

*Section 203—Authorization of Sale of Certain National Forest System Land*

The Department supports the conveyance of NFS parcels for market value and the proceeds being deposited in a Sisk Act fund. The parcels to be conveyed to the private parties are each less than one acre in size.

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

S. 841

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today and provide the Department of Agriculture's views regarding S. 841, the "Hermosa Creek Watershed Protection Act of 2013".

The Department supports S. 841. We thank Senator Bennett and Senator Udall for their collaborative approach and recognize the local involvement that has contributed to the wide support in Colorado for this bill.

S. 841 would designate 107,886 acres of the San Juan National Forest as the Hermosa Creek Watershed Protection Area to protect water resources within the Hermosa Creek Watershed, which supplies residents of the Animas River valley and the city of Durango, Colorado with clean drinking water. This designation would be consistent with the Forest Plan. This bill recognizes the important role that National Forests play in providing clean drinking water, recreation opportunities and economic value for surrounding communities.

Of the 107,886 acres, 68,289 acres would be designated as the "Hermosa Creek Special Management Area." The purpose of the Special Management Area is to conserve and protect the watershed, geological, cultural, natural, scientific, recreational, wildlife, riparian, historical, educational, and scenic resources and values of the area. Overall this special area designation will focus attention and management priority to these non-commodity values within the area, including protection of native Colorado River cutthroat trout.

The bill also would require the creation of a management plan for the Special Watershed Management Area. The Department has concerns about the overlap of the Special Management Area plan with the San Juan Forest Plan. The management of the values and resources within the area can be addressed as components of the existing San Juan Forest Plan. We suggest adjusting this language to reflect incor-

poration of the management guidance as an amendment to the San Juan Forest Plan, rather than creating a new planning process.

In addition, 37,236 acres of the 107,866 acres would be designated as the Hermosa Creek Wilderness under the National Wilderness Preservation System. This area encompasses some of Colorado's most majestic, remote landscapes with many abundant wildlife species including elk, deer, bears and a variety of birds. This area also provides opportunities to experience solitude and primitive recreation use for members of the public seeking areas to connect with nature.

Finally, the Department has minor technical recommendations that we would like to include in this bill that we would be happy to share with this Committee.

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

S. 1305

Chairman Manchin, Ranking Member Barrasso and members of the Subcommittee, thank you for the opportunity to appear before you today to provide the Department of Agriculture's views on S. 1305, "A Bill to provide for the conveyance of the Forest Service Lake Hill Administrative Site in Summit County, Colorado."

The Department supports S. 1305.

S. 1305 would provide that the approximately 40 acre Lake Hill site on the White River National Forest is considered to be an administrative site under the Forest Service Facility Realignment and Enhancement Act (FSFREA) of 2005 (Public Law 17 109-54; 16 U.S.C. 580d) and conveyed to Summit County, Colorado under that Act. The Lake Hill parcel is undeveloped land that would be used by the County primarily for providing affordable local housing for municipal, school, hospital and emergency services employees. As a condition of the conveyance, the County would pay for all administrative costs associated with the conveyance and the proceeds of the conveyance will be made available for capital improvement and maintenance of Forest Service facilities.

The Department supports the conveyance of the Lake Hill administrative site to Summit County Colorado. The Lake Hill site has lost its National Forest character. It is severed from the remaining White River National Forest. Interstate Highway 70 runs parallel on the Northwest side of the parcel, Dillon Reservoir and the Dam Road border the Southeast side and the community of Frisco borders the Southwestern boundary. A community water storage reservoir and utility corridors also occupy NFS lands on, or adjacent to, the parcel.

The conveyance will benefit both Summit County and the Forest Service. Summit County has identified the need to provide workforce housing in the area. The conveyance of the Lake Hill Administrative Site will provide space for this important county project. The Forest Service benefits by the opportunity to use funds generated by the legislation to improve the condition of Forest Service facilities within the Region.

In summary, we support S. 1305 and would be glad to answer any questions.

S. 1341

Chairman Manchin, Ranking Member Barrasso and members of the Subcommittee, thank you for the opportunity to appear before you today to provide the Department of Agriculture's views on S. 1341, the Cabin Fee Act of 2013.

The Department supports S. 1341.

In the early part of the twentieth century, the Forest Service began introducing Americans to the beauty and grandeur of their National Forests. One way to accomplish this objective was to permit individuals to build cabins for summertime occupancy and use within the National Forests. Cabin owners were permitted to occupy and use National Forest System (NFS) lands during the summer months in exchange for a fee. In 1915, the agency began to issue permits of up to twenty years for occupancy and use of NFS land. At that time, there was relatively little recreational use of the National Forests. Today, the National Forests host over 175 million visitors per year. When this recreational cabin program began, there was limited interest in building and owning a remote cabin on NFS land. In the early years, fees were nominal, but since the 1950's, the Forest Service has been mandated to obtain fees approximating market value for the occupancy and use of NFS land. Increasing fees have led to controversy and have resulted in enactment of multiple fee moratoriums and caps over the years. The current law (Public Law 106-291, the Cabin Use Fee Fairness Act of 2000 (CUFFA)) was the last attempt to achieve an equitable fee for the use of National Forest System land.

CUFFA prescribes parameters for the appraisal process and the fees are based on five percent of the appraised market value of the lot under permit adjusted annu-

ally for inflation. The agency began the appraisal process pursuant to CUFFA in 2007, and is continuing that effort presently. As cabin lot permittees received notice of the new fees, some have experienced substantial increases because the old fees were based on appraisals completed ten to thirty years ago. In response, Congress included appropriations language for calendar year (CY) 2010 which limited fee increases to no more than 25% of the fee paid in calendar year 2009. For CY 2011 Recreation Residences fees were held at the fee paid the previous year (CY 2010) however, the 2011 fee was adjusted for inflation. For CY 2012 Recreation Residence fees that were subject to a new base fee resulting from an appraisal in either CY 2011 or CY 2012 were implemented and limited to a 25% increase over the amount billed in CY 2011. If the new base fee to be implemented did not exceed 125% of the fee paid in CY 2011, the fee was fully implemented. Recreation residence fees that were not subject to first year implementation of a new base fee were subject to the annual index. For CY 2013, the Agency issued bills pursuant to the annual fee determined under CUFFA for those recreation residence lots that had current appraisals implemented after an administrative appeal review. If the appraisal for a recreation residence lot was not completed or the subject of an administrative appeal for CY 2013, then the CY 13 annual fee was based upon the previous year's fee adjusted for inflation.

S. 1341 the Cabin Fee Act of 2013 would replace CUFFA on National Forest System lands and revise the procedures for determining the amount the holder of a Special Use Permit for a private cabin on the National Forests must pay to occupy and use the underlying public property. The bill would require the agency to place cabin lot values in eleven categories based on an appraisal and complete remaining appraisals within two years of enactment. It would create eleven tiers or categories ranging from \$500.00 to \$5,500.00 annually and provide for an additional payment on the sale or transfer of the cabin. The Department appreciates the addition of the tenth and eleventh tiers which helps to close the gap between annual fees and market value. However, to further close the gap between annual fees and market value, the Department would like to discuss with the Committee a graduated transfer fee that better reflects the value of the fee tiers.

During the transition from CUFFA to the Cabin Fee Act the Secretary would be required to assess an interim annual fee for recreational residences on National Forest System lands. The interim fee amount must be equal to the lesser of the fee determined under CUFFA, subject to the requirement that any increase over the fee assessed during the previous year shall be limited to not more than 25% or \$5,500.00, which is the scheduled amount for tier 11. This provision of the Cabin Fee Act would ensure that Recreational Residence permit holders would have some protection from steeply escalating annual permit fees.

The Bill would require an annually adjustable transfer fee of \$1,200.00 for the issuance of a new recreational residence lot permit due to a change of ownership of the recreational residence. The Bill requires the Secretary to annually increase or decrease the transfer fee, based on the Implicit Price Deflator of the Gross Domestic Product, applied on a rolling 5-year average. This provision would ensure that the United States would be able to collect a flat fee for transferring a Recreational Residence lot permit.

The cost of administration for the Recreational Residence Program pursuant to CUFFA is a significant financial burden for the agency. Based on a recent study in California (US Forest Service, Region 5), the Agency estimates the cost of administration is from \$500 to \$700 per cabin lot, along with recurring appraisal costs that can approach \$1 million per year. The study showed that the administration of this program accounts for some fifteen percent of this Region's total recreation budget. While there are some 14,000 cabin lot permittees, there are 175 million visitors to the National Forests each year. S. 1341 would reduce the administrative burden by eliminating the requirements for reappraisals not less than every 10 years while applying the savings to provide for a quality recreational experience with continued protection of the environment for all who use the National Forests.

The Department wishes to clarify the purpose of the bill which refers to lands "derived from the public domain," and the bill text refers to National Forest System lands. We would request that the bill purpose be changed to reflect the bill text so that it is clear that this legislation applies to all National Forest System land; that is acquired lands and lands reserved from the public domain.

The Forest Service recognizes that there are helpful reforms in this bill over the current Public Law (106-291). From an administrative perspective, this bill would reduce the agency's re-appraisal costs while providing resources to manage the program in the long term. For the Recreational Residence permit holders, it would provide certainty for cabin fees.

In closing, the Department supports S. 1341 and appreciates the opportunity to work with the bill's sponsor and the Committee's staff to develop legislation that will benefit taxpayers, cabin owners, and other users of the National Forests and Grasslands, and which can be administered without undue burden on the agency.

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

S. 1479

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) regarding S. 1479, which proposes to expedite forest management projects relating to hazardous fuels reduction.

USDA acknowledges the need to increase the pace and scope of restoration on this nation's forests, but opposes S. 1479 because of numerous provisions which would reduce environmental analysis, resource protections, and the opportunities for public participation in agency decision making. We are concerned that this approach will re-polarize forest policy in a way that is detrimental to our goal of restoring the nation's forests.

USDA defers to the Department of the Interior regarding the impact of the legislation on the Department's programs and authorities.

S. 1479 would direct the Secretary to carry out authorized wildfire mitigation projects in at-risk forests and on threatened and endangered species habitat. Authorized wildfire mitigation projects are projects that reduce hazardous fuels, restore forests or watersheds, or protect threatened and endangered species habitat, and include livestock grazing and timber harvests. The Secretary would be required to review a petition to designate National Forest System land as an at-risk forest and as threatened and endangered species habitat within 60 days of its receipt to determine whether to make the designation.

The bill would alter the process for reviewing a proposed wildfire mitigation project. The Secretary would be required to publish a notice of the project in the Federal Register and provide a 30-day comment period for the public to submit written comments on the proposal to the Secretary. Within 60 days of publication, the Secretary would be required to designate the final authorized wildfire mitigation project and publish notice of the designation in the Federal Register. Persons who commented on the proposal would have 30 days to submit written comments on the final project.

If the proposed project includes timber harvesting or grazing, the Secretary would be required to complete an environmental assessment (EA) under National Environmental Policy Act (NEPA) within 30 days of the initial Federal Register notice of the proposed project. If that deadline is not met, the project would be deemed compliant with all requirements of NEPA. An EA would be considered sufficient for grazing for a minimum of 10 years and for a timber harvest project for a minimum of 20 years. Only the proposed agency action would need to be considered in the EA.

Compliance with the notice and review requirements of Section 4 for any authorized wildfire mitigation project would be deemed to satisfy the requirements NEPA, Section 14 of the National Forest Management Act, the Endangered Species Act, and the Multiple Use Sustained Yield Act.

The administrative and judicial review provisions of the Healthy Forests Restoration Act of 2003 would apply.

#### *Comments and Concerns*

There are many programs within the Forest Service that can reduce the risk of catastrophic wildland fires. These include Integrated Resource Restoration, Collaborative Forest Landscape Restoration, Hazardous Fuels, Federal and cooperative Forest Health programs, Stewardship Contracting, Good Neighbor Authority, State Fire Assistance and others. One example is the Western Watershed Enhancement Partnership announced this past summer as part of the President's Climate Action Plan, which reduces the risk of wildfire to critical water supplies. Approaches to restoring fire-adapted ecosystems often require treatment or removal of excess fuels (e.g., through mechanical thinning, prescribed fire, or a combination of the two) that reduce tree densities in uncharacteristically crowded forest, and application of fire to promote the growth of native plants and reestablish desired vegetation and fuel conditions.

Fuel treatments result in healthier ecosystems that are more resilient to disturbance and a changing climate and that provide the many benefits society wants and needs, including climate resilience, clean water, scenic and recreational values, wood products, biodiversity, community preparedness to better withstand wildfire, and

safer conditions for firefighters. Fuel treatments change fire behavior, decrease fire size and intensity, divert fire away from high value resources, and can result in reduced suppression costs.

In FY 2012, the Forest Service treated a total of 2 million acres, which included 1.2 million acres of prescribed fire treatments, 662,500 acres of mechanical treatments to reduce hazardous fuels, and 141,300 acres of wildfire management to reduce hazardous fuels. The wildland-urban interface (WUI) remains the highest priority. Nearly 1.3 million acres of the total hazardous fuels reduction acres were in the WUI. Of these treatments, 93 percent of the acres treated were identified as a treatment priority in a community wildfire protection plan or an equivalent collaborative plan. Hazardous fuels treatments also produced 2.8 million green tons of wood biomass used for energy and nearly 500 million board feet (MMBF) of wood products. We are working with the Department of the Interior and our partners to improve the implementation of these activities on NFS and other public lands.

While the Administration is very supportive of reducing wildfire risk, the Administration believes that some provisions in the bill would reduce environmental analysis, resource protections, and opportunities for public participation in agency decision making. The Administration's concerns with S. 1479 are outlined below.

Section 3 of S. 1479 would allow authorized wildfire mitigation projects to be carried out in inventoried roadless or wilderness study areas. Statutorily designated wilderness study areas are typically managed in a manner so as to maintain their wilderness character and potential. The 2001 Roadless Area Conservation Rule also contains a general prohibition of road building in inventoried roadless areas. The Roadless Rule already permits timber cutting only under limited exceptions, such as removing small diameter timber to reduce the risk of uncharacteristic wildfire effects while maintaining or improving roadless area characteristics. As such, the Section 3 provisions appear unnecessary.

Section 4(c) provides that domestic grazing may be used in an authorized wildfire mitigation project, but in such cases, utilization standards shall not be applied. USDA does not object to including grazing in authorized wildfire mitigation projects, but we do not support doing so without the application of utilization standards. Utilization is commonly understood to be that portion of the current year's forage growth lost to grazing or trampling. Utilization standards are set on a site-specific basis to prevent key forage species from being detrimentally affected by grazing use in the long term. Utilization standards help prevent excessive forage removal or soil erosion which could lead to permanent reduction in forage production and grazing capability. Appropriate utilization levels would help meet the objectives of wildfire mitigation projects and help retard fire spread, while supporting key species sustainability on a site.

Section 5 of S. 1479 would make several changes to the environmental review process under NEPA. Our comments below discuss our recent improvement in implementing NEPA and some specific concerns, but we want to emphasize that the Secretary is keenly interested in working with the Committee to further our NEPA efficiency efforts without adding unnecessary complexity.

Over the past several years, the Forest Service has emphasized the importance of collaboratively developing hazardous fuels reduction and restoration proposals; collaborative development builds the community support necessary to implement projects efficiently. This investment in collaboration takes more time early in the process but allows future projects to be planned and implemented more efficiently as trust and working relationships are in place. Agency experience with the Uncompahgre Plateau Collaborative, the Deshutes Collaborative, the Four Forest Restoration project in the Southwest, and the Black Hills National Forest Pine Beetle Restoration Project are examples of successful large scale collaborative efforts which will speed implementation over a longer time horizon.

The Agency is also identifying NEPA efficiencies by focusing on improving Agency policy, learning and technology. We are expanding the use of focused EAs, expanding categories of actions that may be excluded from documentation in an EA or an environmental impact statement (EIS), and applying an adaptive management framework to NEPA. These NEPA process improvements will increase decision-making efficiencies, resulting in on-the-ground restoration work getting done more quickly and across a larger landscape. The goal of this effort is to ensure that the Agency's NEPA compliance is as efficient, cost-effective, and up-to-date as possible.

S. 1479 would prescribe time frames for preparing an EA for an authorized wildfire mitigation project that includes timber harvesting or livestock grazing that are less flexible than current Agency NEPA requirements, undermines public participation, and would require the publication of two Federal Register notices for each project which is not the most effective way to notify the public and ask for comment on a local project.

American forests are experiencing great changes due to drought, changing climate, wildfire, and insects and disease. To respond, our decision making must be dynamic and flexible so that changing conditions can be quickly addressed and environmental degradation can be stopped. The bill's 10 and 20 year NEPA sufficiency may not be helpful with rapidly changing conditions, such as an insect and disease outbreak which would require a new timber prescription, or a wildfire which would necessitate widespread watershed rehabilitation and salvage harvesting.

Section 6 of S. 1479 requires implementation of the Healthy Forests Restoration Act objections process for covered activities. Pursuant to section 428 of the Consolidated Appropriations Act of 2012, the Forest Service recently promulgated new regulations governing pre-decisional objections for activities implementing land and resource management plans that are documented in environmental assessments. The new objection process essentially mirrors the pre-decisional objection process established in the HFRA, except where otherwise directed by the Appropriation Act. The agency believes that the new objection process already assures an administrative review process that is more aligned with our collaboration efforts and emphasizes public involvement and resolution of concerns where possible before decisions are made.

Section 4(b)(2) of S. 1479 requires that an authorized wildfire mitigation hazardous fuels project be designed to result in a change from Fire Regime Condition Class (FRCC) II or III to FRCC I. A newer tool, the wildland fire potential (WFP), which is an indicator of the relative potential for severe wildfire, has proven useful in addition to the FRCC. Though we may generally agree that it may be desirable to shift the composite vegetation characteristics (e.g. species composition, canopy closure) of any given planning area towards those more resembling the natural (or historical) range of variation, we believe there may be important biophysical conditions at the site and/or local scale that could be overlooked by the use of this coarse-scale approach.

Under section 5(c) of the bill, the emergency procedures described at 50 CFR 402.05 would apply to authorized wildfire mitigation projects. This would appear to greatly expand the scope of applicability of the existing regulations to expedite consultation. Currently, 50 CFR 402.05 establishes an alternative set of consultation procedures to support the emergency response to natural disasters, national defense emergencies, and/or mass casualty threats to American citizens. The Department opposes treating authorized wildfire mitigation projects, even those laudably designed to restore a set of desired habitat conditions, as an emergency as outlined in 50 CFR 402.05.

We would like to thank the members for their interest in this important topic, and would like to work with the Committee on these strategies. The Forest Service recognizes, and has stated in previous testimonies, the need for increasing the scope and scale of our restoration efforts in the face of the threats we are facing today from not only wildfire, but also insects, disease and invasive species and the compounding implications of a changing climate. This is a very high priority and we continue to explore options to increase restoration activities across large landscapes. Our intent is to do so in an ecologically sound manner using a fully transparent process that utilizes the best available scientific information and effectively involves the citizens who would benefit from these activities.

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

Senator MANCHIN. With that, we'll start questioning if it's OK with everybody. I'd like to ask just a few brief questions first.

Ms. WELDON, on the S. 841, the Hermosa Creek Watershed Protection Act, which is to designate some wilderness area, and I know the hunters and everyone seems to be—worked with on this and seem to be satisfied.

I just wanted to make sure during that process is there an ability to enhance the habitat? Are they able to enhance habitat for game?

Ms. WELDON. Yes, there should be. Activities that would occur in wilderness have a different approach, as far as what types of activities to enhance habitat. But in other areas, it's quite possible, and hunting is permitted within the area.

Senator MANCHIN. No motorized vehicles—right?

Ms. WELDON. Correct. No motorized vehicles.

Senator MANCHIN. OK. Let me just see this other—Mr. Ellis, on S. 771, you mentioned that the value of the CEMEX contract is a minimum of up to \$28 million, I believe.

Mr. ELLIS. Yes, correct. By canceling these contracts is \$21 million.

Senator MANCHIN. What's the total projected value of the resources to the U.S. Treasury? What were you all projecting as far as resources?

Mr. ELLIS. Mr. Chairman, by canceling these valid contracts, we'd lose \$21 million in royalties, and the bill prohibits future mining on the site, and, thereby, foregoing an estimated \$450 million in royalties.

Senator MANCHIN. So all in total, it's about \$475 million to the Treasury, the taxpayers.

Mr. ELLIS. Yes.

Senator MANCHIN. They're going to—

Mr. ELLIS. Yes, Mr. Chairman.

Senator MANCHIN. As I understand, they are going to come up with—they're going to offset as far as the city itself and—

Mr. ELLIS. Yes, what—According to language in the bill, they would sell 10,000 acres of public lands near Victorville, which, of course, are also a resource to the taxpayer. So, you know, this would forever prevent those lands or the resources on those lands from being used for the greater public.

Senator MANCHIN. One more. On S. 339, I know there are concerns with this bill, and I just wanted—if you knew if there was any way for the industry and the tribe to come together for a compromise. Do you believe there needs to be major changes for any of that compromise to happen or is it beyond that position?

339 is to facilitate the efficient extraction of metal resources in southeast Arizona by authorizing and directing an exchange of Federal and non-Federal land.

Mr. ELLIS. OK. The concern we have there, Mr. Chairman, is two-fold. One, the NEPA process. We generally do NEPA first. In my career, we do the NEPA process, involve all our publics—

Senator MANCHIN. Sure.

Mr. ELLIS [continuing]. Then after we go through that a decision comes.

Also, we have a trust responsibility that we take very seriously with Native American tribes, a government-to-government trust responsibility. From our perspective, that must be a meaningful consultation that we do with tribes. That's very important, and we do out there on lands.

Senator MANCHIN. Thank you. Senator Heinrich.

Senator HEINRICH. Thank you, Mr. Chairman.

Deputy Chief Weldon, I want to thank you for your support of S. 776, the Columbine-Hondo Wilderness Act, and say that I very much look forward to working with the Forest Service on bill details as it moves forward.

One of the reasons why my constituents have—one of the reasons they've continually raised for supporting this bill is the importance of the watershed, in particular, that it would protect.

In an arid western State like New Mexico and many of the states in the intermountain west, there is nothing more valuable than our

water resources. This area is home to the headwaters of both the second- and third-largest tributaries of the Rio Grande.

With more than half of our State still in drought, even after the recent floodwaters and rains, we need to do everything we can to protect those water resources.

Can you talk a little bit about how conservation designations like this can help us to conserve water, especially as we face the growing uncertainties of a highly variable climate?

Ms. WELDON. Yes, thank you, and, you know, it's a real pleasure to see a project like this one, because the community really has come together to acknowledge the importance of what you'd call the natural infrastructure in the process is that natural and healthy landscapes can serve to provide so many needs, you know, critical among that being water.

So by ensuring these types of protection it does a couple of things. One, is, I think first and foremost, it serves as a permanent way of highlighting to the community the difference of this particular landscape compared with others, and really moving above other outcomes from multiple-use land that value protecting water with so many other things that come along with that.

I also believe it gives an opportunity to build some additional linkages and connections for partnerships that can be invested in, you know, understanding the things within that watershed that continue to need to be improved to put it in the best position for the long term to be resilient and to be able to provide that water downstream.

Senator HEINRICH. Thank you. I want to move on real quickly to the Southeast Arizona Land Exchange Act. I know my colleague, Senator Flake, from Arizona has worked incredibly hard on this, but I would be remiss if I didn't express some of the concerns that I've been hearing actually from my constituents in New Mexico regarding the impact of the bill on Sacred Sites.

I've heard from both Mescalero Apache and Chiricahua Apache Nation as well as the All Indian Pueblo Culture about the potential impacts, their opposition to the bill, and its impact on Sacred Sites important to both Apache and Yavapai people.

Deputy Chief Weldon, I was very pleased last year when the U.S. Department of Agriculture finally finalized the new policies regarding the management and protection of Sacred Sites on lands that the department manages, including an MOU with Interior and other Federal agencies.

I just wanted to ask you would this bill be in compliance with your department's policies with regard to Sacred Sites?

Ms. WELDON. As the bill is currently written, we're concerned that we would be foregoing key opportunities to implement policies and regulations that we have in place and executive orders for ensuring that consultation. So that remains one of our very strong and primary concerns with the bill at this point.

Senator HEINRICH. So meaningful consultation is really the piece of this that you're most—

Ms. WELDON. It's formal government-to-government consultation that's done under the guise of a proposal for action by the Federal Government.

Senator HEINRICH. Thank you very much. That's all I have, Mr. Chairman.

Senator MANCHIN. Senator Flake.

Senator FLAKE. Thank you, and I appreciate concern about Sacred Sites being raised by my colleagues. It's something that we're all concerned about and we want to make sure that there are sufficient consultations.

Now that the mine has actually submitted a plan, that's when the process can start in terms of tribal consultations, is that right?

Ms. WELDON. It can be the beginning of that process. We need to get to the point where the Forest Service has reviewed the plan that's been submitted and move to the next step of actually starting the NEPA process. But having the plan in place does give us the opportunity to have conversations. It's just a question of when the formal consultation would occur.

Senator FLAKE. OK. Great. Let's talk about that NEPA process for a minute. You both testified that it's the administration policy that NEPA be fully complied with to address all Federal agency actions and decisions, including those necessary to implement congressional direction, unquote.

How does this policy apply to other land exchanges or conveyance bills that have come before this committee?

Ms. WELDON. I'll respond first. I don't have the track record of that, but our general policy has been that in order for us to complete conveyances, NEPA has to be completed. So I can get you info that says what our track record is, but I'm sorry I don't have that right now.

Senator FLAKE. OK. Anything to add, Mr. Ellis?

Mr. ELLIS. Yes. I don't have the records either, but when I've done land exchanges in my career, and I've done many, the NEPA process is something we go through when we do this.

Senator FLAKE. Why didn't the administration express concern about the absence of pre-exchange NEPA with the Lyon County Executive Development and Conservation Act? That was S. 159.

Mr. ELLIS. Generally, Senator, when we go through the NEPA process, we put out our proposal on what we're going to do. We go to our public. We have public meetings, tribal consultation. We generally, then, look at alternatives of that. We go through a process and get their input.

Then the decisionmaker at the other end, that decisionmaker then has the benefit of not only the potential impacts, not only to the environment, but the social-economic impacts are also part of this in that decision process. So that's why, you know, we feel it's a very important process to go through prior to decision.

Senator FLAKE. I understand prior to decision, but is there any bright line as to when that consultation, or the pre-exchange conveyance, when it will be required and when it won't?

I'm sorry, it seems here that this concern has been raised at this stage in the process with this bill, but wasn't raised or hasn't been raised consistently in other land-conveyance bills. So is there a bright line as to when this is raised?

Mr. ELLIS. Senator, are you referring to the consultation process?

Senator FLAKE. Yes.

Mr. ELLIS. OK. I can only speak from my experience and that is that the consultation process, we do it with tribes. You know, that relationship is ongoing. On a specific project, generally, we start that process at the initial stages and we continue that as we go through the NEPA process.

Senator FLAKE. OK. Those are administrative decisions. This here with this bill was Congress deciding, so—but I was just wondering there seems to be just a little inconsistency with some legislation coming through as when the administration says that certain steps need to be taken, and I just want to make sure that this legislation is treated like other pieces of legislation by the administration. So thank you.

Senator MANCHIN. Mr. Ellis, one final on S. 771, I think that it was stated that the lands that would be sold to compensate CEMEX were already identified for disposal, and I just wondered if you could identify that.

Mr. ELLIS. Mr. Chairman, actually, the lands were identified, the Victorville lands in question were identified in 1980 California Desert Conservation Plan mandated as unclassified lands, reading from the plan, to be managed on an individual basis. This is what's in the plan.

Then the land 10-year adjustment includes the Victorville lands as a disposal zone, meaning they are available for disposal after you have further analysis. So that's how they're classified.

Senator MANCHIN. Thank you. I want to thank both of you all for being here. We appreciate so much your testimonies and we'll put all that in the record. Thank you.

Senator FLAKE. Mr. Chairman.

Senator MANCHIN. Oh, I'm sorry. Senator Flake.

Senator FLAKE. I don't think I was as clear as I should have been. It's my fault. On that last question with—what I'm seeking to find out is is there a bright line as to when pre-exchange conveyance NEPA will be required and when it won't? That's where I've seen kind of an inconsistency with the administration's position on these land-conveyance bills.

So is there a bright line as to when you require a pre-exchange NEPA and when you don't?

Ms. WELDON. To my knowledge and understanding, you know, with my own experience, and what I would say I'd like to go and do some research on this question in particular, is that has been to complete the NEPA prior to conveyance.

One thing that shows up differently is the timing within a process that may be underway for a land exchange that ends up ultimately being done through legislation that sometimes has a different influence or effect compared with one that hasn't had any public process initiated.

So sometimes it's about the timing of when the NEPA portion may have got started and what time a proposal for legislation would have occurred.

The key part, like Steve was saying, has to do with ensuring the ability for good public engagement to have an action that's the basis for doing our tribal consultation in such a way that really allows the full consideration prior to landing on what that ultimate decision is, you know, whether it's ultimately through legislation or

through the regular administrative process. So I think I'd like to go back and get some more information for you on that.

Senator FLAKE. OK. Thank you. Like I said, we just want to make sure that we're not treating this legislation differently than we've treated other legislation or land-conveyance issues. So thank you.

Ms. WELDON. Thank you.

Senator MANCHIN. Thank you all both.

Ms. WELDON. Thank you.

Senator MANCHIN. Appreciate it.

At this time, we'll have our third panel, which will be the Honorable Robert Garcia, Mr. Mike Rondeau, the Honorable Terry Rambler and the Honorable Robert Kellar.

Let me thank you all for coming. We appreciate it very much you being here with us and look forward to your testimony.

Chairman Rambler, I'll start with you, if you will, start with your statement.

**STATEMENT OF TERRY RAMBLER, CHAIRMAN, SAN CARLOS  
APACHE TRIBE**

Mr. RAMBLER. OK. Thank you. Good afternoon, members of the subcommittee. My name is Terry Rambler, Chairman of the San Carlos Apache Tribe.

Thank you for this opportunity to testify on S. 339. Joining me today are Councilman Wendsler Nosie, Sr., and tribal members Alfred and Rose Belvado, Tanaya White, Naelyn Pike and Vanessa Nosie.

We oppose this bill for 3 reasons. One, it'll destroy our sacred areas. Two, it will deplete and contaminate the region's already overdrawn water supply, and, three, it is a bad deal for the American taxpayer.

I also serve as president of the Intertribal Council of Arizona which represents 21 tribes in Arizona and submitted testimony strongly opposing this bill.

I have here a list of tribes and tribal organizations that represent over 400 tribal governments united in opposition to this bill. This opposition keeps growing.

The bill would transfer 2,422 acres of our sacred land known as Oak Flat and Tonto National Forest to Resolution Copper to develop a massive copper mine.

Oak Flat is a place of worship where our Gaan, our spiritual deities, reside. Just as Mount Sinai is a holy place to Christians, Oak Flat is the equivalent for us.

The Apache way is to respect and care for our relatives, which includes the animals and plants and their habitats that thrive at Oak Flat. Our Gaan provides these living things to sustain life and for use in our ceremonies and prayers.

Our people have always gone to Oak Flat to gather ceremonial items and to conduct ceremonial dances, such as the Sunrise Ceremony that celebrates a young woman's coming of age.

I'd like to ask Naelyn Pike to stand. Naelyn wrote about her Sunrise Ceremony, which took place last year. Her account and pictures are attached to my written testimony. Naelyn's younger sister recently had a Sunrise Ceremony at Oak Flat.

Like to ask Mr. and Mrs. Belvado to stand. Mr. and Mrs. Belvado are longtime members of the San Carlos Elders Advisory Council. Mrs. Belvado is a direct descendent of Apaches from the Oak Flat area who were forcibly removed to the San Carlos Reservation.

Mr. and Mrs. Belvado are elders who are passing down our spiritual connections to young Apaches like Naelyn. They demonstrate the tribe's long and continued connection to Oak Flat.

I have a map here in green and orange that shows Oak Flat in relation to our reservation. As you can see, the Tonto National Forest borders our reservation and Oak Flat is 15 miles away.

Oak Flat and the forests are our aboriginal homelands. This forest shares the same name as the Tonto Apache Band that was removed to San Carlos.

I have a second map here that shows Oak Flat. The outline shows land withdrawn from mining by President Eisenhower. Federal laws and policies require meaningful consultation with tribes before taking Federal action.

However, once Oak Flat is held in private ownership, as this bill mandates, these Federal laws will no longer apply and our sacred area will be destroyed without our input.

Resolution Copper plans to use the block-cave method to extract the copper beneath Oak Flat because it is cheaper than other methods. However, it is also more destructive.

This diagram here depicts the block-cave mining process. The company would dig a tunnel 7,000 feet down to extract one cubic mile of ore. It would take 1,400 Cowboy stadiums to hold one cubic mile of ore. At this depth, the temperature is 170 degrees Fahrenheit and not a place humans can go.

The next diagram on block-cave mining shows that the surface will eventually collapse once the cubic mile of ore is removed, causing an open pit two miles in diameter and visible from outer space.

Here is a picture of subsidence that has occurred from block-cave mining. As you can see, the surface is destroyed.

Our second major concern is the loss of water in the region and our water rights. One of the purposes for establishing the Tonto National Forest in 1905 was to protect the watersheds and the quality of the water. This bill undermines that purpose.

The mining project will require at least 20,000 acre-feet of water annually to keep the mine from flooding. This equates to the life water supply for 180,000 Arizona citizens each year.

According to a recent study, this massive groundwater pumping would not be sustainable, and this will forever damage the region's water supply and threaten surface water resources.

Here is a picture of a perennial spring at Oak Flat. Mining here will contaminate and dry up the spring and other water sources at Oak Flat.

Here is a picture of the Oak Flat area and an ancient oak tree that has nourished the Apache people with centuries with its acorns. It takes 100 years to produce the first acorn from these trees. These trees will be destroyed when the land collapses.

My final point is that at a time when all Americans are being asked to tighten our belts, this bill will result in a giveaway of American wealth to a foreign-owned mining company.

The appraisal requirements included in S. 339 do not ensure that the public will receive fair value. The American taxpayer stands to receive only a small fraction of the value of the Federal minerals in the exchange.

In closing, I urge you to oppose this bill.

[Speaking in the Apache language.]

What I'm saying in Apache is may God watch over you and give you guidance. Thank you.

[The prepared statement of Mr. Rambler follows:]

PREPARED STATEMENT OF TERRY RAMBLER, CHAIRMAN, SAN CARLOS APACHE TRIBE

S. 339

My name is Terry Rambler. I am the Chairman of the San Carlos Apache Tribe ("Tribe"), representing 15,000 tribal members. The San Carlos Apache Reservation ("Reservation") is located within part of our aboriginal territory, and spans 1.8 million acres in southeastern Arizona. I am also President of the Inter Tribal Council of Arizona ("ITCA"), a non-profit organization representing 20 federally recognized Indian tribes. Thank you for the opportunity to testify about the Tribe's views on S. 339, the Southeast Arizona Land Exchange and Conservation Act of 2013. The Tribe strongly opposes S. 339 and its companion bill, H.R. 687, and respectfully urges Members of the Subcommittee to oppose this bill for the reasons set forth below. Also, ITCA has submitted written testimony expressing its strong opposition to S. 339.

*Summary of Objections to S. 339*

S. 339 would direct the Secretary of Agriculture to convey 2,422 acres of U.S. Forest Service lands in an area called Oak Flat and the copper ore body underneath it into the private ownership of Resolution Copper Mining, LLC ("Resolution Copper" or "Resolution")—a subsidiary of foreign mining giants Rio Tinto (United Kingdom) and BHP Billiton, Ltd. (Australia) for block cave mining. Section 4(h) mandates that the land will be subject only to applicable laws "pertaining to mining and related activities on land in private ownership." Section 4(i) mandates that the Oak Flat area be transferred to Resolution Copper within one year of enactment—period. And Section 4(j) limits application of National Environmental Policy Act ("NEPA") to one subparagraph of the Act—which could be questioned in light of Section 4(h), which limits application of federal laws to "land in private ownership."

In the decade since this project has been in development, Resolution Copper has consistently refused to provide details regarding the environmental, financial, and economic impacts of the project. S. 339 would give the Oak Flat area to Resolution Copper for a bare fraction of its actual value. Once the land is privatized under S. 339, federal laws and policies that currently protect the area and tribal rights would no longer apply or have limited application.

Since 2005, the San Carlos Apache Tribe has opposed this legislation in its various forms. As details about the impacts of this legislation have emerged, public opposition has grown. Many tribes and national tribal organizations have joined us in opposing this bill, because of the dangerous precedent that it would set in transferring a known tribal sacred area located on federal land to a foreign-owned mining company for activities that will ultimately destroy the area while circumventing meaningful government-to-government consultation between the U.S. and Indian tribes.

Tribal opposition to S. 339 includes: the National Congress of American Indians, the National Indian Gaming Association, the Inter Tribal Council of Nevada, the United South and Eastern Tribes, the Midwest Alliance of Sovereign Tribes, the Great Plains Tribal Chairman's Association, the Affiliated Tribes of Northwest Indians, the Eight Northern Indian Pueblos Council, the All Indian Pueblo Council, the California Association of Tribal Governments, the Coalition of Large Tribes, and many tribes and other tribal and non-tribal organizations.

Local communities near the Oak Flat area have either expressed opposition to this legislation or have raised serious concerns about it. The Town of Superior, which is the town located closest to the proposed mining project, opposes the bill.<sup>1</sup> The City of Globe, located near the project, tabled its support for the project. Other

<sup>1</sup>The Town of Superior's resolution\* dated March 15, 2013, opposing this bill is attached to my testimony. (\*Document has been retained in subcommittee files.)

groups that oppose this bill include: the Concerned Citizens and Retired Miners Coalition in Superior, AZ, the Arizona Mining Reform Coalition, the Arizona Mountaineering Club, the Arizona Native Plant Society, the Arizona Wildlife Federation, Environment Arizona, the Sierra Club, the Audubon Society, the Natural Resources Defense Council, the Access Fund, the Queen Valley Homeowners Association, the Progressive National Baptist Convention, the Friends Committee on National Legislation, the Religion and Human Rights Forum for the Preservation of Native American Sacred Sites and Rights, and many others. Attached to this testimony is a detailed list of tribes, tribal organizations, and other organizations opposing S. 339 / H.R. 687.

Our opposition to S. 339 is based upon the following points, among others:

(1) The bill would desecrate and destroy an area of religious and sacred significance to the Apache and Yavapai people in contravention of federal laws and policies governing meaningful consultation with Indian tribes and protection and preservation of sacred sites;

(2) The bill mandates, in direct violation of NEPA, the transfer of the Oak Flat area to Resolution Copper without first informing the public about the adverse impacts on the quality and quantity of the region's precious water supply, the environment, and the potential health and safety risks to the public; and

(3) The bill constitutes a multi-billion dollar giveaway to a foreign-owned mining company that is partnering with the Iran Foreign Investment Company ("IFIC"), which is controlled by the Islamic Republic of Iran, in a uranium mine in Namibia.

In considering S. 339, I respectfully request that you question the merits of this legislation and closely examine whom actually benefits by its passage. This legislation is a special interest give-away of unprecedented proportions to a foreign owned entity with no attachment to our nation. The legislation fails to protect Indians, Arizonans and Americans. Simply put, the American public cannot afford this deal.

*Status of H.R. 687, Companion Bill to S. 339, in the House*

Last Wednesday, on November 13th, the U.S. House of Representatives unexpectedly scheduled H.R. 687 for House floor consideration, and then abruptly pulled the bill as Members were waiting on the floor to cast remaining votes on the bill. This was the same day that San Carlos tribal leadership and the leadership of over 550 other tribes from across the United States were in Washington, D.C., to meet with the President to discuss important issues facing Indian country and to honor the government-to-government relationship between the United States and Indian tribes.

This is the second time in two months that House Republican leaders pulled this bill from the House floor schedule. On September 26, 2013, the House completed debate on H.R. 687 and amendments to the bill. However, the House pulled the bill due to concerns that the bill did not have enough votes for passage due to tribal opposition and growing opposition by House Members. Remaining as unfinished business on H.R. 687 are a vote on an amendment by Rep. Ben Ray Lujan (D-NM) to protect sacred and cultural areas and a vote on the underlying bill.

The San Carlos Apache Tribe is deeply appreciative of the tremendous efforts of tribes across the country and Members of Congress from both sides of the aisle uniting to oppose this bill. The swift mobilization of Indian country and the outspoken opposition of congressional tribal champions were critical in stopping House advancement of this bill last week. The opposition of tribes against this bill will continue to grow. Indian country is strongly united in opposition to H.R. 687. Many tribal sacred areas are located on federal lands because these lands were once our ancestral homelands. Tribal connections to these lands have not been extinguished despite changes in title.

*The Oak Flat Region is a Sacred Site*

The 2,422 acres of lands to be conveyed pursuant to S. 339 are located in the Tonto National Forest and include the 740 acres of the Oak Flat Withdrawal where the Oak Flat Campground is located and the surrounding area (collectively referred to as the "Oak Flat area"). The San Carlos Apache Reservation is bordered to the west by the Tonto National Forest. The Forest is named after the Tonto Band of Apaches who lived in the area along with other Apache bands until the U.S. Cavalry forcibly removed them in the 1880's to nearby reservations. The Oak Flat area is located 15 miles from our Reservation. The Forest and the Oak Flat area are part of our and other Western Apaches' aboriginal lands and it has always played an essential role in Apache religion, traditions, and culture. In the late 1800's, the U.S. Army forcibly removed Apaches from our lands, including the Oak Flat area, to the

San Carlos Apache Reservation. We were made prisoners of war there until the early 1900's. In fact, U.S. military forces were stationed on the Reservation until 1900, almost 30 years after the conclusion of the Western Apache wars and at Ft. Apache until 1920. Even though we were removed at gunpoint by the United States from the Oak Flat region, we still have a unique and sacred connection to this land.

Oak Flat has played an essential role in the Apache religion, traditions, and culture for centuries. In Apache, our word for the Oak Flat area is Chich'il Bildagoteel (a "Flat with Acorn Trees"). Oak Flat is an Apache holy and sacred site and traditional cultural property with deep religious, cultural, archaeological, historical and environmental significance to Apaches, Yavapais and other tribes.

At least eight Apache Clans and two Western Apache Bands have documented history in the area. Apache clans originated from this area and Apaches on the Reservation have ancestors who came from the Oak Flat area before being forced to Old San Carlos. Tribal members' ancestors passed their knowledge to their descendants who are alive today. Our people lived, prayed, and died in the Oak Flat area for decades and centuries before this mining project was conceived.

For centuries, Apache religious ceremonies and traditional practices have been held at Oak Flat. Article 11 of the Apache Treaty of 1852 requires the United States to "so legislate and act to secure the permanent prosperity and happiness" of the Apache people. S. 339 would directly abrogate this promise. The Oak Flat area, as well as other nearby locations, is eligible for inclusion in and protection under the National Historic Preservation Act of 1966 and under other laws, executive orders and policies.

Today, the Oak Flat area continues to play a vital role in Apache religion, tradition, and culture. The ceremonies conducted at Oak Flat are part of a centuries-old continuum of ceremony and everyday life. The Oak Flat area is a place filled with power—a place where Apaches today go for prayer, to conduct ceremonies such as Holy Ground and the Sunrise Dance that celebrates a young woman's coming of age, to gather medicines and ceremonial items, and to seek and obtain peace and personal cleansing. The Oak Flat area and everything in it belongs to powerful Diyin, or Holy Beings, and is the home of a particular kind of Gaan, which are mighty Mountain Spirits and Holy Beings on whom we Apaches depend for our well-being.

Apache traditions and practices mean that we are responsible to respect and to take care of our relatives, which in our culture includes all living things. On my mother's side, I am Tu'gain, (Whitewater Clan). I am related to the eagles and hawks, yellow corn, and a plant called iya'aiye? (wild tarragon). On my father's side, I am Nadots'osn (Slender Peak Clan) and related to the roadrunner, side-oats grama grass, and black corn. These animals and plants thrive at Oak flat and elsewhere. Our lives are closely intertwined with these living things as the power of the Holy Beings provide the plants, corn and animals to sustain life and for use in our ceremonies and prayers. The Apache way of life is to take care of these relatives and their habitats. The Tonto National Forest's own website states that it works closely with tribes in the area to ensure that we can continue to practice our religious and traditional activities there and to protect tribal archeological, historical, and cultural areas.

Apache Elders tell us that mining on the Oak Flat area will adversely impact the integrity of the area as a holy and religious place. There is no possible mitigation for destroying Apache cultural resources even if Resolution Copper and/or the Forest Service were to have the best of intentions. Again, Oak Flat is home to Gaan and Holy People and the type of activities proposed would diminish the power of the place. Without the power of Gaan, the Apache people cannot conduct our ceremonies. Our Apache Elders and traditional medicine practitioners tell us that if mining occurs under or near the Oak Flat area, we will become vulnerable to a variety of illnesses and our spiritual existence will be threatened. There are no human actions or steps that could make this place whole again or restore it once lost.

Our Elders teach our youth from the earliest of ages the meaning and significance of our sacred places to the Apache people. I have appended to my testimony an account by Naelyn Pike, a fourteen-year old Apache young woman here with me today, who described her experiences and the importance of Apache sacred sites to her. It is a moving description of the importance of Apache sacred sites to all of our people, young and old. I hope you read her account.

I have also attached\* to my testimony a picture from Ms. Pike's Sunrise Ceremony at Mt. Graham as well as two pictures from the Sunrise Ceremony of Ms. Shelby Pina with her Godmother Elaina Nosie and her Godfather Vansler Nosie at Oak Flat. Our Elders, Ms. Pike, Ms. Pina, their relatives, our other youth, and the rest of our community seek reassurance from the Committee that our sacred and

\*All attachments have been retained in subcommittee files.

cultural areas, including Oak Flat, will not be destroyed. We urge the Committee to protect these areas of tremendous significance to us for the future of our people.

The unique nature of the Oak Flat area has long been recognized and not just by the Apache. The Oak Flat Withdrawal was set aside from appropriation under the mining laws by President Eisenhower and reaffirmed by President Nixon.<sup>2</sup> U.S. Department of Agriculture (USDA) Secretary Tom Vilsack has acknowledged the Oak Flat area as a “special place” that should be protected from harm “for future generations.” Protecting the Oak Flat area as a sacred site is consistent with the articles of the United Nations Declaration on the Rights of Indigenous Peoples (“Declaration”), which was adopted by the U.N. General Assembly in September of 2007, and for which President Obama announced U.S. support in December of 2012.<sup>3</sup> The Obama Administration tied its support of the Declaration to the current federal policies of government-to-government consultations with Indian tribes and maintaining cultures and traditions of Native Peoples.<sup>4</sup>

The mining project proposed by Resolution Copper will destroy the Oak Flat area. The block cave mining technique will permanently ruin the surface of the area. As explained below, the water required for the project will forever alter the medicinal plants and trees in the area upon which our people rely for healing and prayer. The ore body that Resolution seeks lies 4,500 to 7,000 feet beneath the Oak Flat area. Resolution admits that the ore body is “technologically difficult” to mine, that it may take up to a decade to develop this technology, and that temperatures as high as 175 degrees Fahrenheit will be encountered.<sup>5</sup> It also acknowledges that the land above the ore body, the Oak Flat Campground, will subside and cave in.<sup>6</sup> The mine will destroy the nature of the land, its ecology, and its sacred powers forever.

Some of the bill’s proponents claim that the mining would take place below ground and that the sacred and cultural areas at Oak Flat would be undisturbed. This is an absurd argument, considering that Resolution Copper admits there will be significant subsidence and considering the aftermath resulting from other block cave mines. The attachments to my testimony contain a photograph of subsidence from a block cave mine that was also used on the House floor during the debate on H.R. 687 on September 26, 2013. This photo shows the destruction that results from block cave mining. Common sense dictates that removing millions of tons of earth directly below a sacred and cultural area will cause the surface to subside and collapse. There is not one guarantee in this bill that collapse of these areas would be prohibited. In addition, nothing in the bill holds Resolution Copper accountable for damages done to this place of worship, to our water supply, or to our environment. For my constituents and many other tribes, this alone is reason enough to oppose S. 339.

*S. 339 Circumvents Federal Laws and Policies Designed to Protect Native American Religious and Sacred Areas*

Indian tribes, including the San Carlos Apache Tribe, ceded and had taken from us hundreds of millions of acres of tribal homelands to help build this great nation. The United States has acknowledged that, despite the transfer in title of these lands to the U.S., Native people still maintain a connection to their former lands. The United States has an obligation to accommodate access to and ceremonial use of religious and sacred sites by Native Americans as well as a responsibility to protect tribal sacred areas. This solemn obligation is codified in a number of federal laws, regulations, and policies.<sup>7</sup> A core aspect of each of these federal enactments is the requirement that the U.S. must conduct meaningful government-to-government consultation with affected Indian tribes prior to making a decision that will impact a Native sacred area.

Executive Order 13175 on tribal consultation requires federal agencies to conduct consultations with tribes when proposed legislation has substantial direct effects on

<sup>2</sup>Public Land Orders 1229 (1955) and 5132 (1971).

<sup>3</sup>See <http://www.ohchr.org/english/issues/indigenous/declaration.htm>.

<sup>4</sup>Available at <http://www.state.gov/s/tribalconsultation/declaration/index.htm>.

<sup>5</sup>See S. Hrg. 110-572, p. 44 (July 9, 2008)(Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate, S. 3157 110th Cong.).

<sup>6</sup>See Resolution Copper website available at <http://www.resolutioncopper.com/sdr/2011/environment>.

<sup>7</sup>See the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq.; the American Indian Religious Freedom Act, 42 U.S.C. 1996; the National Historic Preservation Act, 16 U.S.C. 470 et seq.; the Religious Freedom Restoration Act, 42 U.S.C. 2000bb et seq.; Executive Order 13175: Consultation with Indian Tribal Governments (Nov. 6, 2000); and Executive Order 13007: Indian Sacred Sites (May 24, 1996).

one or more Indian tribes.<sup>8</sup> USDA Secretary Vilsack acknowledged “it is important that [the Southeast Arizona Land Exchange] engage in a process of formal tribal consultation to ensure both tribal participation and the protection of this site.”<sup>9</sup> President Obama stated in his 2009 Memorandum affirming and requiring agency implementation of E.O. 13175, that “[h]istory has shown that failure to include the voices of tribal officials in formulating policy affecting their tribal communities has all too often led to undesirable and, at times, devastating and tragic results.”<sup>10</sup> I can attest with unequivocal certainty that the San Carlos Apache Tribe has never been consulted on this bill or any of its past iterations. No federal agency has ever reached out to the Tribe to consult on this land exchange despite the Tribe’s requests to do so.

To strengthen federal policies pertaining to Indian tribes, the Obama Administration recently acted to improve protections of Native religions and sacred areas. In December of 2012, the USDA released a report titled, “USDA and Forest Service: Sacred Sites Policy Review and Recommendations,” which provides a framework for how and why the United States, and specifically USDA and the Forest Service, is legally obligated to protect and preserve sacred areas located on federal lands. The Report acknowledges, “Like almost all public and private lands in the United States, all or part of every national forest is carved out of the ancestral lands of American Indian and Alaska Native people.” It affirms and lists the Administration’s federal legal obligations to protect and provide access to Indian sacred sites and to consult with tribes on any federal actions that will impact sacred sites.

On December 5, 2012, five federal agencies, including USDA, the Departments of the Interior, Defense, Energy, and the Advisory Council on Historic Preservation entered into a MOU to develop guidance for the management and treatment of Native sacred areas, to develop a public outreach plan to acknowledge the importance of maintaining the integrity of Native sacred areas and to protect and preserve such sites, and to establish practices to foster the collaborative stewardship of sacred sites, among other goals. On March 5, 2013, these federal agencies adopted an action plan to implement the MOU, which entails working to “improve the protection of and tribal access to Indian sacred sites, in accordance with Executive Order 13007 [on Indian Sacred Sites] and the MOU, through enhanced and improved interdepartmental coordination and collaboration and through consultation with Indian tribes.”

Section 4(c) of S. 339 provides for tribal consultation within thirty days of enactment of the Act “in accordance with applicable laws,” BUT the bill in Section 4(i) overrides Section 4(c) by mandating that the USDA Secretary transfer the Oak Flat area to Resolution Copper within 1 year of enactment of the Act to become private land where it would no longer be subject to federal laws.<sup>11</sup> As such, tribal consultations would be a mere formality with no meaningful effect. Without the government-to-government consultations prior to enactment as required by federal law and policy, S. 339 makes an end run around the legal and policy obligations to consult with tribes by transferring the Oak Flat area to Resolution Copper into private ownership. Again, once the lands are in private hands, the obligations to protect the Tribe’s religious and sacred areas and accommodate tribal access will have no force of law.

Proponents and sponsors of this bill claim that the Tribe has been consulted regarding Resolution Copper’s mine. Such a claim is misleading and disingenuous. Tonto National Forest has consulted with the Tribe in a piecemeal and compartmentalized manner regarding only limited pre-feasibility drilling tests conducted by Resolution Copper on lands outside of the Oak Flat area. The Tribe has never been consulted about the land subject to this exchange. The Tribe has never been consulted about the overall mining operation or its potential impacts. Indeed, Resolution only delivered its mining plan of operation for initial review to the Tonto National Forest last Friday, November 15, 2013.

Further, despite federal mandates to consult with tribes on sacred areas and to protect and provide access to these areas as well as to protect and give back holy items taken from tribes, there are some who choose to dismiss Native American religious views. For example, the Smithsonian still refuses to repatriate Apache holy objects despite overwhelming evidence and support from tribes and academics.

<sup>8</sup> 59 Fed. Reg. 22951 (April 29, 1994).

<sup>9</sup> See Letter from USDA Secretary Vilsack to Chairman of the Senate Energy and Natural Resources Committee, Subcommittee on Public Lands and Forests (July 13, 2009).

<sup>10</sup> 74 Fed. Reg. 57881 (Nov. 5, 2009).

<sup>11</sup> Section 4(i) of the bill states, “the land exchange directed by this Act shall be consummated not later than one year after the date of enactment of this Act.” (Emphasis added).

In the context of S. 339, similar discriminatory views are being undertaken that ignore centuries of Apache practices, traditions, and customs. Proponents of the bill seek to subordinate our religious and cultural views so that this project can move forward. Would they have this same position if an ore body were to be located beneath their church, cathedral, the Vatican, Arlington National Cemetery, or Mt. Sinai and a company wanted to bulldoze or destroy it? Likely not.

Only when the mining plan of operations is made public (which it has not been to date) will the Tribe and the public have an opportunity to learn the most basic aspects of the proposed mining project. I can assure you Resolution will have painted the rosiest picture possible. Rigorous analysis and vetting of Resolution's plan of operations will reveal flaws that we already know exist and which I discuss in more detail below.

*S. 339 Authorizes the Project to Move Forward without Informing the Public of the Adverse Impacts to the Region's Water, Environment, and Health and Human Safety*

#### THE BILL CIRCUMVENTS NEPA AND PUBLIC INTEREST REQUIREMENTS

S. 339 undermines the National Environmental Policy Act (NEPA). NEPA requires an analysis of potential impacts, including providing public notice and an opportunity to comment before federal actions are taken. It is ironic that in the ten years that this or similar bills have been before Congress, the NEPA process for this land exchange could have been completed three to five times over depending on which agency estimates you use.

The bill fails to require an environmental review, including consideration of mitigation measures, or a public interest determination, before the land exchange is completed. The bill mandates that USDA convey the lands to Resolution Copper within one year of enactment. Once the lands are transferred to Resolution Copper, NEPA review will not have any real impact because the land would already be in private ownership. Because the bill is a mandatory transfer, the Secretary of Agriculture has no discretionary authority to determine under the Federal Land Policy Management Act (FLPMA) or other laws whether the exchange is a bad deal for the American taxpayer, the local residents, and the local economy, which would be the case if an administrative transfer were required.

Resolution Copper's lack of transparency regarding the land exchange manifests itself in other important aspects. In May 2007, the Forest Service published its "Technical Guide to Managing Groundwater Resources." The Technical Guide examined the Forest Service's compliance with FLPMA and NEPA.<sup>12</sup> The Guide references the Service's experience with the Carlota Mine also located in the Tonto National Forest.

In the Carlota project, it was determined through the evaluative procedures of FLPMA and NEPA that Carlota Mine's groundwater pumping would impact the Tonto Forest's surface waters and the Service's appropriated water rights. The Carlota Mine was required to mitigate the impacts of its groundwater demands for the mining operation before the mine was permitted.

The Carlota project illustrates the necessity of NEPA review before this land exchange is completed. The surface waters and aquifers that were affected by the Carlota Mine are the same surface waters and aquifers that will be impacted by Resolution Copper's mine. Why enact a land exchange if a NEPA review would require mitigation efforts for Resolution's ground water demands? Because under S. 339, Resolution Copper will be able to evade this type of analysis and can ignore mitigation conditions as they would own the land privately and federal laws would no longer apply.

Resolution Copper has no intention of sharing any relevant information with the public prior to taking the lands in private ownership. Resolution's former Vice President Jon Cherry told the Senate Environment and Natural Resources Committee in February of 2012 that Resolution Copper "will be in a position to file our Mine Plan of Operations (MPO) which will begin the NEPA EIS process over the entire project area including the area of the subject exchange" by the "second quarter of 2012."<sup>13</sup> As we now know, this statement was incorrect. Resolution's behavior begs the question whether the late filing of an MPO was for the purpose of influencing this bill.

Section 4(j)(1) of S. 339 requires only that Resolution Copper submit a MPO to the Secretary prior to commencing production in commercial quantities. There are

<sup>12</sup> See Technical Guide to Managing Groundwater Resources, U.S. Forest Service, FS-88, pp. 20-22 (May 2007).

<sup>13</sup> See S. Hrg. 112-486, pp. 28, 29 (Feb. 9, 2012) (Hearing Before the Committee on Energy and Natural Resources, United States Senate, 112th Congress).

no requirements to guarantee that the MPO will contain a complete description of mining activities or the measures Resolution Copper will take to protect environmental and cultural resources, as normally required by law. Indeed, this Section of the bill excepts from an MPO all “exploration and . . . development shafts, adits and tunnels needed to determine feasibility . . . of commercial production.”

Regarding actual environmental review, Section 4(j)(2) of the bill requires only that the Secretary, within 3 years of receiving Resolution Copper’s MPO, prepare an environmental review that must be conducted under the framework of 42 U.S.C. 4322(2) of NEPA. Again, this review will be conducted long after the lands are exchanged and in private ownership.

Section 4(h) of the bill makes clear that federal laws will not limit Resolution Copper’s mining activities on the land after the mandated exchange. It provides that the lands conveyed “shall be available to Resolution Copper for mining and related activities subject to and in accordance with applicable Federal, State, and local laws pertaining to mining and related activities on land in private ownership.” As a result, the Secretary will have no discretion to exercise meaningful authority over the MPO or mining activities on private land after the exchange absent a federal nexus. There is no requirement in the bill for the Secretary to examine the direct, indirect and cumulative impacts of exploratory activities, pre-feasibility, feasibility operations, or mine facility construction that will be conducted after the exchange.

Further, upon enactment of S. 339, Resolution Copper will almost immediately begin activities that will harm our sacred area and the region’s water supply, again without any public disclosures of information. Section 4(f) mandates that the Secretary “shall” provide Resolution with a special use permit within 30 days of enactment to engage in mineral exploration activities at Oak Flat Withdrawal and, within 90 days, the Secretary is required to allow mineral exploration. The integrity of Oak Flat could be substantially harmed by exploratory activities before the limited environmental review requirements in Sec. 4(j)(2) are triggered. The limited environmental review of the MPO will have little or no benefit.

Under S. 339, the Secretary lacks any authority to propose alternatives to interim activities that might be necessary to protect water resources, landscape, plants, ecosystems or the integrity of Oak Flat as a traditional cultural property and sacred site. The immediate exploration of Oak Flat contemplated by Section 4(f) constitutes an “irretrievable commitment of resources” in contravention of NEPA.

Joel Holtrop, former Deputy Chief of the National Forest Service, stated that an MPO containing subsurface information is “essential in order to assess environmental impacts, including hydrological conditions, subsidence, and other related issues.”<sup>14</sup> Similar concerns were expressed by Forest Service Associate Chief Mary Wagner who noted that the Service could not support the bill given that it “limited the discretion” of the Service to develop a reasonable range of alternatives and lacked the opportunity for public comment on the proposal.<sup>15</sup> Likewise, USDA Secretary Vilsack stated:

The purpose of a requirement that the agency prepare the EIS after the exchange, when the land is in private ownership, is unclear because the bill provides the agency with no discretion to exercise after completing the EIS. If the objective of the environmental analysis is to ascertain the impacts of the potential commercial mineral production on the parcel to be exchanged, then the analysis should be prepared before an exchange, not afterwards, and only if the agency retains the discretion to apply what it learns in the EIS to its decision about the exchange. It seems completion of the exchange prior to the EIS would negate the utility of the EIS.<sup>16</sup>

Further, S. 339 strips the Secretary of authority to address the many concerns presented by the mining operation proposed for Oak Flat. The bill does not allow for a supplemental EIS document if additional review is needed to examine the direct, indirect and cumulative impacts of mining activities by Resolution. Section 4(j)(2) makes clear that the Secretary may only use the single environmental review document prepared within 3 years of the submission of a MPO as the basis for all “decisions under applicable Federal laws, rules and regulations regarding any Fed-

<sup>14</sup> See S. HRG. 111-65 (June 17, 2009) p. 41, Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate (S. 409 111th Cong.).

<sup>15</sup> See S. HRG. 112-486 (June 14, 2011) p. 16, Hearing before the Committee on Energy and Natural Resources, United States Senate (H.R. 1904 & S. 409 112th Cong.).

<sup>16</sup> See Letter from USDA Secretary Vilsack to Chairman of the Senate Energy and Natural Resources Committee, Subcommittee on Public Lands and Forests (July 13, 2009)(emphasis added).

eral actions or authorizations related to the proposed mine or plan of operations.” (Emphasis added).

*Southeast Arizona’s Water Supply Cannot Sustain this Project*

Resolution Copper has also not been transparent with the public or its neighbors in the Oak Flat area regarding the water needed for this project. In 2009, Resolution explained that it was purchasing water and reclaiming contaminated waters in order “to build the needed water supplies for mining activities that are a full decade or more away.” Resolution claimed to be “managing water by taking into account the needs of both current and future users of this precious resource.”<sup>17</sup> Resolution claimed that it had purchased and “banked” over 120,000 acre feet of Central Arizona Project (“CAP”) water from 2006 through 2008 with Irrigation Districts near Phoenix, enough to operate the mine for six years at a projected use of 20,000 acre feet per year.<sup>18</sup> Resolution further reported in 2008 that it “installed several hydrology wells to assist in developing models that will determine if mining may affect the regional aquifers, and . . . what mitigation options are viable.”<sup>19</sup> Nevertheless, in an exceptional moment of candor, the East Valley Tribune reported former Resolution Copper President David Salisbury as admitting that groundwater will be needed for operation of the new mine.<sup>20</sup>

Arizona and the west have been in the throes of a decade long drought. Recently, the Bureau of Reclamation announced that water releases into Lake Mead will be reduced by nine percent (9%) in 2014 and 2015.<sup>21</sup> If shortages persist, it will result in the Secretary of the Interior declaring a Lower Basin shortage of Colorado River water in 2016. CAP water deliveries would be reduced by 320,000 acre-feet, approximately 20% of the CAP water supply in recent years.

S. 339 does not require Resolution Copper to perform or disclose its studies of the impacts on the regional water supply and hydrology prior to the land exchange. Repeated requests for an independent agency, such as the U.S. Geological Survey (“USGS”), to conduct studies have been ignored or opposed. Resolution’s admitted demands for groundwater must be examined before any exchange in order to determine whether the public interest is served by the exchange.

Resolution Copper’s failure to disclose critical information about the impacts on the region’s water has united a diverse group that opposes S. 339. Our neighbors to the west in Queen Valley have already felt Resolution’s insatiable thirst for water. Since 2008, Resolution has been pumping groundwater to dewater parts of the decommissioned Magma Mine. Water levels in the Magma shaft have declined nearly 2,000 feet and water levels in the surrounding aquifer will inevitably decline as well. The Queen Valley Homeowners Association reported that since Resolution began pumping 900,000 gallons of water a day, the community’s water supply fell to a historic low requiring water rationing for the community golf course. The Association passed a resolution opposing the mine that would be authorized by S. 339.

According to USGS records, since 2008, the average stream flow in Queen Creek (downstream from the mine site) has been less than half the average stream flow for 2001-2007 before Resolution began dewatering at Magma Mine. Resolution’s dewatering efforts (approximately 920 acre feet per year) remove far less water than will be needed for the mine sought through S. 339, which will require at least 20,000 acre feet per year. The simple act of dewatering the proposed mine’s underground works will have negative effects on regional water supplies. If Resolution depends on even more groundwater for its mining operations, the negative impacts will simply grow.

In 2009, former Senate ENR Chairman Bingaman questioned the Forest Service about the impacts of the mine on the local water supplies and quality. Former Deputy Chief Holtrop responded:

At this time the U.S. Forest Service does not have an understanding of the impacts of the proposed mine will have on local or regional water supplies, water quality, or possible dewatering of the area. No studies or assessments of the water supplies have been conducted. That is information which could be obtained by the Forest Service with NEPA analysis before the exchange. A NEPA analysis after the exchange would not allow the For-

<sup>17</sup> Previously on Resolution Copper webpage, now missing file: <http://www.resolutioncopper.com/res/environment/ddnav.css>

<sup>18</sup> Id.

<sup>19</sup> See Resolution Copper webpage.

<sup>20</sup> See East Valley Tribune, “Pinal farms will get reused water from mine”, March 14, 2009.

<sup>21</sup> Central Arizona Project, Arizona Department of Water Resources, Joint Press Release, “Colorado River Shortage Will Have No Direct Impact On CAP City Water Supplies”, August 16, 2013.

est Service to recommend alternatives since the exchanged parcel would already be in private ownership. Data and analyses in the possession of Resolution Copper Mining would be of assistance to the Forest Service in evaluating the impacts of the proposed mine on local and regional water supplies and quality.<sup>22</sup>

In order to better inform the public of the potential impacts, L. Everett & Associates (LEA), an internationally recognized environmental consulting firm made up of hydrogeologists, engineers, and geologists, conducted a review recently of potential environmental impacts to the region that would be caused by S. 339. The following excerpts from the review clearly rebuff Resolution Copper's water claims:

[I]t is highly speculative that CAP water will be a reliable source for Resolution over the decades-long lifetime of the mine. In fact, Resolution correctly admitted that 'excess CAP water will not always be available for purchase and other sources will be needed.' It seems apparent that Resolution will need to rely on local groundwater resources to provide a significant percentage of Resolution's water supply if it is to be a viable project.

It is virtually impossible for Resolution to meet even a fraction of its water needs from local groundwater in a sustainable manner: the amount of water needed is just too vast for the natural processes that recharge the aquifer in this arid region of Arizona to replenish the needed withdrawals.

Because groundwater and surface water systems are intimately inter-related, pumping too much groundwater will have a negative impact on nearby surface water resources because lowering the water table can starve the local streams of recharge from the aquifer. This is a serious issue that is very difficult if not impossible to mitigate. For example, the nearby Carlota Mine uses much less water than the proposed Resolution Mine (approximately 1,000 acre feet per year). In a 25-day pump test at the Carlota Mine, stream flow in Haunted Canyon (2,300 feet from the nearest well) declined from 45 gallons per minute to 5 gallons per minute, thus threatening the sensitive riparian habitat.<sup>23</sup> (Emphasis added).

Following its assessment of the dewatering process that will be required to operate Resolution's mine, LEA added, "Given the depth of the ore body and the need to dewater the mine workings that are deep below the water table, Resolution will have to aggressively pump groundwater from the aquifer. The effect of this pumping will be felt far beyond the boundaries of the mine."

Throughout the mining process, water will migrate to the vacant ore body and mining tunnels. For example, Resolution estimates that inflows to the existing workings at Magma Mine are 300 million gallons per year. If mining production on this new project is authorized, the mine dewatering will deplete many billions of gallons of water from surface waters and groundwater throughout the region, resulting in the loss of important seeps, springs, and streams and depleting the perennial pools in Gaan (Devil's) Canyon and streamflows in Queen Creek and other surface waters.

The alteration of subsurface and surface geological structures because of block caving and the admitted collapse of the land surface will completely alter the natural state of the aquifers and surface drainage of the watersheds forever. Resolution's consumption of water is simply not sustainable. Yet, Resolution has refused to publish the potential impacts on the water supplies of the region despite the fact that this legislation has been introduced in the Congress over the past eight years. Instead, Resolution has simply claimed that it is urgent for Congress to pass this land exchange for jobs. But the real question is whether the benefit of jobs, which we believe Resolution Copper has grossly overstated, will outweigh the loss of the region's water supply and the associated environmental costs.

#### *Damage to the Southeast Arizona Environment*

While Resolution's impact on the region's supply of water is a paramount concern for the opponents of S. 339, it is not the only concern. Resolution Copper has failed to provide data pertaining to its mining and post-mining subsidence analysis, water quality contamination analysis (including acid mine drainage and subsequent pollution), air quality compliance, tailings and overburden storage and placement. Reso-

<sup>22</sup> See S. Hrg. 111-65, p. 42 (June 17, 2009)(Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate, S. 409 111th Cong.)(emphasis in original).

<sup>23</sup> Letter from LEA Principal Geologist, James T. Wells, PhD, PG, to San Carlos Apache Tribe, Chairman Terry Rambler (March 18, 2013)(Attached to this testimony)(hereinafter "LEA Analysis").

lution Copper knows it does not have to disclose such data even in its MPO. Why? Because S. 339 does not require Resolution Copper to provide any such information to the Forest Service prior to the land exchange.

Resolution will use a mining technique known as “block caving.” Resolution Copper has acknowledged that the surface land above the ore body will subside and cave in. Indeed, in 2009, Resolution Copper’s website identified “surface subsidence” as an “environmental risk.” Surface subsidence is an indisputable result of Resolution’s proposed mine. What is not known is the scope and degree of that subsidence. Resolution has not disclosed its subsidence models or reports.

It is common knowledge that acid mine drainage leaking into groundwater and surface water is a widespread consequence of copper mining. Acid-generating mines pollute surface water and groundwater requiring expensive reclamation and long-term water treatment. The water Resolution is pumping from the Magma Mine shaft is contaminated with heavy metals. That water is being treated at Resolution’s water treatment facility. In order for that treated water to be reclaimed and re-used, it has to be diluted with clean CAP water before being transported for use on crops to the Irrigation Districts.

The Town of Superior, in whose backyard the proposed block cave mine would be located, opposes this bill, and the City of Globe tabled a proposed resolution to support the bill until its questions about the bill have been satisfactorily answered about the impacts of this mine. The bill’s proponents tout jobs for the local economy. However, these nearby communities question the benefits of jobs if their communities become environmental disaster areas lacking water to support their residents. These local communities and other nearby areas have withheld or withdrawn their support for the bill and Resolution’s proposed mine because they lack critical information about the environmental and other impacts of the mine which can only be provided with NEPA review before the exchange. Resolution’s lack of transparency is problematic.

NEPA is a forward-looking statute setting out procedural obligations to be carried out before a federal action is taken. NEPA requires federal agencies consider the environmental impacts of a proposed major Federal action and alternatives to such action. As former Forest Service Deputy Chief Holtrop stated:

The purpose of a requirement in the bill that the agency prepare the EIS [Environmental Impact Statement] after the exchange, when the land is in private ownership, is unclear because the bill provides the agency with no discretion to exercise. If the objective of the environmental analysis is to ascertain the impacts of the potential commercial mineral production on the parcel to be exchanged, then the analysis should be prepared before an exchange, not afterwards, and only if the agency were exercising its discretion in making a decision about the exchange. An EIS after the exchange would preclude the U.S. Forest Service from developing a reasonable range of alternatives to the proposal and providing the public with opportunities to comment on the proposal. The exchange would be a *fait accompli*. A reasonable range of alternatives and public comment would be superfluous.<sup>24</sup>

Instead, Resolution and its foreign corporate parents seek to avoid revealing the true costs of environmental compliance through S. 339, which does not require NEPA compliance before the land exchange. Once these public lands are conveyed into private ownership, and subject only to the permissive mining and reclamation laws of the State of Arizona, Resolution will likely not be required to post a cash bond to underwrite either the cost of remediation during its mining operations or for cleanup upon mine closure. Typically, only self-bonding or corporate guarantees are all that is required. This is woefully insufficient to protect the public from bearing the potentially astronomical costs of cleanup resulting from a limited liability company’s massive mining operations. Resolution can simply walk away from damage to the Oak Flat area. As a result, American taxpayers would be left without any revenue and will be on the hook for the future cost of any environmental remediation.

There are too many environmental questions that Resolution Copper has failed to answer. This land exchange allows Resolution to avoid responding to these questions that federal law otherwise requires every other company in America to answer. The Subcommittee should ask why a foreign multinational corporation deserves special treatment?

<sup>24</sup> See S. HRG. 111-65 (June 17, 2009) p. 47, Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate (S. 409 111th Cong.).

*S. 339 is a Massive Giveaway of Taxpayer Resources to Foreign, Special Interests*

At a time when all Americans are being asked to tighten our belts, S. 339 will result in a giveaway of substantial American wealth and resources to a foreign-owned mining company. The appraisal requirements of S. 339 are unique to this land transfer and do not adequately ensure that the public will receive fair value. Since the bill does not afford the federal agencies the opportunity to perform a substantive economic evaluation of the lands along with the copper and other minerals to be exchanged to Resolution, it is impossible for the Congressional Budget Office and/or Office of Management and Budget to effectively evaluate S. 339. The public interest requires that a complete and fully informed appraisal and equalization of values be performed prior to Congressional passage of S. 339, not after. Resolution Copper has variously estimated the mineral wealth in the lands ranging from \$100 to \$200 billion. Resolution's self evaluation of the ore body underlying Oak Flat is orders of magnitude greater in value than that of the non-federal parcels offered in exchange to the public.

The federal administrative land exchange process typically occurs in five phases:

- (1) development of an exchange proposal;
- (2) feasibility evaluation;
- (3) processing and documentation;
- (4) decision analysis and approval; and
- (5) title transfer.

During development of an exchange proposal, the federal and non-federal parties have preliminary discussions to share information about goals and constraints and to screen proposals. The parties develop a written exchange proposal that includes a legal description of the lands to be conveyed and the responsibilities of the parties. Federal agencies check the title of the non-federal land to ensure its acceptability for acquisition and the survey and land status of the federal land to ensure its availability for disposal.

The General Accounting Office ("GAO") issued a report in June 2000 where it examined a total of 51 land exchanges, most of which occurred in the west.<sup>25</sup> The GAO auditors found that often the public lands were being undervalued while the private lands were being overvalued, resulting in significant losses to taxpayers. The agency also found that many of these exchanges had questionable public benefit.

In response to the GAO report, the Bureau of Land Management ("BLM") formed an Appraisal and Exchange Work Group to review BLM land exchanges. The Work Group's report concluded that BLM's land appraisals were inappropriately influenced by the managers wanting to complete the deals and that these unduly influenced appraisals cost the public millions of dollars in lost value in exchanges with private entities and state governments. To their credit, the BLM and DOI, with prompting and pressure from Congress, have reevaluated and modified their land exchange processes and appraisal methodologies.

While land exchanges can be a tool for conservation, it is a limited tool and the pitfalls are many. An administrative exchange would include examination of alternatives and would look at the environmental impacts required by NEPA. Even though the federal land management agencies are required to do thorough reviews and ensure that a trade is in the public interest, there are significant problems with land exchanges. Valuation of properties, which are different in nature, is one such problem in that exists in this case. S. 399 undermines the entire administrative land exchange process and the advances made since the GAO report.

A significant amount of information is required for a meaningful and accurate appraisal. Under the Uniform Appraisal Standards for Federal Land Acquisition ("UASFLA") requirements, a detailed mining plan and a mineral report are necessary to properly assess the value of the exchanged land. UASFLA requires that production level estimates should be supported by documentation regarding production levels achieved in similar operations. However, it is unknown at this time what Resolution Copper's production estimates are since mining plan data has not been forthcoming. The UASFLA royalty income approach also requires several economic predictions including a cash-flow projection of incomes and expenses over the life span of the project and a determination of the Net Present Value ("NPV"), including the NPV of the profit stream, based on a discount factor.

Former Deputy Chief Holtrop and BLM Deputy Director Luke Johnson informed the Subcommittee on National Parks, Forests and Public Lands on an earlier version of this bill that the completion of the exchange within one year (as required

<sup>25</sup> See BLM and the Forest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest, GAO/RCED-00-73, June 2000.

by S. 339 Section 4(i)) was insufficient time to complete the required appraisals.<sup>26</sup> Specifically, Mr. Johnson stated:

Based on our experience with exchanges, we do not believe that this is sufficient time for the completion and review of a mineral report, completion and review of the appraisals, and final verification and preparation of title documents. Preparation of a mineral report is a crucial first step toward an appraisal of the Federal parcel because the report provides the foundation for an appraisal where the land is underlain by a mineral deposit. Accordingly, adequate information for the mineral report is essential.

On July 9, 2008, Michael Nedd, Assistant Director of the BLM, repeated Deputy Director Johnson's testimony before this Committee<sup>27</sup> calling for Resolution Copper to provide information to the BLM and Forest Service so that a proper valuation of the copper ore body deposit below Oak Flat could be prepared by the federal agencies. He added:

We recommend adding a provision requiring Resolution Copper to provide confidential access to the Secretaries of Agriculture and the Interior (and their representatives) to all exploration and development data and company analyses on the mineral deposits underlying the Federal land in order to ensure an accurate appraisal.

In a hearing before this Committee on June 7, 2009, former Resolution Copper President David Salisbury was evasive about the availability of Resolution's proprietary mining data to the federal agencies, leaving Senator Wyden to ponder: "We're going to have to work with you and with the agencies to, sort of, unpack what that really means, because the agencies have felt strongly about that particular point."<sup>28</sup>

It is clear that Resolution Copper will benefit from the exchange. It is less clear that the public is getting a fair return or that it is worth the loss of important public lands. It is difficult to understand how this exchange could move forward without solid appraisals including the value of the copper ore body itself. Given the evaluation standards prescribed by the UASFLA and the federal agencies, coupled with the lack of factual data from Resolution, the American taxpayer will be short-changed if S. 339 becomes law.

#### *Resolution Copper's Corporate Parents Partner with Iran and China*

Resolution Copper is a subsidiary of Rio Tinto (55% majority owner)(UK head-quarter/Australian offices) and BHP Billiton (45% shareholder)(Australia head-quarter/UK offices). Rio Tinto is a partner with Iran in the Rössing uranium mine in Namibia. Rio Tinto owns a majority stake in the Rössing mine. The Iran Foreign Investment Company ("IFIC") owns a 15% stake in the same mine. The IFIC is wholly owned by the Islamic Republic of Iran.

United Against Nuclear Iran ("UANI") raised concerns about Rio Tinto's partnership and called on Rio Tinto and Rössing to sever ties with the Iranian government. In a letter to the Chairman of Rio Tinto, UANI President, Ambassador Mark D. Wallace, wrote:

Thank you for the letter of November 8, 2010 from the Rio Tinto Group. While your letter attempts to address some of the concerns . . . the largest issue—the current Iranian government's 15 percent stake—remains outstanding and is of serious concern to UANI and many within the international community. . . . You dismiss the concerns raised by UANI because the government of Iran initially acquired its share in the Rössing mine in 1975 . . . . This fact is not relevant in 2011 when the government that has been profiting from the mine for over three decades is one that is pursuing an illegal nuclear weapons program, [and] sponsoring terrorism in the region. . . ."<sup>29</sup>

<sup>26</sup> See S.110-52 (Nov. 1, 2007), pp. 4, 5, 8 (Legislative Hearing before the Subcommittee on National Parks, Forests and Public Lands of the Committee on Natural Resources, U.S. House of Representatives, 112th Congress).

<sup>27</sup> See S. Hrg. 110-572, p. 32 (July 9, 2008)(Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate, S. 3157 110th Cong.).

<sup>28</sup> See S. HRG. 111-65, p. 39 (June 7, 2009)(Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate, S. 409 111th Cong.).

<sup>29</sup> Letter from Former U.S. Ambassador and UANI CEO Mark Wallace to Rio Tinto Group Chairman Jan du Plessis (Jan. 13, 2011).

In 2010, The Hill reported that two representatives of the IFIC sat on Rössing's Board of Directors, including one who is an accomplished chemical engineer.<sup>30</sup>

In addition, there are no guarantees that the copper mined pursuant to S. 339 will be processed or used in the United States, because the People's Republic of China looms large in this transaction. Chinalco, owned by the Chinese government, holds a 9% stake in the Rio Tinto Group. According to a recent news article, China expects to consume nearly 84% of the world's copper by 2014 and Rio Tinto is best situated to benefit from China's "surging production."<sup>31</sup>

Contrary to Resolution Copper's public relations statements, nothing in the bill requires Resolution Copper, Rio Tinto's subsidiary, to process or sell the copper to U.S. companies, or even use U.S. resources to mine the copper. Nothing in the bill prevents Rio Tinto from selling its interest in Resolution to another foreign company as it just agreed to do with its signature showcase block cave Northparkes Mine in New South Wales, Australia.<sup>32</sup>

Based upon the history of parent company Rio Tinto's business relations with Iran and China and in light of the U.S. and international sanctions against Iran, it is not in America's interests to trade valuable federal land to this foreign-owned mining company.

#### *S. 339's Economic Benefits are Speculative*

The sponsors and proponents of S. 339 claim that Resolution's mine will create 3,700 jobs. This number comes from an economic report prepared for Resolution. The number of new jobs promised under this bill is false. Resolution Copper plans to use automated drills and a driverless fleet of haul-trucks for the mining project. Further, it is too hot for humans to go down into the mine given the 175 degree temperature at the mine's proposed depth of 7,000 feet below the surface of the earth.

The Tribe commissioned Power Consulting, Inc. to review and evaluate Resolution's report. An executive summary of the Power Consulting report is appended to my statement.<sup>33</sup> The Power report establishes that the mine will produce substantially fewer jobs and less revenue for local communities and Arizona than claimed by Resolution and its supporters.

Between 1974 and 1997, copper production in Arizona rose by 73%, but the workforce was cut by 56%, or about 16,000 jobs. This is directly attributable to improvements in technology worker productivity. In 1974 it took 35 workers per 1,000 tons of contained copper, but in 2003 it took only 7 workers to produce the same quantity.<sup>34</sup> This trend will continue. Automation reduces jobs. In fact, RCM's jobs claims are exaggerated and only about 400 permanent mining jobs will be created and no permanent jobs will be created until 2020 when RCM pre-feasibility and feasibility studies are completed.

Incredibly, Resolution's economic report does not examine environmental costs associated with the mine. Specifically, Resolution's Pollack Report—its economic report—did not include:

- Costs associated with environmental and engineering issues and the cost of their correction were not included in the study.
- The study did not consider the potential reduction of sales at other establishments in the trade area that may occur as a result of the proposed Resolution mining project.
- The study did not consider the costs to any government associated with providing services to the mine or other operations.<sup>35</sup>

In reality, the construction and operation of that mine will conflict with other economic activities or values. Resolution's economic report was a "pure benefits" analysis that intentionally ignored obvious costs. Local communities' costs normally incurred when a mine opens, such as road improvements, increased school, police and fire protection service, and other infrastructure costs were ignored by Resolution.<sup>36</sup>

<sup>30</sup> <http://thehill.com/blogs/congress-blog/foreign-policy/123753-irans-uranium-holdings>

<sup>31</sup> <http://www.fool.com/investing/general/2013/08/26/mongolia-copper-heaven.aspx>

<sup>32</sup> See Rio Tinto, Third Quarter 2013 Operations Review, p. 4. ("On 29 July 2013, Rio Tinto announced that it had reached a binding agreement for the sale of its 80 per cent interest in Northparkes. The Northparkes joint venture parties have since waived their pre-emptive rights under the joint venture agreement and consented to the assignment of Rio Tinto's interest to China Molybdenum Co., Ltd." (Emphasis added).

<sup>33</sup> See [http://www.oakflat.org/pdf/Resolution\\_Mine\\_Econ\\_Report\\_Power\\_Consulti\\_g\\_Final%209-9-2013.pdf](http://www.oakflat.org/pdf/Resolution_Mine_Econ_Report_Power_Consulti_g_Final%209-9-2013.pdf) for full Power Consulting report.

<sup>34</sup> Id. pp. 23-24, Figures H, I.

<sup>35</sup> Id. pp. 35-36

<sup>36</sup> Id.

The economic impacts of the mine will largely be felt outside of Arizona. Over half of the economic impact created by the mine will not stay in Arizona. Instead, economic impacts will flow to national and international investors, including China. Only about 4% of mineral value would flow to local residents in the form of wages and 71% of the tax revenue would go to the federal government.

Resolution has touted local job creation and local economic benefits as the primary justifications for this land exchange. Resolution promises jobs and prosperity.

Yet, Resolution and its supporters have opposed all efforts to amend the bill to require that: (1) the project headquarters be located in Southeast Arizona; (2) local Arizonans be considered first for any job opportunities that may result from the project; and (3) the ore is processed and used in the U.S.—not in China or another foreign nation. Refusing to consider such minimal amendments to S. 339 contradicts Resolution's promises of local prosperity.

The proposed mine, under S. 339, will be highly automated and the actual jobs likely to be produced will come in far below the speculative figures promised. The Power Consulting report certainly tests Resolution's claims.

Finally, I would like to address claims made by the bill's supporters in the U.S. House of Representatives last week after House leadership abruptly pulled H.R. 687 from the floor for the second time. Supporters of H.R. 687 advise that the San Carlos Apache Tribe should support this bill, given the Reservation's high employment rate. However, the Tribe has worked hard to decrease our unemployment rate by creating new jobs on the Reservation. Our people want jobs, but we will create jobs that respect our religion and respect our tradition of living in harmony with Mother Earth. Our solemn obligation is to protect and preserve our sacred and cultural areas for our children and grandchildren. We are fighting for our ability to take of ourselves in a respectful, Apache way. Maybe we can't live like we did 150 years ago, but we can try to live in ways consistent with our traditional way of life. Further, the elected officials on the San Carlos Apache Tribal Council represent the views of their districts and tribal constituents, and the San Carlos Apache Tribal Council has strongly opposed this bill since it was first introduced in 2005, as evidenced by repeated tribal resolutions opposing this bill.

#### *Conclusion*

In 1871, the United States established our Reservation. Since then, the United States diminished our Reservation several times due to the discovery of silver, copper, coal, water and other minerals and natural resources. Our burial sites, living areas, and farmlands on our Reservation were flooded for a federal dam for the benefit of others. Based upon this history and for the reasons stated above, the Tribe strongly opposes S. 339 or any other conveyance of our tribal ancestral lands in the Oak Flat area to Resolution Copper for mining that would permanently destroy an area sacred to us. Once done, this action cannot be undone.

Senator MANCHIN. Thank you, Chairman Rambler.  
Chairman Garcia.

#### **STATEMENT OF ROBERT GARCIA, CHAIRMAN, CONFEDERATED TRIBES OF COOS, LOWER UMPQUA, AND SIUSLAW INDIANS**

Mr. GARCIA. Good afternoon, Chairman Manchin. My name is Robert Garcia. I am chairman of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians.

On behalf of the tribe, I thank you for the opportunity to offer our testimony.

S. 1414 is a straightforward bill that will yield jobs and justice. We are grateful for the support of Senators Wyden and Merkley. We respectfully ask that you join them.

The bill transfers from the Bureau of Land Management to the Bureau of Indian Affairs responsibility for managing approximately 14,804 acres of land in 3 watersheds draining into the Pacific Ocean in Oregon.

Our 3 tribes live in the watersheds of the Coos, Umpqua and Siuslaw Rivers. Our average territories once extended to approxi-

mately 1.6-million acres. S. 1414 returns management of a little less than 5,000 acres in each watershed.

Most of the land has been logged in the past. Most of it is now forested with second-growth plantation stands with some small scattered remnant stands of older forest.

If the bill becomes law, the United States will continue to hold title to the land. Under the bill, the BIA will become the Federal agency responsible for the lands. Through the BIA, the United States will hold the land in trust for the tribe as part of our reservation.

Under S. 1414, the National Indian Forest Resource Management Act or NIFRMA will require the BIA, working with the tribe, to create and adopt a management plan for the newly designated trust forest lands.

The National Environmental Policy Act or NEPA requires careful study prior to major action by a Federal agency. The BIA's adoption of the NIFRMA management plan will be a major Federal action.

As a result, S. 1414 will require the BIA, working with the tribes, to make the assessments required by NEPA prior to the approval of the NIFRMA management plan.

In making every decision, we consider how our ancestors would view our work and how our decision will affect the seventh generation of our descendants. We expect the outcome of the NIFRMA/NEPA planning process to be a plan reflecting our culture and our seven-generation perspective on land and resource management.

Our management philosophy will shape a plan that neither bars all commercial use nor manages the forest as an industrial tree farm. We expect to construct a forest management plan for holistically managing these lands integrating a combination of intensive but sustained-yield forestry and conservative restoration forestry, yet avoiding the extremes of both approaches.

We created our Department of Natural Resources over 11 years ago to manage and protect the natural and cultural resources of our ancestral lands. The head of our National Resources Department, Howard Crombie, is here today.

In addition, details about each of the tracks are included in the supplemental materials already submitted to the subcommittee staff.

Jobs for the broader community, as well as for tribal members, will also yield from the bill. Local workers, some of them tribal members, and some who are not, will work in the woods, maintain roads, transport harvests and restore habitat.

S. 1414 prohibits the export of raw logs. The logs will stay in the United States helping to sustain domestic mills, the employees dependent on a sustainable flow of logs to the mill and their families.

Justice is the second predictable result of S. 1414. We remain the only western Oregon tribe that did not, as a result of our tribes' respective restoration acts, regain control of significant acreage of our ancestral lands nor receive a financial payment.

S. 1414 restores our tribe to a central role in managing less than 1 percent of our ancestral lands. Even the modest steps proposed in S. 1414 is a step in the direction of justice as well in the direction of jobs.

Mr. Chairman, members of the committee, we sincerely thank you again for the opportunity to be heard on this proposal. Despite its simplicity, S. 1414 has the potential to yield both jobs and justice. Thank you.

[The prepared statement of Mr. Garcia follows:]

PREPARED STATEMENT OF ROBERT GARCIA, CHAIRMAN, CONFEDERATED TRIBES OF THE COOS, LOWER UMPQUA, AND SIUSLAW INDIANS

S. 1414

Good afternoon. I am Chairman of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians. I speak for our Members and for our Tribal Council. On behalf of the Tribe, I thank you for the opportunity to offer our testimony.

S. 1414 is a straightforward bill that will yield jobs—and justice. We are grateful for the support of Senators Wyden and Merkley. We respectfully ask that you join Senators Wyden and Merkley in supporting S. 1414.

The bill transfers from the Bureau of Land Management (BLM) to the Bureau of Indian Affairs (BIA) responsibility for managing approximately 14,408 acres of land in three watersheds draining to the Pacific Ocean in Oregon. These watersheds are the homes of the Ancestors of the three tribes that make up our Confederated Tribes. All of the land lies within the ancestral territory of the Coos, Lower Umpqua, and Siuslaw Indians. If the bill becomes law, the United States will continue to hold title to the land, and, through the BIA, will hold the land in trust for the Tribe as part of our Reservation.

In March, 2013, Senators Wyden and Merkley publicly released a discussion draft of what eventually became S. 1414. Immediately after release of the discussion draft, the Tribe intensified its broad-based consultations about the proposal. These efforts included consultations with the local communities of which the Tribe is a part; with groups representing individuals sharing with the Tribe economic, recreational, and environmental protection interests; with neighboring federally-recognized Indian tribes; with neighboring private property owners; with the State of Oregon and its political subdivisions; and with both the BIA and the BLM. Details of some of these consultations are set out in the supplemental materials submitted to the Subcommittee.

The proposal enjoys the bipartisan support of members of the Oregon State Legislature from the region in which the lands are located or with an official role in government-to-government relations between the Tribe and the State of Oregon. Secretary of State Kate Brown, a member of the board that sets policy for state-owned timberlands, supports the proposal. Governor Kitzhaber's representatives have affirmed the Governor's willingness to include the substance of the discussion draft of S. 1414 in legislation also addressing management of other public lands.

Senator Wyden himself conferred with representatives of the Association of O & C Counties in a successful effort to identify adjustments to the discussion draft that protect those counties from any perceived reduction in timber revenue harvest payments. These adjustments appear as Section 7. We had no objection to the addition of Section 7 to S. 1414.

On the initiative of Representative Peter DeFazio, the essence of the discussion draft of S. 1414 subsequently has been incorporated (Title III, Subtitle D, Part 2) into a much larger public forest lands bill (H.R. 1526). That bill recently passed the House with bi-partisan support from Representatives DeFazio, Greg Walden, and Kurt Schrader.

Under S. 1414, the National Indian Forest Resource Management Act (NIFRMA) will require the BIA, working with our Tribe, to create and adopt a management plan for the newly-designated trust forest lands. The National Environmental Policy Act (NEPA), one of the federal laws whose applicability is ensured by Section 6 of S. 1414, requires an Environmental Assessment or Environmental Impact Statement prior to major action by a federal agency. The BIA's adoption of the NIFRMA management plan will be a major federal action. As a result, S. 1414 will require the BIA, working with the Tribes, to complete an Environmental Assessment or Environmental Impact Statement prior to the approval of the NIFRMA management plan.

The NIFRMA/NEPA planning process will require the BIA, working with the Tribe, to assess, and as necessary, avoid or mitigate potential impacts to the environment as identified by government agencies and the general public. The Endangered Species Act will require the BIA, working with the Tribes, to consult with the US Fish and Wildlife Service and the National Marine Fisheries Service to further

the conservation of threatened and endangered species. The National Historic Preservation Act will require the BIA, working with the Tribe, to assess any undertaking which could adversely affect a historic property and to take steps to avoid or mitigate any adverse effects to that property.

While these and other federal laws will require the BIA and the Tribes to be good stewards of the land, we will be good stewards of the land not simply because the law requires it, but because that is who we are.

Most of the land has been logged in the past by clear-cut logging or regeneration harvesting. Most of the land is now forested with second-growth plantation stands, with some small, scattered remnant stands of older forest. We excluded many tracts from the proposal to avoid older stands, late-successional reserves, and critical habitat for threatened or endangered species. Although it would have been impossible to completely avoid such areas, we tried to minimize the inclusion of older stands, late-successional reserves, and critical habitat. The supplemental materials\* submitted in conjunction with this testimony include detailed breakdowns of the characteristics of each tract.

In making every decision, we consider how our Ancestors would view our work and how our decisions will affect the seventh generation of our descendants. We expect the outcome of the NIFRMA/NEPA planning process to be a plan reflecting our culture and our seven-generation perspective on land and resource management. Our management philosophy, which is deeply embedded in our traditions, our culture, and our Tribal constitution, will shape a plan that neither bars all commercial use nor manages the forest as an industrial tree farm. NIFRMA prohibits the timber harvest from exceeding the sustained yield of the forest while also allowing “the retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land.” We expect to construct a forest management plan for holistically managing these lands, integrating a combination of intensive but sustained-yield forestry and conservative restoration forestry, yet avoiding the extremes of either approach. The combination of the Tribe’s management philosophy with the continued applicability of federal laws as required by S. 1414 will permit modestly increased commercial use of the forestlands at the same time we begin to restore them to a condition our Ancestors would recognize and the seventh-generation of our descendants will appreciate.

My Tribe long-ago established a Natural Resources Department. The head of that Department, Howard Crombie, is here today and is prepared to assist should a question arise about the anticipated management of these lands.

Jobs—for the broader community as well as for Tribal members—will be one yield from the shift in management of public lands from one agency within the Department of the Interior to another agency within the same Department. Timber from the trust forestlands will be harvested by local loggers and moved to mills by local log truck drivers. The stand will then be replanted by local tree-planters. Roads will be maintained by local equipment operators. Fish and wildlife habitat will be actively improved by local restoration specialists. Some of the local jobs sustained by S. 1414 will be filled by local tribal members and some by non-tribal local workers. In every case, their wages will sustain families and circulate in the local economy.

The Tribe does not own, and has no intention to build, a lumber mill. S. 1414 prohibits the export of raw logs. The logs will stay stateside, helping to sustain domestic mills and the employees dependent on a sustainable flow of logs to those mills.

Justice is the second predictable result of S. 1414. We were the original trustees of these lands. The United States failed to ratify a treaty (which we signed in good faith) that would have provided due process for the forced dispossession of 1.6 million acres of our ancestral territory. As of today, only 153 acres are held in trust by the United States for the Tribe. We remain the only western Oregon tribe that did not, as a result of the tribes’ respective restoration Acts, regain control of a significant acreage of our ancestral lands nor receive a financial payment.

My people watched as the new managers of our lands lurched from unsustainable harvest levels to litigation-driven gridlock. Like our non-Tribal neighbors, members of our Tribe send our children to public schools, use public libraries, and rely on the local public infrastructure sustained, in part, by federal timber management policy. Our members have the same investment in our local communities—including the duty to pay property taxes on the homes that we own—as our non-Tribal neighbors.

The Tribe’s connection to these lands has an added and unique dimension. For generation upon generation during our stewardship of these lands, we avoided the

\*Materials have been retained in subcommittee files.

extremes of the past 150 years. The land sustained us spiritually as well as materially. We used the forest, and the forest was not harmed.

S. 1414 restores our Tribe to a central role in managing less than one percent of our ancestral lands. It is not a settlement of the Tribe's claims. Nor is it a remedy for the taking of our lands without due process of law. And yet even the modest step proposed in S. 1414 is a step in the direction of justice as well as in the direction of jobs.

Mr. Chairman, members of the subcommittee, we sincerely thank you again for the opportunity to have been heard on this proposal. Despite its simplicity, S. 1414 has the potential to yield both jobs and justice. We would be pleased to answer your questions.

Senator FLAKE. Thanks. Thought I was going to be able to stage a coup, until Mr. Heinrich came in, but Mr. Rondeau.

**STATEMENT OF MICHAEL RONDEAU, CEO, COW CREEK BAND OF UMPQUA TRIBE OF INDIANS**

Mr. RONDEAU. Thank you.

[Speaking in the Takelma language.]

My friends, my name is Michael Rondeau and I am an Umpqua Indian. We are friends to each other.

Chairman Manchin, Ranking Member Barrasso and distinguished members of the subcommittee, thank you for allowing me this opportunity to provide comments today on S. 1415, the Canyon Mountain Land Conveyance Act of 2013.

The Cow Creek Umpqua Tribe is grateful to have the opportunity to testify before this committee regarding the restoration of the tribe of certain forest parcels within our ancestral homeland. Thank you.

I would like to take this opportunity to show respect and recognize my tribal chairman, Dan Courtney.

In addition to this committee, as a member, the tribe would also especially like to thank Senators Ron Wyden and Jeff Merkley and Representative Peter DeFazio for sponsoring our reservation legislation in their respective chambers of Congress.

The basic story of our bill is simple. Our tribe ceded over 800 square miles of our southern Oregon homeland to the Federal Government in a treaty that was ratified by the U.S. Senate in 1854.

The Cow Creek Treaty contained a reservation-lands provision, but this obligation was never fulfilled by the Federal Government.

In spite of all odds and difficulties, our ancestors held our tribe together and met regularly as a tribal government, believing that 1 day justice would prevail and the dream of a reservation for our people would become reality.

Subsequent to our tribe being legislatively restored to Federal recognition in 1982, our tribe has focused on providing governmental services and developing programs while working to develop a diverse economy from a limited land base in a rural, natural-resource area.

While our tribe is grateful for our Federal recognition, it did not address the reservation-lands provision of our treaty. Today, although our tribe has been able to purchase some limited acreage for housing, governmental services and economic development, we are one of the only tribes in the U.S. with a ratified treaty providing a reservation with no reservation yet established.

Our reservation lands bill will not only rectify a material omission in the treaty relationship between the Cow Creek Band of

Umpqua and the Federal Government, it will also allow our tribe to continue on our well-established path of self-sufficiency, regional economic development and environmental stewardship.

For our people to have a place of their own to gather, to fish, to hunt and camp and meet and make a meaningful living it is the culmination of a dream 7 generations old.

Should we be fortunate enough to have Congress complete the process of honoring our treaty reservation, we are committed to making those lands beneficial for the next 7 generations and many more to come for our tribe as well as part of a favorable tide for our entire community.

When we look at the map of our proposed reservation lands, located just miles from where our treaty was signed, and in the same area as our sacred cultural gathering place at South Umpqua Falls, and see our tribal names reflected in the very landscapes through features such as Rondeau Butte and Dompier Creek, we know in our hearts that the reservation bill is right and the time is now.

Today, I was able to greet you in our language, Takelma, because of the efforts of my ancestors and your predecessors in Congress having given us the ability and hope to begin to speak our ancient words.

It is my wish that the fruits of our reservation lands efforts today will pave the way for my descendants to make the whole speech in Takelma, as proud Americans addressing those that follow in your footsteps in these halls of Congress.

Again, thank you for allowing me to testify.

[The prepared statement of Mr. Rondeau follows:]

PREPARED STATEMENT OF MICHAEL RONDEAU, CEO, COW CREEK BAND OF UMPQUA  
TRIBE OF INDIANS

S. 1415

Wik'uuya'mhan. Michael Rondeau eyít<sup>h</sup>e. Yaakalà's eyít<sup>h</sup>e. K'uùyapatam eepík<sup>h</sup>.

Chairman Manchin, Ranking Member Barrasso, and distinguished members of the subcommittee, thank you for allowing me this opportunity to provide comments today on S.1415, the Canyon Mountain Land Conveyance Act of 2013.

The Cow Creek Umpqua Tribe is grateful to have the opportunity to testify before the Committee regarding the restoration to the Tribe of certain forest parcels within our ancestral homeland.

Thank you.

In addition to this Committee as a body, the Tribe would also like to especially thank Senators Ron Wyden and Jeff Merkley, and Representative Peter DeFazio, for sponsoring our reservation legislation in their respective chambers of Congress.

The basic story of our bill is simple. Our Tribe ceded over 800 square miles of our Southern Oregon homeland to the federal government in a treaty ratified by the US Senate in 1854. The Cow Creek Treaty contained a reservation lands provision, but this obligation was never fulfilled by the federal government.

In spite of all odds and difficulties, our ancestors held our tribe together and met regularly as a tribal government, believing that one day justice would prevail and the dream of a reservation for our people would become reality.

Subsequent to our Tribe being legislatively restored to federal recognition in 1982, our Tribe has focused on providing governmental services and developing programs while working to develop a diverse economy from a limited land base in a rural natural resource area.

While our Tribe is grateful for our federal restoration, it did not address the reservation lands provision of our Treaty and today, although our Tribe has been able to purchase some limited acreage for housing, governmental services and economic development, we are one of the only tribes in the US with a ratified treaty providing for a reservation, with no reservation yet established.

Our reservation lands bill will not only rectify a material omission in the treaty relationship between the Cow Creek Umpqua and the federal government, it will also allow our Tribe to continue on our well established path of self-sufficiency, regional economic development and environmental stewardship.

For our people to have a place of their own Tribe to gather, to fish, to hunt and camp and meet and make a meaningful living, is the culmination of a dream seven generations old, and—should we be fortunate enough to have Congress complete the process of honoring our treaty reservation—we are committed to making those lands beneficial for the next seven generations of our Tribe, as well as part of a favorable tide for our entire community.

When we look at the map of our proposed reservation lands, located just miles from where our treaty was signed, and in the same area as our sacred cultural gathering place, South Umpqua Falls, and see our Tribal names reflected in the very landscape through features such as Rondeau Butte and Dompier Creek, we know in our hearts that the reservation bill is right, and the time is now.

Today I was able to greet you in our language, Takelma, because the efforts of my ancestors and your predecessors in Congress have given us the ability and hope to begin to speak our ancient words. It is my wish that the fruits of our reservation lands efforts today will pave the way for my descendants to make the whole speech in Takelma, as proud Americans addressing those that follow in your footsteps in these halls of Congress.

Again, thank you for allowing me to testify before you.

Senator MANCHIN. Thank you, Mr. Rondeau.  
At this time, Mayor Kellar.

**STATEMENT OF ROBERT KELLAR, MAYOR, CITY OF SANTA CLARITA, CA**

Mr. KELLAR. Thank you. Good afternoon, Chairman Manchin and members of the committee. My name is Bob Kellar and I am the mayor of the city of Santa Clarita, California. Thank you for the opportunity to testify today in support of S. 771.

I want to begin by thanking Senator Boxer for sponsoring the bill. I also wish to extend the Santa Clarita City Council's appreciation to Senator Feinstein for cosponsoring S. 771 and to Representative McKeon for his long-term involvement in leadership on this issue.

I'm proud to have with me today my colleague on the Santa Clarita City Council, Mayor Pro Tem Laurene Weste, who sits behind me. Additionally, we have Cliff Kirkmyer, Executive Vice President of Aggregates and Mining Resources for CEMEX USA.

I ask the committee's consent to have the entire text of my statement and CEMEX's statement entered into the record.

This bill is the product of over 6 years of partnership between the city of Santa Clarita and CEMEX in a mutual effort to find a responsible resolution to a difficult problem.

While some may feel that S. 771 may not be the perfect solution, it represents our best ongoing collaborative efforts. The Santa Clarita City Council remains committed to working with our legislative delegation, CEMEX and other stakeholders.

During the past 14 years, the city of Santa Clarita and CEMEX have been in dispute over the company's proposal to site a 56-million-ton sand and gravel mine in our community. The proposed project goes back almost a quarter century, when two 10-year consecutive mining contracts were issued by the Bureau of Land Management to CEMEX's predecessor-in-interest, Transit Mixed Concrete.

The proposed mining area is located on split estate with the surface owned by the city of Santa Clarita and the underlying mineral estate owned by the BLM.

While small-scale mining is an integral part of our community, a large-scale mine is clearly incompatible with the vibrant urban area of today.

For example, in 1990, when the contracts were issued, Santa Clarita's population stood at approximately 110,000 people. Today, Santa Clarita's population has almost doubled and now places our community in the top 5 percent of California's 482 incorporated cities. We expect that significant growth will continue into the future.

Fourteen years ago, when the environmental documents were released, the city of Santa Clarita began administratively and legally challenging the size and scope of the project. Between 1999 and 2006, Santa Clarita and CEMEX engaged in an aggressive legal and public-relations battle that cost both sides millions of dollars, but brought us no closer to a resolution.

Since 2007, the city and CEMEX have been working in partnership with Senator Boxer, Senator Feinstein and Representative McKeon to craft a mutually agreeable solution which meets the goals of our community's residents while providing CEMEX with appropriate compensation for their contracts.

The legislative history reaches back even farther with legislation having been introduced in each of the past 6 sessions of Congress.

We are now at a critical juncture. If we cannot bring closure to the issue during this session, CEMEX has indicated that they will have no choice but to go forward and obtain the final permits leading to the mining of the site. Many years of cooperation and trust will be lost and, more importantly, the community will be changed forever with the establishment of large-scale mining.

The city of Santa Clarita's opposition to the proposed mine is founded on 4 primary areas—traffic congestion, air quality, loss of irreplaceable habitat and open space and significant depletion of the quality of life for our citizens.

Over the past 5 years, departments of the Federal Government have conducted or participated in 4 different studies that have identified the Upper Santa Clara River area in which the mining project is proposed to be located as an important area for ecological resource protection.

The United States Forest Service, National Park Service and even BLM have independently validated the importance of habitat and open space resource protection in the Upper Santa Clara River Watershed. This new information certainly is worthy of your consideration.

We have forged a coalition of business, environmental stewards and government, including California Natural Resources Agency Secretary John Laird, on behalf of Governor Jerry Brown's administration, in support of S. 771.

The bill authored by Senator Boxer and Senator Feinstein facilitates the protection of important and potentially irreplaceable natural resources while providing for fair and appropriate compensation for the contract holder.

Santa Clarita and CEMEX are committed to working with Senator Boxer to achieve a zero score on the bill from the Congressional Budget Office.

On behalf of the Santa Clarita City Council and our constituents, I urge your support for S. 771.

I would be pleased to answer any questions. Thank you.  
[The prepared statement of Mr. Kellar follows:]

PREPARED STATEMENT OF ROBERT KELLAR, MAYOR, CITY OF SANTA CLARITA, CA

S. 771

*Summary*

The City of Santa Clarita, California supports S. 771, for reasons outlined in this background document and in conformance with Mayor Bob Kellar's oral testimony to be presented on November 20, 2013, which accompanies this submission.

S. 771, sponsored by Senator Barbara Boxer (D-CA) and Senator Dianne Feinstein (D-CA), provides a reasoned solution to a difficult dispute that is now in its fourteenth year. The bill ensures that the long-term needs of the community are met through elimination of mining at the site. Over the past two decades, significant growth in the community has placed the once remote proposed mining site adjacent to a vibrant, urbanizing city. An important additional value supporting enactment of S. 771 is that it facilitates preservation of irreplaceable ecological natural resources, protection of species, and creates an important urban/wildland interface balance, complementing existing federal interests in the area. Furthermore, the bill provides for fair and appropriate compensation of CEMEX for the value of their valid mining contracts with the Bureau of Land Management.

During the past five years, four resource studies participated in by the United States Forest Service, National Park Service, or Bureau of Land Management have identified important ecological natural resources within the Upper Santa Clara River watershed, where the mine is proposed to be located. The studies, developed independently by the various federal agencies, provide significant new information that was unknown at the time the Record of Decision for the project was issued in 2000.

The commonly found aggregate is readily available throughout California and can be accessed at other locations. California Natural Resources Secretary John Laird's strong support for S. 771 validates both the importance of the recent federal resources studies and the availability of sand and gravel within the State of California, exclusive of the site under the two federal contracts.

S. 771 is the product of over six years of partnership between the City of Santa Clarita and CEMEX in a mutual effort to find a responsible resolution to a seemingly intractable problem. The bill facilitates a winning scenario for the community, contract holder, and the United States government!

*Project History*

Over the past fourteen years, the City of Santa Clarita, California and CEMEX have been in dispute over a proposed 56,000,000 ton (net) sand and gravel mine, to be located in the Soledad Canyon area, immediately east of the City of Santa Clarita. CEMEX currently holds two valid mining contracts (CA-22901 and CA-20139) issued by the United States Bureau of Land Management (BLM) on split estate; with the City of Santa Clarita owning the surface estate and the underlying mineral estate owned by BLM. The two contracts are each ten years in duration and, with consecutive application, represent twenty years of projected mining. The federal mining contracts were originally awarded almost a quarter century ago, in March 1990, with the Record of Decision for the project issued in August 2000.

It is certainly arguable that these contracts would not be issued today; in part, based upon rapid community urbanization and new information contained in recently completed and currently-in-progress federal resource studies. The studies have identified the Upper Santa Clara River area, in which the mining project is proposed to be located, as environmentally significant. The vast majority of information contained in the new studies was not known at the time the project's environmental documents were prepared and the Record of Decision issued. These new studies, coming forward within the past five years, have been conducted or participated in by the United States Forest Service, National Park Service, or Bureau of Land Management.

In addition to the new information related to the Upper Santa Clara River watershed, the project will significantly increase regional traffic congestion and negatively impact air quality. According to the environmental documents, at full operation the mine is anticipated to place 1164 additional truck trips daily onto California State Route 14, continuing south into the greater Los Angeles metropolitan freeway and arterial system. During an average day, once the project is fully online, this will mean one additional large truck on local roadways every two minutes, 24 hours per day! In addition to traffic congestion concerns, the mine is expected to negatively impact air quality within the geographically self-contained Santa Clarita Valley. According to the 2004 South Coast Air Quality Management District Santa Clarita Valley Subregional Analysis, while PM 10 emissions from the project would not exceed the federal standard; the more protective State of California standard would be exceeded. Furthermore, according to the study, "Santa Clarita does not meet the federal and California ozone air quality standards."

During the period from 1999 through 2006, the City of Santa Clarita and CEMEX engaged in a bitter legal and public relations battle, costing both entities several million dollars. These efforts failed to resolve the dispute and both parties ultimately came to the conclusion that a cooperative strategy was more likely to yield results acceptable to both parties. Since 2007, the City of Santa Clarita and CEMEX have been working in partnership to secure a legislative resolution to the ongoing dispute over proposed large-scale mining in Soledad Canyon.

Existing law does not provide the Department of the Interior with the necessary administrative authority to significantly modify or cancel the contracts. Federal legislation is required to provide authorization for the Secretary of the Interior to cancel the mining contracts and compensate CEMEX for the fair market value of their contracts with BLM. Enactment of federal legislation will facilitate fair compensation of CEMEX and protection of important natural resources identified by the various federal agencies through their studies.

During each of the last three sessions of Congress, Senator Boxer has introduced legislation to resolve the dispute between the City of Santa Clarita and CEMEX. Additionally, going back almost a decade, in 2004, Senator Barbara Boxer (D-CA) first addressed the dispute legislatively by introducing S. 2058, which terminated the two federal mining contracts, but did not provide compensation for CEMEX. A similar measure, H.R. 3529 had been introduced in the House of Representatives by Representative Howard P. "Buck" McKeon (R-CA-25) in late 2003.

In the 108th (S. 2058/H.R. 3529), 109th (H.R. 5471), 110th (H.R. 5887), 111th (S. 3057/H.R. 4332), 112th (S. 759/H.R. 6469) and 113th (S. 771) Congresses, there has been legislation introduced in either the Senate, House of Representatives, or both houses in an ongoing effort to bring a successful resolution to the issue. For a variety of reasons, many unrelated to the content of the measures, earlier efforts have been unsuccessful. However, each iteration of the legislation has served as a catalyst for discussion; resulting in refined language designed to meet the needs of the parties and resolve the long-term conflict in the best manner possible.

#### *Background*

In April 18, 2013, Senator Barbara Boxer introduced S. 771, the Soledad Canyon Settlement Act. This bill was carefully crafted by Senator Boxer to incorporate three key components desired by the City of Santa Clarita and CEMEX, as central to any successful legislative effort: 1) cancellation of the two ten-year consecutive valid mining contracts between BLM and CEMEX; 2) withdrawal of the site that is the subject of the two mining contracts from further mineral entry; meaning that the Secretary of the Interior is prohibited from further contracting, leasing or other conveyance of a right to mine the property; and 3) compensation of CEMEX for the fair market value of the two contracts.

An important element to this year's legislative effort is the addition of Senator Dianne Feinstein (D-CA) as a co-sponsor of S. 771. In addition to his long-standing leadership on the issue, United States Representative Howard P. "Buck" McKeon (R-CA-25) has expressed his personal support for enactment of S. 771, thus demonstrating strong bi-partisan support for a legislative resolution to the prolonged dispute.

The funds to fairly compensate CEMEX are derived from the sale of approximately 10,200 acres of BLM owned properties in San Bernardino County, California that have already been identified for disposal in the adopted 2006 West Mojave Land Management Plan. The lands are already slated to be sold by BLM and S. 771 simply establishes a specific time period in which the sales shall occur. All of the lands identified for sale have been vetted by the Sierra Club, which is in support of the bill.

In the event that the value of the lands identified for sale is less than the value of the contracts established by the Secretary of the Interior, S. 771 directs that the Secretary shall work with the City of Santa Clarita and CEMEX to financially participate in the elimination of the shortfall. Both entities have assured Senator Boxer of their good-faith commitment to evaluate financial participation, should that become necessary.

*The Changing Dynamic of the Santa Clarita Area*

At the time the original contracts were issued in 1990, the population of the City of Santa Clarita was approximately 110,000 people. Today's population is almost double that at approximately 204,000, with an additional 70,000 people residing in the adjacent unincorporated areas of the geographically self-contained Santa Clarita Valley. In terms of population, Santa Clarita is the third largest municipality of the eighty-eight cities in Los Angeles County, behind Los Angeles and Long Beach. Santa Clarita ranks, by population, in the top 5% of California's 482 incorporated municipalities. The City of Santa Clarita was recently identified as the fastest growing city in California, based upon 2012 population figures provided by the California Department of Finance.

The Santa Clarita Valley is a geographically separate area, located immediately north of the City of Los Angeles. The community is essentially surrounded on three sides by the Angeles National Forest. The Santa Clara River, the largest relatively natural, free flowing river in Southern California bisects the community; as it travels east to west from Los Angeles County, through Ventura County, and flows into the Pacific Ocean.

For a number of years, there has been significant interest in preserving the natural habitat and other important ecological resources of the Upper Santa Clara River area, which is strategically located between the northern and southern segments of the Angeles National Forest. Additionally, the Pacific Crest Trail, which runs the entire length of the west coast, traverses the area and provides important interconnectivity with regional and local trail systems (refer to map entitled Trails and Open Spaces Parks and Recreations Planning Map).

Four critical studies have been conducted or are being conducted that are now quantifying the importance of the Upper Santa Clara River area. Each of these studies is outlined below.

EAST SANTA CLARITA LAND CONSERVATION CONCEPT PLAN AND IMPLEMENTATION STRATEGY

In 2008, a coalition comprised of the City of Santa Clarita, County of Los Angeles, Santa Monica Mountains Conservancy, United States Forest Service, Rivers and Mountains Conservancy, and Vulcan Materials Company (a major land owner in the area), developed the East Santa Clarita Land Conservation Concept Plan and Implementation Strategy. This collaboration built upon a number of earlier efforts, which identified the importance of connecting the northern and southern sections of the Angeles National Forest to facilitate critical wildlife linkages and habitat preservation.

The Angeles Linkage Conceptual Area Protection Plan (CAPP) was identified and a strategic effort was set into motion to begin purchasing properties, thus implementing the long held vision of connecting critical connections between the two sections of the Angeles National Forest. The CAPP area includes approximately 26,000 acres and the proposed mining site is located within the zone.

The 2005 Land Management Plan for the Angeles National Forest states, "Opportunities for establishment of regional wildlife linkages to improve connectivity between the San Gabriel, Castaic, and Santa Susana Mountains exist and are needed in this place. Potential threats to sensitive habitat areas include developed and dispersed recreation, mining, wildland fire, and groundwater extraction." The report also states that, "The national forest will work collaboratively with others to acquire land that contains unique resources; is needed for continued public access; enhances public use; or improves habitat linkage."

The plan also emphasizes the importance of the Pacific Crest Trail, a portion of which is located within the identified CAPP area. The Pacific Crest Trail is a 2,663 mile trail, running the entire length of the three west coast states from Canada to Mexico. The trail was designated a National Scenic Trail under the National Trails System Act of 1968.

For further information, please reference the East Santa Clarita Land Conservation Concept Plan and Implementation Strategy included with this submission.

## NATIONAL PARK SERVICE: RIM OF THE VALLEY CORRIDOR SPECIAL RESOURCE STUDY

The National Park Service has initiated the Rim of the Valley Corridor Special Resource Study, under authority granted through the Consolidated Natural Resources Act of 2008 (P.L. 110-229). The purpose of the study is to determine whether any of the evaluation area is eligible to be designated as part of the national park system or added to the Santa Monica Mountains National Recreation Area. In the event that direct federal management is not appropriate, the study contemplates alternatives for government agencies at all levels and private entities to work in partnership to protect the area's resources and enhance outdoor recreational opportunities.

The study is currently in progress, with an anticipated completion date sometime during calendar year 2014. Although not yet complete, the study has already identified Nationally Significant Natural Resources in the Upper Santa Clara River area, in which the proposed mining site is located.

According to the National Park Service's Fall 2012 Newsletter #3 regarding the Rim of the Valley study, "The Upper Santa Clara River contains some of the highest quality, least disturbed and biotically intact acreage of big-cone Douglas fir-canyon oak forest, riparian forest and woodland, coastal sage scrub, and alluvial fan sage scrub. Invertebrate species diversity is very high with over 2,500 species."

For further information, please reference the United States Department of the Interior National Park Service Rim of the Valley Corridor Special Resource Study Newsletter #3—Fall 2012 included with this submission.

## SAN GABRIEL WATERSHED AND MOUNTAINS SPECIAL RESOURCE STUDY

The National Park Service recently completed the San Gabriel Watershed and Mountains Special Resource Study. The Secretary of the Interior transmitted the study to Congress on April 10, 2013. The study zone overlaps a portion of the area contained within the Rim of the Valley Corridor Special Resource Study, including portions of the Upper Santa Clara River watershed.

The San Gabriel study's selected alternative establishes a San Gabriel unit of the Santa Monica Mountains National Recreation Area. The report further identifies the importance of strong partnerships between the federal government, state and local governments, non-profit organizations, and landowners as being the key toward achieving the conservation, recreation, and educational goals of the new unit.

The study highlights the Santa Clara River as "the last unchannelized riparian and wildlife corridor in the region, providing the primary remaining east-west biological connection between the San Gabriel Mountains and the Pacific Ocean." The study goes on to note that "the Santa Clara River functions as an important corridor between the mountains and the ocean. Protecting this corridor is a high priority for local and state agencies as well as conservation groups."

For further information, please reference the United States Department of the Interior National Park Service San Gabriel Watershed and Mountains Special Resource Study extractions relating to Upper Santa Clara River included with this submission.

## SOUTH COAST RESOURCE MANAGEMENT PLAN

The Bureau of Land Management is currently completing the South Coast Resource Management Plan. This study has identified a number of potential Areas of Critical Environmental Concern (ACEC) for adoption under the new management plan. According to the study, "ACECs are areas where special management attention is needed to protect, and to prevent irreparable damage to important historic, cultural, and scenic values; fish or wildlife resources or other natural systems or processes; or to protect human life and safety from natural hazards."

The current effort identifies eight existing ACECs and proposes up to eight additional environmentally critical areas be added to the updated South Coast Resource Management Plan. The Upper Santa Clara River ACEC is identified in Alternatives B and D in the draft environmental document. Alternative B identifies 32,368 acres and Alternative D identifies 31,713 acres that partially overlay and complement the Conceptual Area Protection Plan (CAPP) established in the East Santa Clarita Land Conservation Concept Plan and Implementation Strategy. There are 1,620 acres of BLM land within the proposed Upper Santa Clara River Area of Environmental Concern.

The rationale for seeking the Upper Santa Clara River ACEC designation recognizes the importance of maintaining the wildlife corridors and habitat in the area. The draft federal report underscores the important role of the Santa Clara River as

a breeding ground, a wildlife travel route, for flood control, and groundwater recharge.

While the report and accompanying maps acknowledge the significant resource value of the area, the report is careful to specifically carve out the proposed CEMEX mining site from inclusion in the Area of Critical Environmental Concern under the preferred alternative (D). In reviewing the map, this is clearly a political decision vs. an objective environmental decision, as the lines eliminating the site are drawn in conformance with the mining site's property boundaries. In its selection of the preferred alternative, it would appear that the department is concerned about not compromising its valid mining contracts. However, another alternative (B) shows that inclusion of the mining site does strongly suggest environmental value to the department. The report talks in terms of making the designated Area of Critical Environmental Concern off limits for major surface disturbance activities, while creating a specific exception for "State of California Division of Mines and Geology classified and designated sand and gravel resources in Los Angeles County."

The draft South Coast Resource Management Plan very clearly recognizes the significant natural ecological resource value in the Upper Santa Clara River watershed and is generally consistent with the findings of the other federal and non-federal environmental resource studies.

For further information, please reference United States Department of the Interior Bureau of Land Management South Coast Resource Management Plan, Appendix H, relating to Areas of Critical Environmental Concern and maps for Alternative B and Alternative D, included with this submission.

#### SANTA CLARITA OPEN SPACE PRESERVATION DISTRICT

In 2007, the voters of Santa Clarita established an Open Space Preservation District. Santa Clarita voters realized that their personal financial participation was necessary for ensuring that local open space preservation and habitat enhancement goals are achieved. Since the City of Santa Clarita's incorporation in December 1987, the City Council and community have been committed to establishing a green-belt around the City. This green-belt builds on existing federal land ownership, primarily in the form of the Angeles National Forest, which surrounds the City of Santa Clarita on the northern, eastern and southern sides. Complementary State of California open space and park ownerships, primarily in the form of the 4,000-acre Santa Clarita Woodlands Park and other Santa Monica Mountains Conservancy owned and managed properties, provide open space buffers and habitat linkages on the southern and western flanks of the City of Santa Clarita.

Since the City of Santa Clarita's incorporation in 1987, the Santa Clarita City Council, in partnership with the community, has made a strong commitment toward enhancing local and regional open space and parklands, in addition to building and connecting trail linkages. For example, over the past six years, Open Space Preservation District funding has been leveraged to acquire approximately 2,000 acres. Important natural resources, irreplaceable habitat, and open space are now being preserved in perpetuity.

#### *Competing Priorities*

The current challenge is to balance the need for preserving irreplaceable natural resources in the Upper Santa Clara River watershed with the statewide need for construction aggregate. If the proposed mine moves forward, it will undoubtedly have a negative effect on open space retention, species protection, resource preservation and enhancement. The proposed CEMEX mine is located within areas identified in the four studies as important for preservation and habitat connectivity. The proposed mining site is also identified as an important, but not irreplaceable, source for construction aggregate within the San Fernando Valley-Saugus-Newhall aggregate study area, as outlined in the Aggregate Sustainability in California 2012 report.

On October 3, 2013, California Natural Resources Agency Secretary John Laird wrote to Senator Boxer expressing "strong support" for S. 771. This statement of support is critical for two primary reasons. First, this is the only time that the State of California administration has expressed support for federal legislation relating to the proposed Soledad Canyon mining project. Second, Secretary Laird is charged, through the Department of Conservation—a constituent department of the California Natural Resources Agency, with identifying future aggregate resources in California and planning for future needs. A copy of Secretary Laird's letter in support of S. 771 is included with this submission.

Clearly, the Secretary believes that the ecological natural resources of the Upper Santa River area must be protected and that sufficient aggregate is available elsewhere in the state to meet California's future needs. S. 771 provides the legislative

vehicle to facilitate realization of preservation and protection goals, which have been identified as important to the United States, State of California, City of Santa Clarita, and other public and private sector entities.

*Aggregate Availability In California*

The California Department of Conservation, California Geological Survey's Aggregate Sustainability in California 2012 report was made publicly available in Spring 2013. The Department of Conservation is contained within the California Natural Resources Agency, under Secretary John Laird. This report is an update of the assessment published in 2006. The 2012 report identifies the availability of aggregate in California (sand, gravel and crushed stone) over the next 50 years. The California Department of Conservation divides the state into 31 aggregate study areas. Santa Clarita is included within the San Fernando Valley-Saugus-Newhall aggregate study area.

The 2012 California aggregate report identifies a statewide 50-year anticipated demand of 12,047,000,000 tons of aggregate. Currently, 4,067,000,000 tons of aggregate are permitted; meaning that "aggregate deposits that have been determined to be acceptable for commercial use, exist within properties owned or leased by aggregate producing companies, and have permits allowing mining of aggregate materials." The permitted deposits represent just under 34% of the identified statewide need over the next half-century.

The report also identifies approximately 74 billion tons of non-permitted aggregate resources within the 31 aggregate study areas, representing six times the anticipated statewide demand! Clearly, sand and gravel aggregate is not in short supply in California!

Within the San Fernando Valley-Saugus-Newhall study area, it has been determined that the 50-year aggregate demand is 476,000,000 tons. Currently, there are 77,000,000 tons permitted, representing approximately 16% of anticipated future demand. The proposed CEMEX mining project in Soledad Canyon is considered, for purposes of the study, to be a permitted project.

The proposed CEMEX project represents approximately 11.8% of the 50 year demand total for the local study area. Furthermore, BLM has identified the proposed CEMEX mining site as having an additional 300,000,000 tons of material, which would represent approximately 75% of the long term regional need. Over the past six years, permitted reserves in the San Fernando Valley-Saugus-Newhall study area have fallen by 11,000,000 tons or 13%, while the 50-year regional demand has increased by 19,000,000 tons or 4%. While BLM and the State of California have historically viewed the Soledad Canyon site as important to meeting future regional aggregate needs, the recent support of S. 771 by Secretary Laird places a premium on the protection and preservation of the ecological natural resources in the Upper Santa Clara River area.

In 2007, the City of Santa Clarita commissioned a study conducted by The Rose Institute of State and Local Government, Claremont-McKenna College, entitled *The Economic Impact of CEMEX's Soledad Canyon Project on the Surrounding Community and Los Angeles County*. This is an update to a study conducted in 2001, also authorized and paid for by the City of Santa Clarita. While the two studies were paid for by the City of Santa Clarita, the results were independently determined, as the City needed an unbiased, authoritative assessment of the proposed mining site's sand and gravel asset scarcity and importance. The updated study determined that there were 11,500,000,000 tons of aggregate resources in Los Angeles County. This included permitted and non-permitted sand and gravel resources.

This number has not likely changed significantly over the past six years. As noted in the state report, it is highly unlikely that all the identified resources will be mined due to a number of reasons. The Rose Institute study does make the case that aggregate materials are not scarce and potentially available to meet anticipated demand!

During the past six and one-half years, the City of Santa Clarita and CEMEX have been engaged in a highly public effort to legislatively resolve the now fourteen year old dispute over mining in Soledad Canyon and remove the site from the federal mineral portfolio. A key question is "What sites have been identified or activities undertaken to secure additional permitted reserves within the San Fernando Valley-Saugus-Newhall study area during the past six years?"

The state report acknowledges that while there are 74 billion tons of non-permitted aggregate resources identified within the 31 study areas throughout California, "it is unlikely that all of these resources will ever be mined because of social, environmental, or economic factors. The location of aggregate resources too close to urban or environmentally sensitive areas can limit or prevent their development." The Soledad Canyon site is too close to urban and environmentally sensitive areas,

based upon substantial growth in the community and the new federal studies coming forward. Secretary Laird's letter of support for S. 771 appears to validate that perspective.

*Conclusion*

The City of Santa Clarita respectfully requests that the members of the Senate Subcommittee on Public Lands, Forests and Mining support S. 771.

[Additional material submitted has been retained in subcommittee files.]

Senator MANCHIN. Thank you so much. I would like to just start out with a couple of questions, if I may.

Mayor, you were just mentioning on that, I would just ask do you have any opposition whatsoever? Is there any groups opposing? I know you told me everyone—your delegation is in support, you're in support, CEMEX is in support. Are there any organized opposition groups?

Mr. KELLAR. Senator, in fact, we have over 100 entities throughout the city of Santa Clarita—school districts, water boards, homeowner associations—in support. I am not aware of a single organization in opposition to this bill.

Senator MANCHIN. On top of that, I know we were talking about scoring.

Mr. KELLAR. Yes.

Senator MANCHIN. I think Mr. Ellis said—I know we're losing \$28 million in royalties. There's another \$450 million he mentioned of lost revenue to the taxpayers.

Mr. KELLAR. I don't believe that is completely the case, and I state that because the first 10 years are the years that we are looking at. As you know, there are two 10-year contracts. His numbers project beyond that, should they have authority to move forward with additional contracts at some future date in time. So I don't believe that those numbers are really—

Senator MANCHIN. You all are capable of handling the \$28 million.

Mr. KELLAR. That's correct, sir.

Senator MANCHIN. Thank you, sir.

Mr. Garcia, Mr. Rondeau, on S. 1414 and S. 1415—and either one of you all can or both of you can respond to this, if you like—how important are the land transfers in your bills to the exercise of your inherent sovereignty?

Is allowing unfettered public access to these lands, as I'm understanding the bills do post-transfer, against a promotion of tribal sovereignty, do you believe that diminishes or takes away from your sovereignty by the way the bills are constructed with unfettered access?

Mr. GARCIA. Yes, Senator Manchin, you know, we believe that S. 1414 is something we're—you know, the deer, the beaver, the elk of the area really don't know any boundaries, so we've already entered into consultations and discussions with the State of Oregon over issues that would have been involved.

You know, fire knows no boundary, and so in terms of access, in terms of dealing with the issues with the other constituencies those are certainly something that we believe that we'd enter into active discussions with.

Senator MANCHIN. Do you all have any idea how it would or what's your thoughts about how it would create jobs for the tribes and non-tribal people in the area?

Mr. RONDEAU. For Cow Creek, we have a long history of cooperative relationships with our community. Our philosophy has been high tide floats all ships. If our community does well, so does our tribe and vice versa.

We do offer a lot of jobs in our community. We're one of the top employers in our area, and by managing these properties properly, we feel that we will be able to provide jobs for the community as well as much needed lands for our tribal people.

Senator MANCHIN. Chairman Rambler, yours has a little bit more controversial, and, if I may, first of all, how many tribes around the country or do you know of that oppose S. 339?

Mr. RAMBLER. From our last count, it was over 400 tribes across the United States.

Senator MANCHIN. Come out openly against S. 339.

Mr. RAMBLER. Yes.

Senator MANCHIN. I know that you strongly oppose it, and I also understand that the bill has the support of the Arizona delegation, hence, that creates a little bit of a controversy in the—We're used to controversy here, as you know. This makes it a little more contentious.

Is there any way that you can see that you all can come to an agreement or find some compromise? Has it been proposed to you, any type of a compromise that you might be able to live with?

Mr. RAMBLER. Two things, first one is what we see is this land that's sacred to us that covers the whole 2,400 acres is that once it gets desecrated, it really infringes on our Apache way of life, which is our freedom of religion that's afforded to all other Christians in the United States, people of faith. We want that respected, because it is who we are. It's our way of life, and that's the way that we believe.

As far as what you're saying about is there anything compromise, the only thing that I will say is that if this bill goes through the normal administrative process of getting it reviewed and getting all the issues that are very harmful, and if that goes through, then not only us Apaches, but other Indian tribes and other communities that live in the area, I believe, they will come out and oppose this once they find out what this bill really means to the area.

Senator MANCHIN. Thank you.

Senator Heinrich.

Senator HEINRICH. Thank you, Chairman.

Chairman Rambler, I want to thank you for your testimony today. I think, as part of our trust responsibility to our Nation's tribes, all of us on this committee, regardless of whether we have tribes or reservations in our home states, have a responsibility to understand these unique impacts on native communities.

I want to just thank you for sharing the role that these places play in your community's religious life. I've had to deal with a number of these thorny Sacred Site issues in my home State, and that's always a difficult thing for communities to do. I want to share my gratitude for your willingness to put some of that into the record.

I don't have any further questions. If there's anything that you think you missed in your testimony, I'd like to hear it. Otherwise, I'll move on.

Mr. RAMBLER. OK. Thank you, Senator Heinrich. First of all, thank you for being open minded about this issue.

Second is as I was explaining the Apache way of life and how this area is going to affect that Apache way of life, and not just our tribe. Other tribes have an interest in that area that come from that area.

We go there not only to pray, we go there to collect medicinal plants that still provide us the medicine that we need today. We go there to gather food, and there's places in the whole area that are very sacred to us.

Right now, the Tonto National Forest is still working with us. Takes a long time, but they're still working with us on the ethnographic study to identify those things, because nobody seems to believe us.

How this ties into what's going to happen is here's the way we see it: Once this giant hole is created underneath the surface, eventually that land is going to collapse on top of—and even Resolution Copper themselves have admitted that there'll be some sort of subsidence in that area, that a subsidence, a land collapse two miles in diameter, and these are mountains in that area.

Those mountains are what we consider weather makers. These mountains gather snow. They attract snow. They gather water. They attract rainfall. Once it comes down, the rainfall, it's already been created by our Creator that they have designated places to go to in all the 4 directions.

The same with the snow. Not only when they melt they go to these 4 directions, but they go trickle down underneath to replenish our aquifers for our children.

But when this giant hole is created, what's going to happen, those waters that will naturally flow outwards to other areas, with that giant hole, it's going to reverse. It's now going to find its way to this big magnet in this giant hole that's going to attract this water.

The only way that it's going to stop the water from flowing back in there is it reaches a certain level of surface, and so once that happens, then, yes, the water may stop flowing back into that giant hole.

At the same time, the water that's going to be contaminated from that area, I mean, once that happens, the surface is going to be affected, and that surface, those natural elements that are created by our Creator that ties us to our Creator, they're going to be affected forever. How can we as human beings undo or try to perfect something that has already been perfected by a higher power than us?

Senator HEINRICH. Thank you.

Senator MANCHIN. Senator Flake.

If there's no more questions, let me just thank all of our participants today, and then all the testimonies you gave us, it's very enlightening and it's very helpful for us.

We're going to have to take this up to the full committee, as you know, and we'll see where it goes from there. But we really appre-

ciate you all making an effort to be here today, and your testimony is well received.

With that, the Subcommittee on Public Lands, Forests, and Mining is adjourned.

[Whereupon, at 5:21 p.m., the hearing was adjourned.]

## APPENDIXES

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### APPENDIX I

#### Responses to Additional Questions

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##### RESPONSES OF LESLIE WELDON TO QUESTIONS FROM SENATOR FLAKE

*Question 1.* In your testimony, you stated, "It is the Administration's policy that NEPA be fully complied with to address all federal agency actions and decisions, including those necessary to implement congressional direction." Where is this policy stated (e.g., federal regulations, guidance, statute, internal policy documents)?

Answer. The quoted statement was made in the context of expressing the Administration's concern about the timing of NEPA compliance in S. 339. The bill would change the timing of the environmental analysis under NEPA by requiring that the agency prepare the environmental review document after the land exchange is completed. The Administration's position is that S. 339 should be amended to require the preparation of an environmental analysis before the land exchange is completed.

In general, the Administration's position is that when NEPA applies to a proposed federal action having a potentially significant effect on the human environment then NEPA calls for consideration of the action's environmental consequences before a decision is made (42 USC 4332) and if a legislated land exchange leaves the agency with discretion to propose and decide how to carry out that law, and the law does not exempt the agency from its legal obligations, then the agency must comply with NEPA before it acts.

*Question 2.* Please provide a copy of the document that states that it is the Administration's policy that NEPA be complied with prior to enactment of a congressionally directed land exchange or other land conveyance.

Answer. Your question pertains to NEPA compliance prior to enactment of a bill directing a land conveyance. NEPA is not required prior to Congress' enactment of a legislated land conveyance. The CEQ regulations make clear that NEPA applies to Federal agencies, not to Congress.

Post-enactment, for many legislated land conveyances, Congress leaves some discretion to the Federal agency regarding implementation of the legislation. In such cases, the agency would comply with NEPA in determining how to exercise that discretion.

The Forest Service directives address NEPA compliance with congressionally directed land conveyances. Specifically, the Forest Service Handbook 1909.15 (01—Proposed Actions Subject to NEPA) states: Congress may direct the Forest Service to take certain actions, such as sale, exchange, or disposal of land, and the Forest Service has no discretion whether or how to take the action. In these cases it is not likely that the Forest Service is obligated to perform analysis and documentation under NEPA. The Forest Service Handbook identifies the circumstances when the agency is to apply NEPA. The specific statutory wording is key in these circumstances and therefore it is important to consult with an Office of General Counsel attorney to verify whether or not NEPA applies in each specific situation.

*Question 3.* Despite stating that it is Administration "policy," the Administration has not insisted on NEPA compliance prior to the enactment of any other congressionally directed land exchange or other land conveyance bill pending before this Committee. For example, the Administration's testimony on S.159, S.1414, S.1415, S.609, and HR 507, does not mention pre-conveyance or pre-exchange NEPA. Why has the Administration declined to require the same-type of NEPA compliance in other bills that it now insists is a "principal concern" with regard to S.339?

Answer. S.159 ( Lyon County Economic Development and Conservation Act), S.1414 (Oregon Costal Land Conveyance Act), S. 1515 (Canyon Mountain Land Con-

veyance Act of 2013), S. 609 (San Juan Federal Land Conveyance Act), and H.R. 507 (Manhattan Project National Historical Park Act), involve exchange or conveyance of any lands administered by the Department of the Interior (DOI). We defer to DOI about the positions taken on these bills. However, we note that none of the bills requires NEPA compliance in the same manner as S. 399, by requiring compliance after, not before, the conveyance. Our position is simply that when NEPA applies to a proposed federal action having a potentially significant effect on the human environment then NEPA calls for consideration of the action's environmental consequences before a decision is made (42 USC 4332) and if a legislated land exchange leaves the agency with discretion to propose and decide how to carry out that law, and the law does not exempt the agency from its legal obligations, then the agency must comply with NEPA before it acts.

*Question 4.* What are the criteria the Administration uses to determine whether to require NEPA compliance prior to a congressionally directed land exchange or other land conveyance?

Answer. See answer to Question 2. Whether NEPA applies depends upon whether enacted legislation leaves the agency with discretion to make a decision how to carry out the exchange. If when a legislated land exchange leaves the agency with discretion to propose and decide how to carry out that law, and the law does not exempt the agency from its legal obligations, then the agency must comply with NEPA before it acts.

*Question 5.* Is it the Administration's position that other congressionally directed land exchange or land conveyance bills currently pending before this Committee must be amended to include a NEPA provision prior to congressional enactment?

Answer. The Administration supports bill language that does not affect the agency's obligation to comply with or to prepare an environmental analysis under NEPA. Here the issue is not whether but when the agency must comply with NEPA. The Administration is concerned about legislation that requires NEPA compliance after completion of a land exchange or other conveyance. NEPA is a forward looking statute setting out procedural obligations to be carried out before a federal action is taken. It requires that, before taking a discretionary decision, the federal agency consider the environmental impacts of a proposed major federal action and alternatives of such action. The purpose of the requirement in the bill that the agency prepare a limited NEPA review after the exchange, when the land is in private ownership, is unclear because the agency will have exercised its discretion and completed the conveyance at that point.

*Question 6.* The Forest Service Handbook 1909.15, Chapter 20, page 11, states that the Forest Service's environmental review shall "[i]nclude reasonable alternatives not within the jurisdiction of the lead agency." Based on that authority is the Forest Service precluded from recommending reasonable alternatives affecting private land as part of an environmental impact statement?

Answer. The Forest Service is required to consider reasonable alternatives not within its jurisdiction in accordance with the Council on Environmental Quality's NEPA regulations. The Forest Service may consider reasonable alternatives affecting private land as part of an environmental impact statement, including an alternative or components of alternatives outside of its jurisdiction. The Forest Service may make a decision, or recommend an alternative affecting private land. The Forest Service would not have the authority to unilaterally implement an alternative outside of its jurisdiction or authority to do so.

*Question 7.* Did Resolution Copper's November 15, 2013 filing of the mine plan of operations initiate the completeness review that marks the beginning of the NEPA process?

Answer. The submission of the Plan of Operations (PO) by Resolution Copper on November 15 initiated a review by the Tonto National Forest to determine whether the proposal is complete and meets the regulatory requirements for a Plan of Operations. Because the proposal is large and complex, this review is estimated to take as long as nine months. The environmental review of the Plan of Operations under NEPA will begin after the Forest Service determines that the Plan of Operations is complete and notifies Resolution Copper that it has accepted the PO.

*Question 8.* Will tribal consultation be a part of that NEPA process?

Answer. Tribal consultation will be accomplished in conjunction with the NEPA process.

The CEQ Regulations (40 CFR 1501.2) require that:

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(d) Provide for cases where actions are planned by private applicants or other non-federal entities before federal involvement so that:

(2) The federal agency consults early with appropriate state and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

FS policy on consultation with Tribes is found in the Forest Service Manual at 1563 and the Forest Service Handbook at 1509.13. It is FS policy to consult with Tribes (and in some cases Alaska Native Corporations) on matters that may affect their rights and interests. For national policy, there is a minimum 120-day consultation period.

Forest Service Handbook 1909.15, Chapter 10, 11.31b—Cooperating with Other Agencies, states:

The lead agency has the responsibility to solicit cooperation from other Federal, Tribal, State or local agencies with jurisdiction by law or special expertise on environmental issues that should be addressed in the environmental analysis. (see “NEPA’s 40 Most Asked Questions”, #14) (40 CFR 1508.5)

Whenever invited Federal, State, Tribal and local agencies elect not to become cooperating agencies, they should still be considered for inclusion in interdisciplinary teams engaged in the NEPA process and on distribution lists for review and comment on NEPA documents. (CEQ Memorandum for Heads of Federal Agencies, 1/30/2002).

#### RESPONSES OF STEVEN A. ELLIS TO QUESTIONS FROM SENATOR WYDEN

*Question 1.* I would like to ask Mr. Ellis a question on the two Oregon bills I introduced—S. 1414 and S. 1415. Restoring these tribes’ homelands so that they can exercise their sovereignty is very important to these tribes. And, it’s very important to me. I appreciate that the Administration supports the goals of these bills. I understand that a land transfer like this is complicated and raises a number of policy issues. Can I get your commitment that the BLM will work with me so that we can move these bills forward?

Answer. The BLM supports the goals of the bills and the goal of putting lands into trust on behalf of tribes in order to protect sites of cultural significance and provide economic opportunities. The BLM has long enjoyed a strong relationship with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians and the Cow Creek Band of Umpqua Tribe of Indians. Our work with them has included consultation and coordination on a wide range of activities, such as restoration, recreation, environmental education, cultural and heritage resource management. We welcome the opportunity to continue our work with you on policy issues affecting access, utility and facility encumbrances as well as timber harvest so we can address concerns raised in our testimony while supporting the goals of the bills.

*Question 2.* Also, in your written testimony, you say you have technical concerns with section 7 of each bill. Can you please expand on that?

Answer. Section 7 of S. 1414 and S. 1415 pertains to the reclassification of public domain forest lands as O&C lands. This section raises a number of concerns for the BLM that we would like to work with you to address. First, the 180-day time frame for completing a survey as described in Section 3 would be very difficult-if not impossible-for us to meet due to staffing and cost constraints so we would like to identify a different time frame. Additionally, we would like to work with you to modify the survey requirements so as to ensure that they are described in a way that is both efficient and practical. For example, in lieu of completing extensive field surveys, we recommend instead use of the existing Public Land Survey System Land Descriptions where possible.

Second, the bills direct the Secretary of Agriculture and the Secretary of the Interior to “identify any land owned by the Oregon and California Railroad.” It is our understanding that you intend the bills to transfer or reclassify only Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands falling under the jurisdiction of the Department of the Interior. We would like to work with you on language clarifying this point.

Additionally, the bills direct the Department of the Interior to identify public domain lands to reclassify as O&C lands in order to ensure there is no net loss in the size of the O&C land base. The BLM is concerned that lands of approximately equal acreage, habitat condition, productivity, and land use allocation may be unavailable for reclassification within the affected planning areas. The BLM would like to work with you on language that provides greater clarity on the lands to be

reclassified and how they would be managed. Specifically, the BLM is concerned that reclassification would affect not only revenues to the Treasury but also the BLM's ability to meet present timber sale volume targets. Finally, the BLM would also like to work with you on two additional issues: language regarding the technical aspects of reclassifying land and language clarifying which environmental laws, policies, and plans would apply if the bills were enacted.

RESPONSE OF STEVEN A. ELLIS TO QUESTION FROM SENATOR BARRASSO

*Question 1.* S. 483, S. 776, and S. 841 would either designate wilderness or federal lands as a National Conservation Area. I am concerned we could be locking up lands that may be important for energy and mineral development.

Have these federal lands been assessed with respect to their energy or mineral development potential? Do you have any available reports to share with the committee?

Answer. The Department of the Interior defers to the Department of Agriculture on S. 776, the Columbine-Hondo Wilderness Act and S. 841, the Hermosa Creek Watershed Protection Act. The areas proposed for conservation designation under both of these bills are on National Forest System lands. Likewise the Department defers to the Department of Agriculture on National Forest System lands proposed for designation under S. 483, the Berryessa Snow Mountain National Conservation Area Act. Approximately 141,200 acres of the proposed 350,000 acre National Conservation Area is on lands managed by the BLM and approximately 28,650 acres on lands managed by the Bureau of Reclamation (BOR). The Department supports the bill as it applies to lands managed by the BLM and BOR.

The BLM does not have any official studies of this area. However, there are no mineral leases within the area proposed for designation and the potential for oil and gas and geothermal is generally considered low. There are two mining claims within the area on which there is no current activity. There had been active mining in parts of the area late in the 19th and early 20th centuries, but there has been no active mining for at least 30 years.

RESPONSES OF STEVEN A. ELLIS TO QUESTIONS FROM SENATOR FLAKE

*Question 1.* In your testimony, you stated, "It is the Administration's policy that NEPA be fully complied with to address all federal agency actions and decisions, including those necessary to implement congressional direction." Where is this policy stated (e.g., federal regulations, guidance, statute, internal policy documents)?

Answer. The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review "major Federal actions significantly affecting the quality of the human environment." Federal agencies also follow implementing regulations and policies issued by the Council on Environmental Quality (CEQ). The Department also promulgated NEPA regulations (43 CFR Part 46) and issued Departmental policy (Departmental Manual 516, Chapter 11) that the BLM also follows to comply with NEPA. NEPA requirements, including the public process and the direction to engage Federal, State, and local agencies, lead to better, more collaborative decision-making.

*Question 2.* Please provide a copy of the document that states that it is the Administration's policy that NEPA be complied with prior to enactment of a congressionally directed land exchange or other land conveyance.

Answer. The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review "major Federal actions significantly affecting the quality of the human environment." The Department's NEPA regulations at 43 CFR 46.100(a) specify that a bureau proposed action is subject to NEPA if it would cause effects on the human environment and is subject to bureau control and responsibility.

*Question 3.* Despite stating that it is Administration "policy," the Administration has not insisted on NEPA compliance prior to the enactment of any other congressionally directed land exchange or other land conveyance bill pending before this Committee. For example, the Administration's testimony on S.159, S.1414, S.1415, S.609, and HR 507, does not mention pre-conveyance or pre-exchange NEPA. Why has the Administration declined to require the same-type of NEPA compliance in other bills that it now insists is a "principal concern" with regard to S.339?

Answer. The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review "major Federal actions significantly affecting the quality of the human environment." BLM and DOI will work to comply with NEPA requirements for any legislation enacted by Congress.

*Question 4.* What are the criteria the Administration uses to determine whether to require NEPA compliance prior to a congressionally directed land exchange or other land conveyance?

Answer. The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review “major Federal actions significantly affecting the quality of the human environment.” Federal agencies comply with statutory direction they receive from Congress; this often entails compliance with multiple statutes. The applicability of NEPA requirements is dictated by the terms of the land exchange or conveyance statute and NEPA itself.

*Question 5.* Is it the Administration’s position that S.159 needs to be amended to include a pre-exchange NEPA provision prior to congressional enactment?

Answer. In testimony delivered on April 25, 2013, the Administration expressed concerns that the timeline provided in S. 159, the Lyon County Economic Development and Conservation Act, would not allow sufficient time to complete environmental review and public consultation required under the National Environmental Policy Act of 1969 (NEPA) prior to the exchange. NEPA requires that Federal agencies review “major Federal actions significantly affecting the quality of the human environment.” BLM and DOI comply with NEPA requirements and would like to work with Congress to meet the goals of the legislation while ensuring appropriate environmental review occurs.

*Question 6.* Is it the Administration’s position that S.1414 needs to be amended to include a pre-exchange NEPA provision prior to congressional enactment?

Answer. The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review “major Federal actions significantly affecting the quality of the human environment.” If S. 1414 was enacted, the BLM would comply with the requirements of NEPA.

*Question 7.* Is it the Administration’s position that S.1415 needs to be amended to include a pre-exchange NEPA provision prior to congressional enactment?

Answer. The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review “major Federal actions significantly affecting the quality of the human environment.” If S. 1415 was enacted, the BLM would comply with the requirements of NEPA.

*Question 8.* Is it the Administration’s position that S.609 needs to be amended to include a pre-exchange NEPA provision prior to congressional enactment?

Answer. The Administration has expressed its support for S. 609, the San Juan County Federal Land Conveyance Act. If S. 609 was enacted, the BLM would comply with the requirements of NEPA.

*Question 9.* Is it the Administration’s position that HR 507 needs to be amended to include a pre-exchange NEPA provision prior to congressional enactment?

Answer. The Administration raised environmental review concerns with the proposed land exchange when testifying on an earlier version of H.R. 507, the Pascua Yaqui Tribe Trust Land Act, in the 112th Congress. In its testimony on April 17, 2012, on the earlier version of the bill (H.R. 4222), the Department expressed concern that the legislation as written did not ensure public involvement and participation under the National Environmental Policy Act of 1969 (NEPA). NEPA requires that Federal agencies review “major Federal actions significantly affecting the quality of the human environment.” If S. 507 was enacted, the BLM would comply with the requirements of NEPA.

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RESPONSE OF ROBERT GARCIA TO QUESTION FROM SENATOR WYDEN

*Question 1.* Can you give us a sense of how the passage of these bills will enable your tribes to create jobs for community members, Indian and non-Indian, alike?

Answer. The Tribe’s primary motivation in seeking to have the lands affected by S. 1414 placed into trust is not economic. Even so, passage of S. 1414 will contribute to the economic self-determination of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (Tribe), and will benefit of the larger communities of which the Tribe is a part. Most of the land has been logged in the past by clear-cut logging or regeneration harvesting. We expect to construct a forest management plan for holistically managing these lands, integrating a combination of intensive but sustained-yield forestry and conservation restoration forestry, yet avoiding the extremes of either approach. The combination of the Tribe’s management philosophy with the continued applicability of federal laws as required by S. 1414 will permit modestly increased commercial use of the forestlands at the same time we begin to restore them to a condition our Ancestors would recognize and the seventh-generation of our descendants will appreciate. Timber from the trust forestlands will be harvested by local loggers and moved to mills by local log truck drivers. The stand will then be replanted by local tree planters. Roads will be maintained by local equipment operators. Fish and wildlife habitat will be actively improved by local restoration specialists. Some of the local jobs sustained by S. 1414 will be filled by

local tribal members and some by non-tribal local workers. In every case, their wages will sustain families and circulate in the local economy.

RESPONSES OF TERRY RAMBLER TO QUESTIONS FROM SENATOR CANTWELL

*Question 1a.* I have some concerns about the Southeast Arizona Land Exchange and Conservation Act. The bill would transfer land for large-scale mining and bypass important environment protection processes and necessary government-to-government consultation with affected Native American Tribes.

Chairman Rambler of the San Carlos Apache Tribe, you outlined extensive tribal concerns with this project, which underscores the need for continuous dialogue with affected tribes. The bill would effectively cut off all such consultation.

Last week the mining company finally released its "Mining Plan of Operations." Under normal circumstances, this report would trigger the NEPA process, which would need to be completed prior to the approval of the conveyance. This bill, however, would by-pass the NEPA process and tribal consultation and would allow the conveyance to occur without this important review. Enacting this bill without first seeing the results of that environmental review and without tribal consultation seems to be premature.

Do you believe the environmental protection and National Historic Preservation Act processes are sufficient to protect these culturally important sites from project development?

Answer. We agree with you that S.339 bypasses the NEPA process and tribal consultation process. Further, by themselves, NEPA and NHPA processes are not sufficient to protect culturally important sites from Resolution Copper's project development. The United States has trust obligations set forth in treaties, federal laws, and federal policies to protect and preserve sacred sites located on federal lands, including the Oak Flat area located in the Tonto National Forest which are ancestral homelands of Apaches and Yavapais, and to accommodate access to and ceremonial use of these sites by Native Americans. If the Oak Flat area were to be transferred into the private ownership of Resolution Copper, which is required in Section 4(j) of S. 339, these federal obligations would no longer exist.

Given that Resolution Copper plans to block cave mine the Oak Flat area, this type of mining would adversely impact or destroy it. Neither NEPA nor NHPA has teeth to require actual protections for the Oak Flat area or other areas adjacent to or near the Oak Flat area of significance to the Tribe and other tribes. NEPA and/or NHPA cannot guarantee that the Oak Flat area would be protected or prevent the Oak Flat area from collapsing, the water from drying up and the land, water and air from being polluted.

Significantly, the proposed land exchange under S. 339 eliminates the Secretary of Agriculture's discretionary authority to determine under the Federal Land Policy Management Act (FLPMA) whether the detriments of the exchange outweigh the benefits to private corporations and their shareholders. S. 339 eviscerates the import of a number of important federal laws which are designed to protect Native Americans, the federal government and its taxpayers.

For the San Carlos Apache Tribe, our paramount goal is to protect this unique and special place, including its physical integrity, and to ensure that our people and other Native Americans can continue to practice religious ceremonies, pray and gather herbs and medicine there, and to seek peace there for future generations. The federal government should remain the steward of the Oak Flat area and continue to carry out its trust responsibilities to Native Americans to preserve and protect the area and ensure access to it.

*Question 1b.* Would you support any legislation that allows for a land transfer if full consultation is performed and tribal concerns are addressed?

Answer. The ability to engage in meaningful government-to-government consultations regarding the land exchange is extremely important to the Tribe. However, this is only a part of the process that would protect the Tribe's interests and concerns, and we find it difficult to imagine any legislation that would address the Tribe's overarching concerns with the land transfer and the proposed block cave mining project even if full consultation were performed given Resolution Copper admits that the land above the ore body that it seeks to extract will subside and cave in, forever destroying the nature of the land, its ecology, and its sacred powers and given undeniable impacts to water resources.

The San Carlos Apache Tribe cannot support the transfer of our holy lands to commercial entities that owe no legal treaty or trust obligations to our people to protect the lands or ensure access to our people so that we can continue the uninterrupted practice of our religion. The Tribe supports amendments to the bill like that

offered on the House floor by Representative Ben Ray Lujan (D-NM) on September 26, 2013, to H.R. 687, the companion bill to S. 339. The Lujan amendment would eliminate surface and subsurface lands considered tribal sacred and cultural sites, as determined by the Secretary in consultation with tribes, from the land transfer. The Lujan amendment was debated on the floor of the House of Representatives. House leadership pulled the vote on the Lujan amendment and the underlying bill from the House floor twice over the past several months—we believe in part because the majority of House members support the Lujan amendment.

However, even with the Lujan amendment, the potential for negative impacts to our sacred and holy areas due to proposed mining activities on adjacent or surrounding areas is too great a risk to take. Further, we are deeply concerned about potential economic, environmental, and community impacts that the mine and the resulting subsidence and collapse will have on the region, including adverse impacts on water resources, landscape, plants, ecosystems, and areas of historical, archaeological, and traditional significance to Native Americans and places in close proximity or connected to tribal sacred and cultural sites.

In our Apache traditions and practices, we respect and take care of our relatives, which in our culture includes all living things. Many of these living things, such as animals and plants, thrive at Oak Flat and in surrounding areas. Our lives are closely intertwined with these living things as the power of our Holy Beings provide the plants, maize and animals to sustain life and for use in our ceremonies and prayers. The Apache way of life is to take care of these relatives and their habitats. Apache Elders tell us that mining on the Oak Flat area will adversely impact the integrity of the area as a holy and religious place. There is no possible mitigation for the destruction that will occur should the mining project move forward even with the best of intentions.

*Question 2.* I have seen statements by the mining company and by other supporters of the mine that individual tribal members of the San Carlos Apache Tribe are actually in favor of the mine. But the tribal government and other regional and national tribal organizations oppose the project.

I would like to note that this country's relationship with Native Americans is a government-to-government relationship where the federal government sits down and consults with elected tribal leaders. Is there any truth to the statements that individual tribal members support the project, and if so, why does the tribal government still oppose the bill?

*Answer.* We understand that only a few individual tribal members support the mining project. These individuals represent a minority view within the Tribe.

In May 2006, the San Carlos Apache Tribal Council, which is the governing body of the Tribe, adopted Resolution No. May-06-077 opposing large scale mining on Oak Flat. Since that date, the Tribe has conducted three general elections and one special election for Tribal Council seats. The Tribal Council has changed its composition four times since the Resolution was adopted in May of 2006. None of the previous Tribal Councils or the current Council has ever proposed repealing or changing Resolution No. May-06-077, which represents the Tribe's official position on federal legislation to transfer the Oak Flat area to Resolution Copper. Instead, since this legislation was first introduced in 2005, the Tribal Council has consistently sent representatives strongly opposing the many versions of this bill in the 109th, 110th, 111th, 112th, and 113th Congresses, and has unanimously passed a resolution opposing the land exchange.

The Tribe's government is a representative government. The Tribal Council represents the Tribe's members. San Carlos Councilman Tao Etpison summarized this very well in stating, "The San Carlos Apache Tribal Council has provided numerous public forums for tribal members to officially register their opposition to the Tribe's stand against the land exchange, and, there has not been one single complaint."

Tribal members, living on and off the reservation, have had a chance to inquire about, visit, and tour the Oak Flat and Apache Leap area as well as to hear about the bill. Numerous articles and meetings with those who are involved have occurred and are continuously occurring. Those few tribal members who actively support the bill have not made any official declarations to the Tribal Council regarding their concerns or opinions.

Please let us know if we can provide additional information.

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[Response to the following question was not received at the time the hearing went to press:]

QUESTION FOR MICHAEL RONDEAU FROM SENATOR WYDEN

*Question 1.* Can you give us a sense of how the passage of these bills will enable your tribes to create jobs for community members, Indian and non-Indian, alike?

## APPENDIX II

### Additional Material Submitted for the Record

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STATEMENT OF ROY C. CHAVEZ, CHAIRMAN/SPOKESPERSON, CONCERNED CITIZENS & RETIRED MINTERS COALITION, SUPERIOR, AZ, ON S. 339

On behalf of Concerned Citizens & Retired Miners Coalition in Superior, Arizona, I write to you today in opposition of the above-referenced legislation scheduled for committee hearing on November 20, 2013.

CC&RMC is a grass-roots group made-up of local, regional and national citizens, who support responsible mining projects and ventures throughout our communities. However, we do not support the proposed Resolution Copper Mining plan as currently projected due to the following:

**Environmental Analysis:** issues regarding water use/contamination, air pollution, ground disturbance, mine waste disposal, etc. . . , have not been fully addressed as to how they would affect our local community.

**Economic Evaluation:** a true unbiased economic report (Power's Study—San Carlos Apache Tribe) describes little to no direct tax revenue from the mine project to be collected by local communities in the region. Projected job numbers by RCM have been greatly exaggerated, with few mine employees actually living in our community. The real value of the ore body (true value to the U.S.) has never been defined. Destruction of the local natural resources and environment would prohibit opportunities to develop diversified recreational and tourism based sustainable economies.

**Socio-Economic Loss:** results of the past 100 + years of mining operations in our communities has left us in a depressed state, with less population, fewer student enrollment, under-served medical care for all (especially our young & elderly), lowered property values/revenue and a decrease in providing amenities and general services for our local residents.

**Native American Sacred Rights & Religious Freedoms:** existing treaties, laws and procedures must be followed by the U.S. Government and Tribes regarding the preservation of those federal lands designated sacred by such treaties and laws. CC&RMC supports the San Carlos Apache Tribe and the several hundred other national tribes who oppose this legislation, based on sacred rights & religious freedoms.

Our group, along with our many partners conclude that the National Environmental Policy Act must be conducted and fully addressed before any action be taken on this special interest legislation. A NEPA study would answer many, if not all of the above-referenced concerns, thereby providing public-elected officials a better understanding of the proposal and what benefits and consequences it may bring.

We respectfully ask that no action be taken on this legislation until the above questions and serious concerns are answered. We request these issues be taken under advisement, with benefits VS consequences of the mining project publicly stated and fully understood.

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STATEMENT OF THE DEFENDERS OF WILDLIFE • EARTHJUSTICE • SIERRA CLUB • THE WILDERNESS SOCIETY • CENTER FOR BIOLOGICAL DIVERSITY • ENVIRONMENT AMERICA • LEAGUE OF CONSERVATION VOTERS • ENDANGERED SPECIES COALITION • EPIC-ENVIRONMENTAL PROTECTION INFORMATION CENTER • KLAMATH FOREST ALLIANCE • LOS PADRES FORESTWATCH • NORTHCOAST ENVIRONMENTAL CENTER • OREGON WILD • PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY • ROCKY MOUNTAIN WILD • SAFE ALTERNATIVES FOR OUR FOREST ENVIRONMENT • WASHINGTON WILD • WESTERN NEBRASKA RESOURCES COUNCIL, ON S. 1479

On behalf of our organizations and our millions of members, activists, and supporters, we write to express our strong commitment to working together to find realistic, effective solutions to the land management challenges facing our country, in-

cluding wildfire management. However, we also write to express our significant concerns with and strong opposition to S. 1479, the “Catastrophic Wildfire Prevention Act of 2013.”

As further highlighted below and in the attached Appendix, this legislative proposal acts as a Trojan horse for mandating or incentivizing damaging logging and other intensive development of our public lands under the guise of wildfire management, regardless of whether such activities reduce wildfire risk. S. 1479 dramatically increases the areas of our national forest and Bureau of Land Management (BLM) land that can be logged or developed with limited public review, while also eliminating protections for roadless areas, wilderness study areas, endangered and threatened species habitat, and other ecologically sensitive areas, along with making major changes to the implementation of the Endangered Species Act (ESA) for listing decisions, recovery plans, and critical habitat designations. Moreover, this bill authorizes and incentivizes projects in remote backcountry areas of our public land, thereby diverting increasingly scarce resources away from forest-adjacent communities (otherwise known as the wildland-urban interface area or “WUI”) where public safety needs are greatest, thereby potentially increasing fire risk for such communities.

We respectfully request that this letter be included in the official record for the November 20, 2013 hearing before the Senate Energy and Natural Resources’ Subcommittee on Public Lands, Forests, and Mining.

NEW AUTHORITIES ARE NOT NEEDED. CURRENT AUTHORITIES SUFFICIENTLY FACILITATE  
FIRE AND INSECT TREATMENT

The Healthy Forest Restoration Act (“HFRA”) of 2003, 16 U.S.C. § 6501 et seq., currently provides broad authority to the federal government to conduct a wide range of logging projects across large areas of our national forests and BLM public land for reducing hazardous fuels and treating insect and disease outbreaks using expedited NEPA review and public participation, special administrative appeals, and limited judicial review. See sections 104-106 of HFRA, id. § 6514-6516.

In passing HFRA, Congress intentionally prioritized projects intended to protect at-risk communities and within high-risk watersheds containing municipal water supply systems. See section 103 of HFRA, id. § 6513. As recognized in this fundamental tenant of HFRA, when it comes to protecting people’s homes and property, it is important to concentrate efforts within the wildland-urban interface adjacent to such homes.<sup>1</sup> We would further note that when HFRA was passed by a Republican-controlled Congress at the urging of President George W. Bush, Congress felt it was important to include certain key sideboards to avoid logging in ecologically sensitive areas like old growth, wilderness and wilderness study areas, to retain large trees within projects, to ensure that projects comply with applicable land management plans, and to monitor project effectiveness. See section 102(b), (d)-(g) of HFRA, id. § 6512.

In addition, the Forest Service has a variety of administrative tools to address forest health and fire-related threats. Forest Service regulations allow the agency to take action in emergency situations when necessary to protect human safety, property, or important natural or cultural resources without having to prepare NEPA documentation beforehand. See 36 C.F.R § 220.4(b). The agency also utilizes several Categorical Exclusions that exempt a wide variety of projects from NEPA requirements, including but not limited to commercial thinning, prescribed burning, hazardous fuels reduction, insect and disease control, post-fire rehabilitation, and salvage logging. See id. § 220.6(e)(6),(10)-(14). Other administrative tools include authorities to remove hazard trees from roadsides, to implement Burned Area Emer-

<sup>1</sup>Research has shown that the best way to protect communities and people from wildfire is to practice FireWise policies, such as creating buffers around homes, build homes and structures with non-flammable materials and institute community-based fire protection plans. In fact, a recent Forest Service report confirms shows that the most effective way to prevent homes from burning is to clear trees and brush from the area directly around them. See e.g., USDA/Forest Service Rocky Mountain Research Station, FOURMILE CANYON FIRE FINDINGS 67, 60 (Aug. 2012), available at <http://www.scribd.com/doc/104114914/USFS-report-on-Fourmile-Canyon-Fire> (83 percent of the homes burned were “not directly associated with intense wildfire” and instead ignited by surface fire as opposed to crown fire). Id. at 65, 69 (This supports the existing research that home ignition potential during wildfires is principally determined by the condition of the Home Ignition Zone (HIZ), which is the design, materials, and maintenance of the home in relation to its immediate surroundings within 100 feet. As a result, “the opportunity to significantly reduce the potential for WUI fire disasters during extreme burning conditions . . . requires a change of approach—an approach focused on reducing home ignition potential within the HIZ rather than increasing expensive fire protection capabilities that have proven to strategically fail during extreme wildfire burning conditions.”) (emphasis added).

gency Recovery (BAER) practices, and to create defensible space in the immediate vicinities of communities at risk.

Current authorities are more than adequate, and in fact, a recent report highlights that “[i]n the last three years, the Forest Service and the Bureau of Land Management (BLM) have implemented over 8000 projects to reduce hazardous fuels for over 10 million acres of federal land.”<sup>2</sup> Notably, the Forest Service itself acknowledges that the lack of financial resources, not a lack of legal authority, is the problem. At a recent April 11, 2013 hearing before the House Natural Resources Subcommittee on Public Lands and Environmental Regulation, in an exchange between Congressman Peter DeFazio and Forest Service Chief Tidwell, Chief Tidwell admitted that current HFRA authorities are sufficient and that budgetary capacity is the source of constraints:<sup>3</sup>

Rep. DeFazio: “What is the greatest restraint on you conducting forest health fuel reduction projects—is it environmental law constraints, given the fact that you have the HFRA tools, or is it budgetary constraints?”

Chief Tidwell: “It’s a capacity issue right now.” Rep. DeFazio: “So it’s a budgetary constraint. You don’t have enough money to do the projects, the projects you could do under the existing laws . . . particularly if you use the authority of HFRA. Is that correct?”

Chief Tidwell: “Yes.”

Moreover, the Administration recently issued a veto threat on House bill H.R. 1526, the “Restoring Healthy Forests for Healthy Communities Act,” because of a number of alarming provisions, including Title II that contains similar language as S. 1479. The September 18, 2013 Statement of Administration’s Policy made clear:

[T]he Administration strongly opposes H.R. 1526, which includes numerous harmful provisions that impair Federal management of federally-owned lands and undermine many important existing public land and environmental laws, rules, and processes. The bill would significantly harm sound long-term management of these Federal lands for continued productivity and economic benefit as well as for the long-term health of the wildlife and ecological values sustained by these holdings. H.R. 1526, which includes unreasonable restrictions on certain Federal agency actions, would negatively impact the effective U.S. stewardship of Federal lands and natural resources, undertaken on behalf of all Americans. The bill also would create conflicts with existing statutory requirements that could generate substantial and complex litigation . . .

The Statement went on to detail the Administration’s concerns with each of the Titles in H.R. 1526, including Title II, which resembles S. 1479 and similarly purports to address wildfire risk by providing vast new authorities for logging, grazing, and other intensive development:

The title would also accelerate commercial grazing and timber harvests without appropriate environmental review and public involvement, and would impede compliance with NEPA and Endangered Species Act (ESA) requirements. The Administration supports early public participation in Federal land management. The bill would mandate processes that short-change collaboration and would lead to more conflict and delay. Further, this title’s mandated use of limited budgetary resources would likely reduce funding for other critical projects.<sup>4</sup>

Accordingly, as corroborated above, S. 1479’s authorization of destructive projects across vast swaths of our national forests and public lands is not only unnecessary and harmful, but would further strain the federal government’s already limited budgetary resources to conduct projects in forest-adjacent communities where public safety needs are greatest.

<sup>2</sup>Edward J. Markey, Ranking Member, House Natural Resources Committee, DOUSING THE CLAIMS: EXTINGUISHING REPUBLICAN MYTHS ABOUT WILDFIRE 2 (July 24, 2012), available at [http://democrats.naturalresources.house.gov/sites/democrats.naturalresources.house.gov/files/DousingtheClaims\\_WildfireReport.pdf](http://democrats.naturalresources.house.gov/sites/democrats.naturalresources.house.gov/files/DousingtheClaims_WildfireReport.pdf).

<sup>3</sup>See Archived Hearing Webcast at 01:00:20–01:01:04, available at <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=326329>.

<sup>4</sup>See [http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr1526r\\_20130918.pdf](http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr1526r_20130918.pdf) (emphasis added).

ENVIRONMENTAL LAWS AND THE OPPORTUNITY FOR JUDICIAL REVIEW ARE NOT A ROADBLOCK TO EXISTING AUTHORITIES THAT FACILITATE FIRE AND INSECT TREATMENTS

Citizen challenges to fuel reduction projects are often blamed for hampering efforts to prevent wildfires, even though HFRA already requires limited and expedited processes for public input, administrative appeals, and judicial review. Moreover, contrary to this ill-informed myth, a variety of data confirms that negligible levels of projects are impacted by environmental protections and public engagement. For example, a 2012 report from the House Natural Resources Committee Minority staff shows that almost no wildfire prevention projects are stopped by citizen appeals and challenges. The report states that “[w]hen put in context of all the work undertaken by the Forest Service and [BLM], appeals impacted less than 1% of all hazardous fuels work on over 10 million acres of land.”<sup>5</sup> A 2010 Government Accountability Office (GAO) report also confirms that for fiscal years 2006-2008, the Forest Service issued 1,415 decisions involving fuel reduction activities, covering 10.5 million acres, but that only 2% of these decisions were litigated.<sup>6</sup>

EFFECTIVE WILDFIRE MANAGEMENT STRATEGIES SHOULD BE BASED ON SCIENCE AND PROTECTION OF THE PLACES NEAR WHERE PEOPLE LIVE, NOT ON ELIMINATING PUBLIC INPUT AND ENVIRONMENTAL SAFEGUARDS

Although S. 1479 purports to protect public lands from wildfire and disease, in reality, this proposal would result in serious and irreparable harm to our nation’s treasured landscapes and potentially increase fire risk for forest-adjacent communities. This bill—as outlined in the attached Appendix—would eviscerate long-standing common sense protections by authorizing destructive development projects (explicitly including commercial logging and grazing, which can actually increase fire risk) to go forward in backcountry areas with limited environmental review and public input, while also eliminating protections for roadless areas, wilderness study areas, and endangered and threatened species. In addition, there is not sufficient evidence supporting the efficacy of backcountry mechanical treatment in reducing fire hazard for communities to support S. 1479’s expansive authorization, especially for such authorities that mandate logging in remote landscapes far from homes and without emphasis on home ignition zone treatments.<sup>7</sup>

Moreover, because S. 1479 would authorize intensive logging, grazing, and other development projects in remote areas of our national forests and public lands well outside the wildland-urban interface, scarce appropriated dollars could be diverted away from areas and projects most apt to result in saving people’s homes and property in the event of a wildfire. The WUI is estimated at over 175 million acres across the continental United States (719,156 square kilometers) and thinning the WUI is likely to be in the billions of dollars alone.<sup>8</sup> There is already insufficient

<sup>5</sup> Supra note 2 at 2.

<sup>6</sup> GAO, REPORT TO CONGRESSIONAL REQUESTERS: INFORMATION ON APPEALS, OBJECTIONS, AND LITIGATION INVOLVING FUEL REDUCTION ACTIVITIES, FISCAL YEARS 2006 THROUGH 2008 5 (March 2010), available at <http://www.gao.gov/assets/310/301415.pdf>.

<sup>7</sup> In April 11, 2013 written testimony submitted before the House Natural Resources Subcommittee on Public Lands and Environmental Regulation, Dr. Jason Sibold from Colorado State University emphasized: “Forest thinning projects would not be expected to reduce fire risk or mitigate against the likelihood of future bark beetle outbreaks in these forests. A forest thinning policy with the goal of reducing fire risk following bark beetle outbreaks would be moving into unknown territory, which means that both the normal review process and monitoring for effectiveness are essential.” See <http://naturalresources.house.gov/uploadedfiles/siboldtestimony04-11-13.pdf> at 1 (emphasis added). “In sum, the scientific evidence does not suggest that fire risk has increased as a result of recent and ongoing bark beetle outbreaks. In contrast, the vast majority of evidence suggests that bark beetle outbreaks have either no influence on fire risk or potentially decrease fire risk, and that weather (drought) is the dominant influence on fire risk in these forests. The extensive, high-severity fires of 2002 and 2012 in Colorado that were coincident with two of the most extreme drought years in Colorado’s recorded history clearly illustrate the importance of drought over fuels as the driver of destructive wildfires. Unfortunately, wildfires in years of severe drought are not only extremely difficult and hazardous to fight but they are also not the type of events that we can mitigate against by thinning forests. As a result, forest thinning throughout the landscape, much less in remote roadless areas far from communities, would not be expected to decrease fire risk to communities. On the other hand, significant gains would be expected from policies that focus on reducing fire hazard through fuel removal close to communities, following established ‘defensible space’ guidelines such as removing fuels within a minimum of 100 feet adjacent to structures, and replacing flammable building materials such as wooden shingles with metal roofs.” Id. at 3 (emphasis added). See also supra note 1.

<sup>8</sup> The wildland-urban interface covers about 9.4 percent of all land in the contiguous United States and includes federal, state, and private land. See <http://www.nrs.fs.fed.us/pubs/jrnl/2005/>

money to treat the entire WUI. Protecting the WUI will be made even harder if funds are directed to intensive logging or grazing operations in backcountry areas that are far away from communities.

We recognize that uncharacteristic wildfire and insect and disease outbreaks present a challenge to our public lands managers. However, S. 1479's authorization of intensive development projects across vast swaths of our public lands with limited public review, along with rolling back bedrock environmental protections, is not the answer. The issue is a lack of financial resources, not a lack of legal authority, and incentivizing scarce appropriated dollars to be diverted away from priority WUI areas where public safety needs are greatest would only make matters worse.

Thank you for your consideration of our concerns and your inclusion of this letter in the committee record.

APPENDIX: SUMMARY OF S. 1479, "CATASTROPHIC WILDFIRE PREVENTION ACT OF 2013"

- Applies to Forest Service and BLM land, explicitly including inventoried roadless areas and wilderness study areas
- Requires the Secretaries of Agriculture and Interior to conduct broadly defined "wildfire prevention projects" in both "at-risk" forests (also defined broadly) and on threatened and endangered species habitat
- Automatically deemed authorized "wildfire prevention projects" specifically include commercial logging and livestock grazing (even though grazing encourages the spread of highly flammable cheatgrass)
- Projects do not have to comply with the applicable land and resource management plan (i.e. timber sales can occur in areas deemed not appropriate in the LMP)
- Secretary must publish notice of proposed project in Federal Register but there is limited public comment and review (only 30 day comment period and then final decision required 60 days after notice published)
- Projects require informal ESA consultation only and although bill states projects shall comply with NEPA, it requires an abbreviated NEPA process of only 30 days and if deadlines aren't met, projects are automatically deemed to have complied with NEPA
- Shorter Environmental Assessments (not a full environmental review) are automatically required for logging and grazing projects, no alternatives analysis required beyond the proposed action, and the EA is automatically deemed sufficient for 10 years (for grazing) or 20 years (for timber harvest)
- Compliance with the bill's limited public input and review requirements results in automatic compliance with NEPA, the National Forest Management Act, the ESA, and the Multiple-Use Sustained Yield Act, regardless of any substantive conflicts
- Healthy Forest Restoration Act's limited administrative appeals process and judicial review provisions apply
- Makes major changes to the implementation of the Endangered Species Act by requiring that the Secretary concerned must analyze the effect of a listing on forest fuel loads before any species can be listed under the ESA, and recovery plans and critical habitat designations must also include wildfire risk analysis

STATEMENT OF MICHAEL VAN ABEL, IMBA PRESIDENT AND USA EXECUTIVE DIRECTOR, BOULDER, CO, ON S. 776, S. 841, AND S. 483

On behalf of the International Mountain Bicycling Association (IMBA), I write to offer comments in support of the following bills:

S. 776—To establish the Columbine-Hondo Wilderness in the State of New Mexico, to provide for the conveyance of certain parcels of National Forest System land in the State, and for other purposes;

S. 841—To designate certain Federal land in the San Juan National Forest in the State of Colorado as wilderness, and for other purposes; and

S. 483—To designate the Berryessa Snow Mountain National Conservation Area in the State of California, and for other purposes

nc\_2005\_radeloff\_001.pdf. "Experts estimate that almost 60 percent of all new housing units built in the 1990s were located in the [WUI] and that this growth trend continues." GAO, WILDLAND FIRE MANAGEMENT: BETTER INFORMATION AND A SYSTEMATIC PROCESS COULD IMPROVE AGENCIES' APPROACH TO ALLOCATING FUEL REDUCTION FUNDS AND SELECTING PROJECTS (Sept. 2007), available at <http://www.gao.gov/assets/270/267645.html>.

The International Mountain Bicycling Association (IMBA) is a 501(c)3 non-profit educational association whose mission is to create, enhance and preserve great mountain biking experiences. Founded in 1988, IMBA leads the national and worldwide mountain bicycling communities through a network of 80,000 individual supporters, 750 chapters and clubs, and 600 dealer members. Each year, IMBA members conduct almost one million hours of volunteer trail stewardship on America's public lands and are some of the best assistants to federal, state, and local land managers.

#### WILDERNESS AND THE RECREATION ECONOMY

The mountain bicycling community values our forests, deserts, canyons and mountains, and deeply appreciates a natural and protected riding experience for our low-impact, healthy, human-powered recreation. Mountain bikers share an interest in protecting our wild areas for future generations. Wilderness designations, however, are a sensitive and complicated issue for IMBA and mountain bicyclists. While we strongly desire to preserve wild landscapes for future generations, federal land management agencies interpret the Wilderness Act of 1964 to prohibit the use of mountain bicycles in designated Wilderness. This interpretation often leads to the unintended consequence of closing bicycle trails that are important to local constituents who mountain bike and play a role in the recreation economy of the region in question. For this reason, the use of slight boundary adjustments, and companion designations (such as Wild and Scenic Rivers, Special Management and/or Conservation Areas, and specific trail corridors) within Wilderness proposals are a proven method of accomplishing both objectives. Therefore, our decision to support these acts is of special note as these acts are positive examples.

According to the Outdoor Industry Association, the outdoor recreation industry generates \$646 billion dollars annually, making it almost twice the size of pharmaceuticals at \$331 billion and motor vehicles at \$340 billion. These macro examples are generated by the micro economies of our local communities. Rural communities across the country can no longer depend entirely on agriculture and resource extraction for income. Many small towns have diversified and are now poised to reap the benefits of the recreation goods and services economy. Locations with valuable recreational assets also attract businesses and industry of all types that have employees and owners who prefer to live and work close to the places with extensive recreation assets. The communities in New Mexico, Colorado and California that surround the landscapes covered by these acts are no exceptions to this phenomenon. For them, recreation has become their lifeblood.

The outdoor recreation industry as a whole depends on well-managed and diverse recreation assets on public lands to help grow their businesses. To maintain this growing and sustainable economic driver these lands must be protected in ways that do not prevent appropriate recreational access.

We support these acts in part because they represent modern solutions that create a win-win situation for conservation and recreation as they protect ecological values and important access to local bike trails; strengthening the recreation economy of small communities and ensuring vital habitat for fish and wildlife in the process. These acts are great examples of land protection for the 21st century.

#### S. 776—COLUMBINE-HONDO WILDERNESS ACT

IMBA supports the Columbine-Hondo Wilderness Act, which would permanently protect 45,000 acres of National Forest while improving mountain bike access to important trail opportunities in the Carson National Forest such as the Lost Lake trail from Taos Ski Valley to the East Fork trail to Red River. While we understand the sensitivity of adjusting the boundary of the existing Wheeler Peak Wilderness, we believe that, in this scenario, it is a net positive adjustment resulting in new and greater Wilderness acres, achieved with a small and sensible adjustment that in turn gains the support of the broader recreation community by ensuring a diverse and robust recreation economy—one that balances access with appropriate land protection.

IMBA greatly appreciated the concerted effort by the Columbine Hondo Wilderness Coalition Campaign to include the mountain bicycling community and our local chapters and clubs in the development of this proposal. IMBA participated in numerous meetings and conversations with former Senator Bingaman where we worked collaboratively to seek solutions that worked for all involved. With this process of smart planning and an open dialogue, IMBA fully endorses the Columbine Hondo Wilderness Act.

We would especially like to express our profound appreciation to U.S. Senator Tom Udall and his staff for introducing this bill (as well as to U.S. Rep. Ben Lujan

for the companion bill H.R. 1683) and we hope that the committee will hail this balanced and carefully crafted proposal and take action to protect this important landscape.

S.841—HERMOSA CREEK WATERSHED PROTECTION ACT OF 2013

IMBA supports the Hermosa Creek Watershed Protection Act of 2013, which would utilize a range or appropriate designation tools such as Wilderness, Special Management Areas, and Mineral Withdrawals to permanently protect approximately 107,886 acres in the San Juan National Forest in Colorado. The act will help maintain the cultural, ecological, and economic health of the Hermosa Creek Watershed and the surrounding communities while preserving world-class recreational opportunities that include skiing, mountain biking, hiking, fishing, hunting, horseback riding, snowmobiling, and motorcycle riding.

IMBA specifically supports this bike-friendly legislation because through thoughtful boundaries and the use of Special Management Areas, it protects important trails in the area, including Hermosa Creek Trail, Coral Draw, Colorado Trail, Jones and Dutch Creek, Elbert Creek, Little Elk Creek, Goulding Creek and the Pinkerton-Flagstaff trails while keeping them open to mountain biking, a major component of the recreation economy in Colorado's La Plata County. Protected trail systems in communities all over the country provide a reliable source of revenue for their host communities.

This act, which will protect this land for our outdoor recreation economy and for future generations of Coloradans and Americans to enjoy, is the result of a successful local effort that took into account the varied interests of the community including Trails 2000, a local multi-use trail organization and long time IMBA supporter. Because of this, IMBA wholeheartedly supports the Hermosa Creek Watershed Protection Act. We specifically want to thank U.S. Senator Michael Bennet (and U.S. Representative Scott Tipton for the companion bill H.R.1839) for their leadership in crafting these bills.

S.483—BERRYESSA SNOW MOUNTAIN NATIONAL CONSERVATION AREA ACT

IMBA supports the Berryessa Snow Mountain National Conservation Area (NCA) Act, which would permanently protect nearly 350,000 acres of federal land within Napa, Lake, Mendocino, Solano, and Yolo Counties in California for the conservation, protection, and enhancement of the ecological, scenic, wildlife, recreational and cultural resources of the lands included for the enjoyment of present and future generations.

The Berryessa Snow Mountain region of northern California is one of the most biologically diverse regions of the state. Located less than one hundred miles from Sacramento and Bay Area metropolitan areas, the area is rich in natural features and loaded with recreational opportunities. Many visitors recreate in this region and the NCA designation established by S. 483 will best manage the impacts of that recreation while providing nearby opportunities for people to reconnect with nature. The intact ecological treasure of the Berryessa Snow Mountain region necessitates one comprehensive management plan, yet the public lands in the region, which include wilderness, recreation areas and wildlife reserves, are managed by a variety of local, state and federal public agencies which leads to disjointed and fragmented management.

Designation of the region as a National Conservation Area will provide a litany of solutions that will compliment this landscapes such as Congressional recognition and acknowledgement, the formation of a Public Advisory Committee for official citizen and tribal input, the coordination of a multi-agency management plan, a unified fundraising mechanism for current and future conservation and stewardship enhancement projects, and the framework for development of a well managed recreation plan that provides access to public lands while ensuring the protection of environmental and cultural resources and neighboring private landholdings. In short, IMBA supports S.483 because it provides a modern solution for maximizing efficient and effective landscape-level conservation for the enjoyment by the American public.

Thank you for the opportunity to submit comments on these important conservation bills. IMBA looks forward to working with the committee and its members and urges your favorable consideration of each bill. Please contact me at any time if you have any questions.

STATEMENT OF THE LA PLATA COUNTY, COLORADO BOARD OF COUNTY  
COMMISSIONERS

On behalf of the citizens of La Plata County, Colorado, thank you for the opportunity to testify on S. 841, the Hermosa Creek Watershed Protection Act of 2013.

The La Plata County Board of County Commissioners affirms its strong support for the Hermosa Creek Watershed Protection Act. The proposal to protect the Hermosa Creek watershed through a special management designation containing wilderness, multiple recreational uses, and the protection of a valuable water resource is truly a community-based approach to local land management, which we laud for its transparency and its effectiveness. This legislation is based on consensus reached by a wide spectrum of local and regional interests after several years of open public discussion. We believe the bill is a wise and important stewardship effort that enjoys broad support within our community.

The Hermosa Creek watershed offers world-class fishing and hunting, as well as mountain biking, hiking, and motorized recreation opportunities sought by people both locally, and from across the country. Since recreation and tourism represent a large portion of the County's economy, protecting these opportunities is vital to our economic well-being.

We also support language in the bill that includes provisions to remove the leasing, exploration and development of oil and gas and other federally owned minerals from within the Perins Peak and Animas City Mountain Areas located in La Plata County. For the record, in May, 2009, the La Plata County Board of County Commissioners passed Resolution 2009-17 opposing such leasing, exploration and development of oil and gas and other minerals in the Perins Peak Wildlife Area.

In addition, the La Plata County Board of County Commissioners is likewise supportive of including provisions in the bill that would remove the leasing, exploration, and development of oil and gas and other federally owned minerals from within the Ridges Basin area as well as property owned by the City of Durango in Horse Gulch and property owned jointly by the City of Durango and La Plata County in Horse Gulch, if such inclusion is agreeable to all relevant stakeholders.

These local areas are highly valued by County residents, and being just minutes away from downtown Durango, are used regularly for hiking and mountain biking. They also form the viewshed for Durango; preserving those views and recreational opportunities contributes to our local quality of life as well as our ability to attract future businesses to the area. Since La Plata County already contributes significantly to Colorado's oil and gas production, prohibiting energy development in the above areas represents a balanced approach to land use in the region.

Finally, Section 8 of the bill contains language that would convey to La Plata County approximately 111 acres of land managed by the Bureau of Land Management, Tres Rios District, Colorado to be used for a public purpose consistent with uses allowed under the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.) La Plata County has been working cooperatively for the past three years with the BLM to convey this property as a site for a future multi-event center complex.

La Plata County has an extraordinary opportunity to plan for the recreational future of our community through its acquisition of the BLM property. La Plata County owns a 42.5-acre parcel adjacent to the BLM property that is currently the site of a county gravel pit. The BLM owns approximately 1,500 acres in that area, which includes a network of popular and scenic trails that are heavily used and beloved by our local hiking, biking, running and horseback riding community. A portion of the BLM property adjacent to the County's property also currently accommodates gravel mining operations.

La Plata County has a bold vision to create a multi-event center complex through the acquisition of approximately 111 acres of BLM property adjacent to the County's 42.5 acre parcel and the reclamation of the two gravel pits (once the gravel resources have been exhausted) to maximize the access to trails for all users, provide outdoor venues for a variety of recreational activities, and serve as an educational and cultural center.

The County's 42.5 acres will provide an exciting new location for our County Fairgrounds and related amenities including trail access points, horse corral and horse stalls, an outdoor equestrian facility, an indoor arena with exhibit space, and an indoor multi-stock pavilion. The BLM property is envisioned as an area for recreational activities and/or amenities consistent with the Recreation and Public Purposes Act, and we will seek and explore ideas from the public, stakeholders and other public partners to develop a master plan for this acreage. Additional access to existing trails on BLM property will be provided, and trail amenities, such as trailheads and bathrooms, will be constructed to handle the significant recreational pressure these trails experience.

The Multi-Event Center project will bring jobs to our region, enhance recreational and cultural amenities for our constituents and attract new business and tourism to the area. The conveyance of the BLM property is a key component of the overall vision for the project, and we are grateful for its inclusion in the Hermosa Creek Watershed Protection Act.

In closing, we appreciate the wisdom and efficiency of combining all of these issues into a single piece of legislation that affects our area in such a positive and constructive way. We thank you for the opportunity to offer comment on these issues of importance to our constituents in La Plata County and for your favorable consideration of the Hermosa Creek Watershed Protection Act of 2013.

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STATEMENT OF LAURA SKAER, EXECUTIVE DIRECTOR, NORTHWEST MINING ASSOCIATION, SPOKANE, WA, ON S. 339

The Northwest Mining Association (NWMA) strongly supports S. 339, the South-east Arizona Land Exchange and Conservation Act of 2013. At a time when job creation remains a high priority, S. 339 is a common sense solution that will provide tremendous economic benefits to Arizona and the Nation, while providing high value conservation lands to the federal government. S. 339 is a win-win for jobs, the economy the environment and wildlife. S. 339 will reduce our Nation's dependence on foreign sources of critical and strategic minerals required for energy production and transmission and the manufacturing supply chain. We urge an affirmative vote on this important legislation.

NWMA is a 2,400 member national association representing the hardrock mining industry with members residing in 42 U.S. states, seven Canadian provinces or territories, and 10 other countries. NWMA represents the entire mining life cycle, from exploration to reclamation and closure, and is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands. Our membership represents every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. Our broad-based membership includes many small miners and exploration geologists as well as junior and large mining companies. More than 80% of our members are small businesses or work for small businesses. Most of our members are individual citizens.

Copper is a critically important metal used in the production of electronics, transportation, machinery and renewable energy technologies. According to the U.S. Geological Survey, the U.S. is 35% import reliant for our copper needs. S. 339 will enable the Resolution Copper project to produce enough copper to equal 25% of the current U.S. demand, thereby reducing our Nation's dangerous dependence on foreign sources for this critical and strategic metal.

S. 339 is the result of years of negotiations and compromise garnering strong bipartisan support among local constituents, state and local elected officials and a wide range of business and conservation interests. The federal government will receive more than 5,300 acres of high-priority conservation lands in exchange for approximately 2,400 acres of National Forest System land enabling the development of third largest undeveloped copper deposit in the world. The resulting mine will provide more than 3,700 new direct and indirect jobs, \$220.5 million in annual wages, an economic impact of more than \$61 billion over the life of the project while generating more than \$19 billion in federal, state county and local tax revenue.

The economic, conservation and environmental benefits outlined above depend on the passage of S. 339. We urge your support of this important job creating legislation.

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*November 19, 2012.*

Hon. RON WYDEN,  
*Chairman, Energy and Natural Resources Committee, U.S. Senate, 221 Dirksen Senate Office Building, Washington, DC,*

Hon. LISA MURKOWSKI,  
*Ranking Member, Energy and Natural Resources Committee, U.S. Senate, 709 Hart Senate Office Building, Washington, DC.*

Re: Hermosa Creek Watershed Protection Act of 2013

DEAR CHAIRMAN WYDEN AND RANKING MEMBER MURKOWSKI, As a collective voice for the thousands of Colorado's citizens and visitors that recreate on our public lands and waters, we are writing in support of permanent protections for the Hermosa Creek Watershed.

Outdoor Alliance Colorado (OAC) is a new coalition for human powered outdoor recreation that includes: the Colorado Mountain Club; the Colorado Mountain Bike Association; the Colorado networks of the Access Fund and American Whitewater; and Outdoor Alliance. OAC advocates for the protection and enjoyment of public lands and waters in Colorado, on behalf of those that hike, mountain bike, climb, paddle, backcountry ski and snowshoe.

The Hermosa Creek area includes diverse ecosystems and recreation opportunities, including mountain biking, hiking and backcountry winter sports. The designation of the Hermosa Creek Watershed Protection Area, including the Hermosa Creek Wilderness and the Special Management Area, will permanently protect the landscape and the area's high-value recreation opportunities. We particularly appreciate the direct recognition of human powered outdoor recreation in the watershed, including the "outstanding single track mountain bike riding [and] backcountry hiking."

In Colorado, outdoor recreation generates over \$10 billion annually in revenues to our state economy and supports 107,000 jobs. Activities like hiking, biking, climbing, camping, whitewater rafting, and kayaking, are enjoyed by nearly 4 million people each year, helping to generate \$500 million in state tax revenue. People from across Colorado and the country regularly visit the region to enjoy these activities, and it is critical that Hermosa Creek be protected to both ensure that the area will remain open to outdoor recreational pursuits and to preserve Colorado's outdoor legacy for future generations.

We applaud Senators Michael Bennet and Mark Udall for their efforts, as well as Representative Scott Tipton. We highly encourage permanent protection initiatives like the Hermosa Creek Watershed Act, which incorporate extensive community outreach, careful land designations that can include Wilderness, and continued access to high quality recreation.

In Cooperation,

NATHAN FEY, COLORADO STEWARDSHIP DIRECTOR,  
*American Whitewater,*  
HEATHER MACSLARROW, CONSERVATION DIRECTOR,  
*Colorado Mountain Club,*  
ERIK MURDOCK, POLICY DIRECTOR,  
*Access Fund,*

JASON BERTOLACCI, COLORADO AND WYOMING REGIONAL DIRECTOR,  
*International Mountain Bicycling Association,*  
TOM FLYNN, REGIONAL DIRECTOR,  
*Outdoor Alliance.*

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STATEMENT OF HAL QUINN, PRESIDENT & CEO, NATIONAL MINING ASSOCIATION, ON  
S. 339

The National Mining Association (NMA) expresses its strong support for S. 339, The Southeast Arizona Land Exchange and Conservation Act of 2013, to convey 2400 acres of federal land in Pinal County, Ariz., to Resolution Copper. In exchange the federal government will receive 5300 acres of privately owned high-value conservation habitat that would go to both the United State Forest Service (USFS) and the Bureau of Land Management (BLM). This land exchange is necessary to protect the global competitiveness of the U.S. mining industry and will provide high-paying jobs and improve a weakened economy.

This legislation will help create economic benefits through direct mining operations, supplier purchases and by salaries paid to working will in turn contribute to the local and national economy. S. 339 will provide \$61.4 billion over its lifetime and will provide 3,700 jobs annually, equating to \$220.5 million in annual wages. More importantly, S. 339 will provide \$14 billion to the U.S. Treasury over the life of the project. With record deficits and high unemployment Congress cannot turn its back on thousands of jobs and billions in revenues.

NMA thanks you for your leadership on the introduction of S. 339 and urges Senate leadership to bring this important legislation up for consideration in the U.S. Senate.

## STATEMENT OF BRADY ROBINSON, EXECUTIVE DIRECTOR, ACCESS FUND, BOULDER, CO, ON S. 339

The Access Fund, the national organization that keeps climbing areas open in the US, welcomes this opportunity to submit testimony for inclusion into the public record regarding S. 339, the Southeast Arizona Land Exchange and Conservation Act. Since 2004, the Access Fund has been an interested party and involved stakeholder to the various versions of this proposed federal land exchange, and has met dozens of times with Congressional staff about this proposed law that would direct the Secretary of Agriculture to convey highly popular public rock climbing resources on federal land for use as a massive underground copper mine. The Access Fund opposes this bill because it destroys public climbing resources, lacks meaningful environmental analysis and is a massive giveaway of public wealth to a foreign-owned private mining company.

This testimony addresses specific problems and suggested solutions related to S. 339 that will better serve the public interest. If the Southeast Arizona Land Exchange and Conservation Act becomes law, Congress should 1) recognize the importance of the recreational and cultural resources at Oak Flat and require specific protection of these resources in perpetuity, and 2) require responsible environmental analysis before this massive mining project is allowed to consume public resources and potentially affect the environment far beyond the footprint of this proposed mine.

## THE ACCESS FUND AND OUR STAKE IN OAK FLAT

The Access Fund is a 501(c)3 non-profit advocacy group representing the interests of approximately 2.3 million rock climbers and mountaineers in the United States. We are America's largest national climbing advocacy organization with over 10,000 members and affiliates. The Access Fund's mission is to keep climbing areas open and to conserve the climbing environment. Preserving the opportunity to climb and the diversity of the climbing experience are fundamental to our mission. Arizona is one of our largest member states.

Rock climbers account for the greatest number of recreational user days at the Oak Flat/Queen Creek area, and we therefore stand to suffer the largest loss if this area is destroyed by mining activities. There are over one thousand established rock climbs in the Oak Flat area that will subside into an enormous crater if Resolution Copper Mining (RCM) is allowed to proceed with their present plan to "block cave" mine the underlying ore deposit.

## OAK FLAT RECREATION

Located near Queen Creek Canyon in the Tonto National Forest, the Oak Flat Campground and the abundant climbing resources therein and surrounding area would be transferred through this bill to Resolution Copper Mining (RCM). RCM plans to subsequently mine the area by using the extremely destructive yet highly profitable "block-cave" mining method. The value of the Oak Flat area as a recreational resource has been officially acknowledged since the 1950s. The Eisenhower Administration foresaw this exact threat of mining to Oak Flat when in 1955 it issued Public Land Order 1229 and specifically placed this land off-limits to all future mining activity. The Nixon Administration subsequently issued PLO 5132 in 1972 to modify PLO 1229 and allow "all forms of appropriation under the public land laws applicable to national forest lands except under the US mining laws." These executive orders sought to protect Oak Flat from the exact threat that this land exchange proposes, and various attempts over the years by mining companies to lift this protection have failed. This proposed law would lift those longstanding protections. For decades climbers have frequented the Oak Flat/Queen Creek Canyon area in Central Arizona to scale the vast assortment of cliffs, canyons, and boulders. Climbing at Oak Flat—one of the country's few areas widely visited during winter months—has become so popular that for years the area hosted the Phoenix Bouldering Contest which, at the time, was the world's largest outdoor rock climbing event.

## S. 339 LACKS ENVIRONMENTAL ANALYSIS AND FAILS THE PUBLIC INTEREST TEST

The Southeast Arizona Land Exchange and Conservation Act of 2013 fails to require any meaningful environmental analysis prior to the transfer of public land to RCM. This bill would circumvent the public process mandated under the National Environmental Policy Act (NEPA) requiring prior analysis of any major federal action on public land. Such an analysis would assess the impact of mining operations on the health of nearby residents, water quality, air quality, cultural resources,

recreation, transportation, and the overall environment. A pre-exchange NEPA review is good policy, was included in previous versions of this land exchange bill, and should be included in S. 339 if this law is passed. The Access Fund believes that NEPA must be fully complied with to address all federal actions and decisions, including those necessary to implement Congressional direction such as this highly consequential land exchange.

Further, it is bad policy to waive the requirement that a range of alternatives be considered before RCM obtains title of the property and that decisions are appropriately informed, especially for controversial and highly consequential issues such as this land exchange. Likewise there will be no meaningful opportunities for public involvement. NEPA requires that, before taking a discretionary decision, the federal agency consider the environmental impacts of a proposed major federal action.

The environmental review process outlined in S. 339 is inadequate because it fails to require a NEPA analysis of mining impacts at Oak Flat prior the transfer of title to RCM.

This bill merely requires a NEPA analysis after the Federal land has already been conveyed to RCM. Once the land exchange is consummated and these lands are in the private ownership of RCM, the Secretary of Agriculture will have virtually no discretion to require the consideration of a full range of planning and management alternatives. It is unlikely that the Federal government would have any means to significantly influence mining operations once title to Oak Flat is conveyed to RCM.

A better approach for this bill is to follow NEPA procedures as required as if this land exchange was evaluated through the normal administrative process. An administrative land exchange would require an environmental impact statement pursuant to NEPA prior to consummating the land exchange itself (as was done with two major Arizona land exchanges involving mining: the Ray Mine and the Safford land exchanges). Such an analysis would require a mining plan of operations, a comprehensive assessment of environmental and cultural impacts, an analysis of cumulative impacts to sensitive resources, and possible requirements for impact mitigation. Significantly, a full NEPA review would require an examination of a full range of alternatives including whether a potentially less environmentally harmful—yet economically feasible—mining alternative could be employed in order to preclude surface subsidence and the associated loss of Oak Flat.

This bill also unreasonably requires the exchange to be completed within one year. Such a rushed timetable will eliminate any meaningful analysis of this project and limit a wellreasoned determination whether this mine is in the public's interest. At least two to three years are needed to complete environmental reviews, appraisals, title documents, and tribal consultations to understand whether this land exchange and subsequent mine is actually in the public interest as required by Section 206 of the Federal Land Policy and Management Act. The current language in S. 339 does not provide any assurance that the public is informed about the numerous impacts and consequences of this proposal.

Finally, the timing of this Senate hearing on S. 339 is problematic considering that RCM, just days ago (and nine years into their mine project), filed a Mining Plan of Operation (MPO) with the USFS. At the very least, the Forest Service should be given an opportunity to opine on the completeness of the MPO and conduct the required NEPA analysis before Congress acts on any land exchange legislation involving Oak Flat.

The conclusory statement in section 2 (A)(2) of S. 339 that “the land exchange is, therefore, in the public interest” is completely unsubstantiated absent a meaningful review of the MPO and ample opportunity for public involvement. If Congress does intend to exert its authority and make the public interest determination in place of the Secretary of Agriculture, Congress should, at the minimum, evaluate the recently filed MPO before acting.

We do not challenge the authority of Congress to make public interest determinations, but we do respectfully caution that it is potentially unwise to make such a determination in the absence of the very information and data that are typically required to make an informed decision.

For these reasons stated herein, the Access Fund opposes S. 339. Thank you for your attention to this important matter.

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STATEMENT OF KELLY NORTON, PRESIDENT, ARIZONA MINING ASSOCIATION, PHOENIX, AZ, ON S. 339

The Arizona Mining Association strongly supports and requests your support of S. 339 Southeast Arizona Land Exchange and Conservation Act of 2013. As you are

aware, this land exchange represents a tremendous opportunity to improve the long term economic vitality of the State of Arizona as well as convey to the citizens of the United States thousands of acres of sensitive parcels offering permanent protection to endangered species, preservation of key riparian habitats, and conservation of some of Arizona's most valuable lands.

We believe Congress has an excellent opportunity to provide an ideal balance between the expansion of jobs, local and state revenues, and diverse economic activity while conserving ecologically sensitive and pristine lands for future generations. Following several years of in-depth research, study, and debate we submit to you our sincere hope that this legislation can be swiftly approved so that the remarkable economic impacts of this exchange can begin to be fully implemented and realized.

The Arizona Mining Association is a non-profit business league comprised of entities engaged in metal mining, beneficiation and mineral processing activities in Arizona. Its members include (but are not limited to): ASARCO LLC, BHP Copper Inc., Freeport-McMoRan Copper & Gold, Inc., Carlota Copper Company, Mineral Park Inc., Golden Vertex, Rosemont Copper Company, Resolution Copper Company, and Peabody Energy. In 2012, AMA member companies produced approximately 65% of the nation's newly mined copper, along with significant amounts of associated valuable co-products (e.g., gold, silver, selenium, tellurium and molybdenum). In 2012, the Arizona copper industry employed approximately 12,100 people and had an estimated direct and indirect impact on the Arizona economy of nearly \$4.8 billion. In addition, our members are engaged in the mining of coal, uranium and other materials, and make significant contributions to the Arizona economy as a result of those activities.

The AMA acquires and disseminates scientific and business information and participates in the development of legislations and regulations essential to the development of sound public policies affecting the mining industry in Arizona.

Please let us know if you have any questions or if there is anything else we can do to help move S.339 forward.

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STATEMENT OF ANDREW TAPLIN, PROJECT DIRECTOR, RESOLUTION COPPER MINING,  
SURPRISE, AZ, ON S. 339

Thank you for holding this hearing and for the opportunity to discuss S. 339, The Southeast Arizona Land Exchange and Conservation Act of 2013

At its heart, S. 339 is a major jobs and land conservation bill that will bring billions of dollars of direct investment to the United States of the next several decades. In 1995, one of the great copper ore discoveries of the last 100 years occurred in the heart of Arizona's Copper Triangle above the town of Superior, AZ. Today the Resolution Copper Mining project represents one of the largest undeveloped copper resources in the world that would help greatly revitalize the economy of a historic mining corridor in the Western United States.

Resolution Copper Mining (RCM) is proud to advise the Committee that the Mine Plan of Operation (MPO) has been filed with the U.S. Forest Service pursuant to the U.S. Forest Service (USFS) regulations (36 CFR 228A) for review and approval. By filing the Mine Plan, Resolution Copper Mining hopes to put to rest speculation that the land exchange would in some way circumvent the U.S. regulatory review process and approval under the National Environmental Policy Act (NEPA). Resolution Copper Mining is submitting its mine plan with the full expectation that the Forest Service will complete a comprehensive environmental review under NEPA and with the full intent that the project will comply with all other applicable laws including the Clean Air Act, the National Historical Preservation Act, and all applicable laws relating to Native American cultural and sacred sites.

The land exchange proposed in S. 339, between Resolution Copper Mining and the federal government, would transfer about 5,300 acres of long-term conservation and recreational land currently owned by Resolution Copper Mining to the federal government. In return, the federal government would transfer ownership to Resolution Copper Mining of about 2,400 acres from the Tonto National Forest, where the company currently holds unpatented mining claims covering the majority of the copper deposit, except for parcels around the Oak Flat campground that were withdrawn from mining in 1955 by executive order. When the withdrawal decision was made, the Resolution copper deposit was not known.

ABOUT RESOLUTION COPPER MINING AND RIO TINTO

Resolution Copper Mining is owned by Rio Tinto (55%) and BHP Billiton (45%). Rio Tinto is a global mining company whose operations have been doing business in the United States since 1872. Rio Tinto is listed on the New York Stock Exchange

and 20 percent of its shares are owned by U.S. individual or investment funds. Rio Tinto's U.S. headquarters are located near Salt Lake City, Utah, where the company has been doing business since 1903. In Utah, Rio Tinto operates the 10th largest copper mine in the world, which currently produces around 25 percent of the U.S. copper and molybdenum supply and is responsible for generating almost 17,000 direct and indirect jobs in the state. Rio Tinto has also operated, partnered or invested in many other U.S. operations of projects across the U.S. including Alaska, Colorado, Michigan, California, Kentucky, Wisconsin, South Carolina and Arizona. Over the course of the last century, Rio Tinto has brought tens of billions of dollars in direct investment to the United States. Rio Tinto's operations have been presented numerous awards in the United States for its environmental stewardship and commitment to safety.

#### RESOLUTION COPPER MINING'S ECONOMIC IMPACT

Resolution Copper Mining will become one of the largest employers in the region and will help secure Arizona's economic future. Over the life of the mine, RCM is projected to create more than 3,700 direct and indirect jobs; generate \$20 billion in federal, state, county and local tax revenues; and deliver an estimated \$61.4 billion in economic value. That equates to the nearly \$1 billion of economic impact every year in Arizona over the life of the mine. For context, the Resolution Copper Mining's economic impact would be the equivalent of hosting two Super Bowls in the state every single year, for more than the next 60 years. Today, the land exchange legislation is supported by over 30 local towns, municipalities, counties and regional governmental organizations. It has bipartisan government support local, state and federal levels.

#### ENVIRONMENTAL VALUE OF EXCHANGE LANDS

The land exchange in S. 339 transfers about 5,300 acres of carefully selected land with high environmental and conservation value for 2,422 acres of federal land to Resolution Copper Mining. The 2,422 acres of federal land is part of the historic Pioneer Mining District and largely covered by mining claims, some of which pre-date the Oak Flat withdrawal. This area has seen significant mineral exploration, and also contains the Magma mine Road, used to access the eastern shafts of the former Magma Copper mine and thus it is an area that has seen mining for decades. Resolution Copper Mining has also spent more than \$30 Million to reclaim and remediate the historic Magma Mine site. The lands offered by Resolution Copper Mining for exchange are located throughout Arizona and provide long-term conservation, habitat protection and recreational opportunities. These high-value conservation lands were identified through input from the U.S. Forest Service, Bureau of Land Management (BLM), Audubon and The Nature Conservancy, among others. Resolution Copper Mining holds unpatented mining claims covering the 2,400 acres with the exception of the Oak Flat campground which was withdrawn from the mining in 1955 by executive order. The Eisenhower Administration executed a number of withdrawals at the same time for the protection of capital investments the federal government had made in campgrounds, lighthouses, airstrips and other government property across the country. When the withdrawal decision was made, the technology did not exist to understand the potential resource under the land and its economic value.

Within the 5,300 acres offered to the federal government by Resolution Copper Mining as part of the land exchange, there are eight specific parcels that were selected in consultations with the BLM, U.S. Forest Service, Nature Conservancy and Audubon Society to build a portfolio of diverse and important conservation assets. With the passage of S. 339, there will be very significant net gain of high-value conservation and recreational lands to the United States:

- River bottoms and riparian lands, including seven miles along the renowned and free flowing San Pedro River;
- Habitat for several threatened, endangered or sensitive plant and animal species;
- Nationally and internationally identified important bird habitat by the Audubon Society and Bird Life International;
- New public recreational opportunities;
- Riparian and water resource habitat—a rarity in many parts of Arizona; and
- Protection of historic Apache Leap—a location of great significance to Native Americans.

## MINE PLAN OF OPERATIONS

As noted, Resolution Copper Mining has filed a proposed Mine Plan of Operations with the USFS. The MPO describes all project features (mine, concentrator, tailings, infrastructure, filter plant) on private, state and public lands; water sources, quantity, uses and pipeline locations; and employment numbers. The document includes baseline data (i.e. water, air, biological and, cultural resources) for the area in and around the proposed mine and includes a proposed reclamation plan and environmental protection measures. The MPO is the beginning point for the Forest Service regulatory process and the provisions will be evaluated and refined during the USFS plan completeness review and during the comprehensive environmental review under NEPA.

Submittal of the Mine Plan of Operations is the first step to initiating a comprehensive environmental review of the project under the National Environmental Policy Act (NEPA). The MPO describes the operational and environmental components of the Resolution Copper Mining project, located near Superior, Arizona. The project includes an underground mine, ore processing facility, tailings disposal facilities, access roads, and supporting infrastructure. A large portion of the project will be located on lands managed by the Tonto National Forest (USFS).

A copy of the Mine Plan of Operations will be placed on the Resolution Copper Mining website for the public to view before the USFS has finalized their completeness review. By filing a MPO and making it available for public review, Resolution Copper Mining hopes to put to rest speculations that the land exchange would in some way circumvent the review process under the National Environmental Policy Act (NEPA).

The public will have a number of opportunities for the review and comment after the USFS completeness review and as a requirement of the NEPA process.

## NATIONAL ENVIRONMENTAL POLICY ACT

The Resolution Copper Mining project will affect federal lands in the Tonto National Forest that are not subject to the proposed land exchange. Forest Service regulations require that an approved MPO must be obtained before operations begin. This land exchange bill will have no effect on this requirement. The USFS's decision must comply with NEPA, which requires that an Environmental Impact Statement (EIS) and Record of Decision be completed before a final Mine Plan of Operations is approved. The NEPA process allows for considerable input from the public as well as federal (e.g., EPA), state and county agencies.

NEPA ensures that federal agency decision makers consider and disclose the potential environmental consequences of their decisions and at the same time comply with all relevant rules and regulations including the Clean Air Act, Clean Water Act, the Safe Drinking Water Act, the National Historic Preservation Act and the Endangered Species Act. The application of these statutes does not depend on this legislation. NEPA governs federal decisions. The FS decision on the MPO must comply with NEPA.

## CULTURAL RESOURCES PROTECTION

In addition to NEPA, the Resolution Copper Mining must comply with all applicable laws relating to Native American cultural and sacred sites. This includes the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, and the American Antiquities Act. This also includes formal government-to-government consultation between the United States and Native American Tribes, including the San Carlos Apache, where the potential effects of the proposed operation is disclosed and assessed so they can be avoided or mitigated. It should be that the Resolution mine is located more than 20 miles from the boundaries of the San Carlos Apache Nation. Several large mines, and the communities of the Globe and Miami, are located between Resolution Copper Mining and the San Carlos Apache Nation. Current major infrastructure, historic mining operations, active mining claims as well as recreation, ranching and cultural values in the general Oak Flats area have co-existed for decades.

## CONCLUSION

Resolution Copper Mining is grateful to the Committee for holding this hearing today. We believe that the mine that we planning to build in Superior, Arizona will have an enormous, positive economic impact on the region, the state of Arizona and the United States. We believe this economic impact will be accomplished with the highest levels of environmental protection. The bill before the committee (S.339) is a necessary step in making this economic engine a reality. In addition to facilitating

billions of dollars of investment and job creation, the land exchange will protect unique and diverse acreage of the highest environmental and conservation value. We, and the people and communities in Arizona that support the Resolution Copper Mining project, ask for your support in advancing both economic and conservation objectives.

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STATEMENT OF PATRICK GRAHAM, STATE DIRECTOR, THE NATURE CONSERVANCY,  
PHOENIX, AZ, ON S. 339

Thank you for the opportunity to comment on S. 339, the Southeast Arizona Land Exchange and Conservation Act of 2013 (hereinafter “bill”). The Nature Conservancy has no formal position on this legislation. Instead, this letter is meant to outline the important conservation value of “the approximately 3,050 acres of land located in Pinal County, Arizona”, known as “Seven B”, as part of the federal acquisition for conservation purposes.

The Nature Conservancy is an international, nonprofit organization dedicated to the conservation of biological diversity. Our mission is to conserve the lands and waters on which all life depends. Our on-the-ground conservation work is carried out in all 50 states and in more than 30 foreign countries and is supported by approximately one million individual members. We have helped conserve nearly 15 million acres of land in the United States and Canada and more than 102 million acres with local partner organizations globally.

The Conservancy owns and manages approximately 1,400 preserves throughout the United States—the largest private system of nature sanctuaries in the world. We recognize, however, that our mission cannot be achieved by core protected areas alone. Therefore, our projects increasingly seek to accommodate compatible human uses, and especially in the developing world, to address sustained human well-being.

In Arizona, The Nature Conservancy has created a dozen nature preserves and developed new funding sources for conservation throughout the state. One main focus of our work has been to protect one of the last few remaining undammed rivers in the State of Arizona, the San Pedro River.

The “Seven B” property contains nearly 7 miles of the lower San Pedro River as well as over 800 acres of ancient intact mesquite bosque representing what is probably the largest old-growth mesquite forest remaining in Arizona. As early as 1974, an Arizona Academy of Science report called for preserving the bosque as a scientific and educational natural area, and subsequent analyses by The Nature Conservancy and others have affirmed its conservation value. In addition to the mesquite bosque and river corridor, the Seven B contains an artesian well that has the potential for providing a recovery site for endangered desert fish species. Therefore, we support the federal acquisition of this parcel for conservation purposes.

Furthermore, the bill expands the San Pedro National Conservation Area to include the Seven B on the lower San Pedro River. It will greatly assist the parties that share a vision for the long-term protection and enhancement of the river’s natural values.

However, the conservation values of the “Seven B” property exist only in the context of an ability to maintain the natural functioning of the larger San Pedro River ecosystem.

We thank Resolution Copper for opening a dialogue with its partner on the mine, BHP Billiton, to discuss the future of the lands owned by BHP Billiton adjoining the “Seven B” to ensure their permanent protection. These discussions are ongoing. As well, Resolution Copper has brought together other nearby landowners on lower San Pedro River to discuss long-term strategies for the health of the river.

In addition, we support the inclusion in Sec. 6(d)(2) the ability to provide funding for the management and protection of lands acquired by the federal government by this legislation. We believe this is important for the lands provided to the federal government by this legislation to have an endowment to provide for their management. It is not uncommon to have such a practice in administrative transactions with the federal government.

Thank you again for the opportunity for us to discuss the conservation values associated with the legislation. We do have an open dialogue with Resolution Copper and Members of the Arizona Congressional Delegation. We look forward to continuing to discuss the items outlined in this letter as this important legislation continues in the U.S. Congress.

Please do not hesitate to contact me if you have any questions.

November 18, 2013.

Hon. RON WYDEN,  
*Chairman, Committee on Energy and Natural Resources,*

Hon. LISA MURKOWSKI,  
*Ranking Member, Committee on Energy and Natural Resources,*

Hon. JOE MANCHIN,  
*Chairman, Subcommittee on Public Lands, Forests and Mining,*

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

DEAR SENATORS: Thank you for your consideration of S. 339, the Southeast Arizona Land Exchange and Conservation Act of 2013. We want to let you know of our genuine excitement about the possibility of this bill becoming law and leading to economic development in the State of Arizona and in our traditional mining communities so desperately in need of quality jobs. We join our Senators John McCain and Jeff Flake in support of this important legislation and respectfully ask for your support.

This project will create 3,700 direct and indirect jobs for Arizonans and others across America, and it will inject \$61.4 billion into the Arizona economy over the life of the mine. Combine that with the tremendous natural resource of copper to our nation and the tremendous benefit to state and local governments (\$5.8 billion over the life of the mine), and the federal government (nearly \$16 billion over the life of the mine). It is clear that this legislation deserves to secure passage in the Senate and enactment by the President of the United States.

We have previously corresponded about the benefits of the land exchange and because of your years of leadership on this matter you know the tremendous environmental, economic, and strategic benefits of this legislation and the Resolution Copper Mining project. As leaders in economic development in Arizona we stand ready to assist you in any way we can to keep this legislation moving forward through the legislative process. The resources represented by this group are at your disposal and we look forward to working closely with you and your staff to make this land exchange and, ultimately, the Resolution Copper Mining project a reality.

Please let any of us know how we can be helpful.

Sincerely,

GLENN HAMER, PRESIDENT AND CEO,  
*Arizona Chamber of Commerce,*

SANDRA WATSON, PRESIDENT AND CEO,  
*Arizona Commerce Authority,*

SCOTT SMITH, MAYOR,  
*City of Mesa,*

ROC ARNETT, PRESIDENT AND CEO,  
*East Valley Partnership,*

TODD SANDERS, PRESIDENT AND CEO,  
*Greater Phoenix Chamber of Commerce,*

BARRY BROOME, PRESIDENT AND CEO,  
*Greater Phoenix Economic Council,*

THOMAS FRANZ, PRESIDENT AND CEO,  
*Greater Phoenix Leadership,*

WILLIAM C. HARRIS, PRESIDENT AND CEO,  
*Science Foundation Arizona,*

RICHARD HUBBARD, PRESIDENT AND CEO,  
*Valley Partnership,*

MICHELLE RIDER, PRESIDENT AND CEO,  
 WESTMARC.

CEMEX,  
West Palm Beach, FL, April 30, 2013.

Hon. BARBARA BOXER,  
112 Hart Senate Office Building, Washington, DC,

LYNN ABRAMSON,  
Office of U.S. Senator Office Building, 112 Hart Senate Office Building, Washington,  
DC.

RE: Soledad Canyon Settlement Act

DEAR SENATOR BOXER: CEMEX, Inc. wishes to express its gratitude to you for your continuing interest and assistance in trying to find a legislative resolution for the decades-long dispute involving the federal mining contracts in Soledad Canyon. We also wish to thank Lynn Abramson, your Senior Legislative Assistant for Energy, Natural Resources and Transportation, for her diligent and tireless efforts in assisting CEMEX and the City of Santa Clarita in their attempts to find common ground that will facilitate such a legislative solution.

CEMEX has reviewed the bill and believes that some reasonable concerns remain. Some of these concerns have previously been communicated to Ms. Abramson. However, in order to be clear about the remaining concerns, CEMEX has prepared and enclosed with this letter a redlined draft of the bill showing language proposed by CEMEX to address the continuing concerns.

Very briefly, CEMEX's major concerns are summarized as follows:

- Section 3(b)(1)(B)(ii), p. 2: CEMEX proposes language to clarify that the contract appraisal will assume the mining of all of the resource subject to the contracts.
- Section 3(c)(2)(C), p. 2: CEMEX proposes elimination of the language providing that the projected revenues from the Victorville lands be reduced by the lost BLM royalties. As a substitute for the reduction provision, which appears to have been intended to eliminate scoring issues arising from the lost royalties, CEMEX proposes language in Section 3(c)(2)(D) providing that the City of Santa Clarita agree to contribute as reimbursement to the United States, the lost BLM royalties as more fully described in the next bullet.
- Section 3(c)(2)(D), p. 3: CEMEX proposes language providing that the bill will have effect only if the City agrees to reimburse the United States the amount of the appraised BLM royalties lost. Such reimbursement would result in a zero cost score in respect of lost royalties because the value of the lost royalties will be precisely offset by the City's reimbursement. Furthermore, this modification also provides the City with incentive to contribute to the cost of implementing the Act.
- Section 3(c)(3)(B), p. 3: CEMEX proposes modified language for the court referral, authorizing the court to consider all of CEMEX's damages in determining compensation in the event CEMEX and the BLM do not reach agreement. Such language would provide an incentive for BLM and CEMEX to reach reasonable agreement.
- Section 5(c), p. 5: CEMEX proposes elimination of the requirement for the BLM to retain the appraised lost royalty value (this would be rendered moot by the proposed new provision for City reimbursement of BLM royalties); CEMEX instead proposes that the Secretary sell other lands available for sale to make up any shortfall of funds.

CEMEX looks forward to working with your staff to further develop the concepts and goals in this letter and to integrate them into the Act. We would appreciate any further dialogue on this matter.

Very truly yours,

CLIFF KIRKMYER,  
EVP, Aggregate Resources.

ADDITIONAL STATEMENT OF CLIFF KIRKMYER, EVP, AGGREGATE RESOURCES, CEMEX  
USA, ON S. 771

Good afternoon Mr. Chairman and members of the Committee. My name is Cliff Kirkmyer, Executive Vice President of Aggregate Resources for CEMEX, Inc. ("CEMEX"). In the United States CEMEX operates in 35 states producing and selling cement, ready-mix concrete, aggregates, and related building materials. Our network includes 13 cement plants, 46 distribution terminals, nearly 100 aggregate quarries, and more than 400 ready-mix concrete plants. CEMEX was named the EPA Energy Star Partner of the Year for 2009 and 2010.

I want to first thank you for the opportunity to present written testimony for today's hearing on S. 771, the Soledad Canyon Settlement Act of 2013. CEMEX supports S. 771, introduced on April 18, 2013 by Senators Barbara Boxer, D-CA and Diane Feinstein, D-CA. S. 771 is important legislation needed to resolve a regional land use conflict that has existed within Los Angeles County for almost two decades. In fact, S. 771 may be the final opportunity to amicably end this two-decade-old dispute between the City of Santa Clarita and CEMEX over an aggregate mine that CEMEX wishes to operate in Soledad Canyon, near the City.

CEMEX asks that S. 771 be passed with certain reasonable changes as discussed in my testimony below.

#### BRIEF HISTORY OF THE SOLEDAD CANYON PROJECT AND DISPUTE

In 1990, following a public bidding process, CEMEX was awarded by the United States Bureau of Land Management (BLM) two ten-year, consecutively-running, mineral material contracts to extract 56 million tons of federally-owned aggregate from the Soledad Canyon area of unincorporated Los Angeles County. During the period between 2000 and 2004, following more than a decade of environmental review, both the BLM and the County of Los Angeles issued land use approvals for the 20-year mining project. The City of Santa Clarita, the nearest municipality to the mine site, objected to the mine, which led to years of litigation challenging the environmental reviews of the mine project. Although CEMEX has prevailed in no less than five lawsuits against the mine in the U.S. District Courts and the Ninth Circuit Court of Appeals, and has few remaining permit hurdles to clear, in February 2007, Santa Clarita and CEMEX declared a truce from the ongoing legal and political battles and announced they would seek a legislative solution to the dispute. After six years of trying to find the right legislative vehicle to effectuate a lasting resolution,

#### S.771 IS NOW THE RESULT OF THAT AGREEMENT. S. 771 IS THE RIGHT ANSWER TO THE LONG-STANDING DISPUTE

For nearly two decades, CEMEX, at great effort and cost, diligently pursued its obligations under the federal mineral contracts to entitle and develop the Soledad Canyon mine. CEMEX is in the business of natural resources extraction, and it remains fully prepared to implement the contracts if the legislative effort fails. Indeed, despite recent environmental issues raised by concerned stakeholders, earlier this year the California Department of Conservation affirmed its long-held view that pursuit of the Soledad project remains in the public interest due to certain economic and environmental advantages. Thus, if S. 771 does not succeed this year, mining in Soledad Canyon will become a reality in the very near future. This bill, with the appropriate revisions discussed below, represents the best, and perhaps last chance to legislatively resolve the long-standing mining dispute fairly and productively, in a way that meets the needs of all of the affected stakeholders, including the City of Santa Clarita and CEMEX.

S. 771 strikes the right balance because it addresses widely held public concerns while seeking to fairly compensate CEMEX. It would end the possibility of mining at the Soledad Canyon site by removing those specific mining contracts from federal mineral entry, contract or lease, and would require the BLM to cancel CEMEX's contractual right to mine at the Soledad Canyon contract site. In return, the bill would attempt to ensure that CEMEX is fairly compensated for its loss, by providing a means for CEMEX to recover fair compensation for the loss of the contracts.

Once S. 771 is signed into law, the Secretary of the Interior would offer for sale approximately 10,200 acres of federal land near Victorville, CA, which is currently on the BLM's "disposal list." The lands identified on the map were carefully selected to prevent any environmentally sensitive lands from being sold as part of this legislation. Lands in line to be developed would also be subject to full California Environmental Quality Act review. A map of the specific acreage to be sold is included in S. 771.

The proceeds from the land sales would be deposited into a special account in the United States Treasury. Based on the provisions in S. 771, the Secretary of the Interior would then use funds from this account to fairly compensate CEMEX for its cancelled contracts.

Once S. 771 is signed into law, the Secretary of the Interior would, among other things, determine the fair market value of the CEMEX contracts being cancelled in Soledad Canyon. If CEMEX does not agree with the Secretary of the Interior's determination of fair compensation, CEMEX would be allowed to ask the United States Court of Federal Claims to determine a fair amount.

Thus, CEMEX and the City of Santa Clarita welcome this important legislation as a balanced, fair resolution of a costly and difficult dispute that spread across a large region for several decades. Santa Clarita would no longer face the prospect of mining operations that they object to as incompatible with its long-term regional planning goals; and, CEMEX would recover the fair value of its loss arising out of cancellation of the Soledad Canyon contracts and foregoing its hard-fought rights to pursue development of the mine. The parties involved have been refining this bill together for six years, and S. 771, once revised, needs to pass this year in order to preserve this mutually beneficial compromise.

THERE IS STRONG LEGISLATIVE PRECEDENT FOR S. 771

S. 771 is not seeking to break new ground. There is ample legislative precedent for this type of financial process for a land swap. For more than a decade, this financial process using a similar “account” system has been successfully employed in various pieces of land transaction legislation. Past examples include:

- Southern Nevada Public Lands Management Act (October 19 1998): Directed the Secretary of the Interior to dispose of federal lands in Clark County, Nevada. To date, the bill has produced more than \$2.7 billion of land sales revenue for the specific purposes receiving funds from the special account set up as part of the legislation.
- Ivanpah Valley Airport Public Lands Transfer Act (October 27, 2000): Directed the Secretary of the Interior to convey federal lands in Ivanpah Valley, Nevada to Clark County, Nevada for the development of an airport. Payments received from the County were deposited in a special account dedicated to the acquisition of in-holdings in the Mojave National Preserve.
- Lincoln County Conservation, Recreation, And Development Act (November 30, 2004): Directed the Secretary of the Interior to conduct sales of specified lands in Lincoln County, Nevada, with proceeds of the land sales placed in a special account and dedicated to specific purposes. This bill specifically prohibited mining on the lands sold.
- White Pine County Conservation, Recreation, And Development Act (December 20, 2006): Directed the Secretary of the Interior to conduct sales of specified BLM lands in White Pine County, Nevada, with proceeds of the sales placed in a special account and dedicated for specific purposes.

CEMEX REQUESTS REASONABLE CHANGES TO S. 771

CEMEX is grateful for the tremendous efforts of Senator Boxer and Senator Feinstein in seeking to craft legislation that resolves this decades-long problem and that seeks to balance the interests of the varying stakeholders. It also is important to understand that CEMEX believes some reasonable concerns remain with S. 771, which need to be addressed in order to allow both entities to fairly benefit from the legislation. Of primary concern is to imbue the legislation with a shared sense of responsibility and contribution by all stakeholders, which would be reflected in the requirement that the City of Santa Clarita agree to contribute as reimbursement to the United States any BLM royalties lost due to the contract cancellation, rather than having such amounts be deducted from the compensation otherwise due to CEMEX. Attached is a letter dated April 30, 2013 from CEMEX to Senator Boxer outlining these remaining concerns regarding the legislation. CEMEX remains hopeful that these concerns will be addressed by this Committee and during the markup process, and is enthusiastic about the potential of S. 771. Senator Boxer and her staff, as well as the City of Santa Clarita, have expressed a willingness to work to resolve CEMEX’s concerns during the course of the legislative process.

Thank you again for the opportunity to present CEMEX’s testimony to the Committee on this important legislation that is so essential to ending two decades of strife in the region.

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STATEMENT OF ANDREW G. FRIED, PRESIDENT, SAFE ACTION FOR THE ENVIRONMENT, INC., ON S. 771

Safe Action For the Environment, Inc. (SAFE) is proud to offer its wholehearted support for the passage of Senate Bill S. 771 (The Soledad Canyon Settlement Act).

We believe the Soledad Canyon Settlement Act reflects a fair-minded approach to a complex situation that has evolved over the past two decades. By directing the Bureau of Land Management to cancel CEMEX USA’s sand and gravel mining leases in Soledad Canyon and withdrawing the site from future mining, S. 771 addresses the concerns of area residents who have long been concerned that the mine

would adversely impact air quality, human health and animal husbandry, traffic and overall quality of life.

The bill also calls for the BLM to sell surplus lands near Victorville, Calif., and utilize the proceeds to compensate CEMEX for the canceled contracts. This balanced solution addresses the concerns and interests of not only the affected communities, but also CEMEX itself.

Further, S. 771 would bring consistency to federal policy on the Soledad Canyon/Upper Santa Clara River area, a crucial wildlife corridor and habitat that has been identified by the National Park Service as having nationally significant ecological resources. Several pending and recently completed studies, plans and policies put forth by the BLM, the U.S. Forest Service and the Park Service reflect unfavorably on the idea of placing a massive gravel mine in such an ecologically sensitive area.

SAFE concurs with those conclusions: Soledad Canyon is an inappropriate location for a project of this magnitude.

SAFE was founded as a grass-roots effort by a group of concerned community members, and was formally incorporated in June 1999 as a California Non-Profit Public Benefit Corporation with a 501(C)(4) designation. The organization's mission has always been to defend the environmental integrity of the Santa Clarita and Antelope Valleys. While we do not oppose mining projects in general, we have ardently disagreed with the size, scope and location of the Soledad Canyon project from its resurrection in 1999.

SAFE has been one of the preeminent organizations working alongside the City of Santa Clarita, the unincorporated areas of Los Angeles County to the east and west of the City, the Antelope Valley cities of Palmdale and Lancaster, and numerous allies in a long-range effort to avert an environmental and logistical tragedy.

As part of our commitment to this issue, SAFE's Board of Directors hired a well-respected environmental attorney to research and submit our responses to the BLM's Environmental Impact Statement (EIS) and Los Angeles County's Environmental Impact Report (EIR); in addition, the Board authorized the commission of two comprehensive air quality studies, which were jointly submitted as comments to the EIS/EIR by SAFE and the City of Santa Clarita. Our organization has been working steadily for more than a decade to help reach a reasonable and equitable solution.

SAFE's Board of Directors joins with the unprecedented coalition of businesses, educational bodies, political jurisdictions, environmental groups, governmental entities, labor organizations, media groups and others who support this legislation as a creative, balanced and fair resolution of this issue.

S. 771 has the strong support of Santa Clarita officials and SAFE is proud to add its support, too. We are grateful to Sen. Barbara Boxer for authoring S. 771 and to Sen. Dianne Feinstein for supporting it, and we are hopeful that it will receive favorable consideration from your committee. We stand prepared to provide any additional information you may need as you consider this important legislation.

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STATEMENT OF DEBBIE SEASE, FEDERAL CAMPAIGN DIRECTOR, SIERRA CLUB

On behalf of the Sierra Club's 2.1 million members and supporters across the country, I want to thank you and the Public Lands, Forests, and Mining Subcommittee for your continued work to protect American lands, water, and wildlife.

Tomorrow's hearing includes two bills that would establish new wilderness areas and one that would establish a large national conservation area. Congress has not established new wilderness since 2009 and this hearing is a step in the right direction toward crafting a bipartisan package that protects America's wild legacy. We look forward to working with you and members of this committee to continue moving these bills forward.

The hearing also includes two bills, S. 339 and S. 1479, that would privatize public lands and increase intensive logging across our country's forests. These bills would be poison pills and would severely hamper the ability of any lands package to pass the full Senate.

The Sierra Club urges you to support the following bills and help move them forward:

- S. 483, Berryessa Snow Mountain National Conservation Area Act would protect one of northern California's best kept secrets. The Berryessa Snow Mountain NCA would protect approximately 350,000 acres in a region that acts as a wonderful natural outdoor playground within an hour's drive of Sacramento and the bay area. S. 483 highlights the values of this special place and would make it more accessible to those seeking to escape to the great outdoors while providing the management necessary to safeguard the region's landscapes. An

NCA designation is a perfect complement to the region's agricultural economy and will provide a stronger economic foundation that will bring jobs to the region. Permanently protecting the Berryessa Snow Mountain region will safeguard the natural heritage and provide important opportunities to expand the region's economic base by increasing tourism and recreation and creating a more desirable place for people to live and work.

- S. 776, Columbine-Hondo Wilderness Act would designate 45,000 acres in New Mexico's Carson National Forest as wilderness. The area is already managed as wilderness and protects the headwaters for the Rio Hondo and Red Rivers, both which ultimately flow into the Rio Grande. The area is vital both to the communities of northern New Mexico as well as the wildlife such as bighorn sheep, elk, and mule deer for which it provides vital habitat. The bill is widely supported both locally and nationally and the area has been waiting more than 30 years for Congressional protections.
- S. 841, Hermosa Creek Watershed Protection Act would protect the various cultural, economic and ecological resources of well over 100,000 acres of the Hermosa Creek Watershed in the San Juan National Forest. The area is extremely popular for hiking, camping, skiing, biking, hunting and a wide variety of other uses and is some of the most biologically diverse forestland in Colorado. Approximately 37,000 acres of this would be designated wilderness and the legislation would also provide for a mineral withdrawal of over 13,000 additional acres. The bill has wide local support from county commissioners, water conservation districts, hunters and anglers, as well as the conservation community.
- S. 771, Soledad Canyon Settlement Act would finally resolve a longstanding dispute over a controversial proposed gravel mine near the City of Santa Clarita. The bill would accomplish this by cancelling CEMEX USA's contracts with the Bureau of Land Management to mine up to five million tons of sand and gravel per year from the Soledad Canyon site, underlying lands owned by the City of Santa Clarita, and permanently withdraw the area from mining. The withdrawal would ensure the continued protection of the significant natural resources of Soledad Canyon. Soledad Canyon is located in an area adjacent to the Upper Santa Clara River that is touted by the National Park Service as containing some of the best remaining tracts of big-cone Douglass fir-canyon oak forest, riparian forest and woodland, coastal sage scrub, and alluvial fan sage scrub.

The mark-up also includes two bills that are highly controversial both locally and nationally. These bills have not undergone thorough review and are not broadly supported. The Sierra Club strongly opposes the following:

- S. 339, Southeast Arizona Land Exchange and Conservation Act is a piece of special interest legislation that would give about 2400 acres of public lands in Arizona's Tonto National Forest to a foreign mining corporation. These lands are sacred to Native Americans, ecologically significant, and highly valued by recreationalists. The corporation, Resolution Copper, plans to turn the land into a large underground copper mine by using a process which would create a crater three-quarters of a mile wide and 300-400 feet deep. Part of this area was set aside from mineral exploration and extraction for public use by President Eisenhower by Public Land Order 1229, an order that was reinforced by President Nixon. Overturning the executive order for the benefit of foreign mining companies sets a dangerous precedent for religious freedom and public lands protection.

Not only would the bill trade away a sacred area and one that is critical for cultural activities, it would also trade away the Oak Flat Campground and surrounding lands which are prized by countless climbers, birders, and hikers from nearby Phoenix and all over the country. This would represent an enormous loss for those recreationalists and also the small businesses that earn their livelihood from that recreation. The bill would also result in the massive dewatering of the riparian area and the loss of habitat critical to rare and endangered plants and animals. For these reasons and many more the bill is largely opposed both by the local communities and both local and national conservationists, preservationists, recreationalists, and Native American tribes and tribal organizations. Those include the Navajo Nation, the Inter Tribal Council of Arizona, the Inter Tribal Council of Nevada, the National Congress of American Indians, the All Indian Pueblo Council, the United South Eastern Tribes, and tribes throughout Arizona, New Mexico and California.

- S. 1479, Catastrophic Wildfire Prevention Act would act as a Trojan horse for mandating or incentivizing damaging logging and other intensive development of our public lands under the guise of wildfire management, regardless of

whether such activities reduce wildfire risk. This bill proposes to dramatically increase the areas of our national forest and Bureau of Land Management (BLM) land that can be logged or developed with limited public review, while also eliminating protections for roadless areas, wilderness study areas, endangered and threatened species habitat, and other ecologically sensitive areas, along with making major changes to the implementation of the Endangered Species Act (ESA) for listing decisions, recovery plans, and critical habitat designations. S. 1479 authorizes and incentivizes projects in remote backcountry areas of our public land, thereby diverting increasingly scarce resources away from forest-adjacent communities (otherwise known as the wildland-urban interface area or “WUI”) where public safety needs are greatest, thereby potentially increasing fire risk for such communities.

TROUT UNLIMITED,  
Arlington, VA, November 20, 2013.

Hon. JOE MANCHIN,  
*Chair, Subcommittee on Public Lands, Forests, and Mining, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Office Building, Washington, DC,*

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

RE: Trout Unlimited Supports S. 776, S. 841, and S. 483

DEAR CHAIRMAN MANCHIN AND RANKING MEMBER BARRASSO:

I write on behalf of Trout Unlimited and its 150,000 members in support of three bills that would conserve important fish and wildlife habitat: the Columbine-Hondo Wilderness Act, Hermosa Creek Watershed Protection Act, and Berryessa Snow Mountain National Conservation Area Act. These bills would help sustain these areas’ hunting and fishing heritage by protecting the habitat that supports healthy, abundant fish and wildlife.

S. 776: COLUMBINE-HONDO WILDERNESS ACT

The Columbine-Hondo Wilderness Act would designate the Columbine-Hondo Wilderness Study Area (WSA) in the Sangre de Cristo Mountains in the Carson National Forest north of Taos, NM as a wilderness area. The bill would protect 46,000 acres of land that contains the headwaters for a number of streams that provide prime habitat for the Rio Grande cutthroat trout, and hunting opportunities for deer and elk.

S. 841: HERMOSA CREEK WATERSHED PROTECTION ACT OF 2013

The Hermosa Creek Watershed Protection Act of 2013 is a strong example of pragmatic, collaborative land-protection legislation. The bill would designate roughly 108,000 acres of land in Colorado’s San Juan National Forest as the Hermosa Creek Special Management Area—withdrawing most of the area from mineral development and maintaining existing land uses such as mountain biking, motorized recreation, selected timber harvesting, and grazing. Within the Special Management Area, 38,000 acres will be protected as Wilderness. This legislation stems from the recommendations of an inclusive local working group and offers virtually all stakeholders recreational opportunities in and around the areas designated for protection. The provisions in the Hermosa legislation that withdraw future mineral leasing on Perins Peak and Animas Mountain have the support of sportsmen and women because these areas provide critical lower elevation over-wintering big game habitat.

Trout Unlimited’s local staff and volunteers have been among the many stakeholders engaged in the discussion about land designations in the Hermosa Creek watershed. We support the Hermosa Creek Watershed Protection Act because it will help conserve the watershed’s native Colorado River cutthroat trout population and crucial big game habitat for the benefit of the many resident and non-resident hunters and anglers that utilize these invaluable resources.

S.483: BERRYESSA SNOW MOUNTAIN NATIONAL CONSERVATION AREA ACT

This bill would establish the 349,850 acre Berryessa-Snow Mountain National Conservation Area on federal land in northwestern California. The area offers an excellent variety of angling and hunting opportunities in its many trout streams and dozens of lakes and ponds, including the trophy trout fisheries of Cache and Putah

creeks, and the headwaters of the Eel River. The Middle Fork of Stony Creek in the Snow Mountain Wilderness is now designated Wild Trout water, and a segment of Putah Creek is proposed for this designation. The Berryessa-Snow Mountain public lands also provide good hunting for deer in the A and popular B-3 deer hunting zones. Other huntable game species found in the area include quail, blue grouse, tule elk, wild turkey, wild boar/feral pigs, dove, black bear, and various waterfowl species. Leading state and national sportsmen's groups such as Trout Unlimited, Ducks Unlimited, the California Waterfowl Association, and the Northern California Council of the Federation of Fly Fishers support permanent protection of the habitat and sporting values of the Berryessa-Snow Mountain public lands. All of the fishing and hunting opportunities now available in this area would be conserved, and even enhanced, under the Berryessa-Snow Mountain National Conservation Area Act.

Thank you for considering our views on these bills. We urge the Subcommittee to support these bills for the benefit of hunters and anglers in California, Colorado, and New Mexico, as well as non-resident sportsmen and women who drive our nation's \$90 billion hunting and angling economy.

Sincerely,

STEVE MOYER,  
*Vice President for Government Affairs.*

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STATEMENT OF ALAN ROWSOME, SENIOR DIRECTOR OF GOVERNMENT RELATIONS FOR  
LANDS, THE WILDERNESS SOCIETY

We are writing to express our strong support for the wilderness and other public lands conservation bills being heard tomorrow in the Energy & Natural Resources Committee, Subcommittee on Public Lands, Forests, & Mining, and respectfully request that this letter be included in the November 20, 2013 hearing record for the Subcommittee. In particular, we would like to express our support for S. 483, S. 776, and S. 481, which provide community-supported protections for outstanding wild landscapes and watersheds in California, New Mexico, and Colorado. We would also like to express our opposition to S. 1479, which acts as a Trojan horse to override basic environmental and public participation protections in order to facilitate intensive logging and grazing of our public lands under the guise of wildfire management.

The 112th Congress was the first Congress since 1966 that failed to protect any wilderness, leaving us with a large backlog of public lands conservation bills. We appreciate the Committee's continued leadership in driving forward the many locally-supported wilderness bills and other conservation measures pending before the Senate, and hope your efforts will lead the 113th Congress to a more successful conservation record than the 112th. However, we are disappointed that taking up these citizen-crafted conservation bills comes at the price of considering a measure that would undermine the most basic protections for forests, including roadless lands and wilderness study areas. This approach directly contradicts the lessons taught by polling released just this week, which shows that voters don't believe either Democrats or Republicans are doing enough to protect public lands.<sup>1</sup>

S. 483—BERRYESSA SNOW MOUNTAIN NATIONAL CONSERVATION AREA ACT

The Wilderness Society supports the Berryessa Snow Mountain National Conservation Area Act, and we commend Senator Boxer for introducing this legislation. S. 483 would establish a national conservation area in the Berryessa Snow Mountain region of California's interior Coastal Range. The region's lush oak savannahs, free-flowing rivers, and healthy ancient forests provide a wonderful outdoor playground easily reachable from Sacramento and the Bay Area. This largely undiscovered national treasure is home to a wealth of recreation opportunities, a wide range of plants and animals, and beautiful scenic views.

The Berryessa Snow Mountain region is a wonderland rich in natural features including waterfalls, lakes, and rocky outcrops with lovely views. The region is also home to a dazzling variety of native and rare plants and provides habitat for dozens of iconic California birds and animals. Bald and golden eagles, black bears, mountain lions and herds of wild tule elk call the region home and Cache Creek contains the state's second largest wintering population of bald eagles.

S. 483 would ensure that the Berryessa Snow Mountain region is permanently protected for the benefit and enjoyment of future generations.

<sup>1</sup> Source: Public opinion polling, Hart Research Associates, November 18, 2013, available at <http://www.americanprogress.org/wp-content/uploads/2013/11/Me11044-Public-Lands-Memo.pdf>

*Benefits*

A conservation area designation will keep the Berryessa Snow Mountain region the way it is so that the public can continue to enjoy and use these lands for activities like hunting, grazing, hiking and rafting. The designation will also provide important economic benefits to local communities by increasing property values, providing new opportunities for recreation and tourism, creating a more desirable place to live and work, and bringing new residents and visitors into the area. S. 483 would help address important land management priorities within the conservation area by restoring local lands, addressing the spread of noxious weeds, advancing marijuana eradication, and identifying new recreational opportunities.

*Preserving existing land uses*

This legislation has been carefully crafted to ensure that existing land uses may continue. Existing grazing, motorized vehicle use, horseback riding, mountain bicycling, and other recreational activities may continue within the conservation area. The legislation makes clear that fire management activities may continue within the conservation area. The legislation further makes clear that the conservation area designation will not affect existing water rights, use of or access to private land, or any activities outside the boundary of the conservation area.

*Local input*

The legislation is the result of many years of community input. Conservation area supporters have worked closely with local communities and stakeholders in Lake, Napa, Yolo, Solano, and Mendocino counties to ensure that the conservation area designation has strong local support and does not adversely affect important land uses.

S. 483 requires the establishment of a new management plan, which will address important land use issues within the conservation area, and will be crafted with local input. The legislation also establishes an advisory council, to include local stakeholders from a wide variety of backgrounds, including agricultural, private land-ownership, environmental, recreational, tourism, and other non-Federal land interests. This advisory council will provide an important forum for local interests to provide input in the management of the conservation area.

*Supporters*

The Berryessa Snow Mountain National Conservation Area is supported by a wide array of local stakeholders, including:

- Local elected officials: Yolo, Napa, Solano and Lake Counties, the cities of Davis, Winters, West Sacramento, Clearlake, Calistoga, and St. Helena, and dozens of individual elected officials.
- Hunters and Anglers: California Waterfowl Association, Ducks Unlimited, National Wildlife Federation and others.
- Business: Over a hundred local businesses.
- Recreation: Blue Ribbon Coalition, Motorcycle Industry Council, International Mountain Bicycling Association, Back Country Horsemen of America, and others.
- Chambers of Commerce: North Valley Hispanic, Napa Valley Hispanic, and Calistoga Chambers of Commerce.
- Farmers, Ranchers, and Landowners: Napa Valley Vintners and dozens of local farmers, ranchers, inholders, and other private landowners.
- Conservation: Sierra Club, National Hispanic Environmental Council, and others.

We urge the committee to advance S. 483, the Berryessa Snow Mountain National Conservation Area Act as expeditiously as possible.

## S. 776—COLUMBINE-HONDO WILDERNESS ACT

New Mexico depends on its wild landscapes for clean and flowing water, jobs from the booming outdoor and tourism industries, and quality of life. The Wilderness Society supports S. 776, the Columbine-Hondo Wilderness Act, which would protect 45,000 acres of incredible wildlife habitat, an important source of clean water, and a prized hunting and fishing destination around Taos, Questa and Red River, New Mexico.

The Columbine Hondo Wilderness Study Area is the last remaining portion of the Sangre de Cristo Mountains to be designated as wilderness. Congress formally recognized the wilderness values and character of the Columbine Hondo area in 1980 and gave it interim protection as a wilderness study area (WSA). It is crowned by 13 miles of high alpine ridges and peaks that tower above 11,000 feet, including its

high point, Gold Hill, at 12,711 feet elevation. The area is home to elk, Rocky Mountain bighorn sheep, mountain lions, black bear, pine marten, and Rio Grande cutthroat trout.

Columbine Hondo is a significant clean water source for the central Rio Grande Corridor of New Mexico, supplying water to two of the larger Rio Grande tributaries—the Red River and the Rio Hondo. The area also waters many acequias used by the local agricultural community. In addition, northern New Mexico's incredible wildlife, natural beauty, and outdoor recreation opportunities attract locals and visitors alike to the area. Outdoor recreation generates \$6.1 billion in consumer spending and supports 68,000 jobs in New Mexico alone.

Protecting Columbine Hondo is a community-driven effort. A diverse coalition—including business owners, ranchers, sportsmen, Acequia parciantes, mountain bikers, elected officials, conservationists and others have worked together for years to preserve this natural treasure. Community support for safeguarding the Columbine Hondo is broad and deep.

Supporters: The Columbine-Hondo Wilderness Act is supported by a wide array of local stakeholders, including:

- Local Governments: Taos Pueblo, County of Taos, Town of Red River, Town of Taos, Village of Questa and Village of Taos Ski Valley.
- Sportsmen Organizations: New Mexico Wildlife Federation, Trout Unlimited, Backcountry Hunters & Anglers, National Wildlife Federation, and 30 local sportsmen organizations.
- Business: Over 350 local businesses.
- Recreation: International Mountain Bicycling Association, Back Country Horsemen of America, and others.
- Land Grant and Acequia Associations: Arroyo Hondo Arriba Community Land Grant, El Rito de la Lama Acequia Association, Acequia de la Plaza, and others.
- Chambers of Commerce: Taos County Chamber of Commerce, Taos Green Chamber of Commerce, New Mexico Green Chamber of Commerce.
- Organizations: League of United Latin American Citizens (LULAC), Sierra Club, New Mexico Wilderness Alliance, Environment New Mexico, Conservation Voters New Mexico, Rivers & Birds, and many others.
- Newspapers: Albuquerque Journal, Taos News, Santa Fe New Mexican
- Individuals: Livestock permittees, over 300 community members, and over 600 sportsmen have signed letters of support.

We urge the committee to move S. 776, the Columbine-Hondo Wilderness Act, forward as quickly as possible.

#### S. 841—HERMOSA CREEK WATERSHED PROTECTION ACT OF 2013

The Wilderness Society supports the Hermosa Creek Watershed Protection Act, which is the result of four years of community discussion and negotiation to protect one of Colorado's largest unprotected landscapes. The Hermosa Creek watershed is revered for its clean water, wildlife habitat, and recreational opportunities including mountain biking, hunting, hiking, and fishing.

S. 841 is based on the recommendations of the Hermosa Creek Workgroup, a community-based collaborative group that formed to discuss options for protecting the area, and to ensure that all local stakeholder concerns were addressed. Regular participants included sportsmen, mountain bikers, hunter and anglers, water developers, conservation groups, motorized recreation interests, and local governments, and the final legislation is one that truly works for all concerned.

S. 841 will protect the entirety (approximately 108,000 acres) of the Hermosa Creek watershed north of Durango, CO as a Watershed Protection Area. Within this, the wildest part will be designated as the 37,000-acre Hermosa Creek Wilderness. The remaining lands will be designated as a Special Management Area, with motorized and mountain bike use continuing, but a prohibition on new roads and other development. A world class mountain biking destination, all popular mountain bike trails remain open for use. Ninety-eight percent of the watershed will be withdrawn from mineral entry. Four areas near the City of Durango (Perins Peak, Animas Mountain, Lake Nighthorse, and Horse Gulch), totaling approximately 13,000 acres, will be withdrawn from mineral entry. In addition, approximately 111 acres of Bureau of Land Management land southeast of Durango will be conveyed to La Plata County for recreational facilities and 461 acres of the approximately 1,200-acre West Needles Contiguous WSA will be released, to allow for the continuance of historic snowmobile use.

We urge Congress to protect one of Colorado's largest unprotected landscapes by advancing S. 841 as quickly as possible.

## S. 1479—CATASTROPHIC WILDFIRE PREVENTION ACT OF 2013

The Wilderness Society strongly opposes S. 1479, which acts as a Trojan horse to override basic environmental and public participation protections in order to facilitate intensive logging and grazing of our public lands—including wilderness-quality lands—under the guise of wildfire management. Although S. 1479 purports to protect public lands from wildfire, in reality, this proposal would result in serious and irreparable harm to our nation’s treasured landscapes. This bill would eviscerate longstanding common sense protections by authorizing extensive logging and grazing to go forward in backcountry areas with limited environmental review and public input, while also eliminating protections for roadless areas, wilderness study areas (WSAs), endangered and threatened species habitat, and other ecologically sensitive areas, along with making major changes to the implementation of the Endangered Species Act (ESA).

The bill mandates that the Forest Service and BLM implement “authorized wildfire protection projects” in any forest that is deemed “at-risk”. Section 3 of the bill provides definitions for both “at-risk forest” and “authorized wildfire protection project” that are so broad that virtually any fire-adapted ecosystem (which constitutes most of the West) could be designated “at-risk,” and virtually any project could qualify as wildfire protection. While we agree that forest thinning can be an important element of a fire management strategy, it is not an across-the-board solution to mitigating wildfire risk, and is only effective when done in the right places, in the right way, at the right time. In regards to grazing, there is little to no scientific support for utilizing it as a fire management tool, and in fact, some research suggests that grazing can even contribute to increased fire risk. In contrast, S. 1479 seeks to define both logging and grazing as an across-the-board, one-size-fits all solution to fire across a broad swath of our western public lands. The bill specifically overrides all existing legal protections of the Roadless Rule and Wilderness Study Areas to allow implementation of these projects in some of the most pristine and remote parts of our public lands (see Section 3(4)(B)).

Section 5 of the bill creates a series of arbitrary deadlines and streamlined review provisions that would effectively eliminate meaningful public input and environmental review. Review for logging and grazing is particularly limited, and once completed, automatically deemed sufficient for 10 years (for grazing) or 20 years (for timber harvest). In addition, compliance with the bill’s limited public input and review requirements results in automatic compliance with NEPA, the National Forest Management Act, the ESA, and the Multiple-Use Sustained Yield Act, regardless of any substantive conflicts.

The Wilderness Society strongly opposes S. 1479. While we believe that addressing wildfire risk is an important issue, this bill does nothing to further that policy discussion and should be rejected.

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CALIFORNIA LEGISLATURE,  
STATE CAPITOL,  
Sacramento, CA, June 14, 2013.

Hon. BARBARA BOXER,  
*U.S. Senate, 112 Hart Senate Office Building, Washington, DC,*

Hon. DIANNE FEINSTEIN,  
*U.S. Senate, 331 Hart Senate Office Building, Washington, DC.*

RE: S. 771 (Boxer and Feinstein)—The Soledad Canyon Settlement Act POSITION:  
SUPPORT

DEAR SENATORS BOXER AND FEINSTEIN, As representatives for the City of Santa Clarita and the Santa Clarita Valley, we are writing to express our support for your bill, S. 771. This legislation would cancel all current CEMEX USA mining contracts with the Bureau of Land Management (BLM) at the Soledad Canyon site in the City of Santa Clarita. The bill would direct the BLM to sell roughly 10,000 acres of public lands, identified for disposal, near the City of Victorville and use the proceeds to compensate CEMEX for its cancelled contracts.

The City of Santa Clarita has consistently opposed the proposed mine at Soledad Canyon due to concerns about the impacts of heavy blasting, aggregate crushing, air quality and traffic congestion associated with a mine that would potentially remove five million tons of sand and gravel per year. In addition to these concerns, the location of the CEMEX mine is adjacent to the Upper Santa Clara River which the National Park Service’s Rim of the Valley Special Corridor Resources Study identified as containing critical riparian forest woodland and coastal sage scrub

habitats. The protection and conservation of the Upper Santa Clara River is also critical to downstream constituents in Ventura County.

The area has seen tremendous growth since the original contracts were issued. The impact of a large-scale mining operation on the quality of life will impact our constituents directly. S. 771 proposes a win-win for both the City of Santa Clarita and CEMEX. The latest version of this bill has made important changes to help avoid a cost to federal taxpayers.

Thank you for introducing S. 771. We fully support this legislation and sincerely hope that the environment and health of this community will be protected.

Sincerely,

FRAN PAVLEY,  
*State Senator, 27th District,*  
STEVE KNIGHT,  
*State Senator, 21st District.*

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STATEMENT OF RON BOTTORFF, CHAIRMAN, FRIENDS OF THE SANTA CLARA RIVER, ON  
S. 771

I am writing in support of S.771, the Soledad Canyon Settlement Act. This important piece of legislation will help to protect air and water quality, as well as wildlife near the city of Santa Clarita, and on adjacent public lands.

This legislation would cancel the BLM contracts with Cemex that would have allowed mining of 56 million tons of sand and gravel close to the homes and schools of Santa Clarita. This mine is opposed by the City of Santa Clarita, as well as most businesses, individuals and elected officials in the area. Concerns include impacts on air quality from blasting, aggregate crushing and truck trips. The projected truck trips of over 1000/day would impact local roads as well as freeways, including the junction of I-5/I-14 at Newhall Pass, a major north south commuter and commercial route.

The proposed mine, which is adjacent to the Santa Clara River, threatens to do major harm to the river ecosystem. Friends of the Santa Clara River have fought for over 20 years to protect this last major river in Southern California that is still largely in a natural condition over much of its length. The proposed mine site also borders Soledad Canyon, which contains some of the finest riparian forest, coastal sage scrub and alluvial fan sage scrub in the southland.

The mine area is also in the path of the proposed connection of the two parts of the Angeles Forest, is an important wildlife corridor, and is in sight of the Pacific Crest Trail and the new Crest to Coast Trail. The mine would use over 700 acre feet/year of groundwater upstream of already drought-impacted rural homes that depend on groundwater.

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STATEMENT OF TOM RADULOVICH, PRESIDENT, SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT, OAKLAND, CA, ON S. 1243

On behalf of the board of the San Francisco Bay Area Rapid Transit District (BART), we write to request your support of the Senate FY14 Transportation HUD Appropriations bill (S. 1243).

As you know, total funding for the Senate THUD appropriations bill is \$54.045 billion, which is almost \$10 billion more than the \$44.1 billion that the House bill provides for Transportation and Housing programs. Although both the House and Senate bills provide \$8.595 billion in formula funding for transit, the Senate bill provides more discretionary funding from the general fund for transit programs. Specifically, the Senate bill protects funding for Core Capacity, Amtrak, passenger rail projects, New Starts (transit construction) and TIGER grants. These federal funds are essential as BART continues to expand its capacity and maintain the system in a state of good repair in order to support the economic health and livability of the Bay Area.

BART is concerned that if the recommendations included in the House bill are ultimately signed into law, public transit will be detrimentally impacted in the Bay Area and across the nation. As the critical debate to determine FY14 funding levels for transportation moves forward in the Senate, House and ultimately conference, we urge you to show strong support for the Senate bill and oppose the severe reductions in funding for transit included in the House bill.

The BART board strongly supports the federal investments provided in the FY14 Senate bill and asks that you swiftly approve S. 1243.

STATEMENT OF TERRY RAMBLER, PRESIDENT, INTER TRIBAL COUNCIL OF ARIZONA,  
CHAIRMAN, SAN CARLOS APACHE TRIBE

On behalf of 21 federally recognized Indian Tribes, Nations and Communities in Arizona who are members of the Inter Tribal Council of Arizona (ITCA), we write to join Tribal Nations across the country to express our continued and strong objection to H.R.687/S.339, the Southeast Arizona Land Exchange and Conservation Act of 2013. For your information, ITCA's most recent Resolution in opposition to this legislation is also attached here.\*

If enacted, H.R.687/S.339, would allow two foreign mining companies, Rio Tinto and BHP Billiton, through their subsidiary Resolution Copper Mining Company, to acquire over 2,400 acres of Forest Service land, including the Tribal sacred site of Oak Flat, to facilitate the development of a massive and unprecedented copper mine within our ancestral lands.

The Oak Flat area has significant religious, cultural, archeological, historical and environmental significance to many of our Member Tribes, including the Fort McDowell Yavapai Nation, the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Tonto Apache Tribe, the Zuni Pueblo and the Yavapai-Apache Nation, among others. Members of these Tribes still currently rely on Oak Flat for important religious and cultural purposes.

ITCA Member Tribes object to our ancestral lands and this important sacred site being turned over to foreign mining companies who have no loyalty to the United States and whose main goal is to extract America's resources to benefit foreign interests and foreign shareholders.

Indeed, while this bill has been pending in Congress, Rio Tinto (which is owned in part by China) has been making plans to expand the Port of Guaymas, Mexico, in order to ship the copper concentrate and other important minerals extracted from this mine to China and other countries abroad, meaning that the sacred site of Oak Flat will be destroyed under H.R.687/S.339 not to supply copper to the United States, but rather, to foreign countries like China. This is profoundly offensive to ITCA's Member Tribes and Indian Nations across the United States.

The sacred site of Oak Flat qualifies as sacred site within the meaning of Executive Order 13007 and it qualifies as an eligible Traditional Cultural Property under Section 106 of the National Historic Preservation Act. The block and cave mining that would take place on the land proposed for conveyance would cause irreparable damage to the religious integrity of this place, as well as the archeological and cultural resources of the area. The project will also have highly damaging consequences to regional water supplies and to the wildlife, plants, and other natural resources of the area.

For these reasons, we urge you to oppose this legislation and hope that you will urge your colleagues in the Senate to reject this piece of legislation. We appreciate your efforts to protect this special place. Please contact me if you have any questions about this matter.

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STATEMENT OF STEVE TRUSSELL, EXECUTIVE DIRECTOR, ARIZONA ROCK PRODUCTS  
ASSOCIATION, ON S. 339

The Arizona Rock Products Association (ARPA) appreciates your efforts to bring jobs, wealth and strategic materials to Arizona and the nation through your sponsoring of S. 339: Southeast Arizona Land Exchange and Conservation Act of 2013. The passage of this legislation would not only employ thousands of Arizonans for decades, including members of our Association, but would also move the United States closer to becoming self-sufficient in its demand for copper, a metal integral to our nation's continued development and defense. ARPA has strongly supported the project, land exchange and passage of this vital bill. By allowing the exchange of lands, this measure would secure the requisite lands necessary for Resolution Copper to develop this world-class ore body.

The Arizona Rock Products Association has been providing representation for 46 member companies involved with the production of aggregates, asphaltic concrete, ready mix concrete, asphalt, lime products, and portland cement. ARPA members, include over 51 associate members providing related transportation, contracting, and consulting services many of which could be potentially employed by the Resolution project. ARPA supports the importance of mining in the State of Arizona and the benefits to our State's economy, jobs and products that add to the quality of our lives.

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\*Document has been retained in subcommittee files.

In 2012, Arizona copper mines produced nearly 800,000 tons of copper or 63 percent of the nation's copper production. Even with Arizona's significant copper production, the United States continues to be a net importer of copper and is becoming more and more dependent on other countries for this strategic metal. If we do not continue to develop our resources at home, we could find ourselves reliant upon copper from other nations in the same way we are now reliant upon other nations for rare earth minerals and crude oil. At its peak, the Resolution Copper Project will produce 25 to 30 percent of our nation's copper needs; thereby substantially reducing this great nation's needs for imported copper.

The passage of S.339 will result in multi-faceted benefits to the United States and to Arizona. The bill requires the donation of more than 5,500 acres of high-quality conservation lands to the United States, ensuring that those lands are preserved for the enjoyment of future generations. In addition to conservation benefits, the mine is estimated to have a positive economic impact of \$46 billion over the life of the project. Much of this positive impact will be realized through the estimated 5,800 direct and indirect jobs that will be created when the mine reaches full production.

On behalf of the Arizona Rock Products Association, we thank you for your support of this project, the creation of jobs and this vital industry.

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STATEMENT OF DAVID M. MARTIN, PRESIDENT, ARIZONA CHAPTER ASSOCIATED  
GENERAL CONTRACTORS, PHOENIX, AZ

The Arizona Chapter Associated General Contractors (AZAGC) is the oldest construction trade association in Arizona. AZAGC was established in 1934 to represent highway/heavy civil contractors, subcontractors, material suppliers and other construction affiliated companies. This represents over 20,000 construction professionals throughout the state.

Thank you for your consideration of S. 339, the Southeast Arizona Land Exchange and Conservation Act of 2013. We join our Senators John McCain and Jeff Flake in support of this important legislation and respectfully ask for your support.

S. 339 would facilitate the development of an underground copper mine that will create jobs (approximately 3,700), reduce our dependence on foreign sources of energy and minerals as well as generate revenue (over \$61 billion is projected) for federal and state treasuries. In addition, the measure would transfer environmentally sensitive lands into federal stewardship. This legislation is not only a jobs bill, it's a conservation bill. The lands the federal government acquires in the exchange are highly-coveted recreational and conservation areas.

Over the last five years, construction and its related industries have been hit hard by the recession. In Arizona alone the unemployment rate for construction, at its peak, reached over 20 percent. The passage of S. 339 will provide relief to construction as many of our members perform a number of construction-related services at mine sites. This project will make an enormous difference in the lives of Arizonans as well as others around the United States: creating jobs, promoting sustainable mining operations, harvesting a vital natural resource, and protecting conservation lands. All of this can be done without spending one cent of taxpayer money should Congress move this legislation forward.

AZAGC thanks you for having a hearing on this legislation and we urge you to move it forward to the full Senate for consideration. We are available to you and your staff should you have additional questions.

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*September 18, 2013.*

Hon. ANN KIRKPATRICK,  
*U.S. Representative, 330 Cannon House Office Building, Washington, DC,*

Hon. PAUL GOSAR, DDS,  
*U.S. Representative, 504 Cannon House Office Building, Washington, DC.*

DEAR REPRESENTATIVES KIRKPATRICK AND GOSAR,

I would like to start this letter by thanking you for your tireless work on moving the Southeast Arizona Land Exchange and Conservation Act through Congress. I am proud to see two Arizonans put their differences aside to do what is right for Arizona, especially my hometown of Superior and the Copper Corridor.

Last month I was elected to the Superior Town Council on a recall election, an election that was called due to the reckless decisions made by the Superior Town Council to oppose Resolution Copper. I won the election by a 2:1 margin. I have been a long time supporter of this project, a community leader and I also serve as the President of the Superior Unified School District Board. As an elected official

and leader in my community I understand the importance of the Resolution Copper project as do our residents.

The residents of my community want Superior to thrive, not just survive. The investments that Resolution Copper has made in our community and school district have helped us to move forward, however we must get this land exchange passed so we can continue to move forward.

As a Town Councilmember I am fully committed to work with our Town Attorney, Mayor and my fellow Councilmember's to bring forth a resolution of support for the Southeast Arizona Land Exchange in the near future. My hope is that by the end of this week our staff will be directed by the council to begin an official dialog with Resolution Copper to eventually develop both a Mutual Benefits Agreement and Resolution of Support.

Thank you for your time.

Sincerely,

MILA BESICH LIRA.

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STATEMENT OF JANICE K. BREWER, GOVERNOR, STATE OF ARIZONA, PHOENIX, AZ

As the Governor of the State of Arizona, I am pleased to support the passage of legislation that will help generate \$16 billion in revenues to the federal government, creating 3,700 jobs and attracting more than \$6 billion in private investment. All this would be done without any public dollars or stimulus funds and would preserve thousands of acres of conservation lands.

I write to express my sincere desire for the immediate enactment of this critical legislation—HR 687, the Southeast Arizona Land Exchange and Conservation Act. HR 687 enjoys the strong, bipartisan original sponsorship of Congressman Paul Gosar and Congresswoman Ann Kirkpatrick, among others in Arizona's delegation. As you know, this legislation was approved by the U.S. Senate in February of 2012, but, unfortunately, failed to pass the Senate before adjournment.

I urge you to swiftly move this bipartisan legislation so that we can, together, remove impediments to private sector job creation and stimulate our economy.

With many fiscal challenges on the horizon, Arizona and our nation need secure economic development. I am working hard to ensure a sustainable future for our state and encourage development that strikes a balance between economy and environment. A major component of this goal is to create a climate appealing to high-tech businesses while capitalizing on our economic strengths.

By the way of background, several years ago, exploration geologists discovered a world-class copper deposit just outside of Superior—a historic mining town about 65 miles southeast of Phoenix. The discovery of this deposit has given way to Resolution Copper and a proposed mining project that is expected to produce more than 1 billion pounds of copper annually, which represents more than 25 percent of the current U.S. demand for this critical natural resource.

This economic stimulus bill will bring private investment; provide badly needed jobs and economic growth to rural Arizona. Further it will contribute significant revenues to local, state and federal coffers; and protect valuable lands by conferring them to the federal government. Finally, HR 687 will not cost taxpayers one cent.

I have had the opportunity to learn about and personally visit Resolution Copper and have spent time with members of the community throughout the "Copper Basin." I am impressed by the support, patience and resolve of our citizens. Further, I am heartened by Resolution Copper's commitment to addressing concerns related to the local communities, the environment, and the multitude of stakeholders that have been part of the development of this legislation for the past several years.

It is of the utmost importance that this bill be enacted by Congress immediately. I urge your support of this legislation, and I invite you to visit our State to see, firsthand, the men and women who are working every day in Superior, Arizona, to make our nation a better place.

## STATEMENT OF TULEYOME, WOODLAND, CA

## SCIENTIST SUPPORT FOR PERMANENT PROTECTION OF THE BERRYESSA SNOW MOUNTAIN\*

*Region Updated: May 10, 2013*

As members of the scientific community representing many years of research, education, and management that is focused on the environment, conservation, and natural resource management, we support the permanent protection of the Berryessa Snow Mountain Region.

Natural landscapes in the United States face unprecedented pressures that could lead to changes in the landscape, ranging from accelerating climate change to human population growth and related changes in land use. These changes will affect the future well-being of California's natural landscape and the people who occupy it, through altered water supplies, altered fire regime, loss of recreational opportunities, and an erosion of the wonderful natural biological heritage that we share.

The proposed Berryessa Snow Mountain National Conservation Area ("BSM") is an action that we can take that will address the threatened changes and achieve conservation goals.

- An index of conservation significance is the abundance of sensitive elements. Although sensitive element occurrences in the region are not well catalogued, as of 2008 the region included 550 mapped occurrences of 108 sensitive elements (69 plants, 8 invertebrates, 2 fish, 3 herptiles, 10 birds, 9 mammals, and 7 community types). The region is included in one of three "rarity hot-spots" in California identified by The Nature Conservancy.
- Maintaining the richness of native species is an alternative conservation planning strategy. The California Department of Fish and Wildlife has identified the BSM region as having "high" native species richness. The Department's 2004 Atlas of Biodiversity identified a minimum of 1700 native plant species in the region, in a minimum of 82 plant alliances. The Atlas identified a minimum of 11 native fish species, 42 reptile and amphibian species, 127 bird species, and 55 mammal species as elements of the regional biodiversity.
- This richness arises from such varied sources as ultramafic plant communities isolated from each other and from more widespread plant communities; remnant old-growth conifer forests and alpine vegetation ecologically similar to communities farther north; and a complex mosaic of California vegetation types that include chaparral, oak woodland, and prairies. The complex interplay among these distinctive vegetation elements fosters numerous relict and vicariant populations of plants and both vertebrate and invertebrate animals that collectively result in high biological diversity.
- Native biodiversity is associated with variations in the physical landscape. Lowland areas in public lands near Lake Berryessa occur at 100 feet above sea level. Elevations increase in a south-to-north gradient from Lake Berryessa to Snow Mountain. At 7055 feet, Snow Mountain is the highest landscape element in the region proposed for NCA inclusion (Snow Mountain is the southernmost high-elevation landscape element in the Klamath-Siskiyou bioregion).

Climate change has been documented as causing changes in species distributions, often toward higher elevations and latitudes. The nature of future changes in climate in Northern California remains uncertain, but likely will include increased temperature, increased fire, and more variable precipitation. Predicted ecological changes include a potential for loss from their current ranges of significant ecological dominants (e.g., valley oak), as well as the development of novel ("no-analog") ecological communities and an increased prevalence of exotic plant species.

Possible adaptations to some of the ecological shifts in the BSM region that will accompany climate change are structurally inherent in the proposal, including the increasing elevation of the landscape from south-to-north. More significant is the essential habitat connectivity provided by the existing federal lands, with large blocks of natural landscape elements that are mostly joined by broad habitat linkages, making the BSM region intrinsically well integrated from a climate-adaptation perspective. The BSM proposal addresses our concerns for managing this varied landscape and its diverse ecosystems by including into a newly developed management plan the following science-based conservation elements:

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\*Signatures have been retained in subcommittee files.

- development of appropriate land use and management actions across the federal lands in order to achieve scientifically informed conservation goals and objectives;
- a specific assessment of the likely consequences of climate change on the ecosystems in the plan area, together with the development of a strategy that maintains the essential connectivity across the plan landscape;
- development of a strategy to address the anticipated increase in exotic plant and animal species;
- an increased focus on the potential for restoration of desired ecological conditions as a strategy to achieve regional conservation goals; and
- a specific focus on maintaining the connectivity of aquatic elements (i.e., streams and riparian areas) as a key strategy in the plan.

The BSM will address additional goals that are important to residents in the region, including the integration of local communities into the NCA's management approach so that local economic development is fostered, the maintenance of many existing uses on the landscape (e.g., grazing) when these uses help achieve management goals, improved recreational opportunities that are compatible with the plan's conservation focus, and an emphasis on achieving voluntary integration of state-owned and private lands into the NCA's framework to the extent practicable. The BSM also will address other scientifically rich topics, including the identification and interpretation of important geological (e.g., volcanic and tectonic processes), archaeological (e.g., established early-to-late Holocene occupancy) and historical (e.g., mining) resources throughout the region. The permanent protection of the Berryessa Snow Mountain Region provides the opportunity for broad-based land protections, from high-elevation subalpine tundra on Snow Mountain to the low elevation oak woodlands of Cache Creek.

The protection of these areas will provide numerous conservation benefits to natural ecosystems in the BSM region, as well as benefits to the human population of the region and California as a whole, in the form of clean water, clean air and valuable open space.

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STATEMENT OF JOHN LAIRD, SECRETARY, CALIFORNIA NATURAL RESOURCES AGENCY,  
SACRAMENTO, CA, ON S. 771

I write to offer my strong support of the legislation you have introduced and Senator Feinstein has cosponsored to enact the Soledad Canyon Settlement Act (S. 771).

As you know, this bill provides the City of Santa Clarita and CEMEX USA the path forward to successfully resolve a nearly fifteen year dispute involving sand and gravel contracts with the Bureau of Land Management (BLM). In addition to cancelling current mining contracts within the City of Santa Clarita that the city has consistently opposed, the bill directs BLM to sell 10,000 acres of public lands near the City of Victorville to compensate CEMEX for its cancelled contracts.

Your bill, S. 771, provides solutions for all parties engaged in this dispute and benefits an important watershed in Southern California. The City of Santa Clarita and its residents will greatly benefit from improved quality of life derived from large-scale sand and gravel mining operations moved to a more appropriate location. CEMEX is made whole for its cancelled contracts in Santa Clarita through the proceeds of other public lands already identified for disposal. Moreover, the natural resources located adjacent to the Upper Santa Clarita River, which contain critical riparian forest woodland and coastal sage scrub habitats, is protected and conserved to the benefit of the region and downstream into Ventura County.

S. 771 is supported by the City of Santa Clarita, CEMEX and additional stakeholders who see this as a solution to address the concerns of a fast growing community.

Thank you for your leadership on this issue. If your office should have any questions about this issue, please contact Todd Ferrara, Deputy Secretary of External Affairs in my office at (916) 653-5656.

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STATEMENT OF DAN SILVER, EXECUTIVE DIRECTOR, ENDANGERED HABITATS LEAGUE,  
LOS ANGELES, CA, ON S. 771

The Endangered Habitats League (EHL) supports S. 771, the Soledad Canyon Settlement Act. EHL is Southern California's only regional conservation group.

As you know, for 14 years, the City of Santa Clarita has been in a dispute with CEMEX USA regarding a mining proposal in Soledad Canyon, which is adjacent to

Santa Clarita. CEMEX currently holds mining contracts from the United States Bureau of Land Management (BLM), which would allow for the extraction of 56 million tons of sand and gravel from Soledad Canyon over a maximum of 20 years.

S. 771 will provide the Secretary of the Interior with a balanced solution to cancel the sand and gravel mining contracts in Soledad Canyon and prohibit future mining at this site. This legislation will compensate CEMEX for the fair market value of the mining contracts by selling federal lands near Victorville, CA, which are currently identified for disposal by BLM. S. 771 will also protect the people of the Santa Clarita Valley from the pollution and traffic congestion that would result from a large scale mining operation in Soledad Canyon.

S.771 provides a constructive solution between government, private business interests, environmental groups, and concerned citizens that benefits all organizations involved. Thank you for your effort to enact this vital legislation.

