Statement of
Mike Pool
Deputy Director
Bureau of Land Management
Department of the Interior
Senate Energy &Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 270 La Pine Land Conveyance Act
May 18, 2011

Thank you for the opportunity to testify on S. 270, the La Pine Land Conveyance Act. The bill proposes to convey to the city of La Pine and Deschutes County, Oregon, three parcels (consisting of 150 acres, 750 acres, and 10 acres). The BLM does not object to the conveyances in S. 270. We note that these conveyances are consistent with our existing authority under the Recreation and Public Purposes (R&PP) Act, so they could be accomplished administratively. We appreciate the improvements made to this legislation since last Congress, and would like the opportunity to continue to work with Senator Wyden and the Committee on S. 270.

Background

La Pine is a rural community located in southern Deschutes County, Oregon. The BLM and the City of La Pine have a long history of working together and have completed several Recreation and Public Purposes (R&PP) Act conveyances, including the sites of the La Pine library and fire station. Since La Pine is surrounded by BLM-administered lands, community leaders have held ongoing discussions with the BLM concerning the city's need for additional land to serve other public purposes.

The R&PP Act authorizes the Secretary of the Interior to lease or convey public lands for recreational and public purposes, such as campgrounds, municipal buildings, hospitals, and other facilities benefitting the public. The La Pine Special Sewer District submitted an R&PP application to BLM's Prineville District Office in 2007, and an amended application in January 2009, for 750 acres of BLM-administered lands on the eastern edge of the La Pine city limits. The District has informed BLM that its intention is to use the lands to expand their current wastewater treatment facilities. The parcel is largely vacant, but does contain rights-of-way for a natural gas pipeline, transmission line, and roads. This parcel of land is shown as "Parcel B" on the map prepared at the request of Senator Wyden, dated December 11, 2009. "Parcel C" on the map is currently leased under R&PP through 2020 and consists of a library, parking lot and picnic area.

Additionally, the City of La Pine has expressed an interest in developing a public rodeo grounds and equestrian center on a 150-acre parcel of BLM-administered lands adjacent to the southwest border of the city. This parcel is also largely vacant, but contains rights-of-way for a road and transmission lines. It also provides important habitat and a travel corridor for elk. This parcel of land is shown as "Parcel A" on the map prepared at the request of Senator Wyden, dated December 11, 2009.

S. 270

S. 270 proposes to convey, at no cost, to the city of La Pine and Deschutes County, Oregon, all right, title and interest of the United States to the three parcels (consisting of 150 acres, 750 acres, and 10 acres), detailed on the map prepared at the request of Senator Wyden, dated December 11, 2009. These conveyances would be subject to valid existing rights and are intended to address the city's and county's stated need for additional land to accommodate the expansion of its wastewater treatment facilities and provide land for a public library, rodeo grounds and equestrian center.

The bill requires that the three parcels of land be used only for purposes consistent with the R&PP Act and includes a reversionary clause to enforce that requirement. Finally, the bill requires the County to pay all administrative costs associated with the transfer.

As a matter of policy, the BLM supports working with local governments to resolve land tenure issues that advance worthwhile public policy objectives. In general, the BLM supports the proposed conveyances, as they are consistent with the existing R&PP authority. We would like to work with Senator Wyden and the Committee to further address concerns related to Parcel A, which serves as an important travel corridor and shelter area for elk along the Little Deschutes River, either through additional boundary modifications or through identification of alternative sites. To avoid constitutional concerns, the Department of Justice recommends that the bill be revised to make absolutely clear that the city or county would have to agree to the proposed conveyance, which is what we understand Congress intends. This change might be accomplished by adding "and subject to the city's or county's agreement" after "without reimbursement" in section 3(a) of the bill.

Conclusion

Thank you for the opportunity to testify. We look forward to working with Senator Wyden and the Committee to address the needs of La Pine, Oregon.

Statement of
Mike Pool
Deputy Director
Bureau of Land Management
Department of the Interior
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 292, Salmon Lake Land Selection Resolution Act
May 18, 2011

Thank you for the opportunity to testify on S. 292, the Salmon Lake Land Selection Resolution Act. As a party to the Salmon Lake Area Land Ownership Consolidation Agreement, the BLM has supported efforts between the State of Alaska and the Bering Straits Native Corporation (BSNC) to resolve competing land selections at Salmon Lake. As such, BLM supports S. 292, with one minor technical amendment, because it will ratify the agreement between the BLM, BSNC, and the State of Alaska; and allow for a reasonable and practicable conveyance of lands in the Salmon Lake area.

Background

Salmon Lake is located on the Seward Peninsula, approximately 40 miles northeast of Nome. The lake is one of the largest bodies of fresh water on the peninsula, and has long been an important source of food and resources for the Native people. Because the area contains significant fisheries and other subsistence resources, it remains a popular resource and destination for local communities.

The BLM is responsible for expediting the conveyance of Federal lands to Native corporations, including the BSNC, under the Alaska Native Claims Settlement Act (ANCSA), and to the State of Alaska under the Alaska Statehood Act of 1958.

The BSNC, the Native regional corporation for the Bering Straits area, and the State of Alaska each sought to gain title to the Salmon Lake area through selection applications filed under respective provisions of ANCSA and the Alaska Statehood Act. However, the land addressed by the two applications overlapped. The BSNC and the State negotiated a resolution to this issue whereby each entity would receive title to distinct lands. The BLM supported this resolution, and the three parties signed the Salmon Lake Area Land Ownership Consolidation Agreement on July 18, 2007. Legislation is now required to ratify the Agreement between the United States (acting through the Department of Interior, BLM), the BSNC, and the State of Alaska. The Agreement would have expired January 1, 2011, but its term was extended until January 1, 2013 in anticipation of ratifying legislation. Accordingly, the Department recommends that Section 3(1)(b) of the bill be amended to reflect the extension of the Agreement to January 1, 2013.

S. 292

S. 292 represents an opportunity to resolve the overlapping land selections between the BSNC and the State, The bill would ratify the Agreement between the BLM, the BSNC, and the State, and allow for finalization of land conveyances in the Salmon Lake area. The lands would be transferred in accordance with the terms of the signed agreement.

As noted, the BLM supported the efforts between the BSNC and State, and signed the agreement to recognize the desires of the entities. The bill would also further the intent of the Alaska Land Transfer Acceleration Act of 2004 (PL 108-452), expediting the transfer of title to Federal lands to Native corporations and the State of Alaska.

Conclusion

Thank you for the opportunity to testify in support of S. 292. I am happy to answer any questions.

Statement of
Mike Pool
Deputy Director
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Department of the Interior
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 427, Sloan Hills Withdrawal Act
May 18, 2011

Thank you for the opportunity to testify on S. 427, the Sloan Hills Withdrawal Act. S. 427 would withdraw approximately 800 acres of BLM-administered public land in Clark County, Nevada, from all forms of location, entry, and patent under the mining laws, and from disposition under all laws pertaining to mineral and geothermal leasing or mineral material sales, subject to valid existing rights. The BLM is presently preparing an Environmental Impact Statement (EIS) for two proposed competitive mineral material sales that would result in two open pit limestone quarries in this area, as required by settlement agreements between the BLM and two mining companies. Because the BLM is still in the process of analyzing the proposed sales, we defer taking a position on this legislation.

Background

The Sloan Hills area is located approximately 15 miles south of the City of Las Vegas, and consists of approximately 800 acres of BLM-administered public lands. The area is surrounded by public lands that are within the Southern Nevada Public Land Management Act (SNPLMA) boundary. The SNPLMA allows the BLM to sell land within this disposal boundary and use a portion of the sale proceeds to acquire environmentally sensitive lands elsewhere in Nevada. When Congress expanded the SNPLMA disposal boundary in 2002 (through PL 107-282), the Sloan Hills area was not included.

The Sloan Hills area has an extensive mineral development history. Separate, but overlapping mining claims were filed on the site almost 30 years ago, with little development occurring until the early 1990s. The two mining claimants in the area subleased their claims to CEMEX (formerly Rinker Materials West, LLC) and Service Rock Products Corp. (Service Rock). CEMEX subsequently filed a mining plan of operations. When the BLM receives a plan of operations for materials that may be common variety minerals and the mining claims were located on or after July 23, 1955, mining operations may not begin until the bureau completes a "common variety determination" to determine whether the materials are locatable under the Mining Law of 1872 (43 CFR 3809.101).

Because the two mining claims overlapped, the BLM completed a common variety determination in 2004 for both sets of claims. The BLM concluded that the claimed materials (limestone and dolomite) were not locatable under the Mining Law of 1872. As a result, the BLM contested the mining claims. The contests were eventually settled, resulting in the BLM agreeing to analyze two competitive mineral materials sales. The settlement agreements do not restrict the BLM's discretion in approving or denying the proposed sales and the sales must comply with all applicable statutes and regulations (43 CFR 3600).

In 2007, the BLM initiated an EIS to analyze the impacts of the two proposed competitive mineral materials sales. If approved, the projects would consist of two open pit limestone quarries that would operate for approximately 20 to 30 years, eventually merging into one open pit. The BLM is finalizing the Draft EIS and upon its release will solicit public comments on whether it should authorize the proposed sales. The Draft EIS will address potential impacts to: air quality, noise, water resources, and socio-economic conditions. The area surrounding Sloan Hills (located within the SNPLMA disposal boundary) may be developed for housing, commercial, and/or industrial uses during the lifetime of the potential sales contracts. Since the EIS process began, the BLM has received more than 800 letters and e-mails opposing or expressing concern about mining the site.

S. 427

S. 427 would withdraw approximately 800 acres of BLM-administered public land in Clark County, Nevada, from all forms of location, entry, and patent under the mining laws, and of disposition under all laws pertaining to mineral and geothermal leasing or mineral material sale subject to valid existing rights.

A withdrawal from the mineral materials laws would prohibit the BLM from selling mineral materials in the Sloan Hills area, and would prohibit any future mineral use of the withdrawn lands, subject to valid existing rights.

The BLM understands the concerns of Senator Reid, the Nevada Congressional delegation, Clark County and the City of Henderson regarding the proposed mineral materials sales, and the potential operations and associated air quality and noise impacts that could occur in close proximity to many neighborhoods. These and other issues will be considered in the Draft EIS.

Conclusion

Thank you for the opportunity to testify. In accordance with the terms of the settlement agreement, the BLM is in the process of analyzing the proposed sales. Consequently, the BLM defers taking a position on the legislation at this time. The Bureau will continue to actively engage the public through an open and transparent EIS process to analyze the potential environmental impacts of the proposed mineral materials sales unless Congress chooses to legislate this withdrawal.

Statement of
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Department of the Interior
Senate Energy and Natural Resources Committee
Subcommittee on Public Lands and Forests

S. 526, Mohave Valley Land Conveyance Act of 2011
May 18, 2011

Thank you for the opportunity to testify on S. 526, the Mohave Valley Land Conveyance Act of 2011, which proposes to transfer 315 acres of public lands managed by the Bureau of Land Management (BLM) to the Arizona Game and Fish Department (AGFD) for use as a public shooting range. The BLM supports the goals of S. 526 but does not support the legislation as currently drafted. BLM is working with local governments and tribes to resolve land tenure issues. BLM's decision to authorize the land transfer included important mitigation measures which are not in the current legislation.

For the past ten years, the BLM has been working with the AGFD, the Fort Mojave Indian Tribe, the Hualapai Tribe, and the public to find appropriate lands for a public shooting range within the Mohave Valley in Arizona. On February 10, 2010, the BLM made the decision to authorize the transfer of BLM lands to the AGFD (through the Recreation and Public Purposes Act of 1926, as amended, 43 U.S.C. 869 et seq.; R&PP) for use as a public shooting range. The decision, which is consistent with the goals of S. 526, provides a safe, designated shooting environment for the public and includes stipulations designed to respect the traditional beliefs of the Fort Mojave and Hualapai Tribes. The BLM will continue working with interested parties as we move forward with authorizing the shooting range.

Background

In 1999, the AGFD first submitted an application to the BLM for development of a public shooting range on BLM-managed lands in Mohave County, near Bullhead City in northwestern Arizona. As a result, the BLM began working with the AGFD and other interested parties to assess appropriate lands to transfer to the AGFD for the purposes of a shooting range under the R&PP.

The BLM evaluated the AGFD's application through an environmental assessment (EA) and considered numerous alternative locations throughout the Mohave Valley. The evaluation process was conducted with full public and tribal participation. There is an identified need for a designated public shooting range in this region because of the lack of a nearby facility, the amount of dispersed recreational shooting occurring on public and private lands raising public safety concerns, and the associated natural resource impacts from spent ammunition and associated waste.

In 2002, the BLM began consultations with the Fort Mojave Indian Tribe and the Hualapai Tribe. In 2003, the BLM initiated consultation with the Arizona State Historic Preservation

Officer (SHPO); and in 2006, the BLM initiated Section 106 consultation with the Advisory Council on Historic Preservation (ACHP). These consultations, as required by Section 106 of the National Historic Preservation Act and other authorities, ensure Federal agencies consider the effects of their actions on historic properties, and provide the ACHP and SHPO an opportunity to comment on Federal projects prior to implementation.

In addition to the Section 106 consultation process, the BLM initiated a year-long Alternative Dispute Resolution (ADR) process in 2004 to help identify issues, stakeholder perspectives, and additional alternatives to meet the criteria for a safe and effective public shooting range in the Mohave Valley. However, the ADR process failed to reconcile differences between several consulting parties regarding a proposed location.

In 2006, as part of continued Section 106 consultation with the ACHP, the BLM initiated site visits by the concerned parties and also continued efforts to identify alternative sites. Unfortunately, despite these efforts, the BLM was unable to reach an agreement with the consulted Tribes on any area within the Mohave Valley that the Tribes would find acceptable for a shooting range. The Tribes maintained their position that there is no place suitable within the Mohave Valley, which encompasses approximately 140 square miles between Bullhead City, Arizona, and Needles, California.

Through the EA process, the BLM identified the Boundary Cone Road alternative to be the preferred location. Boundary Cone Butte, a highly visible mountain on the eastern edge of the Mohave Valley, lies approximately 3 miles east of the Boundary Cone Road site, and is of cultural, religious, and traditional importance to both the Fort Mojave Indian Tribe and the Hualapai Tribe. In an effort to address the primary concerns expressed by the Tribes over visual and sound issues, the BLM and AGFD developed a set of potential mitigation measures. Again, there was a failure to agree between the consulting parties on possible mitigation. In the end, the BLM formally terminated the Section 106 process with the ACHP in September 2008. In November 2008, ACHP provided their final comments in a letter from the Chairman of the ACHP to then-Secretary of the Interior Kempthorne.

Although the Section 106 process was terminated, the BLM continued government-to-government consultations with the Tribes. In May of 2009, the BLM met with the Chairman of the Fort Mojave Indian Tribe, the AGFD, and the Tri-State Shooting Club in a renewed effort to find a solution. On February 3, 2010, after continued efforts to reach a mutually agreeable solution, the BLM presented the decision to approve the shooting range to the Fort Mojave Indian Tribe and the AGFD. The final decision included mitigation measures to address the concerns of the Tribes such as reducing the amount of actual ground disturbance; reducing noise levels with berm construction; monitoring and annual reporting on noise levels; and fencing to avoid culturally sensitive areas. The Secretary has the authority to take action to revest title to the land covered by the proposed R&PP patent if the AGFD fails to comply with mitigation measures. The final decision to amend the Kingman Resource Management Plan and dispose of the lands through the R&PP was signed on February 10, 2010.

The BLM decision was appealed to the Interior Board of Land Appeals (IBLA) on February 23, 2010, by a private landowner near the proposed shooting range; and on March 15, 2010, a joint

appeal by the Fort Mojave Indian Tribe and Hualapai Tribe was filed. The IBLA dismissed the appeal of the private landowner on July 29, 2010. The IBLA issued a stay of the BLM decision on April 15, 2010, at the request of the Tribes. A final decision by the IBLA on the Tribes' appeal was issued on December 7, 2010 (180 IBLA 158). The IBLA affirmed the BLM's decisions and determined that the BLM had taken a "hard look" at the impacts of conveying public lands to the AGFD for a shooting range. The IBLA decision stated that the EA had an appropriate range of alternatives and the environmental consequences were insignificant or if significant could be reduced or eliminated by mitigation. The IBLA also confirmed that the BLM complied with National Historic Preservation Act obligations. This decision allows the BLM to move forward in conveying the public lands to the AGFD.

On December 21, 2010, the BLM informed the AGFD of the next steps for processing the administrative action of conveying the land for the shooting range. The AGFD is required to: (1) purchase the mineral estate or obtain a non-development agreement for the Santa Fe Railroad mineral estate (390 acres) under the disposal and buffer lands; (2) provide a detailed Plan of Development (Plan) that addresses the mitigation measures found in the BLM's Decision Record; (3) develop a Cooperative Management Agreement with the BLM for the 470-acre buffer area; and (4) provide the funds ($3,150) for purchase of the property. It is the BLM's understanding that the AGFD is negotiating a purchase agreement to acquire the mineral estate. The AGFD also submitted a draft Plan and is currently revising the Plan to address the additional guidance provided by the BLM, including the request to incorporate the Cooperative Management Agreement into the Plan.

S. 526

S. 526 provides for the conveyance to the AGFD of all right, title, and interest to the approximately 315 acres of BLM-managed public lands as identified in the final decision signed by the BLM on February 10, 2010, to be used as a public shooting range. Furthermore, the legislation makes a determination that the February 10, 2010, Record of Decision is "final and determined to be legally sufficient" and "not be subject to judicial review . . ." The bill also provides that the lands must be used for purposes consistent with the R&PP Act and provides for an appropriate reversionary clause.

As a matter of policy, the BLM supports working with local governments, tribes, and other stakeholders to resolve land tenure issues that advance worthwhile public policy objectives. The BLM acknowledges the lands proposed for development as a shooting range are of cultural, religious, and traditional significance to the Tribes which is why we support important mitigation measures. The bill as drafted does not include such mitigation measures. In general, the BLM supports the goals of the proposed conveyance, as it is similar to the transfer the BLM has been addressing through its administrative process for the last ten years. As noted, a decision has been made through the BLM administrative process and the IBLA affirmed the BLM decision, thereby dismissing the Tribes appeal that the BLM did not comply with various environmental laws. Under the provisions of S. 526, judicial review would be prohibited. The BLM will continue working to complete the conveyance of the lands to the AGFD for a shooting range.

If the Congress chooses to legislate this conveyance, the BLM would recommend some improvements to the bill, including changes to section 4(b), the incorporation of mitigation measures to address Tribal concerns, protection of valid existing rights, and an appropriate map reference.

Conclusion

Thank you for the opportunity to testify. Resolution of this conveyance in a manner that is acceptable to all parties has been an important goal of the BLM as evidenced by more than ten years of negotiations and review. The BLM is confident the issued decision addresses the concerns of the interested parties, while providing critical recreational opportunities and benefits to the public.

STATEMENT FOR THE RECORD

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U.S. GEOLOGICAL SURVEY

U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

UNITED STATES SENATE

May 18, 2011

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to provide the Department of the Interior's views on S. 566, "to provide for the establishment of the National Volcano Early Warning and Monitoring System." This opportunity arises on the 31st anniversary of the eruption of Mount St. Helens, which claimed 57 lives and destroyed more than 200 square miles of forest, much of it on public lands. The Department strongly supports the goals of the bill to enhance volcano monitoring and eruption response in the United States and would like to thank the Committee for its work. We note, however, that the activities called for in this bill are within the scope of existing Department of the Interior authorities, and already underway at the U.S. Geological Survey.

The USGS operates a system of five volcano observatories for the purpose of reducing loss of life and property and minimizing social and economic disruptions during volcanic eruptions and their often protracted precursory phases. The USGS does this under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, popularly known as the Stafford Act) as the lead Federal agency with responsibility to provide notification for earthquakes, volcanic eruptions, and landslides to enhance public safety and to minimize economic losses through timely forecasts and warnings based on the best possible scientific information.

U.S. Volcanic Hazards and USGS Capabilities

The United States ranks as one of the top countries in the world in the number of active and potentially active volcanoes. Over the past three decades, 30 U.S. volcanoes have erupted on nearly 100 occasions, and an additional dozen volcanoes have exhibited periods of anomalous activity, *unrest*, that initially were worrisome but ultimately did not culminate in eruptions. In many respects, the country has been fortunate, because only the Mount St. Helens eruption of 1980 was large enough and close enough to communities to cause significant losses of life and property. Major eruptions would seem more common if the written history of our volcanic areas

were not so short. The challenge is to be fully prepared for the next major event, wherever it may occur, as well as the smaller but much more common events that exact a continuing cost on human activities. We are not now fully prepared, a challenge that S.566 would help us to overcome.

Volcanoes produce many kinds of destructive phenomena. Communities near Mount St. Helens in Washington were exposed to powerful explosions and mud flows. Substantial populations live on geologically recent mud flows from Mount Hood, Oregon and Mount Rainier, Washington. In Hawaii, Kilauea volcano has sent lava flows into residential communities. Noxious gas emissions have damaged agriculture and required closure of large areas of public lands downwind of the volcano. Critical highway arteries and major resort areas are located on and near massive young lava flows from Mauna Loa volcano. Ash eruptions of the type expected from California, Oregon, Washington and Alaska volcanoes will endanger aircraft and, if fallout is heavy, interfere with transportation, power generation, and water supply on the ground.

Although many U.S. volcanoes are located on sparsely populated Federal lands, the threat to communities and infrastructure downstream and to aviation downwind nevertheless drives the need to properly monitor volcanic activity and provide forecasts and notifications of expected hazards. The most recent example of a remote volcano inflicting economic damage is the 2009 eruption of Mt. Redoubt, Alaska that disrupted civilian and military aviation operations with ash for more than a week and inundated an oil loading terminal with mud flows, thereby requiring suspension of oil and gas production in Cook Inlet. Without proper monitoring by the Alaska Volcano Observatory, interruption of air travel would have been greater and loss of life at the oil terminal might have occurred.

Hazardous volcanic activity will continue to happen, and the ongoing exposure of human life and enterprise will continue to be a primary consideration driving USGS volcano monitoring efforts. Fortunately, volcanoes exhibit precursory unrest that if detected and analyzed quickly allows eruptions to be anticipated and communities at risk to be forewarned with sufficient time to implement response plans and mitigation measures. Careful monitoring of volcanoes, timely and credible eruption warnings delivered following pre-established protocols, and strong cooperation among federal agencies and the aviation industry have thus far prevented the kind of aviation crisis that gripped Europe in April 2010 during the eruption of Eyjafjallajokull in Iceland and resulted in global aviation sector losses of $2.6 billion with 7 million passengers affected.

Monitoring volcanic activity in the United States is the responsibility of the USGS Volcano Hazards Program and is accomplished by the Alaska Volcano Observatory, Cascades Volcano Observatory, Yellowstone Volcano Observatory, Long Valley Observatory, and Hawaiian Volcanoes Observatory. To make maximum use of the Nation's scientific resources, the USGS operates the observatories with the help of universities and Federal and State agencies, through formal partnerships. With the exception of the Hawaiian Volcanoes Observatory, which was founded in 1912, U.S. volcano observatories have been established in response to specific eruptions or sustained levels of unrest. For example, the Cascades Volcano Observatory in Washington State was established in 1981, following the catastrophic awakening of Mount St. Helens in 1980, and continues to assess and monitor volcanic hazards in the Pacific Northwest. The Alaska Volcano Observatory was established in 1988 following an eruption of Augustine Volcano in Cook Inlet, just in time to deal with the eruption of Redoubt Volcano in 1989-1990.

The USGS Volcano Hazards Program also maintains an international rapid-response team under the Volcano Disaster Assistance Program (VDAP), co-funded by the U.S. Office of Foreign Disaster Assistance within the U.S. Agency for International Development (USAID). This team responds to emergencies worldwide when called upon by the U.S. Department of State and also works to build volcano observatory infrastructure in other countries that are subject to volcanic disasters. Through VDAP, the USGS gains experience with a broad spectrum of volcano behavior and participates in disaster response and mitigation activities in a variety of physical and cultural settings, all of which inform and improve our domestic volcano-response capabilities. The USGS plan for future improvement of monitoring and hazard communication depends heavily on this international experience.

The USGS works closely with other Federal agencies that contribute to volcano monitoring. Geophysical instrumentation funded by the National Science Foundation as part of the EarthScope Program has supplemented USGS networks at volcanoes, and in turn NSF-supported infrastructure now makes USGS volcano monitoring data more readily available to the scientific community. Satellites operated by the National Oceanic and Atmospheric Administration (NOAA) provide important global remote-sensing data that can reveal volcanic hot spots, ash clouds, and gas clouds and are used by the volcano observatories to complement ground-based networks. (Only ground-based networks can provide forecasting capability.) The USGS also works closely with NOAA's Volcanic Ash Advisory Centers in Washington DC and in Anchorage, Alaska, which track the dispersion of volcanic-ash clouds hazardous to aircraft and disseminate advisories to the Federal Aviation Administration and commercial and military aircraft. The Smithsonian Institution's Global Volcanism Program, with which the USGS has been a longtime collaborator, supports volcano monitoring activities by maintaining a comprehensive database on the eruptive histories of volcanoes throughout the world, providing data that are critical to forecasting the likely future activity of restless volcanoes.

Rationale for a National Volcano Early Warning and Monitoring System

We have learned from hard experience that waiting to deploy a robust monitoring effort until a hazardous volcano awakens forces scientists, civil authorities, businesses, and citizens to play "catch up" with the volcano, trying to get instruments and civil-defense measures in place before the situation worsens. Precious time and data are lost in the days or weeks it can take to deploy a response to a reawakening volcano – time and data that the public needs to prepare for the hazards they may confront. The race to install instruments on Mount St. Helens under the difficult and dangerous late winter conditions of March and April 1980 remains a good example.

Volcanoes do not need to erupt to cause problems. Changes in a volcano's behavior that are noted by the local population—such as increased smell of sulfur gases, steaming at the summit, or felt earthquakes—may cause an over-reaction, especially if fueled by rumors of an imminent eruption. This over-reaction may extend beyond the average citizen to businesses and government agencies. Without proper instrumentation installed on a volcano, it is difficult to ascertain whether activity is within the range of normal background behavior and thus of little concern or is precursory to a significant eruption. In contrast, a well-instrumented volcano monitored by a local observatory coupled with an active program of community outreach can quickly replace rumors and speculation with sound scientific interpretation of the activity,

thereby avoiding the social and economic disruption that an evacuation would produce. It follows therefore that all volcanoes capable of erupting should have in place a level of monitoring networks commensurate with the threat they pose to society.

In 2005 the USGS published "An Assessment of Volcanic Threat and Monitoring Capabilities in the United States: Framework for a National Volcano Early Warning System, NVEWS" (http://pubs.usgs.gov/of/2005/1164/). The report is a comprehensive survey of installed instrumentation on the Nation's volcanoes together with a rigorous ranking of volcanoes by threats posed to people and assets. This made possible a "gap" analysis, defining the deficit in needed monitoring as measured by threat potential, including the threat to aviation from remote Alaskan and Marianas volcanoes, and existing monitoring.

The 2005 threat and instrumentation assessment found that only about half of the hazardous volcanoes in the U.S. have even basic (several seismic stations) monitoring networks. The gap analysis provided the basis for prioritizing volcanoes where monitoring should be upgraded. The report also recommended a number of other steps beyond instrumentation improvements, including easier access to monitoring data, formal continuous 24/7 vigilance – not just during crises, improved hazard-information products for decision-makers and the public, enhanced collaboration between USGS and external researchers, and innovative outreach to help communities develop risk-wise practices. These elements form the comprehensive NVEWS framework, which has been adopted as the USGS approach for the future of volcano hazards reduction in "Facing Tomorrow's Challenges - U.S. Geological Survey Science in the Decade 2007-2017" (USGS Circular 1309).

After publication of the initial report in 2005, the USGS began to implement solutions to the most important issues identified in the recommendations. The $15.2 million in funding available for NVEWS under the American Recovery and Reinvestment Act (ARRA) was used to modernize existing monitoring equipment at Kilauea and Mauna Loa volcanoes in Hawaii, at Anatahan and Sarigan volcanoes in the Northern Mariana Islands, at Yellowstone Caldera in Wyoming, and at Spurr, Redoubt, and Augustine volcanoes of Cook Inlet, Alaska; the software and communication systems used to transmit data from monitoring networks also required modernization, especially in the Cascade Range of Washington, Oregon, and California. Additionally, ARRA funds were used to produce high-resolution topographic maps (LiDAR) of volcanic areas in the Pacific Northwest that will greatly aid in development of volcanic risk mitigation plans by local communities. Grants to universities have improved our understanding of the inner workings of Alaska volcanoes and documented impacts from recent eruptions.

S.566 would authorize $15 million/year in additional funding to continue implementation of the NVEWS plan as the National Volcano Early Warning and Monitoring System (NVEWMS).

Elements of the National Volcano Early Warning System (NVEWS) and National Volcano Early Warning and Monitoring System (NVEWMS)

1. *Improved monitoring infrastructure* – targeting the volcanoes that are significantly under-monitored for the threats posed. This will be done principally in Alaska, Hawaii, the

Commonwealth of the Northern Mariana Islands, California, Washington, Oregon, and Wyoming. In addition to installation of new networks and telemetry, out-dated patchwork monitoring systems will be modernized. The goal is to detect the rise of magma and assess the size of an impending eruption as early as possible.

2. *Measures for reduced community vulnerability* – supporting communities in developing plans for mitigating volcanic risk. As with earthquakes, a key to risk mitigation is preparation. This means working with state and local partners to define high-risk areas and community vulnerabilities, creating new hazard-information tools and products, and continuing to build broad-based hazard awareness.

3. *An external grants program* – to engage the Nation's broader scientific and natural hazards community in advancing volcano monitoring science and technology and the societal aspects of volcanic risk mitigation. Volcanology is advancing rapidly both through growing understanding of volcanic processes and through advances in technology that make possible new kinds of observations. Many advances in understanding volcanic processes and advancing relevant technologies have occurred through the National Science Foundation's research programs and through the efforts of USGS scientists. There is a need, however, to broadly engage the Nation's scientific community in rapid application of these developments to volcano risk mitigation. This would be accomplished through a competitive, peer-reviewed grants process to support investigations complementary to but not duplicative of NSF-supported research.

4. *Interoperability among U.S. volcano observatories in order to:*
   A) Provide full 24/7 Watch Operations as a backup for routine observatory monitoring and to provide situational awareness for partner federal agencies, including FAA, NOAA, DHS/FEMA, and DOD, as well as state and local agencies.
   B) Establish a National Volcano Data Portal as a gateway for access to U.S. volcano data. The free exchange of data with the broader scientific community and availability to the public is fundamental to scientific advancement, risk mitigation, and government transparency. Within the USGS observatories, rapid access to historical volcano data system-wide, and eventually globally, informs eruption response.

The USGS will not carry out NVEWMS by itself but will build on its long record of successfully partnering with diverse groups that have expertise and data to share in the mission of helping people co-exist with dangerous volcanoes. Our partners range from the international under the aegis of the International Civilian Aviation Organization, UNESCO, and GEO to national levels, including the U.S. Agency for International Development, the Air Force Weather Agency, NOAA, and the Federal Aviation Administration, to the regional and local scale with neighboring universities and state agencies that are part of the structure of the volcano observatories.

Key Outcomes of NVEWMS implementation

The key outcome of NVEWMS will be to strengthen the scientific contribution to volcano risk mitigation decisions. Comprehensive monitoring of the Nation's most hazardous volcanoes,

coupled with greater understanding of volcanic processes, will improve forecasts of the onset, intensity, duration, and effects of expected hazards. New hazard-information products and dissemination methods will be developed by close collaboration between scientists and users. Timely and accurate warnings to en-route aircraft will help prevent dangerous encounters with volcanic ash while minimizing costly unnecessary rerouting of aircraft.

Thus, civil authorities, businesses, and individuals at risk will have more time and better information to prepare, ensuring that their ability to respond will not lag behind the evolving behavior of a volcano. Volcanic unrest does not always culminate in eruption, and long-term volcano monitoring will provide sound, ongoing, scientific information throughout episodes of unrest so that problems related to over-reacting or under-reacting will be minimized.

More than a network of instruments, NVEWMS will connect the monitoring and research results of scientists to the needs of decision-makers at the national to local level, so that the impact of volcanic activity on the Nation is minimized

Conclusion

The USGS appreciates the Committee's support for NVEWMS, which will strengthen our Nation's ability to respond successfully to future volcanic activity. We note that the activities called for in S. 566 are authorized by existing authorities and are already underway at the USGS. Any work conducted to fulfill the objectives of the bill would need to compete for funding with other Administration priorities.

Thank you for the opportunity to present the Department's views on the National Volcano Early Warning and Monitoring Program Act.

STATEMENT
FOR THE RECORD
UNITED STATES DEPARTMENT OF THE INTERIOR

BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

REGARDING
S. 590 – A BILL TO CONVEY CERTAIN SUBMERGED LANDS TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN ORDER TO GIVE THAT TERRITORY THE SAME BENEFITS IN ITS SUBMERGED LANDS AS GUAM, THE VIRGIN ISLANDS, AND AMERICAN SAMOA HAVE IN THEIR SUBMERGED LANDS

May 18, 2011

Mr. Chairman and members of the Committee, the Department of the Interior is pleased to provide this statement for the record in support of enactment of legislation that would convey the three geographical miles of submerged lands adjacent to the Northern Mariana Islands to the Government of the Northern Mariana Islands. The Administration would strongly support this bill if amended to address the issues outlined below

The bill is intended to give the Commonwealth of the Northern Mariana Islands (CNMI) authority over its submerged lands from mean high tide seaward to three geographical miles distant from its coast lines.

It has been the position of the Federal Government that United States submerged lands around the Northern Mariana Islands did not transfer to the CNMI when the Covenant came into force. This position was validated in Ninth Circuit Court of Appeals opinion in the case of the *Commonwealth of the Northern Mariana Islands v. the United States of America*. One consequence of this decision is that CNMI law enforcement personnel lack jurisdiction in the territorial waters surrounding the islands of the CNMI without a grant from the Federal Government.

At present, the CNMI is the only United States territory that does not have title to the submerged lands in that portion of the United States territorial sea that is three miles distant from the coastlines of the CNMI's islands. It is appropriate that the CNMI be given the same authority as her sister territories.

The Department has three comments on the bill, and then a recommendation. First, the Territorial Submerged Lands Act, which became public law in 1974, contains several sections that refer to the territories by name. S. 590 inserts the CNMI's name only in section 1, but not in section 2, which reserves military rights and navigational servitudes. In order to achieve

consistency, the Department recommends that the CNMI be included in all provisions of the Territorial Submerged Lands Act where other territories are named.

Second, S. 590 includes language interpreting "date of enactment" in the original act as meaning "date of enactment" of S. 590 when referencing the provisions of S. 590. For those who will later interpret the statute, it would be helpful if the interpretation is included in the main statute itself, rather than being relegated to a separately listed amendment or reference note.

Third, on January 6, 2009, by presidential proclamation, the Marianas Trench Marine National Monument was created, including the Islands Unit, comprising the submerged lands and waters surrounding Uracas, Maug, and Asuncion, the northernmost islands of the CNMI. While creation of the monument is a historic achievement, it should be remembered that the leaders and people of the CNMI were and are these three islands' first preservationists. They included in their 1978, plebiscite-approved constitution the following language:

ARTICLE XIV: NATURAL RESOURCES

> Section 1: Marine Resources. The marine resources in the waters off the coast of the Commonwealth over which the Commonwealth now or hereafter may have any jurisdiction under United States law shall be managed, controlled, protected and preserved by the legislature for the benefit of the people.
>
> Section 2: Uninhabited Islands. . . . The islands of Maug, Uracas, Asuncion, Guguan and other islands specified by law shall be maintained as uninhabited places and used only for the preservation and protection of natural resources, including but not limited to bird, wildlife and plant species.

It is important to note that the legislature has never taken action adverse to the preservation of these northern islands and the waters surrounding them. The people of the CNMI are well aware of their treasures. CNMI leaders consented to creation of the monument because they believed that the monument would bring Federal assets for marine surveillance, protection, and enforcement to the northern islands that the CNMI cannot afford.

If enacted as introduced, S. 590 would become a public law enacted subsequent to the creation of the monument. S. 590's amendments to the Territorial Submerged Lands Act would convey to the CNMI the submerged lands surrounding Uracas, Maug, and Asuncion without addressing the effect of this conveyance on the administrative responsibilities of the Department of the Interior and the Department of Commerce. Presidential Proclamation 8335 assigned management responsibility of the Marianas Trench Marine National Monument to the Secretary of the Interior, in consultation with the Secretary of Commerce. The proclamation further states that the "Secretary of Commerce shall have the primary management responsibility…with respect to fishery-related activities regulated pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 *et seq.*) and any other applicable authorities." The proclamation provides that submerged lands that are granted to the CNMI "but remain controlled by the United States under the Antiquities Act may remain part of the monument" for coordinated management with the CNMI. As envisioned by the Presidential Proclamation establishing the Marianas Trench Marine National Monument, the Department of

the Interior is proposing an amendment to ensure that the outstanding resources in the waters surrounding the CNMI's three northernmost islands remain protected. Thus, the Department recommends that language be included in S. 590 referencing the coordination of management contemplated within the Proclamation prior to the transfer of the submerged lands within the Islands Unit of the monument to the CNMI. This language is intended to protect the Islands Unit of the monument and at the same time acknowledge the prescient and historic conservation effort of the leaders and people of the CNMI in protecting Uracas, Maug, and Asuncion, and their surrounding waters.

Appended to this statement is legislative language that would (1) address the submerged lands surrounding the Northern Mariana Islands to the Government of the Northern Mariana Islands, and (2) clearly address the three issues of concern to the Department. The Department of the Interior strongly supports S. 590 if it is amended to include the legislative language provided. The Department of the Interior looks forward to the Commonwealth of the Northern Mariana Islands gaining rights in the submerged lands surrounding them similar to those accorded her sister territories.

Be it enacted *by the Senate and House of Representatives of the United States of America in Congress assembled,* that Public Law 93-435 (48 U.S.C. 1705) is amended:

(a) by inserting the words ‘the Commonwealth of the Northern Mariana Islands,' after the word ‘Guam,' wherever it appears, and

(b) by striking “and” before “(xi)” and inserting the following after “1961.” at the end of Section 1(b):

‘(xii) any submerged lands within the Islands Unit of the Marianas Trench Marine National Monument unless or until such time as the Commonwealth of the Northern Mariana Islands enters into an agreement with the Secretary of the Interior and the Secretary of Commerce for the permanent protection and co-management of such portion of the Islands Unit.’; and

(c) by adding at the end of Section 6 the following section:

‘Sec. 7. All provisions of this Act that refer to “date of enactment”, shall, when applicable to the Commonwealth of the Northern Mariana Islands, mean the date of enactment of the amendment that included the Commonwealth of the Northern Mariana Islands in this Act.

Statement of
Mike Pool
Deputy Director
Bureau of Land Management
Department of the Interior
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 607, Cathedral Rock and Horse Heaven Wilderness Act
May 18, 2011

Thank you for inviting the Department of the Interior to testify on S. 607, the Cathedral Rock and Horse Heaven Wilderness Act. The Department generally supports S. 607, which would bring into Federal ownership certain lands along the John Day River in Oregon, and seeks to eventually designate those lands and adjacent public lands as wilderness. We appreciate the improvements made to this legislation since last Congress, and would like the opportunity to continue to work with Senator Wyden and the Committee on S. 607. We defer to the U.S. Department of Agriculture on those provisions of S. 607 involving the exchange of lands managed by the Forest Service.

Background

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

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

Four miles to the southwest of the Cathedral Rock region is the proposed Horse Heaven Wilderness. The name reflects Oregon's pioneer past when the flawless grasslands of the areas were a closely guarded secret. Today that secret is out and a wide range of recreationists enjoy the area's many opportunities. At more than 4,000 feet, Horse Heaven Mountain serves as a worthy centerpiece to a diverse landscape illustrating Oregon's high and low countries. Traveling south, rolling plains and steep terrain dominate the area; to the west, Muddy Creek is

the area's lone perennial stream. Prairie steppes throughout connect hearty shrubs and woodlands that demonstrate steadfast resolve to thrive in the rocky soil.

S. 607

S. 607 provides for the exchange of lands between three private parties and the Federal government which would allow the consolidation of fragmented land patterns, the designation of two new potential wilderness areas, and a process for those areas becoming designated wilderness and components of the National Wilderness Preservation System. Should the land exchanges be completed, the additional land would greatly enhance the wilderness quality and manageability of the two areas proposed for wilderness.

Section 3 of the bill outlines a series of land exchanges with three private parties. Under section 206 of the Federal Land Policy and Management Act (FLPMA), the BLM has the authority to undertake land exchanges that are in the public interest. Exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into private ownership for local needs and the consolidation of scattered tracts. In principle, the BLM supports the land exchanges envisioned by S.607; however, we would like the opportunity to continue to work with the sponsor and the Committee to address concerns specifically in the areas of public access and the protection of cultural resources.

The lands proposed for exchange out of Federal ownership are largely scattered sections of public land intermingled with private land. The BLM in Oregon is continuing to assess these lands for their cultural resources and the need for possible mitigation. Many of these lands are significant to local tribes and we encourage continuing efforts to resolve the issues raised by the tribes.

The bill requires that the exchanges be consistent with FLPMA, including the requirement that the Secretary determined that the public interest would be served by completing the exchange (section 3(b)). We believe that this provides the BLM latitude to withdraw specific lands from the exchange if any serious impediments are discovered. Furthermore, the legislation provides that the Secretary may add such additional terms and condition as appropriate (section 3(c)(5)). We believe this would allow the BLM to require that all non-Federal parties are responsible for addressing any human safety concerns or the remediation of hazardous materials on the lands to be exchanged out of present ownership. Finally, the BLM supports the provisions of the bill requiring that all three exchanges be equal value exchanges, and that the appraisals be undertaken consistent with Uniform Appraisal Standards.

Section 4 of S. 607 proposes to designate two potential wilderness areas, the "Proposed Cathedral Rock Wilderness" and the "Proposed Horse Heaven Wilderness" on the lands that would be consolidated under the land exchanges envisioned by section 3 of the bill. When those land exchanges are completed, the Cathedral Rock Wilderness would include over 8,300 acres of public land and the Horse Heaven Wilderness 9,000 acres. The legislation provides a process in section 4(b) for converting the "proposed" wilderness areas into designated wilderness following adequate acquisitions of the now private lands. The BLM could manage these areas as wilderness following the exchanges. However, absent the largest exchange envisioned under S. 607, these areas would be impracticable for the BLM to manage as wilderness. That proposed

exchange with the local landowner, "Young Life," involves the core of both the proposed Cathedral Rock and Horse Heaven wilderness areas.

The current land patterns of both the "Proposed Cathedral Rock Wilderness" and "Proposed Horse Heaven Wilderness" are highly fragmented. The BLM manages approximately 4,500 acres in seven non-contiguous parcels within the Cathedral Rock area and less than 3,000 acres in two separate parcels within Horse Heaven. The land exchanges are, of course, optional for the three private parties. If, in the end, the largest private land owner decided not to pursue the exchange, managing the areas as wilderness would not be practical given the fragmented nature of the BLM landholdings in these two areas. The BLM supports the provisions for interim management of the "proposed" areas and the methodology for final designation if sufficient land exchanges are consummated. We would like to continue to work with the sponsor and the Committee on issues concerning sufficient public access to the proposed wilderness areas.

Finally, section 3(g) of S. 607 would transfer the administrative jurisdiction of approximately 750 acres of BLM-managed lands to the Forest Service. The BLM supports this transfer of lands which will improve manageability.

Conclusion

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

Statement of
Mike Pool
Deputy Director
Bureau of Land Management
Department of the Interior
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 617, Elko Motocross and Tribal Conveyance
May 18, 2011

Thank you for the opportunity to testify on S. 617, the Elko Motocross and Tribal Conveyance Act. S. 617 would convey, without consideration, approximately 275 acres of land managed by the Bureau of Land Management (BLM) to the County of Elko, Nevada. The legislation also directs that approximately 373 additional acres of BLM-managed lands be taken into trust for the Te-Moak Tribe of Western Shoshone Indians of Nevada. The BLM supports the conveyances. We would like to work with the sponsor and the Committee on minor technical amendments to the bill.

Background

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

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

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

S. 617

S. 617 proposes to convey approximately 275 acres of BLM-managed lands to the county at no cost for a public motocross park. The conveyance would be subject to valid existing rights. The bill requires that the land be used only for purposes consistent with the R&PP Act and includes a reversionary clause to enforce that requirement. Finally, the bill requires the county to pay all administrative costs associated with the transfer.

The bill also directs that approximately 373 acres of land currently administered by the BLM be taken into trust for the Tribe. S. 617 also addresses valid existing rights and gaming.

As a matter of policy, the BLM supports working with local governments to resolve land tenure issues that advance worthwhile public policy objectives. In general, the BLM supports conveyances if the lands are to be used for purposes consistent with the R&PP Act and include a reversionary clause at the discretion of the Secretary to enforce that requirement. The BLM strongly believes that open communication between the BLM and tribes is essential in maintaining effective government-to-government relationships. In this spirit, the BLM has had a cooperative working relationship with the Te-Moak Tribe of Western Shoshone Indians of Nevada on this requested conveyance. As such, the BLM supports S. 617 with minor technical amendments. To avoid constitutional concerns, the Department of Justice recommends that the bill be revised to make absolutely clear that the city or county would have to agree to the proposed conveyance, which is what we understand Congress intends. This change might be accomplished by adding "and subject to the city's or county's agreement" after "without reimbursement" in section 3(a) of the bill.

Conclusion

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

Statement of
Mike Pool
Deputy Director
Bureau of Land Management
Department of the Interior
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 667, Rio Grande del Norte National Conservation Area Act
May 18, 2011

Thank you for the opportunity to testify on S. 667, the Río Grande Del Norte National Conservation Area Establishment Act. The Department of the Interior supports S. 667, which designates the nearly 236,000-acre Río Grande Del Norte National Conservation Area (NCA) in northern New Mexico as well as two wilderness areas within the NCA.

Background

The proposed Río Grande del Norte NCA lies north of Taos on the border with Colorado and straddles Taos and Río Arriba Counties. The area includes the Cerro de la Olla, Cerro San Antonio and Cerro del Yuta volcanic cones jutting up from the surrounding valley – reminders of the area's turbulent geologic past. Between these mountains is the Río Grande Wild & Scenic River gorge, carving through the landscape and revealing the basalt rock beneath the surface.

The human history of the landscape is as diverse as its features. Early prehistoric sites attest to the importance of this area for hunting and as a sacred site. Today the area is home to members of the Taos Pueblo, as well as descendents of both Hispanic and American settlers. Wildlife species – including bighorn sheep, deer, elk and antelope – bring both hunters and wildlife watchers, while the Río Grande and its tributaries provide blue ribbon trout fishing and other river recreation. Above it all soar the golden and bald eagles, prairie falcons, and other raptors.

S. 667

S. 667 designates nearly 236,000 acres of land administered by the Bureau of Land Management (BLM) as the Río Grande del Norte NCA. Each of the NCAs designated by Congress and managed by the BLM is unique. For the most part, however, they have certain critical elements, which include withdrawal from the public land, mining and mineral leasing laws; off-highway vehicle use limitations; and language that charges the Secretary of the Interior with allowing only those uses that further the purposes for which the NCA is established. Furthermore, NCA designations should not diminish the protections that currently apply to the lands. Section 3 of the bill honors these principles, and we support the NCA's designation.

Section 4 of the S. 667 designates two wilderness areas on BLM-managed lands within the NCA – the proposed 13,420-acre Cerro del Yuta Wilderness and the 8,000-acre Río San Antonio Wilderness. Both of these areas meet the definitions of wilderness. They are largely untouched by humans, have outstanding opportunities for solitude and contain important geological,

biological and scientific features – criteria outlined in the Wilderness Act of 1964. We support both of these wilderness designations as well.

Conclusion

Senator Bingaman's bill is the product of many years of discussions and collaboration with the local community, stakeholders, and other interested parties. It protects both the valuable resources of the area and the way of life in this unique area of northern New Mexico.

Thank you for the opportunity to testify in support of S. 667.

Statement of
Mike Pool
Deputy Director
Bureau of Land Management
Department of the Interior
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 729, Coyote Springs Patent Validation Act

May 18, 2011

Thank you for the opportunity to testify on H.R. 729, a bill which affirms a land patent and an associated land reconfiguration completed in 2005. These land transactions protect habitat for desert tortoise and other Mojave Desert wildlife species while providing for economic development in rural south-central Nevada. The BLM supports this bill, which passed the House of Representatives without amendment on July 15, 2009.

Background

The Nevada-Florida Land Exchange Authorization Act of 1988 (NFLEA, P.L.100-275) authorized the exchange of approximately 29,055 acres ("fee" lands) of BLM-administered lands in Coyote Springs Valley, Clark and Lincoln Counties, Nevada, for approximately 5,000 acres of private land in the Florida Everglades owned by Aerojet-General Corporation (Aerojet). The purpose of the land exchange was to protect habitat in Florida needed for the recovery of wildlife species listed under the Endangered Species Act (ESA). The NFLEA also entitled Aerojet to lease an additional 13,767 acres ("leased" lands) of BLM-administered land in Coyote Spring Valley for 99 years, with an automatic 99-year lease renewal term unless terminated by the lessee.

Aerojet initially intended to use the fee lands for the construction of rocket manufacturing facilities. The Federal leased lands were to remain substantially undeveloped and serve as a conservation area and buffer for the rocket facilities. Aerojet never built the manufacturing facilities and the fee lands changed ownership in 1996 and 1998. In accordance with the NFLEA, the Secretary of the Interior approved the assignment of the leased lands from Aerojet to Harrich Investments LLC, and then from Harrich Investments to Coyote Springs Investment LLC (CSI), respectively.

CSI proposed to develop a planned community on the original Aerojet fee lands. Because the proposed development would affect critical habitat for the desert tortoise, an ESA listed species, the U.S. Fish and Wildlife Service (FWS) asked the BLM in 2001 to consider reconfiguring the boundary of the leased lands to benefit desert tortoise habitat. Reconfiguration of the leased lands was undertaken pursuant to the NFLEA.

Under the original configuration, the leased land was an island surrounded by the fee lands acquired by Aerojet. This configuration was designed to meet the needs of the planned Aerojet manufacturing facilities, but it provided limited habitat conservation benefits. Reconfiguring

the lands would enhance conservation by consolidating the fee lands in a single parcel adjacent to U.S. Highway 93, and by placing the leased lands contiguous to protected habitat on BLM-managed public lands. This configuration would increase habitat connectivity and provide more effective conservation for desert tortoise and other Mojave Desert species.

In 2005, the Bureau of Land Management (BLM) issued a corrective patent to CSI for the reconfigured lands in Clark County. The Western Lands Project and the Nevada Outdoor Recreation Association (plaintiffs), who claimed that the BLM should have prepared an analysis of the corrective patent under the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA), subsequently brought suit in the U.S. District Court in Nevada. The action was dismissed by stipulation of the parties before briefing on the merits.

Continuing with its project proposal, CSI then prepared a Multiple Species Habitat Conservation Plan (MSHCP) to protect tortoise habitat and, consistent with the ESA, applied to the U.S. Fish and Wildlife (FWS) for an "incidental take" permit necessary for project approval. The FWS, with the BLM as a cooperating agency, assessed the CSI proposal in an Environmental Impact Statement completed in July 2008. In October 2008, the FWS issued a Record of Decision authorizing an incidental take permit to CSI with numerous conservation stipulations to protect desert tortoise habitat. A key conservation stipulation is the land reconfiguration authorized by the BLM's corrective patent.

S. 729

S. 729 affirms and validates the corrective patent issued by the BLM in 2005 and its associated land reconfiguration. The bill enables implementation of the land reconfiguration stipulated in the Coyote Spring MSHCP, which will protect critical habitat while allowing economic development in south-central Nevada. The BLM supports the bill.

Thank you for the opportunity to testify. I would be happy to answer any questions that you may have.

Statement of
Mike Pool
Deputy Director
Bureau of Land Management
Department of the Interior
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 766, Devil's Staircase Wilderness Act
May 18, 2011

Thank you for inviting the Department of the Interior to testify on S. 766, the Devil's Staircase Wilderness Act of 2011. The Bureau of Land Management (BLM) supports S. 766 as it applies to lands we manage.

Background

The proposed Devil's Staircase Wilderness, near the coast of southwestern Oregon, is not for the faint of heart. Mostly wild land and difficult to access, the Devil's Staircase reminds us of what much of this land looked like hundreds of years ago. A multi-storied forest of Douglas fir and western hemlock towers over underbrush of giant ferns, providing critical habitat for the threatened Northern Spotted Owl and Marbled Murrelet. The remote and rugged nature of this area provides a truly wild experience for any hiker.

S. 766

S. 766 proposes to designate over 30,000 acres as wilderness, as well as portions of both Franklin Creek and Wasson Creek as components of the Wild and Scenic Rivers System. The majority of these designations are on lands managed by the U.S. Forest Service. The Department of the Interior defers to the U.S. Department of Agriculture on those designations.

Approximately 6,830 acres of the proposed Devil's Staircase Wilderness and 4.2 miles of the Wasson Creek proposed designation are within lands managed by the BLM. The Department of the Interior supports these designations.

We note that while the vast majority of the acres proposed for designation are Oregon &California (O&C) lands, identified under the 1937 O&C Lands Act for timber production, the BLM currently restricts timber production on these lands. These lands are administratively withdrawn from timber production by the BLM through various administrative classifications. Additionally, the BLM estimates that nearly 90 percent of the area proposed for designation is comprised of forest stands that are over 100 years old, and provides critical habitat for the threatened Marbled Murrelet and Northern Spotted Owl.

The 4.2 miles of Wasson Creek would be designated as a wild river to be managed by the BLM under S. 766. The majority of the acres protected through this designation would be within the proposed Devil's Staircase wilderness designation, though 376 acres would be outside the proposed wilderness on adjacent BLM lands.

The designations identified on BLM-managed lands under S. 766 would result in only minor modification of current management of the area and would preserve these wild lands for future generations.

Conclusion

Thank you for the opportunity to testify in support of these important Oregon designations. The Department of the Interior looks forward to welcoming these units into the BLM's National Landscape Conservation System.

STATEMENT FOR THE RECORD
DEPARTMENT OF THE INTERIOR
ON S. 896, THE PUBLIC LANDS SERVICE CORPS ACT OF 2011 SENATE ENERGY AND NATURAL RESOURCES SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

MAY 18, 2011

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on S. 896, a bill to amend the Public Lands Corps Act of 1993 to expand the authorization of the Secretaries of Agriculture, Commerce and the Interior to provide service opportunities for young Americans; help restore the nation's natural, cultural, historic, archaeological, recreational and scenic resources; train a new generation of public land managers and enthusiasts; and promote the value of public service.

The Department strongly supports S. 896. This bill would strengthen and facilitate the use of the Public Land Corps (PLC) program, helping to fulfill Secretary Salazar's vision for promoting ways to engage young people across America to serve their community and their country. During the last Congress, the Department testified in support of similar bills in both the House and the Senate. While we appreciate the revisions to last Congress's versions of the legislation that are reflected in S. 896, we would like to have the opportunity to work with the committee on the amendments described in this statement and any additional issues that we identify as we continue our review of the bill.

Engaging America's Youth Through Service

While there are other Federal programs that promote service, expanding the use of the Public Land Corps is particularly important because it also serves other high-priority goals. The Corps reconnects young people with their natural environment and cultural heritage; conserves energy and increases out use of alternative sources of energy; and provides education, training, and career-building experiences which may support a pathway to careers in Federal land management agencies, which need new, younger and more diverse employees.

Secretary Salazar created the Youth in Natural Resources program during his tenure at the Colorado Department of Natural Resources as a way to educate thousands of young people about Colorado's natural resources, and he saw firsthand what a difference it made in their lives. From the day he was nominated as Secretary of the Interior, he has emphasized that one of his top priorities would be to find more ways to introduce young Americans from all backgrounds to the beauty of our national parks, refuges, and public lands and to promote an ethic of volunteerism and conservation in this Country's youngest generation. Enactment of this legislation helps pave the way to meeting one of the Secretary's top priority goals – to develop a 21st Century Conservation Service Corps. Engaging youth in the great outdoors through educational and employment opportunities is one of the primary focuses of the Administration's America's Great Outdoors initiative , and is a great example of multiple federal agencies coming together for a common goal. S. 896 would help both the Department and our sister agencies, USDA and the Department of Commerce, offer expanded opportunities for our youth to engage in the care of America's Great Outdoors.

Background on Public Land Corps Program

The Department regards the Public Land Corps program as an important and successful example of civic engagement and conservation. Authorized by the National and Community Service Trust Act in 1993, the program uses non-profit organizations such as the Student Conservation Association (SCA) and other service and conservation corps organizations affiliated with the Corps Network as the primary partners in administering the Public Land Corps program. These public/private partnership efforts help to leverage Federal dollars in some cases 3 to 1 and have assisted the Department in increasing youth employment opportunities by 45% from FY2009 to FY2010. In addition, other non-profit youth organizations such as the YMCA also participate, as do local high schools and job-training youth organizations. The youth organizations assist the National Park Service (NPS) in its efforts to attract diverse participants to the parks by recruiting youth 16-25 years of age from all socioeconomic, cultural and ethnic backgrounds.

The National Park Service makes extensive use of the Public Land Corps Act. This authority is used for the majority of all NPS youth work projects that utilize a non-profit youth-serving organization as a partner. In FY 2010, 3,006 employment opportunities[1] were created through the projects undertaken by these partner organizations. Many of these projects were for maintenance and ecological restoration purposes. The NPS receives a 25 percent cost match from the participating partner organizations. During FY 2010, the NPS spent $4.4 million in Service-wide fee revenue and approximately $2 million in park-specific fee revenue, as well as approximately $2.5 million in appropriations for the Youth Intern Program, on PLC projects.

An example of what this program has accomplished is exemplified by the work of one PLC partner organization, the Greening Youth Foundation, which recruited and trained 16 at-risk young adults from Denver. From April, 2010, through February, 2011, these 18- to 24-year olds earned green certifications that enabled them to conduct energy audits and energy retrofits at all the national park sites in Colorado and Arizona. The work provided marketable skills to its young participants and energy savings to the parks.

The Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (FWS) also have a long history of employing young people through the Youth Conservation Corps and through the SCA and other youth service and conservation organizations for a wide array of projects related to public lands resource enhancement and facility maintenance under the Public Lands Corps Act. Though most Corps are affiliated with the nationwide Corps Network, they are often administered at the State, rather than national level. The FWS and SCA have partnered for over 20 years to offer work and learning opportunities to students. In FY 2010, 218 Conservation interns served at 90FWS sites, contributing more than 157,040 hours of work.

The BLM has engaged the services of non-profit youth service corps for many years under financial assistance agreements at the state and local level.. In 2010, the BLM supported 1,689 youth employees through non-profit youth service corps organizations. t They participated in a variety of conservation service activities such as recreation and river management, historic building restoration and maintenance, seed collection, and invasive species control. BLM's

[1] Not less than 80 hours of pay compensation which can be in the form of a stipend or hourly wage, which must be through a cooperative agreement. Includes both projects involving work crews and individual internships.

Salem Oregon District, for example, hires a mixture of Northwest Youth Corps, Clackamas County, and Columbia River Youth Corps members each year to perform a variety of activities such as trail maintenance and construction.

The FWS manages 553 units of the National Wildlife Refuge System that cover over 150 million acres of land and waters, as well as 70 National Fish Hatcheries, which would directly benefit from programs authorized under S. 896. National Wildlife Refuges and National Fish Hatcheries enjoy strong relationships with the local communities, and are involved in many community-based projects that help maintain sustainable landscapes. The FWS's work is also supported by over 200 non-profit Friends organizations that assist in offering quality education programs, mentoring, and work experience for youth.

In 2010, the FWS employed 858 youth employees through local, State, and non-profit youth service corps. The FWS has provided funding for a YCC program involving the Mescalero Apache youth at the Mescalero Tribal Hatchery in New Mexico. The FWS has working relationships with numerous colleges and universities for students interested in pursuing careers in fish and wildlife management.

The Public Lands Service Corps Act of 2011

S. 896 would make several administrative and programmatic changes to the Public Land Corps Act. These changes would encourage broader agency use of the program, make more varied opportunities available for young men and women, and provide more support for participants during and after their service. Appropriately, S. 896 would change the program's name to Public Lands *Service* Corps, reflecting the emphasis on "service" that is the hallmark of the program. President Obama is committed to providing young people with greater opportunities and incentives to serve their community and country. Through an enhanced Public Lands Service Corps, we would be taking a critical first step that direction.

Key changes that the legislation would make to existing law include:

- Adding the Department of Commerce's National Oceanic and Atmospheric Administration, which administers national marine sanctuaries and conservation programs geared toward engaging youth in science, service and stewardship, as an agency authorized to use the program;
- Establishing an Indian Youth Corps so Indian Youth can benefit from Corps programs based on Indian lands, carrying out projects that their Tribes and communities determine to be priorities;
- Authorizing a departmental-level office at the Department of the Interior to coordinate Corps activities within the three land management bureaus;
- Requiring each of the three relevant departments to undertake or contract for a recruiting program for the Corps;
- Requiring a training program for Corps members, and identifying specific components the training must include;
- Identifying more specific types of projects that could be conducted under this authority;
- Allowing participants in other volunteer programs to participate in PLC projects;

- Allowing agencies to make arrangements with other Federal, State, or local agencies, or private organizations, to provide temporary housing for Corps members;
- Providing explicit authority for the establishment of residential conservation centers;
- Authorizing agencies to recruit experienced volunteers from other programs to serve as mentors to Corps members;
- Adding "consulting intern" as a new category of service employment under the PLC program;
- Allowing agencies to apply a cost-of-living differential in the provision of living allowances and to reimburse travel expenses;
- Allowing agencies to provide non-competitive hiring status for Corps members for two years after completing service, rather than only 120 days, if certain terms are met;
- Allowing agencies to provide job and education counseling, referrals, and other appropriate services to Corps members who have completed their service; and
- Eliminating the $12 million authorization ceiling for the program.

We believe that the Department's program would benefit from enactment of this legislation. As noted above, most PLC projects are designed to address maintenance and ecological restoration needs, and those types of projects would continue to be done under S. 896. However, this legislation specifies a broader range of potential projects, making it likely that Corps members could become involved in such varied activities as historical and cultural research, museum curatorial work, oral history projects and programs, documentary photography, public information and orientation services that promote visitor safety, and activities that support the creation of public works of art. Participants might assist employees in the delivery of interpretive or educational programs and create interpretive products such as website content, Junior Ranger program books, printed handouts, and audiovisual programs.

PLC participants would also be able to work for a partner organization where the work might involve sales, office work, accounting, and management, so long as the work experience is directly related to the protection and management of public lands. The NPS and the FWS have a large number of partner organizations that would be potential sponsors of young people interested in the type of work they might offer.

An important change for the Department is the addition of specific authority for agencies to pay transportation expenses for non-residential Corps members. Transportation costs may be a limiting factor in program participation of economically disadvantaged young people.

Another important change is the addition of "consulting intern" as a new category of service employment under the PLC program, expanding on the use of mostly college-student "resource assistants," provided for under existing law. The consulting interns would be graduate students who would help agencies carry out management analysis activities. NPS has successfully used business and public management graduate student interns to write business plans for parks for several years, and this addition would bring these interns under the PLC umbrella.

The Public Lands Service Corps would also offer agencies the ability to hire successful corps members non-competitively at the end of their appointment, which would provide the agency with an influx of knowledgeable and diverse employees as well as career opportunities for those

interested in the agencies' mission. Refuges and hatcheries, for example, are uniquely qualified to connect with local communities since the Service has so many refuges across the country that are located near smaller communities and can directly engage urban, inner city, and rural youth. For example, partnering academic institutions are beginning to offer academic certificate programs to enhance the students' work experience and marketability for securing full-time employment in both the Federal and non-profit sectors, thereby providing orientation and exposure to a broad range of career options.

The legislation would also give the Department's other bureaus that would utilize this program the authority to expand the scope of existing corps programs to reflect modern day challenges, such as climate change and add incentives to attract new participants, especially from underrepresented and diverse populations.

An expanded Public Lands Service Corps program would provide more opportunities for thousands of young Americans to participate in public service while assisting the Department to address the critical maintenance, restoration, repair and rehabilitation needs on our public lands and gain a better understanding of the impacts of climate change on these treasured landscapes.

Recommended Changes to S. 896

As noted at the start of this statement, we appreciate the changes to last Congress's version of the legislation that are reflected in S. 896. However, the Administration recommends the following amendments to this bill:

1) Hiring preference

The Administration recommends changing eligibility for former PLSC participants for non-competitive hiring status from two years to one year. This change would make eligibility status consistent with other Government-wide, non-competitive appointment authorities based on service outside of the Federal government.

2) Cost sharing for nonprofit organizations contributing to expenses of resource assistants and consulting interns

Under current law in the case of resource assistants, and under S. 896 in the case of consulting interns, sponsoring organizations are required to cost-share 25 percent of the expenses of providing and supporting these individuals from "private sources of funding." The Administration recommends giving agencies the ability to reduce the non-Federal contribution to no less than 10 percent, only if the Secretary determines it is necessary to enable a greater range of organizations, such as smaller, community-based organizations that draw from low-income and rural populations, to participate in the PLSC program. This would make the cost-share provisions for resource assistants and consulting interns parallel to the provisions under the bill for other PLSC participants.

3) Definition of Eligible Public Lands

The Administration recommends technical amendments to clarify that PLSC activities will be carried out on public lands as enumerated in the law. “Eligible service lands” may be interpreted to include non-Federal lands.

4) Agreements with Partners on Training and Employing Corps Members

The Administration recommends striking the provision in S. 896 that would allow PLSC members to receive federally funded stipends and other PLSC benefits while working directly for non-Federal third parties. The need for this language is unclear, since agencies already have flexibility in how they coordinate work with cooperating associations, educational institutes, friends groups, or similar nonprofit partnership organizations. Yet, the language could raise unanticipated concerns over accountability, liability, and conflicts of interest. For example, this language could allow an individual to receive a federally funded stipend under a PLSC agreement, and then perform work for a different non-federal group (such as a cooperating association) that is subject to agency oversight under different agreements. This language could blur the lines of responsibility that have been established in response to IG concerns over the management of cooperating associations and friends groups.

5) Living Allowance Differentials

The Administration recommends striking the provision in S. 896 that would allow for the Secretary to provided living allowance differentials to employees. Current law provides the Secretary with broad authority to set “living allowances” at an appropriate rate. Adding “cost-of-living” language to a law that would modify compensation for Federal employees may unnecessarily introduce confusion.

The Department is happy to answer any questions you or the other members of the subcommittee have.

STATEMENT FOR THE RECORD
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS
U.S. SENATE

ON SENATE BILL 897

MAY 18, 2011

Mister Chairman and Members of the Subcommittee, thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSM) regarding S. 897, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The OSM looks forward to working with you on matters relating to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

S. 897 would allow noncertified states and tribes to use certain SMCRA payments for non-coal reclamation. While we recognize the importance of addressing hardrock mine hazards, we cannot support this bill because it is inconsistent with the President's FY 2012 Budget proposal to limit funding derived from the abandoned mine lands fee on coal production to the reclamation of coal sites that pose the most danger to public health and safety and/or damage to the environment.

The FY 2012 President's Budget includes a proposal to focus AML funds on the critical coal reclamation sites in order to ensure that the most dangerous and environmentally damaging coal sites can be addressed before the AML fee expires in ten years. In addition to terminating unrestricted payments to certified states and tribes that have already cleaned up their abandoned coal mines, the proposal will competitively allocate funding for use on these hazardous and environmentally damaging coal reclamation projects. Recognizing the importance of addressing abandoned hardrock mines nationwide, additionally, the President's FY 2012 budget would build off these reforms to the coal AML program and create a parallel program for hardrock AML reclamation in order to address those sites. This proposal would ensure that the industries whose historic practices created abandoned mines bear the costs of addressing these hazards by paying a reclamation fee on production.

Background

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

degradation created by two centuries of weakly regulated coal mining that occurred before SMCRA's enactment.

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

The Surface Mining Control and Reclamation Act Amendments of 2006 were signed into law as part of the Tax Relief and Health Care Act of 2006, on December 20, 2006 (Public Law 109-432). The 2006 amendments revised Title IV of SMCRA to make significant changes to the reclamation fee and the AML program and extended OSM's reclamation fee collection authority through September 30, 2021.

The AML reclamation program was established in response to concern over extensive environmental damage caused by past coal mining activities. Before the 2006 amendments, the AML program reclaimed eligible lands and waters using the Fund, which came from the reclamation fees collected from the coal mining industry. Eligible lands and waters were those which were mined for coal or affected by coal mining or coal processing, were abandoned or left inadequately reclaimed prior to the enactment of SMCRA on August 3, 1977, and for which there was no continuing reclamation responsibility under State or other Federal laws.

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

As originally established, the Fund was divided into State or Tribal and Federal shares. Each State or tribe with a Federally approved reclamation plan was entitled to receive 50 percent of

the reclamation fees collected annually from coal operations conducted within its borders. The "Secretary's share" of the Fund consisted of the remaining 50 percent of the reclamation fees collected annually and all other receipts to the Fund, and was allocated into three shares as required by the 1990 amendments to SMCRA. First, OSM allocated 40% of the Secretary's share to "historic coal" funds to increase reclamation grants to States and Indian tribes for coal reclamation. However, all the funds which were allocated may not have been appropriated. Second, OSM allocated 20% to the Rural Abandoned Mine Program (RAMP), operated by the Department of Agriculture. However, that program has not been appropriated AML funds since the mid-1990s.

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

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

Before the 2006 amendments, States and Indian tribes that had not certified completion of reclamation of their abandoned coal lands could use AML grant funds on noncoal projects only to abate extreme dangers to public health, safety, general welfare, and property that arose from the adverse effects of mineral mining and processing and only at the request of the Governor or the governing body of the Indian tribe. In addition, noncertified States were allowed to deposit up to ten percent of their AML grant funds into a state acid mine drainage set aside account to abate and treat acid mine drainage caused by coal mining.

The 2006 amendments reduced the statutory fee rates by 10 percent from the current levels for the period from October 1, 2007, through September 30, 2012, and by an additional 10 percent from the original levels for the period from October 1, 2012, through September 30, 2021.

The Fund allocation formula was also changed. Beginning October 1, 2007, certified States are no longer eligible to receive State share funds. Instead, amounts that would have been distributed as State share for certified States from the AML fund are distributed as historic coal funds. The RAMP share was eliminated, and the historic coal allocation was further increased by the amount that previously was allocated to RAMP. In addition, the amount that noncertified States could set aside for acid mine drainage abatement and treatment was increased to 30 percent of a State’s State share and historic coal share funds.

The Amendments also created two new types of payments from the General Treasury under section 411(h). Both certified and noncertified states receive payments equal to their portion of the unappropriated balance of the AML fund that existed at the time the amendments were

passed, known as “prior balance funds”. Certified states and tribes also receive a payment, known as the “in lieu” payment, equal to 50% of the fees collected in their borders the prior year.

Though the other sources of funding to noncertified states and tribes are available for a variety of purposes under the statute, since 2006, the Department has interpreted the language of SMCRA section 411(h) to preclude noncertified states and Indian tribes from using funds that they receive under that section for noncoal reclamation or for deposit into a state acid mine drainage account.

S.897

Under SMCRA, noncertified states can use “State share” and “historic coal” funds for noncoal reclamation and deposit into state acid mine drainage set aside accounts, which are considered lower priority hazards associated with AML sites. S. 897 would amend SMCRA to allow these states to also use their prior balance funds, which they receive under Section 411(h)(1), for noncoal reclamation and for deposit into state acid mine drainage set-aside accounts. In other words, S. 897 would allow prior balance replacement funds, which are now focused on the reclamation of coal sites in noncertified States, to be used for other purposes: namely, noncoal reclamation and deposit into State acid mine drainage set aside accounts.

In an effort to focus the OSM’s AML program on coal reclamation, the President’s FY 2012 budget proposes to revise SMCRA to competitively allocate AML funds to ensure that the most dangerous and environmentally damaging coal AML sites are reclaimed before the reclamation fee terminates. Because S.897 is inconsistent with the Administration’s goal of ensuring expeditious coal reclamation through the existing AML Fund, we cannot support this bill.

We share this Subcommittee’s interest in ensuring that abandoned hardrock mines also are addressed. In order to accomplish this goal, we support the creation of a parallel hardrock AML program, funded through a fee on hardrock production to fund the reclamation of hardrock mine sites nationwide, which the FY 2012 President’s budget proposes.

Currently, there is no hardrock reclamation fee similar to the one established by SMCRA to reclaim abandoned coal mine sites. This leaves States, Tribes, and Federal land managers to address these sites within their budgets or using other sources of funding, such as SMCRA’s reclamation funds when possible. To hold each industry responsible for the actions of its predecessors, the President’s FY 2012 budget proposes a new reclamation fee on hardrock production. Once the fee is established, OSM would be responsible for collecting this fee, based on its expertise in collecting the coal reclamation fee. The Department of the Interior’s Bureau of Land Management would be responsible for allocating and distributing the receipts, using the proposed competitive allocation program.

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