

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

***BEFORE THE*
COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS
UNITED STATES SENATE
MAY 25, 2011**

CONCERNING

S. 233 “NORTH FORK WATERSHED PROTECTION ACT OF 2011,”

S. 375 “GOOD NEIGHBOR FORESTRY ACT”

Mr. Chairman, Honorable Ranking Member and members of the Committee, thank you for the opportunity to present the views of the Department of Agriculture on S. 233 to withdrawal land and mining interests from the Flathead River Watershed in Montana and S. 375 to enter into cooperative agreements with state foresters, also known as the Good Neighbor Forestry Act. I will open my testimony by addressing S. 233, followed by S. 375.

S.233: The North Fork Watershed Protection Act of 2011

S. 233 would, subject to valid existing rights, withdraw National Forest System (NFS) lands located in the North Fork and Middle Fork of Flathead River watersheds in Montana which are primarily managed as part of the Flathead National Forest from location, entry and patent under the mining laws and from disposition under the mineral and geothermal leasing laws. S. 233 would also withdraw a small amount of land in the Kootenai National Forest. Currently there are 39 existing leases or claims in the North Fork comprising 56,117 acres and 18 existing leases or claims in the Middle Fork comprising 8,595 acres. The Department supports S. 233, however, I would like to clarify that although the Department has surface management authority concerning mineral operations, the management of the federal mineral estate falls within the jurisdiction of the Secretary of the Interior. We defer to the Department of the Interior on issues related to the status of the existing claims and leases.

Background

The Forest Service administers surface resources on nearly 193 million acres of NFS lands located in forty-two states and the Commonwealth of Puerto Rico. The Forest Plan for the Flathead National Forest blends areas of multiple uses in the North Fork and Middle Fork with areas of specific or limited uses elsewhere on the Forest. Under current law, NFS lands reserved from the public domain pursuant to the Creative Act of 1891, including those in S. 233, are open to location, entry and patent under the United States Mining Laws unless those lands have subsequently been withdrawn from the application of the mining laws. This bill would withdraw

approximately 362,000 acres from the operation of the locatable and leasable mineral laws subject to valid existing rights. This includes approximately 291,000 acres on the Flathead National Forest and approximately 5,000 acres on the Kootenai National Forest in the North Fork watershed and 66,000 acres in the Middle Fork watershed on the Flathead National Forest.

The majority of North Fork and Middle Fork of the Flathead has low to moderate potential for the occurrence of locatable and leasable minerals. A portion of the Middle Fork does have an area of high potential for oil and gas occurrence. Much of the North Fork and Middle Fork was leased for oil and gas in the early 1980s. Subsequently, the Bureau of Land Management (BLM) and Forest Service were sued and BLM suspended the leases in 1985 to comply with a District Court ruling (*Conner v. Burford*, 605 F. Supp. 107 (D.Mont.1985)). Presently, there are no active locatable or leasable operations, including oil and gas, in the North Fork or Middle Fork.

Comments on S. 233

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

The Flathead National Forest and Flathead County rely on the close proximity of local sources of aggregate to maintain roads economically and as a source of building materials. We are pleased this bill would not preclude the removal and use of mineral materials, such as aggregate. The ability to continue using those local mineral materials would allow us to more easily maintain local roads, thus reduce erosion related impacts to streams and lakes in the North Fork and Middle Fork drainages. We appreciate Senators Baucus and Tester's strong commitment to protecting Montana's natural resources.

S. 375: Good Neighbor Forestry Act

I'll now discuss S.375, which would authorize the Secretary of Agriculture and the Secretary of the Interior to enter into cooperative agreements or contracts with State foresters authorizing State foresters to provide certain forest, rangeland and watershed restoration and protection services in states west of the 100th meridian. Activities that could be undertaken using this authority include: (1) activities to treat insect infected trees; (2) activities to reduce hazardous fuels; and (3) any other activities to restore or improve forest, rangeland and watershed health, including fish and wildlife habitat. The bill would authorize the states to act as agents for the Secretary and would provide that states could subcontract for services authorized under this bill. The bill would require federal retention of decision making under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321et seq.). The authority to enter into contracts or agreements under the bill would expire on September 30, 2019.

We support Good Neighbor Authority (GNA) and believe our Nation's forests face forest health challenges, which must be addressed across diverse land ownerships. In these times of limited resources, it is important to leverage workforce and technical capacities and develop partnerships for forest restoration across all lands. We believe further study and analysis is needed to better understand the interplay of needs, state and federal contracting and labor law and regulation

before expansion of the authority is authorized. Further, it is important to recognize that all environmental safeguards, policies and laws remain in place. To that end, we look forward to continuing our work with the committee, States, and federal agencies to develop a better understanding of the issues and make suggestions to improve the bill in a manner that meets the needs of key stakeholders.

How we use the current Good Neighbor Authority:

The Forest Service has gained valuable experience using GNA in Colorado and Utah pilot programs over the past several years. In Colorado, the authority has been successfully used on 37 projects focused on fuel reduction activities, such as tree thinning, resulting in the treatment of approximately 3,900 acres on the Arapaho-Roosevelt and Pike-San Isabel National. Almost all of the projects in Colorado included some form of hazardous fuels reduction within the wildland-urban interface, including the creation of defensible space around subdivisions and private residences, the creation of shaded fuelbreaks, treatment and salvage of insect-infested trees, the creation of evacuation routes and thinning. In Utah on the Dixie National Forest the authority has enhanced, protected and restored watersheds, particularly focused on rehabilitation and recovery of a burned area. In all, we have completed 60 projects in both Colorado and Utah.

For example, in Colorado, Shadow Mountain Estates is a large subdivision (several hundred acres) that directly borders National Forest System (NFS) lands on the Arapaho National Forest in Colorado. In 2006, Shadow Mountain Estates contracted the Colorado State Forest Service (CSFS) to remove dead trees from within the neighborhood to reduce fire risk and in 2007 the subdivision requested the Forest Service to treat the adjoining public lands to enhance its fire prevention efforts. As a result of this request, the Forest Service entered into the Green Ridge Good Neighbor Agreement with the CSFS to remove hazardous fuels and create a defensible space on federal lands in this wildland urban interface.

The contract to remove the trees from both private and federal lands was prepared, advertised and administered by the CSFS, and resulted in the treatment of 135 acres of NFS land. The project was completed in June of 2008. Shadow Mountain Estates is satisfied with the result, as the treated area contributes to reduced wildfire damage risk to the neighborhood and is aesthetically pleasing.

Benefits to the land and relationships

The GNA was the subject of a Government Accounting Office report in February of 2009 (GAO-09-277). The report summarizes our experiences and makes suggestions for improving use of the authority.

The GAO report found that the GNA has facilitated cross boundary watershed restoration and hazardous fuel removal activities. The GAO report notes the Forest Service's experience that the authority has resulted in the accomplishment of more restoration and protection treatments than would have otherwise been accomplished, particularly within the wildland urban interface. On the ground experience from Colorado and Utah indicates there is increased efficiency for both state and federal agencies, because all project work is done at one time, with one contract, making implementation more consistent. Further, the authority enhances our ability to work with

private landowners through the State Forester to remove hazardous fuels on adjacent NFS lands and, perhaps most importantly, it builds greater cooperation among stakeholders.

The Forest Service will continue its review of the findings and recommendations from the GAO and continue to improve its use of the Good Neighbor Authority. The Good Neighbor Authority has produced great results in Colorado and Utah. Its further expansion to states west of the 100th meridian will help meet the department's "All Hands-All Lands" approach. The USDA believes this bill has broader applicability to all national forests, especially in dealing with mixed federal-private lands as long as we are maintaining existing environmental safeguards, policies and laws.

We look forward to working with the Committee, States and federal agencies to continue to be a good neighbor and make suggestions to improve the bill in a manner that meets the needs of key stakeholders and all national forests.

This concludes my testimony on S. 233 and S. 375. I am happy to answer any questions you may have on any of the bills.