

**STATEMENT OF  
FAYE KRUEGER, ACTING ASSOCIATE DEPUTY CHIEF  
FOREST SERVICE  
UNITED STATES DEPARTMENT of AGRICULTURE**

**BEFORE THE  
UNITED STATES SENATE  
COMMITTEE ON ENERGY AND NATURAL RESOURCES  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
APRIL 28, 2010**

**CONCERNING**

**S. 1241  
TO AMEND PUBLIC LAW 106-206**

Mr. Chairman and members of the subcommittee, thank you for the opportunity to be here today and provide the Department of Agriculture's views on S. 1241.

S. 1241 would direct the Secretaries of the Interior and Agriculture to require annual permits and assess annual land use fees for commercial filming on federal lands involving a crew of 5 persons or fewer.

Specifically, the bill would require permits for commercial filming involving a crew of 5 persons or fewer that would cover filming in areas designated for public use on federal lands during a 12-month period. In addition, the bill

would require a fee of \$200 for those permits. USDA defers to the Department of the Interior for activities occurring on DOI lands.

USDA has significant concerns with S. 1241 and cannot support this bill.

Upon enactment, the bill would supplant the authority of the Department of the Interior (DOI) and USDA to issue separate permits and charge separate permit fees for each commercial filming activity. In addition, the bill would supplant USDA's land use fee schedule for commercial filming involving a crew of 5 persons or fewer.

Although we are sympathetic to the needs of small businesses, we believe existing laws, regulations, and directives adequately address all commercial filming on federal lands. Even a five-person crew can have serious impacts on the land and interfere with normal visitor use.

Issuing permits tailored to each use and each location is one of the best tools we have for oversight of operators. Often film crews, even small crews, need large vehicles, trailers, generators, and other equipment to conduct their business. Each project needs to be evaluated separately to address potential impacts. In addition, each project should be assessed a land use fee based on

market value. We are also concerned that the bill could be interpreted to require authorization of commercial filming involving a crew of 5 persons or fewer in wilderness areas, regardless of requirements and considerations in the Wilderness Act.

## **Background**

The Forest Service currently issues special use permits for commercial filming and still photography and collects land use fees for these activities.

The current authority for these permits is Public Law 106-206, which was signed into law on May 26, 2000, and is codified at 16 U.S.C. 460l-6d.

Prior to enactment of P. L. 106-206, the Forest Service had authority to issue special use permits and collect land use fees for these activities under the Organic Act of 1897, 16 U.S.C. 551.

## **Current Policy**

In 2003, the Forest Service amended its directives to make them consistent with P. L. 106-206 and to implement the new authority to retain and spend land use fees for commercial filming and still photography. These directives contain a definition for “commercial filming” that establishes the types of filming activities for which a permit is required. The definition excludes

filming of breaking news because the need to cover breaking news arises suddenly, may evolve quickly, and may cease to be newsworthy by the time a permit is issued.

## **Land Use Fees**

The Forest Service collects land use fees for commercial filming and still photography based on regional and forest fee schedules. In accordance with P. L. 106-206, the Forest Service collects, retains, and spends these fees without further appropriation. Ninety percent of the fee revenues are retained and spent at the local units where they are collected to improve customer service and program management for commercial filming and still photography.

Land use fees for commercial filming and still photography are established using either regional or forest fee schedules, as required by P.L. 106-206. The \$200 fee proposed by S. 1241 does not represent market value for the use of federal lands. While in certain low-impact scenarios this fee might represent the market rate, in many instances, \$200 will not reflect the value of the use of federal land for commercial filming. In addition, the lower the land use fee, the lower the amount available to DOI and USDA under the fee

retention provisions of P.L. 106-206 to improve customer service and program management for commercial filming.

### **Commercial Filming in Wilderness**

The Forest Service currently issues permits for commercial filming in a wilderness area if the proposed use would contribute to the purposes for which the area was established. Section 4(d)(5) of the Wilderness Act, states that commercial services may be performed in wilderness areas only to the extent necessary for activities that are proper for realizing the recreational or other wilderness purposes of the areas. In cooperation with DOI, we plan to publish for public notice and comment definitions and criteria for commercial filming in wilderness areas based on the purposes of the Wilderness Act and the limitation on commercial services in Section 4(d)(5) of the Wilderness Act.

We are concerned that S. 1241 could pre-empt these efforts, as it could be interpreted to require authorization of commercial filming involving a crew of 5 persons or fewer in wilderness areas, regardless of other considerations and requirements in the Wilderness Act. Some of our most pristine lands would be open to commercial filming, regardless of these wilderness factors.

## **Conclusion**

The proposed legislation has a significant potential to adversely affect federal lands, including wilderness areas. Current laws, regulations, and agency directives and the proposed interagency fee schedule and Forest Service directives on commercial filming in wilderness areas provide or would provide better resource protection and better management of commercial filming, as well as conform to existing statutory and regulatory requirements to obtain market value for the use of federal land. We would like to work with the Committee to address the concerns presented by S. 1241 and any concerns of the Committee with regard to accommodating small film crews under current law and policy.

Thank you, Mr. Chairman, and members of the Committee for the opportunity to comment on this bill today. We look forward to working with the Committee on this issue.

**STATEMENT OF**  
**FAYE KRUEGER**  
**ACTING ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM**  
**FOREST SERVICE**  
**U.S. DEPARTMENT OF AGRICULTURE**  
**BEFORE THE**  
**UNITED STATES SENATE**  
  
**COMMITTEE ON ENERGY AND NATURAL RESOURCES**  
**SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS**

**APRIL 28, 2010**

**REGARDING S. 1571 DEAFY GLADES LAND EXCHANGE ACT**

Mr. Chairman, Ranking Member Barrasso, Members of the Subcommittee, I appreciate the opportunity to appear before you today to provide the Department of Agriculture's views on S. 1571, regarding the exchange of certain lands in the Mendocino National Forest (MNF).

The Department supports S. 1571 because it would consolidate four parcels (approximately 162 acres) of private lands, that possess national forest character, partially within, and immediately adjacent to, the Snow Mountain Wilderness area of the Grindstone Ranger District, Mendocino National Forest for approximately 82 acres of National Forest System lands that have been developed by Solano County for their youth facility at Fouts Springs. The National Forest System lands, where the Fouts Springs Youth Facility is located have lost their national forest character because of the development of classrooms, culinary facilities, dormitories, maintenance and administrative facilities associated with the youth facility.

We respectfully suggest that S. 1571 be amended to ensure any necessary protection of the interests of the United States relating to the water rights associated with the National Forest parcel to be conveyed, to provide for survey of, and public access across, the land to be conveyed to the County, and to address other technical issues related to the exchange.

The National Forest System (NFS) lands to be conveyed are located within the Grindstone Ranger District. Those lands were acquired as part of a land exchange with the Setzer Box Company in 1944 and are currently occupied by the Fouts Springs Youth Facility (FSYF) under a special use authorization. A 30-year special use authorization allows Solano County to operate a 162 bed youth correctional facility. The current permit area is approximately 74 acres. The NFS land adjacent to the Fouts Springs Youth Facility is a heavily developed off-highway vehicle area managed by the Forest Service.

The non-federal lands to be conveyed are also located within the Grindstone Ranger District of the MNF. They are known as the Deafy Glade parcels totaling approximately 161.7 acres. The four parcels are adjacent to the southerly boundary of the Snow Mountain Wilderness Area.

### **Amendments**

We would appreciate the opportunity to work with the Committee to address any concerns regarding the transfer of water rights to the County as part of the exchange. At present, with the water right held by the United States, there is adequate in-stream flow in Stony Creek. If the Fouts Spring Youth Facility were to convey to Solano County, we want to ensure that an adequate in-stream flow is maintained in Stony Creek.

The NFS parcel to be conveyed has to be delineated and described by a Cadastral survey approved by the Bureau of Land Management .

Providing for a right-of-way across the parcel conveyed to the county would ensure access to the surrounding national forest for Forest Service administration and for wildfire suppression.

We also would appreciate the opportunity to work with the Committee on several technical aspects of the bill to require that the County provides acceptable title for the land its conveys, to refer specifically to the cash equalization provision in the reference to section 206 of Federal Land Policy Management Act, to require the County to pay appraisal costs, and to provide more specificity regarding the conditions on the use of the land after it is conveyed to the County.

Mr. Chairman, Ranking Member Barrasso, This concludes our prepared testimony. Thank you for the opportunity to present the Administration's views on S. 1571. I would welcome any questions you might have.

## **STATEMENT**

### **NATURAL RESOURCES AND ENVIRONMENT UNITED STATES DEPARTMENT OF AGRICULTURE**

#### **BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES HOUSE SENATE APRIL 28, 2010**

#### **CONCERNING**

#### **S2762, the “San Juan Mountains Wilderness Act of 2009”**

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to provide the views of the Department of Agriculture on S2762, the “San Juan Mountains Wilderness Act of 2009.”

The Department supports S2762. We would like to offer minor modifications to S 2762 that would enhance wilderness values, clarify the special management area designation, and improve our ability to manage resources in the area. We thank Congressman Salazar for his collaborative approach and local involvement that have contributed to this bill.

The Department defers to the Department of the Interior in regard to the proposal to designate approximately 8,600 acres of Bureau of Land Management (BLM) lands as the McKenna Peak Wilderness.

S2762 would designate nine parcels of the Grand Mesa, Uncompahgre and Gunnison National Forests as wilderness under the National Wilderness Preservation System. These areas, totaling approximately 24,800 acres, encompass some of Colorado’s most majestic, remote landscapes with many abundant wildlife species including elk, deer, bighorn sheep, bears and a variety of birds. Several world-class trout streams are also found in the areas. These areas also provide opportunities to experience solitude and primitive recreation use for members of the public seeking areas to connect with nature.

These parcels would be additions to two existing wildernesses: Lizard Head and Mount Sneffels. In addition, S2762 would designate the Sheep Mountain area as a Special Management Area to be managed to maintain the area’s existing wilderness character and potential for inclusion in the National Wilderness Preservation System. Also, S2762 would provide for a mineral withdrawal within a portion of Naturita Canyon.

**Lizard Head Wilderness Additions**

The Lizard Head Wilderness lies astride the spectacular San Miguel Mountains, 10 miles southwest of Telluride on the Uncompahgre and San Juan National Forests. Elevations in the area range from 9,500 to over 14,000 feet. The wilderness is evenly split between the two national forests and is 41,200 acres in size.

The proposed wilderness additions include five parcels, encompassing approximately 3,200 acres of National Forest System lands adjacent to the existing wilderness. Neither Forest Plans, completed in 1983, recommended any of the areas for wilderness designation. However, wilderness designation would be aligned with the current management of the area. No summer motorized recreation is currently allowed and effects to winter motorized recreation will be minimal as there is very little snowmobile use of the area.

**Mount Sneffels Wilderness Additions**

The Mount Sneffels Wilderness comprises more than 16,500 acres on the Uncompahgre National Forest between the communities of Telluride and Ouray. Elevations range from 9,600 to 14,150 feet at the top of Mount Sneffels.

The proposed wilderness additions include four parcels that encompass approximately 21,600 acres of NFS lands adjacent to the existing wilderness. As with the Lizard Head Additions, even though this area was not recommended as wilderness in the forest plan, designation is generally aligned with forest plan direction and will have minimal effects on summer and winter recreation.

We would like to work with the subcommittee to address some technical aspects of the bill. We recommend changing the wilderness boundary near Telluride to allow for potential construction work to address periodic floods with debris flows and provide for a more definitive boundary by following a cliff formation. Additionally, we remain concerned that the legislation would provide for continuation of a competitive footrace event in designated wilderness. Current Forest Service policy does not permit competitive events and this reflects the Wilderness Act prohibition against commercial enterprise.

**Sheep Mountain Special Management Area**

S2762 would also designate an area of about 21,700 acres of NFS land that lies south of the town of Ophir as a special management area. About 9,900 acres are within the Uncompahgre National Forest and about 11,800 acres are within the San Juan National Forest. This area contains some lands purchased recently with funds provided by Congress as part of the Ophir Valley Land and Water Conservation Fund project.

Elevations in the area range from 10,200 to almost 13,900 feet at the top of Vermillion Peak. The area is dense with spruce and fir trees at the lower elevations. Above timberline are high alpine valleys with numerous lakes, tarns and waterfalls beneath dramatic 13,000-foot peaks and serrated ridges. The Forest Plans identify half of the area

to be managed for semi-primitive non-motorized recreation and the other half for other recreation purposes.

As with the Mount Sneffels Wilderness additions, we have concerns that if this area becomes wilderness, the legislation allows for the continuation of a competitive footrace event.

#### **Naturita Canyon Withdrawal**

S2762 would also provide for a withdrawal on approximately 6,600 acres of National Forest System lands within Naturita Canyon on the Uncompahgre National Forest, about five miles south of the community of Norwood. Naturita Canyon is relatively low-elevation river drainage (7,000 feet) with steep canyon walls that tower 1,000 feet. There are no current leases within the area proposed for withdrawal. Impacts on available oil and gas resources for this withdrawal are unknown. Further exploration information would be needed for a conclusive assessment.

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

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FAYE KRUEGER  
ACTING ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM  
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**APRIL 28, 2010**

**CONCERNING  
S. 3075 North Fork Watershed Protection Act of 2010**

Mr. Chairman, Ranking Member Barrasso and members of the Subcommittee, thank you for the opportunity to provide the views of the Department of Agriculture on S. 3075, the “North Fork Watershed Protection Act of 2010.”

S. 3075 would, subject to valid existing rights, withdraw National Forest System (NFS) lands located in the North Fork of Flathead River watershed in Montana which are 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. The Department supports S. 3075, 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 all 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 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. 3075, 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 291,000 acres of the Flathead NF from the operation of the locatable and leasable mineral laws subject to valid existing rights.

The North Fork of the Flathead has low to moderate potential for the occurrence of locatable and leasable minerals. Much of the North 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. There are 115 leases that have been suspended by the Secretary of the Interior since 1985.

**Comments on S. 3075**

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.

We are pleased that this bill would not preclude the removal and use of mineral materials found on the NFS lands that would be subject to the bill. 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. Commensurate with the goal of S. 3075 to protect the North Fork watershed, the ability to continue using those mineral materials would allow us to adequately maintain local roads and reduce erosion related impacts to streams and lakes in the North Fork.

We appreciate Senators Baucus and Tester's strong commitment to protecting Montana's natural resources.

I would be happy to answer any questions from the committee.  
Thank you.