Statement of
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Deputy Director
Bureau of Land Management, Department of the Interior
Senate Energy and Natural Resources Committee
Subcommittee on Public Lands and Forests
H.R. 86, Orange County, California Rocks and Small Islands
April 28, 2010

Thank you for inviting the Department of the Interior to testify on H.R. 86, which would add certain rocks and small islands along the coast of Orange County, California, to the California Coastal National Monument managed by the Bureau of Land Management (BLM). The BLM supports H.R. 86.

Background

The California Coastal National Monument, part of the BLM's National Landscape Conservation System, was established by a Presidential Proclamation by President Clinton on January 11, 2000, to protect:

> "all unappropriated or unreserved lands and interest in lands owned or controlled by the United States in the form of islands, rocks, exposed reefs, and pinnacles . . . within 12 nautical miles of the shoreline of the State of California."

Covering more than 20,000 rocks and small islands spread along 1,100 miles of the California coastline, the Presidential Proclamation protects the Monument's overwhelming scenic quality and natural beauty. The Proclamation specifically calls for the protection of the geologic formations and the habitat that these rocks and small islands provide for seabirds, marine mammals, and other plant and animal life, both terrestrial and marine.

Some particularly significant public rocks and islands off the coast of Orange County in the Laguna Beach area provide important habitat for a wide variety of upper rocky intertidal species, as well as various shorebird species. Additionally, four rock locations – Bird Rock and Two Rocks off the City of Laguna Beach, San Juan Rocks off the City of Dana Point, and San Marcos Rocks off the southern portion of the City of San Clemente – provide important roosting habitat for seabirds (including cormorants and the Federally-listed brown pelican) and haul-out areas for seals and sea lions.

In the process of working with local communities on planning for the California Coastal National Monument, the BLM discovered that the rock features off the coastline of Orange County were under Congressional withdrawals dating from the 1930s and, therefore, were not included within the Monument. These withdrawals include more than 40 offshore rocks, small islands, exposed reefs, and pinnacles located within one mile of the coast of Orange County, California, totaling approximately two acres above mean high tide. More than 70 years old, the withdrawals were originally intended to temporarily reserve the Orange County offshore rocks and small islands for "park, scenic, or other public purposes" (1931 Act), and reserve three specific offshore rock clusters for the possibility of future lighthouses (1935 Act), which were never built. These withdrawals were ultimately never utilized and are no longer needed.

The Laguna Ocean Foundation has led a community-wide effort to include these significant areas within the California Coastal National Monument. The Foundation has worked with the City of Laguna Beach and other local groups, including the Audubon Society and the Surfrider Foundation, on a variety of city and area-wide coastal protection and monitoring projects, which resulted in H.R. 86.

H.R. 86

H.R. 86 would eliminate the existing withdrawals on these public lands off the coast of Orange County and place these features within the existing California Coastal National Monument. The BLM supports the revocation of the old withdrawals and the inclusion of these rocks, islands, and exposed reefs within the Monument.

The BLM has been working with partners along the 1,100 mile California coast to create a series of California Coastal National Monument Gateway community initiatives. These Gateway initiatives are a means to support organized local stewardship of various California coastal areas through the development of a consortium of the area's resource managers and advocates. The Laguna Beach community has expressed strong interest in developing a California Coastal National Monument Gateway initiative for the Orange County coastal area. Inclusion of these rocks and islands within the Monument will allow the BLM to work with the community to provide responsible, long-term stewardship of these valuable areas.

Conclusion

Thank you for the opportunity to testify in support of H.R. 86. We look forward to passage of this legislation which would place these significant features off the coast of Orange County within the California Coastal National Monument, thus ensuring their long-term protection and preservation, and paving the way for an important local community stewardship initiative.

STATEMENT FOR THE RECORD
U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS, OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 1241, A BILL TO AMEND PUBLIC LAW 106-206 TO DIRECT THE SECRETARY OF THE INTERIOR AND THE SECRETARY OF AGRICULTURE TO REQUIRE ANNUAL PERMITS AND ASSESS ANNUAL FEES FOR COMMERCIAL FILMING ACTIVITIES ON FEDERAL LAND FOR FILM CREWS OF 5 PERSONS OR FEWER.

APRIL 28, 2010

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today to present the Department of the Interior's views on S. 1241, a bill to amend Public Law 106-206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities in areas designated for public use on federal lands and waterways for film crews of five persons or fewer.

While we are sympathetic with the goals of this legislation, the Department cannot support S. 1241. Although the annual permit envisioned in S. 1241 may simplify the permitting process for commercial filming by small crews, it would limit the ability of federal land management agencies to manage commercial filming activities to protect natural and cultural resources and minimize disruption to the public's enjoyment these sites.

S. 1241 would amend Public Law 106-206 by requiring the Secretaries of the Interior and Agriculture to create a permit program for commercial film crews of five persons or less for filming during public hours on federal lands and waterways. The bill proposes an annual permit with a fee of $200 to allow up to a five-person film crew to conduct commercial filming activities on public lands. A permittee could not be assessed any additional fees for commercial filming on public lands or waterways. The Secretaries would not be allowed to restrict the use of cameras or related equipment or other mechanized apparatus.

Public Law 106-206 requires the Secretaries of the Interior and Agriculture to establish a fee system and a permit process for commercial filming activities on federal lands. The Secretaries also are directed to recover all costs associated with processing permit requests, to monitor the permitted activities, and to charge a fee that provides a fair return to the United States for the use of public lands.

Commercial film makers and videographers visit our national parks, refuges, forests, public lands and monuments to produce programs that educate, enlighten, and entertain. They create films, documentaries, television programs, and other products that introduce the public to natural and cultural resources and recreational opportunities of our parks, monuments, forests, public lands, and refuges. It is important that these commercial filming activities be managed to avoid disruption to visitor activities while protecting our nation's natural and cultural resources and landscapes.

Currently, film permits for individual projects allow each of the federal land management agencies to be aware of where filming is occurring. The Department is concerned that an annual permit, as proposed in S. 1241, could result in the agencies losing their ability to regulate where filming could take place, the duration of filming, and other conditions under which filming could take place. In addition, it appears that such a permit, as proposed, could be issued by a manager from one agency within the Department and be valid for one year on lands administered by other Departmental agencies.

This is particularly important for areas such as National Wildlife Refuges that have sensitive or closed wildlife areas and no, or limited, staff present on site to monitor the activity authorized by the permit. Issuing commercial filming permits on a case-by-case basis allows federal land management agencies to include location-specific conditions to protect natural and cultural resources, to minimize disruption to visitors, and to ensure public health and safety. Individual permits also allow commercial filming activities to be scheduled so that an area is not over used and provides commercial film crews use of an area without competition from other permitted activities where appropriate.

There are also locations in some federal units where commercial filming during public hours may be inappropriate, even for a small crew, such as inside historic buildings, or areas where wildlife nesting or breeding activities may require that access to an area be restricted. Further, the Wilderness Act restricts commercial activities in wilderness areas, so while the area is open to the public, commercial filming in wilderness, even by small commercial crews, may be inappropriate.

Even small commercial filming activities may require cameras and tripods, reflectors, generators, lights, cables, actors, props, sets, and other equipment. It is important that federal agencies have the ability to monitor filming activities and the type and amount of equipment associated with commercial filming activities, which could vary from one filming opportunity to another, if this equipment could cause resource damage, impact wildlife management and wildlife-dependant recreational activities such as hunting and wildlife viewing, or create safety hazards for visitors.

The Department is also concerned that S. 1241 could allow large-scale commercial filming organizations to avoid paying for use of public lands. For example, the producers of television commercials frequently use Bureau of Land Management lands with props and models. Under S. 1241, an advertisement for beer, cars, or clothing could be filmed with only a small crew actually entering public lands and taking unintended advantage of the authority. Crews could also be divided into small groups of five and likewise circumvent the intent of this legislation.

Finally, one of the purposes of P.L. 106-206 is to require that a fair fee be paid for the use of public lands used for commercial filming activities. The Department is concerned that the payment of an annual $200 permit fee may not adequately reimburse the federal government for the administrative and staff costs associated with use of federal lands for a full year. For example, if filming in the geyser basin at Yellowstone, the permittee must have a NPS monitor for visitor safety reasons. The annual fee may not cover the cost of issuing the permit as well as staff time to monitor the activity.

The Department of the Interior looks forward to working with the Committee to address the concerns we have raised in our testimony. We are sympathetic to the small nature videographers, but at the same time we want to insure our ability to protect important natural, historic, and cultural resources.

Thank you, Mr. Chairman, for providing the Department with the opportunity to present this statement.

Statement of
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Senate Energy and Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 2762, San Juan Mountains Wilderness Act
April 28, 2010

Thank you for the invitation to testify on S. 2762, the San Juan Mountains Wilderness Act. The Department of the Interior supports the designation of the McKenna Peak Wilderness on lands managed by the Bureau of Land Management (BLM). We defer to the Department of Agriculture regarding designations on lands managed by the U.S. Forest Service (FS).

Background

The McKenna Peak Wilderness Study Area (WSA) covers nearly 20,000 acres of BLM-managed lands in San Miguel and Dolores Counties in southwestern Colorado. This WSA is currently managed by the BLM to protect its wilderness characteristics while awaiting Congressional action.

This area is rich in wildlife, including mule deer, elk, mountain lions, black bear, and a variety of raptors. McKenna Peak is also home to the Spring Creek wild horse herd. Geologically, the area is quite diverse. It includes 100 million year-old remnants of inland seas (now black Mancos shale rich in invertebrate marine fossils), as well as the 8,000-foot McKenna Peak with ponderosa pine, Douglas fir, and mountain mahogany. This area offers a wide variety of recreational opportunities, including hunting, hiking, horseback riding, snowshoeing, and cross-country skiing, all of which are compatible with this wilderness designation.

S. 2762

We understand that S. 2762 is the result of a collaborative process, which included discussions between the Colorado Congressional delegation, county commissioners, adjacent landowners, ranchers, conservationists, recreationists, and other interested parties. The results are the proposed extensive wilderness designations on both BLM- and FS-managed lands in San Miguel, Ouray, and San Juan Counties. As I noted, the Department of the Interior defers to the Department of Agriculture regarding designations on lands managed by the FS.

Section 3(a)(4) of the bill designates 8,614 acres of the existing BLM-managed McKenna Peak WSA as wilderness. The BLM supports this designation. The legislation covers only those areas of the WSA in San Miguel County. The remaining almost 11,000 acres of the WSA are south of the proposed wilderness in Dolores County and are not addressed in the legislation. These acres will remain in WSA status, pending Congressional action. The BLM and the Department would support future designation of this area in order to improve the manageability of the area.

We would request the opportunity to work with the Sponsor and the Committee on some technical provisions, including corrections to the map reference. The BLM is currently completing a careful review of the boundaries of the proposed wilderness area to ensure manageability and would welcome the opportunity to work with the sponsor on possible minor modifications.

Conclusion

Thank you for the opportunity to testify in support of S. 2762. We look forward to its inclusion in the National Wilderness Preservation System.

Statement of
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Senate Energy and Natural Resources
Subcommittee on Public Lands and Forests
S. 3075, North Fork Watershed Protection Act of 2010
April 28, 2010

Thank you for the invitation to testify on S. 3075, the North Fork Watershed Protection Act of 2010. The Department of the Interior supports S. 3075, which would withdraw Federal lands within the North Fork watershed of Montana's Flathead River from all forms of location, entry, and patent under the mining laws and from disposition under all laws related to mineral or geothermal leasing. Enactment of S. 3075 would mark an important milestone in the work occurring across multiple jurisdictions to help preserve the remarkable resources in the Crown of the Continent ecosystem.

Background

The Flathead River Basin, a key portion of an area known as the Crown of the Continent ecosystem, spans the boundaries of the United States and Canada. It includes part of the United States' Glacier National Park and borders Canada's Waterton Lakes National Park. These two parks comprise the world's first International Peace Park as well as a World Heritage Site. The U.S. Forest Service's Flathead National Forest is also located within the Flathead River watershed. The Bureau of Land Management manages the Federal mineral estate underlying the Flathead National Forest.

Running along the west side of the Continental Divide, the North Fork of the Flathead River enters the United States at the Canadian border and forms the western border of Glacier National Park until its confluence with the Middle Fork of the Flathead River near the southern end of Glacier National Park. The North Fork watershed, a sub-basin of the Flathead River watershed, includes areas currently managed by the National Park Service, the State of Montana, the U.S. Forest Service, and some private landowners.

The Flathead River Basin is recognized for its natural resource values, including wildlife corridors for large and medium-sized carnivores, aquatic habitat, and plant species diversity. The area is rich in cultural heritage resources, with archeological evidence of human habitation starting 10,000 years ago. Several Indian tribes, including the Blackfeet, the Salish, and the Kootenai, have a well-established presence in the area. The area also has celebrated recreational opportunities, including hunting, fishing, and backcountry hiking and camping.

There has been interest in protecting the Crown of the Continent resources for some time. On February 18, 2010, the State of Montana and the Province of British Columbia executed a Memorandum of Understanding which addresses a myriad of issues related to the Flathead River Basin on both sides of the U.S. – Canada border. The intention of Part I.A. of that memorandum

is to "[r]emove mining, oil and gas, and coal development as permissible land uses in the Flathead River Basin."

The Flathead River Basin contains Federally-owned subsurface mineral estate under National Forest System lands that the Federal government has leased for oil and gas development, including 115 oil and gas leases in the North Fork watershed that the BLM issued between 1982 and 1985. The leases, which cover over 225,000 acres, are inactive and under suspension as part of the 1985 court case *Conner v. Burford*. The BLM has not offered any other leases in the Flathead National Forest since the *Conner v. Burford* litigation suspended the existing leases in 1985.

The U.S. Forest Service is responsible for the surface management of National Forest System land; however, as noted earlier, the Secretary of the Interior and the BLM are responsible for administering the Federal subsurface mineral estate under the Mining Law of 1872, the Mineral Leasing Act of 1920, and various mineral leasing acts. With respect to locatable minerals and oil and gas resources, the Forest Service has authority to regulate the effects of mineral operations upon National Forest System resources. The BLM only issues mineral leases for locatable minerals and oil and gas resources upon concurrence of the surface management agency and always works cooperatively with the agency to ensure that management goals and objectives for mineral exploration and development activities are achieved, that operations are conducted to minimize effects on natural resources, and that the land affected by operations is reclaimed.

S. 3075

S. 3075 withdraws all Federal lands or interest in lands, comprised of approximately 291,000 acres of the Flathead National Forest, within the North Fork watershed of the Flathead River from all forms of location, entry, and patent under the mining laws and from disposition under all laws related to mineral or geothermal leasing. We note that National Park acreage within the watershed is already unavailable for mineral entry. S. 3075 does not affect valid, existing rights, including the 115 leases in the North Fork watershed that are suspended under the *Conner v. Burford* litigation. The Department fully supports S. 3075 as it furthers the goal of preserving the important resources of this region.

The Waterton-Glacier International Peace Park, which extends from Canada into the United States, is one of the great protected ecosystems on the North American continent. A 2010 World Heritage Center/International Union for the Conservation of Nature Report noted that the International Peace Park is "one of the largest, most pristine, intact, and best protected expanses of natural terrain in North America. It provides the wide range of non-fragmented habitats and key ecological connections that are vital for the survival and security of wildlife and plants in the Waterton-Glacier property and the Flathead watershed." Retaining this expanse of natural landscape in the Crown of the Continent ecosystem is of vital importance for providing ecosystem connectivity, which is essential for the growth and survival of plants and animals in the region. S. 3075 will help accomplish this goal.

The Department of the Interior is also committed to maintaining the ecological integrity of Glacier National Park, one of the most noteworthy natural and cultural treasures of our Nation.

Preserving the region's and the park's water resources is also critical. The rich aquatic ecosystems provide breeding and feeding habitats for a variety of important species, and the Department recognizes the importance of maintaining critical habitat corridors when planning for resources uses. S. 3075 will help protect and preserve the important resources of the greater Crown of the Continent ecosystem, including those within Glacier National Park.

Conclusion

The Department supports S. 3075 and commends the many parties involved in protecting the North Fork of the Flathead River and the important resources shared by the United States and Canada. We hope that this legislation and the efforts of the federal and state/provincial governments add to the important legacy of conservation in the Glacier/Waterton Lakes area and Flathead River basin.

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S. 3185, Elko Motocross and Tribal Conveyance Act
April 28, 2010

Thank you for the opportunity to testify on S. 3185, the Elko Motocross and Tribal Conveyance Act. S. 3185 would convey, without consideration, approximately 300 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 pending right-of-way application for a future city road. The BLM Elko RMP also identifies this parcel as available for disposal in support of community expansion.

S. 3185

S. 3185 proposes to convey approximately 300 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. The bill requires the BLM, prior to the taking of land into trust, to complete the environmental review process for the conveyance of a pending right-of-way application for a city road. S. 3185 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. 3185 with minor technical amendments.

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.