

**Statement of
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U.S. Department of the Interior
Senate Energy & Natural Resources Committee
S. 556, Bipartisan Sportsmen's Act of 2015
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Thank you for the opportunity to discuss the views of the Department of the Interior on S. 556, the Bipartisan Sportsmen's Act of 2015. We appreciate the Committee's attention to the important issues of hunting, fishing, and other recreational uses of public lands, and we strongly support the goal of enhancing opportunities for recreation, including hunting, fishing, and target shooting, on public lands. We support the goals of the bill, but we have outlined some concerns in this statement. We look forward to working with the Chairman and the Committee to address these issues.

Agencies in the Department of the Interior manage 19% of the Nation's land area. Providing access to quality recreation on public lands is one of the Department's primary missions as outlined in its current Strategic Plan, which commits to improving outdoor recreation access and increasing opportunities for public enjoyment of Federal lands and waters. In addition to drawing people of all ages outdoors to play, serve, learn, and work, outdoor recreation is a significant contributor to the national economy and the economies of communities that surround the lands we manage. It is important that we make recreational opportunities available in communities across the nation, to promote health and fitness, engage our youth, and inspire the next generations to conserve and protect America's precious resources. In 2012, the Outdoor Industry Association reported that recreation activities generate \$646 billion dollars in spending each year and support 6.1 million jobs. The approximately 417 million visits to DOI-managed lands in 2012 contributed an estimated \$45 billion in economic output to the surrounding economies through trip-related spending.

Because of the complexity of S. 556 and the importance of these issues to the Department, my statement will address each of the bill's provisions individually.

Recreational Fishing, Hunting, & Recreational Shooting on Federal Public Land (Sec.101)

Background

The Bureau of Land Management (BLM) is responsible for the management of 245 million acres of public land under the principles of multiple use and sustained yield. The BLM manages these public lands for a variety of uses, such as energy development, livestock grazing, recreation, and timber production, while protecting an array of natural, cultural, and historical resources. The BLM's recreation program is one of the key elements of our multiple-use mission. In the West, public lands are America's backyard, providing close-to-home outdoor recreation venues. In addition, they afford extensive backcountry recreation opportunities. The expansive landscapes and world-class recreation opportunities offered by the BLM's public lands are among America's greatest treasures.

BLM maintains high quality dispersed recreation opportunities where visitors and recreationists are free to explore and discover undeveloped places in the outdoors. There are countless outstanding examples of fishing and hunting opportunities on the public lands. The BLM-managed Gunnison Gorge National Conservation Area is designated by the State of Colorado as a Gold Medal Trout Fishery and supports excellent rainbow, brown, and cutthroat trout populations; Wyoming BLM lands provide habitat for abundant herds of trophy pronghorn and Rocky Mountain elk; and the BLM-managed Steens Mountain area in Oregon supports fantastic big game hunting opportunities for trophy mule deer. In many places across the west, the BLM's remote lands are highly regarded for the quality of the hunting experiences they offer.

Hunting activities and regulations on public lands are generally managed by State fish and wildlife agencies, and BLM-managed lands are considered open to hunting, fishing, and recreational target shooting unless they have been specifically closed by law or to protect public safety. In rare circumstances, the BLM may also close areas to balance uses of public lands pursuant to a public land-use planning process. The BLM estimates that over 99 percent of BLM-managed public lands are open to hunting, and 99 percent of BLM-managed public lands are open to recreational target shooting. The most common restricted areas are administrative sites, campgrounds and other developed facilities and in a few other areas with intensive energy, industrial or mineral operations or nearby residential or community development.

Analysis

Section 101 of S. 556 provides that Federal land-managing agencies other than the National Park Service (NPS) and U.S. Fish and Wildlife Service (USFWS) exercise their authority to support and facilitate use of and access to Federal land for hunting, fishing, and recreational shooting. This section would require the agencies to consider effects on hunting, fishing, and target shooting when developing planning documents; designate public lands as open to hunting and shooting unless they are closed for reasons authorized under the bill; and authorize designation of areas for target shooting. Finally, this section would initiate reporting requirements for any closures of lands to hunting or target shooting.

The Department strongly supports the goal of promoting recreational fishing, hunting and shooting opportunities. Some of these provisions, however, appear to be duplicative of existing policies and may interfere with existing management practices. For example, the BLM already regards public lands as open to fishing, hunting, and shooting unless it is demonstrated that the activity could result in unacceptable resource damage or create a public health and safety hazard. Any determination to permanently close public lands to certain activities is made following extensive public involvement and notification through the land use planning and NEPA processes. Temporary closures also involve public notification through the Federal Register. Additionally, when developing resource management plans or when taking any action that may affect shooting sports or access, the BLM notifies over 40 hunting and groups, as specified in the Federal Land Hunting, Fishing and Shooting Sports Roundtable Memorandum of Understanding (MOU), expressly to help ensure that these activities and issues are fully considered.

Similarly, the bill provides that the BLM may lease lands for shooting ranges and designate specific lands for target shooting. The BLM currently has and regularly uses its authority under

the Recreation and Public Purposes Act to patent certain lands to cities, counties, and non-profit organizations for use as shooting ranges. This approach allows entities that are focused on the operation of shooting ranges and are better equipped to handle potential clean-up to properly manage these areas of concentrated use. Given the BLM's limited staff and resources, we feel strongly that the current approach is in the best interest of the shooting public and the general public.

In addition to these duplicative requirements, some of the language in the section as drafted appears to contradict the intent of the legislation or to potentially cause confusion with implementation of existing laws. For instance, the BLM is concerned that Section 101(b)(2) may be interpreted to limit the Secretary's discretion and could result in legal uncertainty that might ultimately inhibit the BLM's efforts to enhance opportunities for hunting, fishing, and shooting. Similarly, Section 101(b) (3)(ii) appears to restrict consideration of cumulative effects of certain management actions and activities on adjacent or nearby non-Federal lands, which may in some cases limit the BLM's ability to respond to issues raised in scoping and comply with other federal laws and regulations. Additionally, certain language in this section may be interpreted to allow activities in wilderness areas that are not consistent with the Wilderness Act.

The BLM supports the purposes of this section and would like the opportunity to work with the Chairman to ensure that those goals are met without unnecessary duplication or unintended legal consequences.

Annual Permit and Fee for Film Crews of 5 Persons or Fewer (Sec. 102)

Background

Under current commercial filming fee law (Public Law 106-206), the Secretary of the Interior and Secretary of Agriculture are authorized to establish a fee system for commercial filming activities on Federal lands. The Act requires a permit for all commercial filming and directs the Secretaries to collect a cost recovery fee associated with processing the permit requests and monitoring the permitted activities, and a location or rental fee to provide a fair return to the United States for the use of federal lands. The Department of the Interior regularly receives and processes requests for commercial film permits under existing law.

We welcome individuals, groups, and companies who wish to film the beauty and bounty of our nation's incredible public lands. We also understand and appreciate the interest of hunters and anglers in taking video and photos to record their own experiences and memorialize their visit to the public lands. It is important for Americans to see their public lands and – done right and under the right conditions – commercial filming is a very welcome and important use of our nation's natural areas.

Analysis

Section 102 would establish a process for assessing fees and authorize access to Federal land for small commercial film crews. This section would amend Public Law 106-206 by requiring the Secretaries of the Interior and Agriculture to allow commercial filming crews of five persons or fewer access to all areas designated for public use on lands and waters under their purview, provided each filming crew pays one, \$200 annual fee, and that the access is during public

hours. While notification would be required and the Secretary could deny access under certain circumstances, no further restrictions could be placed on such film crews, including on the cameras, vehicles or other equipment they may use on public lands.

The Department has concerns about the timeframes for permit denial established by this section of the bill. While the bill requires film crews to notify the managing agency 48 hours before filming begins, and allows the Secretary to deny access in certain circumstances, the Department is concerned that this section does not offer the Secretary the discretion needed to manage film crew permits most effectively. Though the Secretary may deny access, the section does not allow for permit restrictions specific to the circumstances of a filming event, which would limit the Department's primary mechanism for avoiding resource damage, user conflicts, or risks to public safety. Additionally, the Department feels that in most cases, a 48-hour notification is not sufficient to assess the possibility of resource damage, user conflicts, or safety risks that may be incurred.

The Department is also concerned that the bill could be interpreted to require authorization of commercial filming in wilderness areas, notwithstanding the requirements and restrictions in the Wilderness Act. Section 4(d)(6) of the Wilderness Act (P.L. 88-577) 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. Under this bill, some of our most pristine lands could be open to commercial filming, regardless of these wilderness factors. Since the vast majority of public lands, including wilderness, do not have designated hours, this use could occur and at any time and without consideration of potential resource impacts.

The Department also has concerns about the fee structure in this section. The effects of some language in this section are not entirely clear. This section does not specify whether the single annual permit fee would be: 1) one fee applicable for all use on federal lands; 2) a fee that must be paid by each film crew to each agency, depending on the type of land being accessed; or 3) an annual fee to be paid for each federal land unit being accessed. This section also does not make clear whether the agencies would be authorized to recover subsequent costs for further monitoring that may be necessary. We also note that in many cases, the \$200 fee may not represent a fair return to the taxpayer for uses authorized under this section. The appropriate cost recovery and location or rental fees for a given use may depend on the needs of the project, requirements for monitoring, and degree of impact to natural or cultural resources or the experience of other visitors.

The Administration appreciates the needs of the many different visitors to the public lands. These constituencies include commercial film makers and videographers, and we value their contributions in films that educate, enlighten and entertain. However, it is important that all commercial filming activities be managed to avoid disruption to visitor activities and damage to natural and cultural resources, and the Administration cannot support this section as written because it does not provide sufficient discretion for the agencies to manage film crews as a use of public lands.

Federal Action Transparency (Sec. 103)

Background

The Equal Access to Justice Act (EAJA) provides that in certain circumstances the Federal government pay attorney fees and certain expenses incurred in successful litigation against the Federal government. The Department of the Interior is committed to transparency as it works to fulfill its broad mission. In recent years the Department has worked to better understand and address litigation risks and the associated costs of our litigation-related activities.

Analysis

We support efforts to increase the transparency of the EAJA process. We are aware that there are concerns regarding the role of the Administrative Conference of the United States in tracking expenditures pursuant to the EAJA, but defer to others on that issue. We note, however, that the specific reporting requirements under the bill would impose a substantial burden on the Department of the Interior by increasing staff time and expenses in collection, formatting, and dissemination of the requested information.

Bows in the Parks (Sec. 104)

Background

Sec. 104 would prohibit the Director of the NPS from promulgating or enforcing any regulation that prohibits an individual from transporting inoperable bows and crossbows across any unit of the National Park System in the vehicle of an individual if the individual is not otherwise prohibited by law from possessing the bows and crossbows; the bows or crossbows that are not ready for immediate use remain inside the vehicle of the individual throughout the period during which the bows or crossbows are transported across National Park System land; and the possession of the bows and crossbows is in compliance with the law of the State in which the unit of the National Park System is located.

Analysis

NPS regulations in 36 CFR 2.4 allow for the transport of an inoperable bow in a motor vehicle and the NPS has no intentions of changing this regulation. Therefore, the Department objects to this section because it is unnecessary. However, if the committee decides to continue to include this provision, we would recommend that it be amended to define the term “vehicle” and to require that bows and crossbows, as well as arrows, be stored in a manner that prevents their ready use.

Availability of LWCF for Recreational Public Access Projects (Sec. 201)

Background

The Land and Water Conservation Fund (LWCF) is one of the Nation’s most effective tools for expanding access for hunting and fishing, conserving critical landscapes, creating places for children to play and learn, protecting traditional uses such as working ranches and farms, acquiring inholdings to manage contiguous landscapes, and protecting sites of historic and cultural significance. In FY 2014, the Department of the Interior received roughly \$135 million in LWCF funding, which the Department used to consolidate and more effectively manage the

lands for which it is responsible, and to acquire easements and rights-of-way to enhance public access. For the BLM, nearly 100 percent of LWCF funding over the past several years has been used for projects that enhance public access for recreation.

Analysis

Section 201 of the bill amends the Land and Water Conservation Act to require not less than the greater of 1.5% or \$10,000,000 of the funds be directed toward public access. The Department supports providing acquisition of easements, rights-of-way, and fee title acquisitions for the purpose of enhancing access to public lands, and would like to note that access priorities can be and have been set administratively through the bureaus' annual LWCF prioritization process. While we strongly support these goals, we would prefer to consider creating a permanent set-aside in the context of establishing full and mandatory funding for the Land and Water Conservation Fund.

Identifying Opportunities for Recreation, Hunting, & Fishing on Federal Land (Sec. 202)

Background

Bureau of Land Management

BLM-managed public lands receive an estimated 60 million visits annually from hunters, anglers, hikers, bikers, OHV riders, climbers, boaters, and other recreationists. The BLM actively seeks to improve access to public lands and has conducted several comprehensive analyses that reported on acres of land with inadequate access. More than 90% of BLM-managed lands are accessible to the public for recreational purposes via adjacent public lands, easements, or rights-of-way. The BLM continually seeks opportunities to acquire access to public lands which are inaccessible because of private or state land ownership patterns that block reasonable access. The BLM uses input from the public obtained during the land use planning and transportation management planning processes to drive the expansion of hunting, fishing, and recreational access opportunities through the acquisition of easements, rights-of-ways, and other means. BLM field offices are also continually updating local maps and online resources with improved access information that incorporate the unique user needs of each local area. In an effort to utilize technologies that will allow the public to produce and view web maps, the BLM is also developing an interactive web-based interface for the public to access BLM maps, data, and information.

National Park Service

The NPS manages 84 million acres of land in 407 units of the National Park System across the U.S. Since 1916, the American people have entrusted the NPS with the care of their National Parks. With the help of volunteers and park partners, the NPS is proud to safeguard these special places and to share their stories with visitors across the nation. Each of these special places reflects a fundamental truth about the American experience, whether it is the natural beauty of our lands or the historic importance of the people and events that have shaped this nation. In 2014, there were 292.8 million visits to National Parks. In 2013, our parks contributed \$26.5 billion to the nation's economy, and supported 240,000 jobs nationwide.

U.S. Fish and Wildlife Service

Hunting and fishing are two priority public uses of the National Wildlife Refuge System. Over

500 national wildlife refuges and wetland management districts are open for fishing, wildlife watching, hunting, photography and other forms of recreation. Currently, 335 national wildlife refuges are open for hunting and 271 are open for fishing. As a way to improve access for all Americans, the U.S. Fish and Wildlife Service (FWS) manages over 3,500 small outdoor recreation facilities on national wildlife refuges that are accessible for hunters, anglers, and other outdoor enthusiasts. These small facilities are supported by a network of well managed roads and trails that enhance access for the public. Refuges rely upon comprehensive conservation plans to identify areas to be opened to the public and are required to undertake appropriate use and compatibility reviews before new recreation programs can be offered.

The FY 2014 Consolidated Appropriations Act (PL 113-76) directed the Department and the U.S. Forest Service to report to Congress on actions they are taking to preserve and improve access to public lands for hunting, fishing, shooting and other recreational activities, including proposed improvements for public involvement in agency decision-making and coordination with State and local governments. The Department is finalizing that report and looks forward to sharing it with the Congress in the near future, as well as using it as a basis for further discussions with the bill's sponsor and the Committee.

Analysis

Section 202 of the bill would require the BLM, NPS, FWS, and the U.S. Forest Service, to develop and maintain a list of priority parcels for which hunting, fishing, or recreational uses are allowed by law but public access is inadequate or unavailable. This section further requires the agencies to identify a general process for obtaining legal public access, and to develop a report to Congress on options providing for access. We note that the Department has existing authority to complete all of these tasks, and that we are prioritizing recreational access under existing law. The Department supports the objectives of this section, but would like to work with the sponsor on technical changes to ensure that reporting and tracking requirements can be feasibly met with existing funding and staffing.

Federal Land Transaction Facilitation Act (Sec. 203)

Background

Congress enacted FLTFA in July of 2000 as Title II of Public Law 106-248. FLTFA expired on July 25, 2011. Under FLTFA, the BLM could sell public lands identified for disposal through the land use planning process prior to July 2000, and retain the proceeds from those sales in a special account in the Treasury. The BLM and the other Federal land managing agencies were then able to use those funds to acquire, from willing sellers, inholdings within certain federally designated areas and lands that are adjacent to those areas that contain exceptional resources. Lands were able to be acquired within and/or adjacent to areas managed by the NPS, USFWS, USFS, and the BLM.

Over the life of the FLTFA, approximately 27,249 acres were sold under this authority and approximately 18,535 acres of high resource value lands were acquired. The President's fiscal year 2016 Budget includes a proposal to permanently reauthorize FLTFA. The BLM identifies lands that may be suitable for disposal through its land use planning process, which involves full public participation. Before the enactment of FLTFA, the BLM had the authority under the

Federal Land Policy and Management Act (FLPMA) to sell lands identified for disposal. The proceeds from those sales were deposited into the General Fund of the Treasury. However, because of the costs associated with those sales (including environmental and cultural clearances, appraisals, and surveys), few sales were undertaken. Since it was enacted, the BLM utilized FLTFA to sell 330 parcels previously identified for disposal totaling 27,249 acres, with a total value of approximately \$117.4 million. Over the same time period, the Federal government acquired 37 parcels totaling 18,535 acres, with a total value of approximately \$50.4 million using FLTFA funds.

Using the FLTFA proceeds, the BLM, NPS, FWS, and FS acquired significant inholdings and adjacent lands from willing sellers, consistent with the provisions of the Act. For example, in November 2009 the BLM used FLTFA funds to complete the acquisition of 4,573 acres within the BLM's Canyons of the Ancients National Monument in southwest Colorado. These inholdings encompass 25 documented cultural sites, and archaeologists expect to record an additional 700 significant finds. The acquisition also included two particularly important areas: "Jackson's Castle," which is archaeologically significant; and the "Skywatcher Site," a one-of-a-kind, 1,000-year-old solstice marker. The following are a few additional examples of important FLTFA acquisitions:

- Elk Springs Area of Critical Environmental Concern (ACEC), New Mexico/BLM – This 2,280-acre acquisition protects critical elk wintering habitat.
- Hells Canyon Wilderness, Arizona/BLM – A 640-acre parcel constituting the last inholding within the Hells Canyon Wilderness, located just 25 miles northwest of Phoenix.
- Grand Teton National Park, Wyoming/NPS – This small (1.38 acres), but critical inholding within the Park was acquired and protected from development.
- Nestucca Bay National Wildlife Refuge, Oregon/FWS – This 92-acre dairy farm on the outskirts of Pacific City, Oregon, was slated for residential development and was acquired to protect a significant portion of the world's population of the Semidi Islands Aleutian Cackling Goose.

Analysis

Section 203 of the bill would both reauthorize and enhance the original FLTFA through four major changes. First, the bill permanently reauthorizes FLTFA. Second, under the original FLTFA, only lands identified for disposal prior to July 25, 2000, were eligible to be sold. This section modifies that restriction by allowing any lands identified for disposal through the BLM's land use planning process to be sold through the FLTFA process. The Department supports this change, which recognizes the usefulness and importance of the BLM's land use planning process. Third, the original FLTFA allowed acquisitions of inholdings within, or adjacent to, certain Federal units such as BLM conservation units, National Parks, National Wildlife Refuges, and certain Forest Service units if they existed prior to July 25, 2000. This section eliminates this limitation as well, and we support this change. Finally, the legislation adds exceptions to FLTFA in recognition of specific laws that modify FLTFA with respect to some particular locations. The FLTFA does not apply to lands available for sale under the Santini-Burton Act (P.L. 96-586) and the Southern Nevada Public Land Management Act (P.L. 105-263). This legislation additionally exempts lands included in the White Pine County Conservation, Recreation, and Development Act (P.L. 109-432) and the Lincoln County Conservation,

Recreation and Development Act (P.L. 108-424). Finally, a number of provisions of the Omnibus Public Land Management Act of 2009 (P.L. 111-11) modify FLTFA at specific sites or for specific purposes. These exceptions are also captured by this legislation.

This section of the bill also provides that \$1 million per year be transferred to the Treasury from the Federal Land Disposal Account. The Department recommends deletion of this section, which would reduce the effectiveness of the FLTFA authority. The Department strongly supports Section 203.

Conclusion

Thank you for the opportunity to testify on the seven provisions included in this legislation. The Department shares the Committee's interest in enhancing recreational opportunities and access for hunting, fishing, and target shooting on public lands, and we look forward to continuing to work with you on these important issues. One opportunity for future collaboration on hunting, fishing, and other recreational uses of the public lands is the Administration's legislative proposal for a Congressionally-chartered, non-profit BLM Foundation. The Foundation would provide opportunities for interested members of the public and stakeholders to contribute financially to the programs they care most about – for instance, land acquisition, recreational access projects, and habitat improvement.