

**Statement of
Robert Abbey
Director, Bureau of Land Management
Department of the Interior**

**Before the
Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
United States Senate**

S. 1024, Organ Mountains-Desert Peaks Wilderness Act

August 3, 2011

Thank you for inviting the Department of the Interior to testify on S. 1024, the Organ Mountains-Desert Peaks Wilderness Act. The Administration supports S. 1024, which designates two new National Conservation Areas (NCAs) and eight new wilderness areas in Doña Ana County, New Mexico. We welcome this opportunity to enhance protection for some of America's treasured landscapes.

Background

Doña Ana County is many things – the county with the second highest population in New Mexico; home to Las Cruces, one of the fastest growing cities in the country; and a land of amazing beauty. Towering mountain ranges, dramatic deserts, and fertile valleys characterize this corner of the Land of Enchantment. The Organ Mountains, east of the city of Las Cruces, dominate the landscape. Characterized by steep, angular, barren rock outcroppings, the Organ Mountains rise to nearly 9,000 feet in elevation and extend for 20 miles, running generally north and south. This high-desert landscape within the Chihuahuan Desert contains a multitude of biological zones – mixed desert shrubs and grasslands in the lowlands ascending to piñon and juniper woodlands, and finally to ponderosa pines at the highest elevations. Consequently, the area is home to a high diversity of animal life, including peregrine falcons and other raptors, as well as mountain lions and other mammals. Abundant prehistoric cultural sites, dating back 8,000 years, dot the landscape. The Organ Mountains are a popular recreation area, with multiple hiking trails, a popular campground, and opportunities for hunting, mountain biking, and other dispersed recreation.

On the west side of Las Cruces are the mountain ranges and peaks of the Robledo Mountains and Sierra de las Uvas, which make up the Desert Peaks area. These desert landscapes are characterized by numerous mesas and buttes interspersed with deep canyons and arroyos. Mule deer, mountain lions, and golden eagles and other raptors are attracted to this varied landscape. Prehistoric cultural sites of the classic Mimbres and El Paso phases are sprinkled throughout this region along with historic sites associated with more recent settlements. This area is also home to the unusual Night-blooming Cereus – seeing the one-night-a-year bloom in its natural surroundings is a rare delight. Finally, the area provides varied dispersed recreational opportunities.

To the southwest of Las Cruces, near the Mexican border, is the Potrillo Mountains Complex. The geologic genesis of these mountains is different from that of the Organ Mountains and Desert Peaks area. Cinder cones, volcanic craters, basalt lava flows, and talus slopes characterize this corner of Doña Ana County. These lands are famous for their abundant wildlife, and contain significant fossil resources. A well-preserved giant ground sloth skeleton, now housed at Yale University, was discovered in this area. The sheer breadth of these lands and their open, expansive vistas offer remarkable opportunities for solitude.

Senator Bingaman and a wide range of local governments, communities, user groups, conservationists, and Federal agencies have worked collaboratively to develop this consensus proposal to protect all of these special areas.

S. 1024

S. 1024 proposes to designate two new NCAs and eight wilderness areas in Doña Ana County, New Mexico, which would be included in BLM's National Landscape Conservation System. The legislation also releases nearly 31,000 acres from wilderness study area (WSA) status, transfers land from the Department of the Defense (DOD) to the BLM for inclusion within an NCA, and withdraws certain additional lands from disposal, mining, and mineral leasing.

Section 3 of S. 1024 designates eight wilderness areas totaling approximately 241,000 acres. The BLM supports the proposed wilderness designations in S. 1024. We would like the opportunity to work with the Chairman on minor boundary modifications for manageability.

These new wilderness designations are in three distinct areas of the county. First, within the proposed 86,000 acre Organ Mountains NCA, 19,200 acres would be designated as the Organ Mountains Wilderness.

The second area is within the Desert Peaks National Conservation Area proposed in this legislation. The bill proposes three designations in this area: Broad Canyon Wilderness (13,900 acres); Robledo Mountains Wilderness (17,000 acres); and Sierra de las Uvas Wilderness (11,100 acres). These three areas are within the 75,550-acre Desert Peaks NCA. Within the Robledo Mountains Wilderness, a small corridor of approximately 100 acres has been designated as "potential wilderness" by section 3(g) of S. 1024. The lands included in this potential wilderness contain a communications right-of-way, and it is our understanding that it is the intention of the Chairman to allow the continued use of this site by the current lessees. However, in the event that the communications right-of-way is relinquished, these lands would be reclaimed and become part of the wilderness area. We support this provision.

Finally, the Potrillo Mountains complex in the southwest corner of Doña Ana County includes: Aden Lava Flow Wilderness (27,675 acres); Cinder Cone Wilderness (16,950 acres); Potrillo Mountains Wilderness (125,850 acres); and Whitethorn Wilderness (9,600 acres). Both the Potrillo Mountains Wilderness and Whitethorn Wilderness extend into adjacent Luna County.

Two National Conservation Areas are established by section 4 of the legislation – the Organ Mountains NCA and the Desert Peaks NCA. As noted above, both of these NCAs include proposed designated wilderness within their boundaries. Each of the NCAs designated by Congress and managed by the BLM is unique. However, all NCA designations have certain critical elements in common, including 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 4 of the bill honors these principles, and the BLM supports the designation of both of these NCAs.

Much of the lands proposed for both wilderness and NCA designations have been historically grazed by domestic livestock, and grazing continues today. Many of BLM's existing wilderness areas and NCAs throughout the West are host to livestock grazing, which is compatible with these designations. This use will continue within the NCAs and wilderness areas designated by S. 1024.

Section 4(f) of the bill transfers administrative jurisdiction of 2,050 acres from DOD to the BLM. These lands, currently part of the Army's Fort Bliss, would be incorporated into the Organ Mountains NCA. The lands to be transferred include the dramatic and scenic Fillmore Canyon as well as the western slopes of Organ Peak and Ice Canyon. We would welcome these lands into BLM's National System of Public Lands.

Section 6 of S. 1024 concerns the recently established Prehistoric Trackways National Monument, just southeast of the proposed Desert Peaks NCA. The Monument was established in Title II, Subtitle B of the Omnibus Public Land Act (Public Law 111-11) signed by the President on March 30 2009. Section 6 of S. 1024 addresses recent additional discoveries of 280 million-year old reptile, insect, and plant fossils on adjacent BLM-managed lands by adding 670 acres to the Monument. The BLM supports this expansion of the Monument.

Section 5(d) of the legislation provides for the withdrawal of two parcels of BLM-managed lands from the land, mining, and mineral leasing laws. The parcel designated as "Parcel A" is approximately 1,300 acres of BLM-managed lands on the eastern outskirts of Las Cruces. This parcel is a popular hiking and mountain biking site, and provides easy access to the peak of the Tortugas Mountains. From here, visitors can take in spectacular views of Las Cruces and the Rio Grande Valley. We understand that Chairman Bingaman's goal is to ensure that these lands are preserved for continued recreational use by Las Cruces residents. The legislation provides for a possible lease of these lands to a governmental or nonprofit agency under the Recreation and Public Purposes Act. The larger, 6,500 acre parcel, designated as "Parcel B," lies on the southern end of the proposed Organ Mountains NCA. It is our understanding that Chairman Bingaman considered adding this parcel to the NCA because of important resource values. However, a multitude of current uses make inclusion of this parcel in the NCA inconsistent with the purposes established for the NCA. Therefore, the limited withdrawal of the parcel will better serve to protect the resources within this area without negatively affecting the current uses of the area. The BLM supports the withdrawal of both of these parcels.

In order to provide the greatest flexibility to the Department of Homeland Security and other law enforcement agencies, the bill includes a number of provisions to facilitate and improve border security. First, the legislation releases over 28,000 acres from WSA status along the southern boundary of the proposed Potrillo Mountains Wilderness. Additionally, it places 16,525 acres along that southern boundary in a “restricted use area.” The Secretary is charged with protecting the wilderness character of these lands to the extent practicable, while at the same time allowing for the installation of communications and surveillance facilities that may be necessary for law enforcement and border security purposes. Finally, in order to provide additional flexibility to law enforcement personnel, the bill keeps open for administrative and law enforcement uses only, an east-west route bisecting the Potrillo Mountains Wilderness.

Finally, the BLM, along with many partners, has undertaken restoration efforts on nearly two million acres in New Mexico, with the goal of restoring grasslands, woodlands, and riparian areas to their original healthy conditions. The BLM will continue to implement appropriate land restoration activities that will benefit watershed and wildlife health.

Conclusion

Thank you for the opportunity to testify in support of S. 1024. Both the BLM and the Department welcome opportunities to engage in important discussions such as this that advance the protection of some of America’s most compelling landscapes. Passage of this legislation will ensure that generations of New Mexicans and all Americans will be able to witness a golden eagle soar over the Sierra de las Uvas, hike the landmark Organ Mountains, or hunt in the volcanic outcroppings of the Potrillo Mountains.

**Statement of
Robert Abbey
Director, Bureau of Land Management
Department of the Interior**

**Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
United States Senate**

S. 1144, Soda Ash Competition Act

August 3, 2011

Good morning and thank you for inviting the Department of the Interior to testify today on S. 1144, the Soda Ash Competition Act, which extends for 5 years the royalty rate reduction provisions of the Soda Ash Reduction Act of 2006 (2006 Act).

At this time, the legislation is premature, pending the completion of a report that will analyze the effects of the royalty reduction under the 2006 Act, and contain a recommendation from the Secretary about continuing the royalty reduction.

Soda ash is one of several products derived from sodium minerals mined on public lands and is used in many common products, including glass, pulp, detergents, and baking soda. The mineral trona is a naturally occurring mixture of sodium carbonate, sodium bicarbonate, and water. Soda ash, or “sodium carbonate,” is refined from trona mined at depths of between 800 and 1,600 feet below the surface.

Soda ash may be either natural or synthetic. It can be extracted from mined natural trona deposits, or it can be manufactured synthetically. Synthetic soda ash production began in this country in the 1880s and increased as the demand for soda ash increased.

In the early 1950s, the modern natural soda ash industry began in the Green River Basin of Wyoming, home of the world’s largest known natural deposit of trona. In 2010, the U.S. soda ash industry consisted of five companies that mine and mill soda ash, four of which operate five plants in Wyoming. One company in California produces soda ash from sodium-carbonate rich brines. At the end of FY 2010, there were 86 Federal sodium leases covering 113,886 acres in Wyoming, California, Colorado, Arizona, and New Mexico. Sixty-one of these Federal sodium leases were located in Wyoming.

Although in 2010 soda ash represented only 2 percent of the nation’s \$39 billion nonfuel mineral industry, its use in many diversified products, including flat glass for the automobile and construction industries, makes it a substantial contributor to the gross domestic product of the United States.

Soda Ash Report

A provision of the 2006 Act requires the Secretary of the Interior to report on the effects of the royalty rate reduction at the end of the 4-year period after enactment and before the end of the fifth year. According to the Act, the report must discuss:

- The amount of sodium compounds and related products shipped to market from Federal lands;
- The number of jobs that have been created or maintained;
- The royalty paid to the United States on the sodium compounds and related products and the portion paid to states; and
- A recommendation of whether the reduced royalty rate should continue.

The report is to include an analysis of data on production, exports, sales values, employment, and royalties. The benchmarks against which the effects of the royalty reduction are evaluated are the conditions that would have been anticipated to prevail absent the royalty reduction. The Bureau of Land Management (BLM) has been working with the Department to finalize the report so that it may be transmitted to Congress in order to meet the October 11, 2011, timeframe.

The BLM can offer some insight at this time into its factual findings. Specific to the three questions identified in the Act:

- Total domestic sodium minerals sales from FY 2002 through FY 2010 ranged from 12.2 million tons to 13.8 million tons annually based on information reported by the Department's Office of Natural Resources Revenue (ONRR). In FY 2006, the year before the royalty reduction took effect, total domestic sales of sodium compounds and related products were approximately 12.9 million tons. The following year, domestic sodium sales increased 7 percent, reaching 13.8 million tons. By FY 2010, domestic sales were approximately 13 million tons, or about 1 percent higher than the total in FY 2006.
- Based on available data¹, overall employment has not increased since passage of the Act. An analysis of the number of jobs maintained depends on a number of factors such as the overall soda ash market conditions and employee productivity.
- Royalty payments on sales of sodium from Federal leases ranged from a low of \$10.3 million in FY 2004 and peaked in FY 2006 at \$29.1 million. From FY 2006 to FY 2007, there was a steep drop in royalty payments as a result of the royalty rate reduction authorized under the Act. Since passage of the Act, Federal royalty payments have remained below \$20 million per year.

¹ Based on data from the United States Geological Survey Mineral Commodity Summaries, the Industrial Minerals Association—North America, and the Wyoming State Inspector of Mines.

The BLM is also able to identify that:

- For the four years following passage of the Act, total sales revenues from sodium production was more than 60 percent higher than the total sales revenues from the four years before passage of the Act based largely on increases in the commodity prices. For example, the weighted average annual sodium price rose from about \$89 per ton in FY 2006, the year before the Act took effect, to approximately \$126 per ton in FY 2009.
- Since passage of the Act, a significant amount of production has shifted from state leases and private (fee) lands onto Federal leases, according to data from ONRR.
- United States exports of soda ash gradually increased from FY 2002 through FY 2008, dropping in FY 2009 during the global economic downturn. United States exports recovered in FY 2010, and were 11.7 percent higher than the export totals for FY 2006.

The 2006 Act requires the Secretary to make a recommendation as to whether the royalty rate reduction should be continued. If enacted, S. 1144 would make the Secretary's recommendation moot.

S. 1144

S. 1144 updates the original Soda Ash Royalty Reduction Act by extending the royalty rate of 2 percent for 5 years, until October 2016. The Act waives the requirements of section 102 (a)(9) of the Federal Land Policy Management Act of 1976 (FLPMA), section 24 of the Mineral Leasing Act, and the terms of any lease under the Act. The FLPMA citation states that it is the policy of the United States to receive fair market value for the use of public lands and their resources unless otherwise provided by statute. The Mineral Leasing Act sets the royalty rate at not less than 2 percent.

Before the royalty reduction Act went into effect in 2006, the BLM was charging royalty rates of 6 and 8 percent. The BLM established these rates based on a study to examine the fair market value in the sodium industry in Wyoming. The study reviewed many comparable state and private leases and found that fair market value in Wyoming appeared to be somewhat higher than the 5 percent being charged by the BLM at that time. As a result of the study, the BLM determined that the royalty for all then-existing leases would be increased from 5 to 6 percent at the lease renewal date. The BLM, based on the study, also determined that the royalty rate on all new leases would be 8 percent. In the Green River Basin at that time, the royalty rate on most private land was 8 percent and 5 percent on State lands.

Conclusion

Thank you again for the opportunity to testify on S. 1144. I would be glad to answer your questions.

**Statement of
Robert Abbey
Director, Bureau of Land Management
Department of the Interior**

**Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
United States Senate**

S. 1149, Geothermal Production Expansion Act

August 3, 2011

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to provide the views of the Department of the Interior on S. 1149, the Geothermal Production Expansion Act. S. 1149 would amend the Geothermal Steam Act of 1970 to allow non-competitive leasing of Federal geothermal energy resources when a valid geothermal discovery is made on adjoining lands. The Bureau of Land Management (BLM) supports the goal of enhancing geothermal exploration and development by ensuring that valid discoveries can be responsibly developed. Accordingly, the BLM generally supports S. 1149, and believes that the bill's provision that the Secretary of the Interior establish regulatory procedures for determining fair market values of adjoining lands is the most effective way to ensure a fair return to American taxpayers. The BLM has concerns with a few provisions in the legislation and would like to work with the Committee to address them.

Background

Geothermal energy resources on Federal lands are leased and managed in accordance with the Geothermal Steam Act of 1970 (GSA), which was amended by the Energy Policy Act of 2005 (EPAAct). The EPAAct made extensive changes to the law governing geothermal leasing and royalty policies. The changes were designed to encourage geothermal energy development and simplify the royalty structure, while ensuring a fair return for the use of Federal lands and geothermal resources. The GSA, as amended, provides the BLM with the authority for leasing and managing geothermal resources on the public lands, and the delegated authority for leasing geothermal resources on lands managed by the U.S. Forest Service (FS). In 2008, the BLM and FS jointly prepared and issued a Programmatic Environmental Impact Statement (PEIS) that analyzed the potential for geothermal leasing on their respective lands. Based on this analysis, the BLM and FS have opened 192 million acres to potential geothermal leasing.

Federal geothermal resources have the potential to make an important contribution toward the President's goal of increasing energy production from clean, renewable sources. To date, the BLM has issued 818 geothermal leases that cover 1.2 million acres of Federal lands. Approximately 59 leases have reached producing status with a generating capacity of nearly 1,300 megawatts (MW). These producing leases account for more than 40 percent of current

U.S. geothermal capacity. Despite this progress, the development of geothermal energy is just beginning, and its future role and importance is expected to increase significantly, from the current level to 12,200 MW by 2025, according to estimates in the 2008 PEIS. Notably, this is often baseload power that does not have the variable qualities of some other renewable sources and may pair well with them.

The BLM's geothermal leasing program is administered under regulations (43 CFR 3200 and 3280) issued in 2007 to reflect the 2005 EPLA's amendments to the GSA. Under these regulations, most leases for geothermal development on Federal lands are offered initially through competitive oral auctions, which are held about twice per year. Typically, the parcels offered at auction are nominated for lease by industry, but may also be nominated by the public, or by Federal, state, and local governments. Since competitive auctions began in 2007, a total of 366 geothermal leases have been sold, generating more than \$74 million in revenue. In addition to the price paid at auction, geothermal lease holders pay annual per-acre rental fees until production begins. Thereafter, lease holders pay royalties or fees on production.

Lease parcels that do not receive a bid at auction are made available for noncompetitive lease for a period of 2 years, at a price of \$1.00 per acre. In addition, noncompetitive geothermal leases may be offered under certain conditions for direct, on-site energy uses, which include the use of geothermal steam and hot water in greenhouses and aquaculture. Noncompetitive leases are also offered to qualified mining claim holders.

S. 1149

S. 1149 seeks to focus Federal geothermal energy leasing activities toward entities that intend to develop geothermal resources rather than toward those who may intend to obtain leases for parcels with geothermal resources for speculative purposes. More specifically, the bill aims to address a practice whereby speculators purchase at auction Federal geothermal leases for parcels that are located adjacent to parcels of Federal or private land with existing geothermal leases or developments. This practice is viewed by some as an effort to capitalize upon another company's geothermal exploration efforts, and is a disincentive for future geothermal investment and development. Because the geothermal competitive leasing program is open to all qualified bidders, the potential exists for such speculative activity.

To address this concern, the legislation authorizes non-competitive leasing of adjoining Federal geothermal resources when a valid discovery of geothermal resources is made, and the geothermal resources are shown to extend into unleased Federal land. Under the bill, a Federal non-competitive lease would be available only for areas not exceeding 640 acres that have not already been leased or nominated to be leased competitively. Only one noncompetitive lease could be issued for each valid geothermal discovery.

To qualify for a noncompetitive lease under this legislation, an applicant would have to demonstrate, consistent with industry standards, a valid discovery of a geothermal resource. An applicant also would have to present sufficient geological and technical data showing that the geothermal resource extends into adjoining Federal lands.

Section 3 of S. 1149 would amend Section 4(b) of the GSA to define fair market value per acre for the non-competitive lease. Under the provisions of Section 3, the lessee would pay fair market value for the non-competitive lease in accordance with regulations issued by the Secretary of the Interior. The bill would set a minimum price on how much the Secretary may determine the fair market value to be at not less than the greater of \$50 per acre, or four times the median amount paid per acre for all land leased during the preceding year.

This legislation would make proposed fair market value determinations open for public comment for a period of 30 days and would allow a qualified lessee and any affected party to appeal a fair market value determination. Further, the lease awarded non-competitively would be assessed the annual rental rate of leases awarded competitively.

The BLM supports the objective of S. 1149 to enhance geothermal development by increasing investor confidence that geothermal discoveries could be fully developed. Additionally, BLM supports a requirement that regulations be promulgated to establish procedures for determining the fair market value of leases on adjoining lands.

The BLM is concerned, however, about the provision of S. 1149 that sets a minimum price on how much the Secretary may determine the fair market value to be. Though the minimum price set forth in the bill may provide some assurance of a return to American taxpayers, the price may not reflect a fair market value. The BLM believes that the provision is unnecessary, because under the bill, the Secretary would be required to establish procedures for determining fair market values of these leases. With these procedures, the BLM would consider a number of factors, including available information on the known resources and the value of other leases within the local market, in determining a price that is fair for that lease. Thus, the BLM recommends that the provision that sets a minimum price be removed from the bill.

The BLM also has concerns with the timeframes included in the legislation. Specifically, the promulgation of regulations issued by the Secretary typically requires more than 180 days. The 90 days provided in the bill for determining the fair market value of a lease may not be adequate to conduct such an evaluation.

Conclusion

The BLM supports efforts to enhance geothermal exploration and development in the United States in a manner that is fair to geothermal developers and other participants in the competitive leasing process. We must ensure those efforts result in a fair return to the American taxpayers. Thank you for the opportunity to testify and I would be happy to answer any questions.