Testimony of
Mike Pool, Deputy Director
Bureau of Land Management
Department of the Interior
Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands and Forests
S. 303, Concerning Claimants of a Small Miner Waiver
March 22, 2012

Thank you for the opportunity to testify today on S. 303, which would require the Bureau of Land Management (BLM) to allow mining claimants a chance to "cure" their failure to meet the required filing deadlines. This bill would also give private relief to two particular mining claimants whose mining claims have been deemed forfeited or abandoned for failure to comply with applicable laws and regulations, and would give one of those claimants the opportunity to obtain fee title to the reinstated mining claims from the Government.

The Department of the Interior opposes S. 303 because of the enormous administrative burden it would generate, and because it singles out two mining claimants for special treatment and leaves open the question as to how other mining claimants in similar situations would be affected.

Background

The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 §§ 10101 to 10106, 107 Stat. 312, 405-07 (Aug. 10, 1993) (maintenance fee statute), established an annual maintenance fee for unpatented mining claims, mill sites, and tunnel sites. This annual maintenance fee is currently set by regulation at $140 per mining claim or site. The maintenance fee statute also gave the Secretary of the Interior the discretion to waive the annual maintenance fee for certain "small miners" -- mining claimants who hold 10 or fewer claims or sites.

Following the enactment of the maintenance fee statute, the Department promulgated regulations that exercised the Secretary's discretion to allow the "small miner waiver." These regulations state that in order to qualify for this "small miner waiver" under the maintenance fee statute, the claimant must, among other things, file a maintenance fee waiver request that certifies that he and all related parties hold 10 or fewer mining claims or sites. Under the original regulations, the deadline for filing the maintenance fee waiver request for the upcoming assessment year was August 31, which was the same day as the statutory deadline for filing annual maintenance fees. When Congress changed the statutory annual maintenance fee deadline to September 1, the Department changed the deadline for maintenance fee waiver requests to also be September 1 for the coming assessment year. The Secretary's decision to make the regulatory deadline for filing maintenance fee waiver requests the same as the statutory deadline for paying annual mining claim maintenance fees took into consideration the statutory constraint that maintenance fee waivers could not legally or practically be sought any later than the deadline for the maintenance fee itself.

The same year that Congress changed the deadline for paying the maintenance fee to September 1, it amended the maintenance fee statute to allow claimants seeking a "small miner waiver" to cure a "defective" waiver certification. Omnibus Consolidated and Emergency Supplemental

Appropriations Act for Fiscal Year 1999, Pub. L. No. 105-277, 112 Stat. 2681-235 (1998) (codified as amended at 30 U.S.C. § 28f(d)(3)). The amendment required the BLM to give claimants filing timely "defective" maintenance fee waiver requests notice of the defect and 60 days to cure the defect or pay the annual maintenance fee due for the applicable assessment year.

Another change in the administration of mining laws and regulations occurred in the Department of the Interior and Related Agencies Appropriations Act of 1995, Pub. L. No. 103-332 §§ 112-113, 108 Stat. 2499, 2519 (Sept. 30, 1994), which placed a moratorium on the patenting of new mining claims or sites, and the further processing of existing patent applications; this moratorium has continued unbroken through subsequent appropriations language. The processing of a patent application to completion can result in the transfer of fee title or "patent" to the claimant for the Federal lands where the claims and sites are located.

Congress provided an exemption from the patenting moratorium for applicants who had satisfied the requirements of the Mining Law of 1872 for obtaining a patent before the moratorium went into effect. Only patent applications for which a "First Half of Mineral Entry-Final Certificate" (FHFC) had been issued were considered exempt or "grandfathered" from the moratorium. Over 600 patent applications were pending with the BLM when the moratorium went into effect on October 1, 1994. Of those, 405 patent applications had received a FHFC by September 30, 1994, and were determined to be "grandfathered" from the moratorium. Mining claimants in a "grandfathered" patent application are not required to comply with the maintenance fee statute after the FHFC was issued.

The remaining 221 patent applications were considered "non-grandfathered" and subject to the moratorium. The BLM did no further processing of these patent applications and the mining claimants were responsible to continue to meet annual maintenance requirements -- timely payment of the annual maintenance fee, or filing a small miner waiver and completing the required annual assessment work -- in order to keep their mining claims active and their "non-grandfathered" patent applications pending.

S. 303

Section 1(a) of S. 303 would require the BLM to provide holders of 10 or fewer mining claims or sites with written notice of any "defect" in their maintenance fee waiver request or their affidavit of annual assessment work associated with the request. Unlike the current maintenance fee statute, failure to timely file the waiver request or affidavit of annual assessment work would be considered a "defect" under S. 303. As under the current statute, mining claimants would have 60 days from the receipt of written notice to correct that defect or pay the applicable maintenance fee.

The BLM opposes the provision in Section 1(a) to amend the maintenance fee statute to make failure to timely file a small miner fee waiver request a curable "defect." The BLM also opposes amending the maintenance fee statute to allow claimants to "cure" defective affidavits of annual assessment work, including failure to timely file the affidavits as required by section 314 the Federal Land Policy and Management Act. Currently, the cure provision in 30 U.S.C. § 28f(d)(3) applies only to maintenance fee waiver requests.

As written, the legislation would effectively eliminate the deadlines for filing a small miner waiver and affidavit of annual assessment work. Defining an untimely filing as "defective" would require the BLM to accept late filings after the deadline, no matter how late. This change will place an excessive administrative review and notification burden on the BLM and would vastly increase the cost of administering the small miner waiver. Further, it would enable a mining claimant to avoid filing the waiver or affidavit of annual work and hold the claims or sites in suspense until the BLM is able to identify the deficiency and notify the claimant.

Under Section 1(a) of S. 303, if a mining claimant either files an untimely maintenance fee payment or waiver or fails to make any filing at all, the BLM would no longer be able to simply declare the mining claim void by operation of law, as authorized under the current maintenance fee statute since 1994. Rather, under this new provision, if any claimant fails to pay the annual maintenance fee by the deadline, the BLM will have to first determine whether the claimant is qualified as a small miner and, if so, give notice and opportunity to cure -- whether or not the claimant had any intention of filing a maintenance fee waiver request.

This additional administrative step would be required even if the holder of the mining claim or site had not filed a maintenance fee waiver in the past, for two reasons. First, fewer than 13,000 mining claimants among those who are eligible for a maintenance fee waiver each year actually request a waiver, and S. 303 does not restrict the "cure" provisions to those claimants who had intended to file a waiver but missed the deadline. Second, verifying eligibility for the "cure" provisions of S. 303 would be required each year for any mining claimant who missed the payment deadline because eligibility for a maintenance fee waiver depends on the number of mining claims and sites on the date that the maintenance fee payment was due. See 30 U.S.C. § 28f(d).

It would be costly and difficult for BLM to assess whether every mining claimant who either makes an untimely filing or fails to file anything is eligible to invoke the "cure" provisions of S. 303. Moreover, because the agency would have no way to determine if a claimant holding 10 or fewer claims or sites had simply decided not to pay the fee or file the fee waiver request and intentionally relinquish his claims, the BLM would have to send a "defect" notice to all such claimants who fail to either timely pay their maintenance fees or timely file a maintenance fee waiver request and give them the opportunity to cure. This effectively extends the payment deadline for any claimant holding 10 or fewer mining claims by removing any penalty for failing to pay in a timely manner.

In addition, this increased administrative burden would so drastically increase the processing time for all mining claimants as to allow some claimants to continue to hold and work their claims for months or potentially years after what would have been forfeiture by operation of law under the current statute without providing payment. It would be challenging for the BLM to reliably determine if a mining claimant intended to relinquish his mining claim or site. Action on the part of individuals wishing to maintain a claim to a Federal resource is a basic responsibility found in many of our Federal programs. Relieving individuals of this basic responsibility is contrary to the interest of the general public that owns the property.

In addition, the BLM opposes the bill's provisions outlined in Section 1(b) under "Transition Rules" on behalf of two mining claimants who forfeited their claims for failure to meet the filing requirements discussed above. Section 1(b) is essentially a private relief bill that gives special treatment to two sets of claimants, allowing their mining claims to be reinstated, and allowing one of them to have his patent application considered "grandfathered" from the patent moratorium.

The mining claims described under Sec. 1(b)(1) belonged to a claimant from Girdwood, Alaska. The claimant owned nine mining claims located in the Chugach National Forest in southeastern Alaska. The claimant had filed a patent application for these mining claims, but his application had not received a FHFC by the deadline. As such, his patent application was considered "non-grandfathered" and his mining claims were subject to ongoing annual maintenance requirements. The BLM determined these mining claims to be statutorily abandoned in January 2005 when the claimant failed to file his annual assessment work documents in accordance with the Federal Land Policy and Management Act of 1976, and the Interior Board of Land Appeals subsequently upheld the BLM's decision. The bill would give the claimant the opportunity to "cure" the defects that led to his mining claims being declared abandoned and void, and to pay prior maintenance fees or seek a waiver of those fees for his mining claims.

The bill would also consider the claimant "to have received first half final certificate" for these voided mining claims before September 30, 1994, thereby "grandfathering" his patent application from the patent moratorium. A portion of the land formerly covered by these claims is now closed to mineral entry, because the State of Alaska has filed Community Grant Selection under the authority of the Alaska Statehood Act. Considering the claimant's patent application "grandfathered" would give him priority over the State of Alaska with respect to these lands, and may mean that he, rather than the State of Alaska, would obtain the fee title.

The forfeited mining claims described under Sec. 1(b)(2) belonged to claimants from Homer, Alaska, and are located on the Seward Peninsula in western Alaska. In 2009, the BLM declared the claimants' mining claims to be forfeited for failure to timely pay maintenance fees or file a maintenance fee waiver request, and the Interior Board of Land Appeals upheld the BLM's decision in 2010. The claimants are now challenging the Department's voidance decision in Federal court in Alaska. The bill would allow the claimants' forfeited mining claims to be reinstated by "curing" their untimely maintenance fee waiver request or paying the applicable maintenance fees. The claimants are seeking private relief because the State of Alaska has selected these lands under the authority of the Alaska Statehood Act. As discussed above, selection by the State of Alaska has closed these lands to mineral entry, so the claimants may not relocate their claims.

The BLM's final concern with respect to this legislation requiring the BLM to consider failure to timely file a maintenance fee waiver certificate a curable "defect" is that the bill is unclear as to the retroactive effects on other small miners who have forfeited or abandoned their mining claims because they failed to timely file a small miner waiver or affidavit of annual assessment work. This includes those small miners who have lost their challenges of BLM decisions declaring their claims forfeited or abandoned at the IBLA. Furthermore, the Department of Justice advises that, as a practical matter, it seems likely that small miners will pursue a "cure"

for failure to pursue a small miner waiver only where the claim owner cannot simply relocate that claim, which might occur if, for example, intervening rights have been granted or the land has been conveyed or assigned other uses. If that has happened, then reinstating any forfeited or abandoned mining claims would create confusion, and generate litigation, and could arguably create takings liability on the part of the United States.

Conclusion

Thank you again for the opportunity to testify on S. 303. I would be glad to answer your questions.

Statement of
Mike Pool
Deputy Director
Bureau of Land Management
U.S. Department of the Interior
Before the
Senate Energy and Natural Resources
Public Lands and Forests Subcommittee
S. 1129, the Grazing Improvement Act
March 22, 2012

Introduction

Thank you for the opportunity to present the views of the Department of the Interior (Department) on S. 1129, the Grazing Improvement Act. The Bureau of Land Management (BLM) is dedicated to a broad range of stewardship goals, including the long-term health and viability of the public rangelands. Our Nation's rangelands provide and support a variety of goods, services, and values important to every American. In addition to being an important source of forage for livestock, healthy rangelands conserve soil, store and filter water, sequester carbon, provide a home for an abundance of wildlife, provide scenic beauty and are the setting for many forms of outdoor recreation.

The BLM recognizes that the conservation and sustainable use of rangelands is important to those who make their living on these landscapes—including public rangeland permittees. Public land livestock operations are important to the economic well-being and cultural identity of the West and to rural Western communities. Livestock grazing is an integral part of BLM's multiple-use mission, and at the right levels and timing, can serve as an important vegetation management tool, improving wildlife habitat and reducing risk of catastrophic wildfire.

The BLM is committed to collaborating with those who work on the public lands and takes seriously its challenge to conserve and manage healthy rangelands for current and future generations.

The Department shares the Committee's interest in identifying opportunities for increasing efficiencies in public land grazing administration, as well as finding ways to make permit renewal less complex, costly, and time-consuming. The BLM would like to work with the Committee to further these shared goals. However, the Department cannot support S. 1129 as it limits the BLM's ability to provide for appropriate environmental review and public involvement—critical components of the BLM's multiple-use management of the public lands—as well as the BLM's ability to implement permits that have been appealed. The Department looks forward to continuing a dialogue with the Congress on these important matters.

Background

The BLM manages approximately 17,750 livestock grazing permits and leases for 12.3 million AUMs (animal unit months) on over 160 million acres of public lands in the West. Since 1999, the BLM has evaluated the health of the rangelands based on standards and guidelines that were developed with extensive input from the ranching community, as well as from scientists, conservationists, and other Federal and state agencies. The BLM collects monitoring and assessment data to compare current conditions with the standards and land use plan objectives. This information is used to complete environmental assessments, to develop alternative management actions, and to modify grazing management as needed.

The BLM administers the range program through issuance of grazing permits or leases. The Federal Land Policy and Management Act (FLPMA) provides for a 10-year (or less) term for grazing permits. In a typical year, the BLM processes over 2,000 permit renewals or transfers. In 1999 and 2000, the BLM saw a spike in permit renewals, when over 7,200 permits were due for renewal. The BLM was unable to process all those permits before expiration, which resulted in a backlog of grazing permit renewals that remains today. By the end of the 2012 Fiscal Year, BLM anticipates that a backlog of 4,200 unprocessed permits will remain. The BLM is committed to eliminating the backlog of grazing permit renewals and to issuing permits in the year they expire. An increase in appeals and litigation of grazing management decisions continues to pose significant workload and resource challenges for the BLM.

The BLM will continue to focus on grazing permits for the most environmentally sensitive allotments, using authorities Congress provided in the FY 2012 Consolidated Appropriations Act concerning grazing permit renewals and transfers. This strategy will allow the BLM to address a wide array of critical resource management issues through its land health assessments and grazing decisions. Additionally, this strategy will help ensure that the backlog of unprocessed permits consists of the least environmentally-sensitive allotments that are more custodial in nature and/or that are already meeting land health standards.

S. 1129

S. 1129 provides for automatic renewal of all expired, transferred, or waived permits, and categorically excludes all permit renewals, reissuance, or transfers from preparation of an environmental analysis under the National Environmental Policy Act (NEPA) if the decision continues current grazing management of the allotment. Terms and conditions of the permit would continue until a permit is later renewed in full compliance with NEPA and other Federal laws. The bill does not first require a determination that the permittee is meeting land health standards. S. 1129 also doubles the duration of grazing permits from 10 to 20 years. Additionally, it provides for the transfer of permits without further environmental analysis when terms and conditions are unchanged, but only for the remaining term of the permit.

The Department supports the concept of having the flexibility to issue longer term permits in certain circumstances, as well as the transfer provision that is currently in place under the FY 2012 Consolidated Appropriations Act. That provision is expected to reduce the permit renewal workload in 2013 by about 700 permits. The number of transfers needing processing each year is unpredictable, posing significant challenges to the BLM as it works to manage staff and other resources.

However, S. 1129 also includes provisions that the Department cannot support since they provide for automatic permit or lease renewal without requiring further analysis, or requiring the permittee to meet land health standards. The bill also limits the BLM's ability to provide for appropriate environmental review and public involvement. As written the bill would result in the majority of permits being renewed under a categorical exclusion, although it is unclear what constitutes a "minor modification" and whether extraordinary circumstances would need to be applied in situations where current management was being continued. The engagement of the public through the environmental review process under NEPA is a crucial component of the BLM's multiple-use management of the public lands.

Further, S. 1129 requires that if a permittee appeals a grazing permit or lease decision, the BLM must suspend the decision until the appeal is resolved. Under current regulations, a typical BLM grazing decision is implemented while under appeal unless the permittee or interested public requests, and the Interior Board of Land Appeals grants a stay of the decision. By contrast, under S. 1129, if a permittee appealed a grazing decision, the BLM could not implement the decision unless it determined there was an emergency regarding deterioration of resources. Otherwise, the permittee could continue grazing at the current level of use until the appeal was resolved. The provisions would effectively give a permittee, by the simple act of appealing any grazing decision, the ability to continue current levels of use for an indefinite period of time (since appeals and litigation may take years). Moreover, grazing at the current level could continue even if the BLM determined land health standards were not being met and changes to the permit were thus warranted.

In summary, while S. 1129 contains provisions that would expedite permitting, the Department cannot support the overarching impact the bill could have on the 160 million acres of public lands used for livestock grazing.

Conclusion

Thank you for the opportunity to present testimony on S. 1129. The BLM looks forward to working with the Congress to develop improvements to the grazing permit renewal process while maintaining the integrity of NEPA, the Nation's bedrock environmental and citizen involvement law, and FLPMA, our multiple-use statute requiring consideration of many uses and values of the public lands. I will be pleased to answer any questions.

Testimony of
Mike Pool, Deputy Director
Bureau of Land Management
Department of the Interior
Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands and Forests
S. 1473, Mesquite Land Conveyances Act of 2011
March 22, 2012

Thank you for the opportunity to present the views of the Department of the Interior on S. 1473, which amends the Mesquite Lands Act of 1986 in order to renew the exclusive right of the City of Mesquite, Nevada, to purchase certain public lands for development, and allows for proceeds from land sales to be used to implement a habitat conservation plan for the Virgin River and any associated groundwater monitoring plan. The Department of the Interior supports the goals of the bill, however, we believe we can achieve the purposes of the bill administratively, such as through sales under the Federal Land Policy Management Act (FLPMA) or the issuance of an airport lease.

Background

The Mesquite Lands Act of 1986 (PL 99-548) as amended by PL 104-208, PL 106-113 and PL 107-282,has provided the City of Mesquite, a community located in eastern Clark County, Nevada, between Las Vegas and St. George, Utah, the exclusive right to purchase lands to its west for a replacement airport and related development. To date, the city has acquired approximately 7,700 acres of public lands from the BLM. These authorities expired on November 29, 2011.

In addition to identifying lands for sale, the Mesquite Lands Act, as amended, provides that a portion of the proceeds from the sale of certain parcels be deposited in an account established under the Southern Nevada Public Land Management Act of 1998 (SNPLMA). It also provides that these funds would be available to pay for, among other things, the BLM's costs to convey land to the City of Mesquite and the development of a multispecies habitat conservation plan for the Virgin River, also in Clark County. The U.S. Fish and Wildlife Service, in cooperation with the BLM, has begun work on the plans for the Virgin River. These authorities also expired on November 29, 2011.

S. 1473

S. 1473 renews until November 29, 2021, the City of Mesquite's exclusive right to purchase parcels of public lands identified in the PL 106-113 amendment to the Mesquite Lands Act, which are near lands already acquired by the City. It also allows for the proceeds from previous land sales to Mesquite to be used to implement a multispecies habitat conservation plan for the Virgin River in Clark County and any associated groundwater monitoring plan. It also extends the withdrawal of the lands from all forms of location, entry and appropriation under the public land laws, including mining laws, and from operation of mineral leasing and geothermal leasing laws, subject to valid existing rights.

The BLM supports the bill and its goal of providing for the economic development needs of Mesquite, Nevada. Some of the lands that may be acquired through enactment of the bill have been identified for a proposed replacement airport and related development. The legislation will provide additional time for the Federal Aviation Administration (FAA) to complete an environmental evaluation under the National Environmental Policy Act for the replacement airport and to identify mitigation measures, if necessary. The BLM is working with the FAA and the Nevada State Historic Preservation Office to develop appropriate measures to mitigate potential impacts to the Old Spanish National Historic Trail as a result of the proposed replacement airport. The additional time provided by this legislation will aid this effort.

Conclusion

That concludes our prepared testimony in support of S. 1473. We would be glad to answer your questions.

Testimony of
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Bureau of Land Management
Department of the Interior
Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands and Forests
S. 1492, Three Kids Mine Remediation and Reclamation Act
March 22, 2012

Thank you for the opportunity to testify on S. 1492, the Three Kids Mine Remediation and Reclamation Act. S. 1492 seeks to resolve longstanding issues surrounding the abandoned Three Kids Mine, in Henderson, Nevada. During the past four years, the Bureau of Land Management (BLM) in Nevada has worked with Nevada governmental entities in search of administrative remedies to the problems posed by the abandoned mine. The BLM supports the goals of S. 1492, which aims to provide legislated solutions to the issues surrounding the Three Kids Mine area and clear the way for its eventual development. However, we have concerns and the legislation needs a number of modifications.

Background

The Three Kids Mine is an abandoned manganese mine and mill site located along the south side of Lake Mead Drive, across the highway from Lake Las Vegas, in Henderson, Nevada. The mine and mill operated from 1917 through 1961 on 314 acres of private land, in part providing steel-strengthening manganese to the defense industry and contributing to the United States' efforts in World War I and II. Federal manganese reserves were stored in the area from the late 1950s through 2003. S. 1492 directs 948 acres of the public lands adjacent to the private site be conveyed, bringing the total size of the project area to 1,262 acres. Of the 948 acres of public lands, 146 acres are contaminated and will require mine reclamation and environmental remediation. The most severe contamination appears to be on the 314 private acres where the mine and mill were located. No viable former operator or responsible party has been identified to remediate and reclaim the abandoned mine and mill site. Today, the site's deep open pits, large volumes of mine overburden and tailings, mill facility ruins, and solid waste disposal areas pose significant risks to public health, safety and the environment. The Nevada Division of Environmental Protection (NDEP) identified the Three Kids Mine site as a high priority for the implementation of a comprehensive environmental investigation, remediation, and reclamation program.

Representatives of the BLM, the Bureau of Reclamation, and the Department of the Interior Solicitor's Office have worked with the City of Henderson and representatives of developer Lakemoor Canyon, LLC, to find solutions to the complex challenges this site presents. Discussions have focused on overlapping Federal agency jurisdictions, land management designations and other resource issues, Resource Management Plan amendments, future liability, and an important utility corridor that traverses the site.

S. 1492

S. 1492 designates the combined 314 acres of private land and 948 acres of public land as the 1,262-acre "Three Kids Mine Project Site" and provides for the conveyance of the public lands to

the Henderson, Nevada Redevelopment Agency. The legislation further provides that fair market value for the Federal lands to be conveyed should be determined through standard appraisal practices. Subsequent to that determination, the Secretary shall determine the "reasonable approximate estimation of the costs to assess, remediate, and reclaim the Three Kids Mine Project Site." That cost would then be deducted from the fair market value of the public land to be conveyed. The Henderson Redevelopment Agency would pay the adjusted fair market value of the conveyed land, if any, and the Federal government would be released from "any and all liabilities or claims of any kind arising from the presence, release, or threat of release of any hazardous substance, pollutant, contaminant, petroleum product (or derivative of a petroleum product of any kind), solid waste, mine materials or mining related features" at the site in existence on or before the date of the conveyance.

While the BLM has not established a range for the cost of cleanup, a proponent of the transaction, Lakemoor Canyon, LLC, estimates the cost of remediating the public and private lands at between $300 million and $1.3 billion. While it is possible that the cost of remediating and reclaiming the entire project area might exceed the fair market value of the Federal land to be conveyed, the cost of the transaction will only be known after the Secretary completes the appraisal process outlined in the legislation. There has been no determination regarding the Federal government's liability for reclaiming the private lands in the project area.

The BLM supports innovative proposals to address the cleanup of the Three Kids Mine, and we do not oppose this proposal to transfer the entire 948 acres of public land to the Henderson Redevelopment Agency at fair market value, subject to valid existing rights. However, the BLM has concerns about the legislation. Most importantly, the BLM recommends the bill be amended to clarify that the Federal land in the Project Area is conveyed to the Henderson Redevelopment Agency after the Secretary appraises the Federal land and the cost of remediating and reclaiming the site and before the remediation and reclamation activities begin.

Additionally, there are a number of minor and technical concerns that need to be addressed, including the timeframes for conducting an appraisal and for securing a Phase II environmental assessment from the Hendersonville Redevelopment Authority. The BLM also notes that under the legislation, the subsurface mineral rights would be included in the sale of lands and should be included in any appraisal of the value of the land. The BLM recognizes that the transfer would include a small portion of the River Mountains ACEC, and we would like to discuss with the committee opportunities to mitigate that loss. Finally, the Bureau of Reclamation would like to work with the bill's sponsors and the Southern Nevada Water Authority (SNWA) to ensure that SNWA's current needs for access to and protection of critical water and utility infrastructure are specifically addressed in the legislation.

Conclusion

Thank you for inviting the Administration to testify on S. 1492. The Three Kids Mine problem needs to be resolved, and we look forward to working toward a solution that protects the environment and serves the public interest. I would be happy to answer your questions.

Statement of
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Department of the Interior
Senate Energy and Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 1559, the San Juan Islands National Conservation Area Act
March 22, 2012

Thank you for the invitation to testify on S. 1559, the San Juan Islands National Conservation Area Act. The Department of the Interior supports S. 1559 and urges Congress to move swiftly to designate Washington State's San Juan Islands as a National Conservation Area (NCA). Secretary of the Interior Salazar has made several trips to the San Juan Islands, most recently in February of this year, and has heard from local citizens about their strong support for protecting this special place. The Secretary's November 2011 *Preliminary Report to Congress on BLM Lands Deserving Protection as National Conservation Areas, Wilderness or Other Conservation Designations* highlighted the San Juan Islands NCA as a proposal deserving Congress' prompt attention.

Background

The Bureau of Land Management (BLM) currently administers nearly 1,000 acres of the proposed NCA land in the San Juan Islands of Puget Sound, Washington. These lands include portions of a few large islands and over 50 small islands, rocks, pinnacles, and outcroppings. These islands have been molded and shaped through tens of thousands of years of glacial forces.

Anglers, hikers, and wildlife watchers are all attracted to the diverse and abundant biological resources of the islands. BLM lands in the San Juan Islands include forests, sandy beaches, woodlands, grasslands, and wetlands. Bald eagles and peregrine falcons are among the many species of birds that soar above the landscape, while orcas, porpoises, and other marine mammals ply the waters. The proposed NCA is not only biologically complex, but also culturally diverse. Two historic lighthouses built in the late 19th century are included in the proposed NCA, as are several archaeological sites of the Coast Salish people who have walked these lands for the last 12,000 years.

S. 1559

S. 1559 would designate the lands administered by the BLM within the San Juan Islands as a NCA. Each of the NCAs designated by Congress and managed by the BLM is unique. For the most part, however, they have certain critical elements, which include 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 S. 1559 honors these principles, and the BLM supports the proposed NCA designation.

The BLM would like the opportunity to work with the Sponsor and the Committee on a modification to the map and related bill language to ensure that all rocks and islands managed by the BLM within the San Juan Islands are included within the NCA.

Finally, S. 1559 establishes an Advisory Council to advise the Secretary and the BLM on preparation and implementation of a management plan. We support this provision, which recognizes the important role that the local citizens have played, and will continue to play, in the conservation of these lands. A wide-ranging group of local residents, stakeholders, and enthusiasts have joined with Senator Cantwell, Senator Murray, and Representative Larsen to support permanent protection for the BLM-administered lands in the San Juan Islands. Today's hearing is the culmination of those efforts.

Conclusion

Thank you for the opportunity to testify in support of S. 1559, the San Juan Islands National Conservation Area Act. The Department urges Congress' swift passage of the bill.

Statement of
Mike Pool
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Department of the Interior
Senate Energy and Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 1635, San Juan Mountains Wilderness Act
March 22, 2012

Thank you for the invitation to testify on S. 1635, the San Juan Mountains Wilderness Act. The Department of the Interior supports the wilderness designation of the McKenna Peak area on lands managed by the Bureau of Land Management (BLM). Additional protection for the McKenna Peak area was highlighted in Secretary Salazar's November 2011 *Preliminary Report to Congress on BLM Lands Deserving Protection as National Conservation Areas, Wilderness or Other Conservation Designations*. We urge swift Congressional action to protect this special area.

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. The McKenna Peak area is also home to the Spring Creek wild horse herd. Geologically, the area is quite diverse and includes 100 million year-old remnants of inland seas (now black Mancos shale rich in invertebrate marine fossils). 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. 1635

S. 1635 is the result of a collaborative process, including the Colorado Congressional delegation, county commissioners, adjacent landowners, ranchers, conservationists, recreationists, and other interested parties. The results are the proposed wilderness designations on both BLM- and FS-managed lands in San Miguel, Ouray, and San Juan Counties.

Section 3 of the bill designates 8,600 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, which include the eponymous McKenna Peak, 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 support future designation of this area in order to improve

the manageability of the area. 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.

Section 6 of S. 1635 provides for the release from Wilderness Study Area (WSA) status of those portions of the Dominguez Canyon Wilderness Study Area that were not designated as Wilderness under Title II, Subtitle E of Public Law 111-11, the Omnibus Public Land Management Act of 2009. Section 2403 of that Act designated the Dominguez Canyon Wilderness Area. However, small portions of the underlying WSA totaling approximately 3,035 acres were neither designated wilderness nor released from WSA status, which would allow the consideration of a range of multiple uses. This release would benefit the BLM's ongoing management by removing narrow strips and scattered tracts of remaining WSA. These areas remain within the Dominguez-Escalante National Conservation Area (NCA), also designated by Public Law 111-11 and will be managed consistent with the rest of the NCA.

Conclusion

Thank you for the opportunity to testify in support of S. 1635. We look forward to its swift passage and to welcoming the covered area into the BLM's National Landscape Conservation System.

Statement of
Mike Pool
Deputy Director
Bureau of Land Management
Department of the Interior
Senate Energy and Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 1774, Rocky Mountain Front Heritage Act
March 22, 2012

Thank you for the invitation to testify on S. 1774, the Rocky Mountain Front Heritage Act which designates approximately 208,000 acres of Federal land in Montana as the Rocky Mountain Front Conservation Management Area. S. 1774 primarily affects lands managed by the United States Forest Service (FS). The Department of the Interior defers to the Department of Agriculture regarding designations on lands managed by the FS. Over 13,000 of the acres proposed for special designation under the bill are managed by the Bureau of Land Management (BLM). The Department of the Interior supports the designation of the BLM lands as part of the Rocky Mountain Front Conservation Management Area (CMA).

Background

A unique and stunningly beautiful area in west-central Montana, the Rocky Mountain Front is located within Pondera, Teton, and Lewis and Clark Counties and contains unparalleled cultural, recreational, scenic, and biological resources. The lands administered by the BLM are dominated by massive limestone cliffs rising to an elevation of 7,700 feet and include grasslands, shrub lands, and limber and white-bark pine forests. Numerous wildlife and fish populations are supported by the highly varied topography and diverse vegetation that for generations has provided an outstanding experience for hunters, anglers and other recreationists. Huntable populations of elk, mule deer, big horn sheep, mountain goats and black bear all occur within the area being considered in the proposed legislation. In addition, threatened species including grizzly bear, Canada lynx, and bull trout are found on these BLM-managed lands.

Congress recognized this priceless region in 2006 when it included the withdrawal of the entire area from new mining claims and mineral leasing in section 403(a) of Public Law 109-432. The BLM currently manages these lands for their important resource values as administratively-designated Outstanding Natural Areas (Blind Horse, Ear Mountain, Chute Mountain and Deep Creek-Battle Creek).

S. 1774

S. 1774 designates over 200,000 acres of federal land in Montana's Rocky Mountain Front as the Rocky Mountain Front Conservation Management Area. Approximately 13,000 acres of public land managed by the BLM would be included in that designation. Running along the eastern edge of the CMA, the lands managed by the BLM are largely closed to motorized access and include a trail system popular with those seeking a wilder recreational experience.

The overall management scheme envisioned for the CMA is consistent with current BLM management of these lands. Under the provisions of S. 1774, motorized vehicles within the

CMA would be limited to roads and trails designated for their use and grazing would be allowed to continue where it currently exists.

The BLM recommends that the bill be amended to specify that the BLM-managed lands within the CMA be included in the BLM's National Landscape Conservation System (NLCS). The CMA is very similar to BLM's National Conservation Areas (NCAs) and inclusion in the NLCS is appropriate.

Conclusion

Thank you for the opportunity to testify in support of S. 1774 as it applies to lands managed by the BLM.

Statement of
Mike Pool
Deputy Director
Bureau of Land Management
Department of the Interior
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 1788, Pine Forest Range Recreation Enhancement Act
March 8, 2012

Thank you for inviting the Department of the Interior to testify on S. 1788, the Pine Forest Range Recreation Enhancement Act. The Department of the Interior supports S. 1788, which designates the Pine Forest Range Wilderness in Humboldt County, Nevada, on lands managed by the Bureau of Land Management (BLM). We urge the Congress to move swiftly to pass this bill.

It is gratifying to see Congress moving to protect this area that was highlighted in Secretary Salazar's November 2011 *Preliminary Report on BLM Lands Deserving Protection as National Conservation Areas, Wilderness or Other Conservation Designations*. There is a long history of bipartisan support in Congress for the conservation of America's special places. Members from both parties have been essential to passing every major public lands bill that has been enacted in recent years. This type of cooperative and bipartisan approach to designating special lands for protection as wilderness, national conservation areas, or similar designations has historically been a regular practice for Congress. The designation of the Pine Forest Range has strong support from County government and local citizens. It is a wonderful example of how people can come together to protect one of America's real gems.

Background

The Pine Forest Range in northern Nevada's arid Great Basin is a rare and exceptional area of abundant streams and clear, cold subalpine lakes. Nestled in a cirque and fed by snowmelt and springs, these lakes are not only visually stunning but also possess an excellent trout fishery. The lakes are surrounded by a rare remnant population of white bark and limber pines. Stands of quaking aspen and mountain mahogany are also found throughout the proposed wilderness. Fall brings an abundance of color found in few other places in northern Nevada.

The spectacular scenery and vistas, combined with outstanding recreational opportunities, draw thousands of visitors annually. Despite being one of the most highly visited recreational areas in the region, the proposed wilderness still appears pristine. Day hiking, horseback riding, rock climbing, hunting, fishing, and camping are all popular in the area. Visitors enjoy a true primitive recreation experience, without trails or facilities. Even during peak visitation periods, solitude is easy to find in the rugged terrain. Abundant wildlife coveted by sportsmen includes trophy mule deer, antelope, bighorn sheep, mountain lion, and chukar.

A wide range of stakeholders began working cooperatively in 2009 and 2010 to bring together diverse interests in a grass-roots effort to protect this special area. In the fall of 2010, the Humboldt County Commission voted unanimously to approve the final recommendations of the

Pine Forest Range Working Group to designate the Pine Forest Range Wilderness. The Nevada State Legislature subsequently passed a resolution praising the process used in arriving at the consensus represented by S. 1788.

S. 1788

S. 1788 proposes to designate the 26,000-acre Pine Forest Range Wilderness in Humboldt County, Nevada, on public land managed by the BLM. This wilderness area is largely formed by the Blue Lakes and Alder Creek Wilderness Study Areas (WSAs). Under the bill, approximately 1,150 acres of land within those WSAs would not be designated as wilderness and would be released from WSA status, thereby allowing the consideration of a full range of multiple uses.

Section 13 of S. 1788 provides for land exchanges to improve the manageability of the Pine Forest Range Wilderness Area and nearby public lands while likewise allowing private landowners the opportunity to consolidate their holdings. The land exchanges are discretionary and would be completed consistent with the Federal Land Policy and Management Act (FLPMA) and other applicable laws. The BLM supports this provision. In addition, these land acquisitions may be undertaken through existing authorities such as purchase or donation.

The Pine Forest Range Wilderness meets the definition of wilderness; the land and its community of life are largely untrammeled. It has retained its primeval character and has been influenced primarily by the forces of nature, with outstanding opportunities for primitive recreation or solitude. The BLM strongly supports this designation. We would like to work with the sponsor and the Committee on some minor technical modifications to management language to insure consistency and to ensure an updated map reference.

Conclusion

Thank you for the opportunity to testify in support of S. 1788. We look forward to the swift passage of this legislation designating the Pine Forest Range Wilderness.

Statement of
Mike Pool
Deputy Director
Bureau of Land Management
Department of the Interior
Senate Energy and Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 2001, Rogue Wilderness Area Expansion act
March 22, 2012

Thank you for inviting the Department of the Interior to testify on S. 2001, which would expand the existing Wild Rogue Wilderness by nearly 60,000 acres and extend the existing Rogue Wild and Scenic River by designating an additional 35 Rogue River tributaries to the National Wild and Scenic Rivers System. The Department supports S. 2001, and would welcome the opportunity to work with the Committee and the members of the Oregon delegation on modifications to the bill to improve manageability.

Additional protection for the Rogue River was highlighted in Secretary Salazar's November 2011 Preliminary Report to Congress on BLM Lands Deserving Protection as National Conservation Areas, Wilderness or Other Conservation Designations. S. 2001 has wide support at state and local levels, as well as from a wide range of local citizens and stakeholders. It is a wonderful example of how people can come together to propose protection of such a beautiful and dramatic area.

Background

The Rogue River's headwaters begin near Crater Lake. It then rushes 215 miles through the mountains and valleys of southwestern Oregon, eventually emptying into the Pacific Ocean near the town of Gold Beach. Over millions of years, the Rogue has patiently carved its way through western Oregon's mountains creating 3,000 foot canyons, rugged valleys and inspiring scenery. Dense, old-growth forests flank the Rogue providing habitat for older forest-dependent species, including the Northern Spotted Owl and the Marbled Murrelet. The cold, clear waters of the river provide a home for Pacific salmon, steelhead trout, and green sturgeon.

Recreationists are drawn to the entire Rogue River watershed to experience nature in a multitude of ways. These recreationists are a critical economic engine for local economies and include commercial and sport fishing, rafting and jet boat tours, and hiking and backpacking. The untamed landscape offers countless opportunities for challenge, exploration, and discovery.

The 36,000-acre Wild Rogue Wilderness was designated by an Act of Congress (Public Law 95-237) in 1978. Located primarily on lands managed by the U.S. Forest Service, the Wild Rogue includes approximately 8,600 acres of lands administered by the Bureau of Land Management (BLM). In 1968, Congress passed the Wild and Scenic Rivers Act (Public Law 90-542), establishing the Wild and Scenic River System and designating eight original rivers. As one of these initial eight rivers, Oregon's Rogue River has long been recognized for its beauty, exceptional recreational opportunities and extraordinary resource values.

For several years, Senator Wyden and other members of the Oregon Congressional delegation have worked with local stakeholders, governments, recreationists, and the conservation community to enhance protections of the Rogue River watershed. S. 2001 is a result of those concerted efforts.

S. 2001

S. 2001 proposes to enlarge the existing Wild Rogue Wilderness by adding nearly 60,000 acres of land administered by the BLM. The bill also extends the existing Rogue Wild and Scenic River by adding 93 miles of 35 tributaries of the Rogue to the wild and scenic river system. In addition, the bill withdraws 50 miles of 20other Rogue River tributaries from operation of the land laws, mining laws, and mineral leasing laws, and prohibits the Federal Energy Regulatory Commission (FERC) from licensing new water resource projects and associated facilities along these tributaries.

The BLM supports the expansion of the Wild Rogue Wilderness as provided by S. 2001. This wild and rugged area is largely untrammeled. It has retained its primeval character and has been influenced primarily by the forces of nature, with outstanding opportunities for primitive recreation or solitude. Protection of these wilderness characteristics is largely consistent with the current management framework for these lands. We would like the opportunity to work with the bill sponsor and the Committee on some modifications to the map and the legislation.

The BLM also recommends that the legislation include language directing the Secretary of the Interior to manage the BLM portion of the current Wild Rogue Wilderness. When the Wild Rogue Wilderness was established in 1978, the legislation called for the Secretary of Agriculture to manage all of the lands within the wilderness boundary. With this expansion we would like to correct that previous oversight and ensure that both the original and the additional BLM-managed lands within the Wild Rogue are managed by the BLM. Management of this area would be a cooperative exercise with the U. S. Forest Service and involve many of the same staff that jointly manage the Rogue's successful river program.

The bill excludes over 500 acres of BLM-managed lands on the north side of the river within the external boundaries of the wilderness addition from designation as wilderness. This could leave these lands open to future development and potentially complicate management of the surrounding lands as wilderness. These lands show visible effects of past logging activities and existing primitive roads that do not meet the naturalness criteria of the Wilderness Act. The BLM would like to discuss the possibility of designating them as "potential wilderness" (as was done, for example, to California's Elkhorn Ridge Potential Wilderness Area through the Northern California Coastal Wild Heritage Wilderness Act – Public Law 109-362). If these lands were to be actively or passively restored to wilderness conditions in the future, they could then be formally added to the Wild Rogue Wilderness.

The BLM would also like to work with the Oregon delegation on boundary modifications of the wilderness expansion to improve manageability. There are portions of the proposed wilderness where minor modifications to follow a road would allow for a more recognizable and manageable boundary. In addition, a few areas identified for wilderness designation on the southeast side of the proposed expansion may raise manageability concerns. Specifically, the

inclusion of areas south of Bailey Creek and east of the Rogue appears to present conflicts with existing uses. The BLM would like the opportunity to discuss these conflicts further with the Committee and the bill's sponsor.

In 1968, when Congress established the National Wild and Scenic Rivers System, it designated the Rogue as one of the original eight rivers included in this system. Section two of S. 2001 further enhances that initial designation by adding specific tributaries of the Rogue to the national system, thus conserving the greater Rogue River watershed. In general, the proposed stream segments are located in steep sloped canyons with mature and structurally complex forest stands that have high conservation values. We support maintaining and enhancing those conservation values through this designation.

Finally, S. 2001 (Section 5) prohibits FERC from licensing the construction of any new water or power projects along 50 miles of 20 Rogue River tributaries. Additionally, the bill would withdraw land for one-quarter mile along either side of these tributaries from operation of the land laws, mining laws and mineral leasing laws. This withdrawal will protect valid existing rights but would prohibit the sale or exchange of any of these federal lands; the location of new mining claims; new mineral or geothermal leases; and sales of mineral materials. These withdrawals will provide additional protections to this important watershed, and the Department supports these provisions.

Conclusion

One of the earliest masters of the American western novel, Zane Grey, proclaimed the historic beauty of this area, and made it his home. "The happiest lot of any angler" wrote Grey "would be to live somewhere along the banks of the Rogue River, most beautiful stream of Oregon."

S. 2001 seeks to preserve and protect the beauty Zane Grey saw for generations to come. This bill is the product of many years of discussions and collaboration with the local community, stakeholders, and other interested parties by the Oregon Congressional delegation and we would like to be part of those continuing discussions. The Department urges swift passage of S. 2001 and looks forward to welcoming these important conservation additions into the BLM's National Landscape Conservation System.

Statement of
Mike Pool
Deputy Director
Bureau of Land Management
Department of the Interior
Before The
Senate Energy and Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 2015, Powell Shooting Range Land Conveyance Act
March 22, 2012

Thank you for the opportunity to present the views of the Department of the Interior on S. 2015, the Powell Shooting Range Land Conveyance Act, which conveys an isolated 322-acre tract of public land to the Powell Recreation District (District) in northwestern Wyoming. The Bureau of Land Management (BLM) supports S. 2015.

Background

Powell, Wyoming, is a town of approximately 5,000 people in northwestern Wyoming. This region of Wyoming is generally irrigated farmland with scattered BLM-managed public land parcels.

In 1980, the Bureau of Reclamation (BOR) granted the District a Special Use Permit (SUP) for a 25-year period to construct and operate a shooting range on this isolated tract of public land southeast of the town of Powell. The District constructed the facilities and infrastructure for the shooting range over 30 years ago, and has operated the range ever since. The District is a local entity created under state statute for the purpose of providing public recreation programs. It is funded from local property taxes and has authority to acquire land and facilities appropriate to carry out its recreational purposes.

The SUP for the shooting range expired in 2005. That year, the District filed an application for a Recreation and Public Purposes Act conveyance of this land to continue the shooting range operations. The BOR extended the SUP pending transfer of the land to the District. In 2010, the BLM discovered that, as a result of a 1950 land exchange with the state of Wyoming, the parcel is actually under the BLM's jurisdiction and not the BOR's jurisdiction as was previously understood. The BLM has used the authority of a Special Recreation Permit to temporarily authorize the use of the existing shooting complex until long-term resolution of the land use issues could be achieved. BLM authorities for conveyance of land under the Recreation and Public Purpose Act do not permit the transfer of this land administratively to the District under its current use as a shooting range.

S. 2015

S. 2015 requires the BLM to convey an isolated 322-acre tract of public land southeast of Powell, Wyoming, to the Powell Recreation District. The bill requires that the parcel of land be transferred subject to valid existing rights, and be used only as a shooting range or for any other public purpose consistent with the Recreation and Public Purposes Act.

If the land conveyed to the District ceases to be used for its intended purpose then the land shall, at the discretion of the Secretary, revert to the United States.

S. 2015 requires the Powell Recreation District to pay administrative costs to prepare the patent and transfer title as well as costs necessary to complete environmental, wildlife, cultural, historical studies, and NEPA review prior to the transfer. The bill also releases and indemnifies the United States from any claims or liabilities that may arise from uses carried out on the land on or before the date the Act is signed.

The BLM supports the bill as it represents an opportunity to resolve land use issues on an isolated tract of public land that has been used as a shooting range for over 30 years and is identified for disposal in current land use plans. The legislation facilitates a reasonable and practicable conveyance of lands to the Powell Recreation District.

Conclusion

Thank you for the opportunity to provide testimony in support of S. 2015.

Statement of the Bureau of Reclamation
U.S. Department of the Interior

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

S. 2056, the Scofield Land Transfer Act
March 22, 2012

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to provide the Administration's views on S. 2056, legislation to authorize the Secretary of the Interior to convey certain interests in Federal lands acquired for the Scofield Project in Carbon County, Utah. The intent of the legislation is to resolve certain issues associated with decades-long encroachment on Federal lands in the Scofield Reservoir basin. If the revisions described below are made, the Department would not oppose an amended S. 2056.

The Scofield Project is located on the Price River about 85 miles southeast of Salt Lake City, Utah. It provides irrigation and municipal and industrial water to Carbon County, Utah. The reservoir is a popular fishing destination. Under contract with Reclamation, the State of Utah operates a state park at the site.

At Scofield Reservoir, the vertical distance between the normal water surface elevation of the reservoir and the flood surcharge elevation (the level to which the water level may rise in a flood event) is approximately 19 feet. Given the sloping sides of the reservoir basin, this flood surcharge capacity translates into a wide band of land around the perimeter of the reservoir above the normal water surface elevation and below the flood surcharge elevation. The United States owns in fee most of the lands within this band.

In the 1950s, an individual purported to subdivide and sell some of these flood surcharge lands – in spite of United States' ownership. The purported "owners" (referred to in the Scofield Land Transfer Act as "claimants") began locating mobile homes and building cabins on these lands. There are over sixty encroaching cabins and trailers today. These encroachments pose a dam safety issue because a flood event may float debris or structures into the spillway, reducing its capacity and threatening the dam.

In 2000, Reclamation initiated a quiet title action on lands within the band on the east side of Scofield Reservoir and was joined in that action by 15 claimants. A 2009 decision by the Tenth Circuit Court of Appeals affirmed ownership by the United States. Reclamation has removed the encroachments on the lands that were the subject of the quiet title action. Because of similar underlying facts, quiet title actions associated with the remaining encroachments would likely affirm United States' ownership.

The bill proposes to resolve these encroachments on Federal lands by authorizing the Secretary of the Interior to transfer a fee interest or life estate to those who claim ownership of United

States' lands within the Scofield Reservoir basin in exchange for fair market value. Claimants have a period of five years during which they may seek a fee interest or life estate. If a claimant does not elect to acquire a fee interest or life estate, Reclamation will remove the encroachment under existing law and policy, including the removal of encroaching structures.

Although the bill addresses in part key objectives for Reclamation, the ideal scenario for Reclamation is for no structures or dwellings to fall within a facility's flood surcharge elevation. Having said that, the bill does address concerns such as: improved protection of public safety and resolving certain issues of encroachment on United States' lands. In addition, the bill imposes conditions on transferred lands. First, it limits the number and types of structures to those in place on the date of enactment. Second, it requires that structures be anchored to foundations to prevent displacement during a flood event and the associated potential for compromising the dam and causing harm downstream. Third, it requires Reclamation to retain the ability to store flood flows on the transferred lands without liability to the United States.

While Reclamation supports, in general, some specific provisions in the bill, the legislation perpetuates occupancy within the flood surcharge elevation, which poses public and dam safety concerns. Reclamation believes it would be prudent to conduct an assessment of the risk to the safety of the dam imposed by structures that would remain within the flood surcharge elevation. In addition, the bill's language raises a number of technical concerns:

Cost of Implementation – The proposed legislation does not provide any monies to fund Reclamation's work in surveying, appraising, and transferring fee interest or life estates to claimants. The legislation furthermore does not provide any monies to conduct environmental compliance, provide notice to Claimants of existing trespasses or encroachments on Federal lands, or to enforce deed restrictions. These costs should not be absorbed by the Federal government.

Cost of Administration – After the legislation is fully implemented, Reclamation will likely face a patchwork of ownership (private fee interest, private life estates, and Reclamation fee interest) at the reservoir in the band between the normal water surface elevation and the flood surcharge elevation. On the transferred lands, Reclamation will be required to monitor construction and the retrofitting of structures to ensure that they are properly secured. In addition, Reclamation will be required to preserve public access to Reclamation fee lands that are not encumbered by life estates. The administration costs and enforcement obligations pursuant to any conveyance restrictions are best left to the local government, subject to oversight by Reclamation.

Scofield Reservoir Fund – The proposed legislation calls for revenues from the sale of fee interests and the sale of life estates to be deposited into a "Scofield Reservoir Fund." The fund would be used to finance "enhanced recreation opportunities at Scofield Reservoir." Because the costs and administrative burdens associated with the conveyance would be redirected toward the beneficiaries of the conveyance through the Scofield Reservoir Fund, the Department of the Interior has serious concerns about the establishment and use of the Scofield Reservoir Fund.

Precedent – On one level, the proposed legislation amounts to rewarding encroachment with an opportunity to purchase or acquire private exclusive use of Federal lands. The Department of the

Interior is concerned about the bill setting a precedent or expectation that there can be a path from encroachment to ownership. However, the Department finds merit in amicably resolving encroachment issues on the Scofield Reservoir without embarking on protracted litigation,

Report to Congress – Reclamation believes the bill's objectives can be accomplished consistent with Congressional intent and with support from the local community. Because of the proliferation of required reports to Congress, and the demand on finite budget resources, the Department in general does not support new and narrow reporting requirements.

In addition to those issues raised above, Reclamation has a number of technical concerns:

Life Estate – The definition of life estate creates a reversion "on the date of death of the claimant." The legislation assumes that all claimants will be individuals. Claimants may claim joint ownership or may be partnerships, corporations, or other entities.

Securing Structures – Ensuring that any remaining structures are fully secure is critical to public safety. For this reason, Reclamation is concerned that the conveyance requirements do not adequately ensure that structures will be secured against inundation. One approach to correcting this would be to add the word "and" between (3)(b)(2)(C)(i) and (3)(b)(2)(C)(ii).

Land Disputes – Among claimants there are disputes about the boundaries of their claims. The resolution of these claims would likely erode the five years that the claimants have to decide whether to submit notice of a desire to acquire a fee interest or life estate. The legislation could direct claimants to accept the result of the Reclamation survey required under (3)(a)(1).

Spillway Crest – In referring to the normal water surface elevation, the proposed legislation refers to the "lip of the spillway." This term is ambiguous and should be replaced with "crest of the spillway."

Hold Harmless Clause – The life estate option requires the claimant to hold the United States harmless for damages due to "design, construction, operation and replacement." The list of causes from which damages may arise should also include "maintenance." In addition, there is no requirement for claimants seeking fee interest in claimed land to hold the United States harmless. Reclamation recommends that a hold harmless requirement be added to the fee interest option.

Payments in Lieu of Taxes (PILT) – The proposed legislation should explicitly state that PILT payments will be discontinued for lands transferred in fee to claimants.

Mineral Rights – The proposed legislation should state that there will be no conveyance of subsurface or mineral rights.

Water Rights and Sewer System – A number of the claimants have developed wells that are also part of their encroachment. To the extent these wells are supported by valid State of Utah water rights, the legislation should address the fate of these wells under conveyance in fee or life estate.

The sewer system serving encroachments is included in a Reclamation license agreement for the State Park. The license agreement is with the Scofield Special Service District for which Carbon County has oversight responsibility.

Sunset- The proposed legislation requires claimants to submit notification to the Secretary of their interest in a fee interest or life estate in the claimed portion of the Federal land within five years of the date of enactment of the proposed legislation, in order to stay enforcement proceeding on the Federal land. This could allow claimants to submit notice of their intent to receive a fee interest or life estate, without requiring affirmative action to effectuate the transfer. The proposed legislation should contain a sunset provision, whereby notice and transfer must occur within a reasonable timetable.

In closing, Mr. Chairman, Reclamation recognizes that, in spite of its serious concerns, the proposed legislation does offer a relatively acceptable five-year solution to a problem Reclamation has wrestled with for many years. In light of this, the Department of the Interior will not oppose S. 2056 if appropriate clarifying language and revisions are added.