

**Department of the Interior Statement  
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Bureau of Land Management  
U.S. Department of the Interior  
Senate Committee on Energy & Natural Resources  
Subcommittee on Public Lands, Forests, & Mining**

- S. 387, Grand Canyon Protection Act**  
**S. 1264, Resiliency for Ranching and Natural Conservation Health Act**  
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**June 7, 2022**

**Introduction**

Thank you for the opportunity to provide testimony on the following bills related to Bureau of Land Management (BLM).

The BLM manages approximately 245 million surface acres, located primarily in 12 western states, as well as 30 percent of the nation's onshore mineral resources across 700 million subsurface acres, overlain by properties managed by other Federal agencies such as the Department of Defense and the U.S. Forest Service (USFS) as well state and private lands.

The BLM manages public lands under the Federal Land Policy and Management Act (FLPMA), passed by Congress in 1976. The BLM remains committed to its core mission of multiple use and sustained yield, which provides for a careful balancing across many uses and resources to steward the public lands for all.

Under the BLM's multiple use mandate, the BLM manages public lands for a broad range of uses, such as renewable and conventional energy development, livestock grazing, timber production, hunting and fishing, recreation, and conservation – including protecting cultural and historic resources. Lands managed by the BLM also provide vital habitat for more than 3,000 species of wildlife and support fisheries of exceptional regional and national value. In addition, the Biden Administration's America the Beautiful initiative emphasizes the conservation of the nation's natural resources recognizing that many uses of our lands and waters, recognizing that that many uses of our lands and waters, including working lands, can be consistent with the long-term health and sustainability of natural systems.

Overall, the BLM estimates that commercial activities on public lands, support nearly 524,000 jobs in timber, recreation, grazing, nonenergy minerals and the energy sector. That activity is the economic driver for communities across the West. It is also a significant generator of tax revenues that support state and local governments.

We appreciate the Sponsors' work on the bills under consideration today. A review of each of the bills follows.

### **S. 387, Grand Canyon Protection Act**

S. 387, the Grand Canyon Protection Act, would withdraw 1.01 million acres of Federal lands near Grand Canyon National Park in Arizona from the public land, mining, mineral leasing, and geothermal leasing laws. The bill would also direct the Government Accountability Office (GAO) to conduct a study of uranium stockpiles in the United States that are available to meet future national security requirements.

### ***Analysis***

Grand Canyon National Park, in northern Arizona, encompasses 278 miles of the Colorado River and adjacent uplands. Located on the ancestral homeland of 11 Associated Tribes, the Grand Canyon is one of the most spectacular examples of erosion anywhere in the world – unmatched in the incomparable vistas it offers visitors on its rim. The Grand Canyon is a majestic national treasure, drawing Americans from across the country to visit, and numerous Tribal Nations regard it as a sacred place.

President Biden has called for restoring balance to the management of our public lands and waters, creating jobs, and aligning the management of America's public lands and waters with our nation's climate, conservation, and clean energy goals. S. 387 puts in place protections for one of our nation's most iconic natural and cultural resources and safeguards recreational opportunities for the benefit of current and future generations. S. 387 aligns with the Administration's conservation goals and the Department of the Interior (Department) strongly supports the bill.

The BLM notes that Public Land Order 7787, issued in 2012, withdrew the proposed withdrawal area only from location and entry under the Mining Law of 1872 for a period of 20 years, leaving the lands available for mineral material sales and other activities under general land laws. The BLM recommends that the Sponsor consider amending the bill to continue to allow these limited

multiple use activities. Having access to local mineral materials, such as sand and gravel, is an important concern of rural communities in the area. Mineral materials of this type are not readily available on private lands, and are used by local communities as well as the BLM, National Park Service (NPS), USFS, and the State of Arizona for maintenance of roads within the proposed withdrawal area.

In addition, the BLM has identified lands within the proposed withdrawal area as potentially suitable for disposal. The isolated nature of these parcels makes effective management by the BLM a challenge, and some are surrounded by private and state land. Other parcels are located where community expansion could reasonably occur. The BLM would welcome the opportunity to discuss modifications with the Sponsor that would allow for these narrowly tailored disposals. Lastly, the BLM notes that under the bill, new rights-of-way could be authorized in the withdrawal area, as consistent with other management priorities.

The BLM defers to the Department of Agriculture (USDA) regarding the bill's provisions affecting the management of lands under their jurisdiction.

### **S. 1264, Resiliency for Ranching and Natural Conservation Health Act**

S. 1264 requires the Secretary of the Interior to provide grazing permittees and lessees the use of alternative forage from temporary vacant allotments when they are displaced from their regular grazing allotments due to drought, wildland fire, and other unforeseen natural disasters. The bill also diverts Land and Water Conservation Fund (LWCF) dollars to improve rangelands and increase public access; doubles the term of grazing permits and leases from 10 to 20 years; and establishes new uses of Categorical Exclusions for certain permit and lease renewals.

#### ***Analysis***

The Department shares the Sponsor's interest in supporting displaced grazing permittees, identifying opportunities for increased efficiencies in public land grazing administration, and finding ways to make permit renewal less complex, less costly, and less time-consuming. The BLM would like to work with the Committee to advance these shared goals. However, the BLM does not support S. 1264, as it diverts LWCF funding and 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.

The BLM is developing a suite of policies and management actions to manage drought, provide flexibility of use, restore ecologic function, and conserve resource values in the face of climate change and extreme drought. The BLM looks forward to continuing a dialogue with Congress throughout this process while maintaining the integrity of the National Environmental Policy Act (NEPA), the nation's bedrock environmental and citizen involvement law, and FLPMA, BLM's multiple-use statute requiring consideration of the many uses and values of the public lands.

#### **Temporary Use of Vacant Grazing Allotments**

S. 1264 (Section 2) would amend FLPMA to provide for the temporary use of vacant allotments for holders of Federal grazing permits and leases during extreme natural events and disasters for a time not to exceed three consecutive grazing seasons. The BLM notes that we may authorize

the use of vacant allotments to assist permit and lease holders in the short term under existing authorities.

The BLM appreciates the Sponsor's direction to support grazing permittees during unforeseen natural events. As written, S. 1264 allows displaced permit and lease holders to graze vacant allotments for up to three consecutive grazing seasons. In cases of wildland fire, there may be instances where the size and severity of the fires necessitate rest from grazing for periods longer than three consecutive grazing seasons in order to implement and successfully establish rehabilitation treatments that will provide for resistance and resilience against future events. Similarly, there may be periods of prolonged, severe drought that last longer than three consecutive grazing seasons. The BLM currently allows displaced permit and lease holders to utilize a vacant allotment under a non-renewable permit that may be re-issued annually. The BLM would like to work with the Sponsor to allow displaced permittees to utilize vacant allotments as needed to ensure the health and recovery of their original allotment.

### **Public Rangeland Resiliency Funds**

The bill (Section 3) would establish a "Range Betterment Account" to be used to carry out rangeland improvement projects and improve access to public lands. The Range Betterment Account would be endowed with monies from the LWCF. S. 1264 directs the amount of funds withdrawn from the LWCF to be the amount necessary to generate \$15 million dollars of investment income per year.

The LWCF was established by Congress in 1964 to fulfill a bipartisan commitment to safeguard natural areas, water resources, and cultural heritage, and to provide recreation opportunities for all Americans. Preliminary BLM estimates have calculated the amount that would be withdrawn from the LWCF under S.1264 to be up to a third of all LWCF funds provided to the BLM, the NPS, the U.S. Fish & Wildlife Service (FWS), the USFS, and State and local governments. The Department cannot support this provision as this substantial withdrawal of Land and Water Conservation Funds would be detrimental to LWCF programs across the Nation.

### **Renewal Term of Grazing Permits / Leases**

S. 1264 (Section 4) would increase the term of grazing permits to up to 20 years, doubling the current allowable term of up to 10 years authorized under the Taylor Grazing Act of 1934. The BLM appreciates the Sponsor's goal to reduce administrative workloads, but notes that the BLM already has the authority to continue grazing permits, without changes to terms and conditions, if the BLM is unable to assess conditions. In these cases, the permit or lease may be continued until the date the Secretary completes any environmental analysis and documentation for the permit or lease required under NEPA. The BLM does not support doubling the term of grazing permits, as resource conditions change quickly and NEPA analysis is needed more than every twenty years to evaluate rangeland health.

### **Authorizing Categorical Exclusion for Renewal of Grazing Permits & Leases**

Finally, the bill (Section 5) amends FLPMA to authorize the use of categorical exclusions under NEPA to renew certain grazing permits or leases, to authorize the temporary use of vacant grazing allotments, and to change minor terms and conditions of existing permits or leases, for use during emergencies and natural event disasters.

Environmental analysis under NEPA is required before the renewal of grazing permits and leases to examine the potential direct, indirect, and cumulative environmental impacts of the renewal. Categorically excluding permit or lease renewals jeopardizes the health and productivity of public rangelands for the use and enjoyment of current and future generations. The BLM does not support this provision as it does not provide for adequate environmental review and reduces public involvement allowed under NEPA.

The BLM employs a number of flexibilities to maintain healthy rangelands while reducing hardships on ranchers as we face increasing levels of drought and wildfire. Under existing authorities, the BLM works with permit and lease holders to utilize vacant allotments, make voluntary adjustments within the terms of existing agreements, allow for temporary grazing of a neighboring allotment where there is extra forage, and approve temporary water hauling sites. The BLM continues to monitor environmental conditions closely and will adjust our actions and policy accordingly as conditions change.

#### **S. 1412, Carson City Public Land Correction Act**

S. 1412, the Carson City Public Land Correction Act, provides for a series of land conveyances in Carson City, Nevada. The bill conveys approximately 258 acres of BLM-managed lands and approximately 0.5 acres of USFS land to Carson City; requires the disposal of approximately 28 acres of BLM-managed lands identified as the Prison Hills Property; authorizes Carson City to dispose of 75 acres of land for public purposes in which BLM has a reversionary interest; and allows for Carson City to convey to the Secretary of the Interior 21 acres of city property. The bill directs the proceeds of the land sales to be deposited in a “Carson City Special Account”.

Sections 3 and 4 of the bill convey approximately 258 acres of BLM-managed lands and approximately 0.5 acres of USFS land to Carson City, Nevada, without consideration. Under the bill, Carson City would be required to pay for all administrative costs related to the conveyances and would be eligible to have the costs reimbursed through the Carson City Special Account. Additionally, Section 3 of the bill allows Carson City to sell all or a portion of the conveyed lands at fair market value with the proceeds from the sale to be deposited in the Special Account. Section 4 also requires the conveyed USFS lands to be used for their intended public purposes under the bill or they will revert to the USFS. The BLM defers to the USFS regarding the bill’s provisions affecting the management of lands under its jurisdiction.

Section 5 of S. 1412 directs the disposal of approximately 28 acres of BLM-managed lands depicted as the “Prison Hills Property” to any interested party. Under this section, the administrative costs of the disposal would be covered by the person who enters into a disposal agreement with the Secretary. Carson City is required to retain the existing rights to public access, utility, and drainage easements across the selected lands. Section 6 allows Carson City to convey approximately 21 acres of city property – identified as Bennett Ave Properties and Pinion Hills Dr Property – to the Secretary of the Interior. If the city decides to convey the property, the Department is required to accept the request within 180 days and then immediately make available these 21 acres for disposal. Under the bill, Carson City is required to cover all costs associated with conveying these lands to the Department, and any party receiving federal land would be required to cover the administrative cost associated with the disposal action.

Section 7 of S. 1412 directs the proceeds from any land sold under the authority of the bill to the Carson City Special Account. The bill specifies that the account is designed to reimburse the costs incurred by the Department and the USDA for the environmental analysis or surveys required to dispose federal land with the approval of the Carson City Federal Land Collaborative Committee, and could be available for Carson City to have costs reimbursed for habitat conservation and restoration projects; development and implementation of multijurisdictional hazardous fuels reduction projects; the acquisition of environmental sensitive land; wilderness protection; and capital improvement administered by the BLM.

Finally, Section 8 of S. 1412 authorizes Carson City to enter into an agreement to sell, lease, or otherwise convey all or a portion of approximately 75 acres of identified city land in which the BLM has a reversionary interest to third parties for public purposes.

### *Analysis*

In 1976, with the passage of the FLPMA, the BLM's mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. Under FLPMA, the BLM retains management of most public lands; however, Section 203 of FLPMA also authorizes the sale of certain public lands when the sales are in the public interest and consistent with publicly approved land use plans. Land sales conducted under FLPMA occur at the discretion of the Secretary and are made at fair market value in accordance with Federal law.

The BLM regularly leases and conveys lands to local governments and nonprofit entities for a variety of public purposes. These leases and conveyances are typically accomplished under the provisions of the Recreation and Public Purposes (R&PP) Act or through direction supplied by specific Acts of Congress. Such direction allows the BLM to help states, local communities, and nonprofit organizations obtain lands at nominal cost. As a matter of policy, the BLM generally supports these legislative conveyances at nominal cost if the lands are appropriate for disposal, will be used for public purposes consistent with the R&PP Act, and if the conveyances include reversionary clauses to enforce this requirement.

The BLM generally does not object to the proposed conveyances of public lands identified in S. 1412, but we would welcome the opportunity to work with the Sponsor and the Subcommittee to ensure consistency with the BLM's existing authorities and requirements under FLPMA. These requirements include the payment of fair market value as determined by an appraisal of the lands and interests transferred out of Federal ownership, surveys of the individual areas to identify the boundaries, analysis under the NEPA, and compliance with applicable environmental and cultural resource laws.

The BLM notes many of the conveyances of public lands to Carson City in Sections 3 through 6 of the bill are at no cost for the value of the property and are exempted from the land use planning process under FLPMA. Under Section 3 of the bill, Carson City would assume any costs for processing the conveyance of 258 acres of BLM-managed land. The BLM would like to work with the Sponsor to clarify whether those costs include all NEPA documentation and compliance requirements as well as administrative costs.

Regarding the disposal of 28 acres of BLM-managed lands in Section 5 of the bill, the BLM would welcome the opportunity to work with the Sponsor on certain modifications. We recommend clarifying the intended recipient of the land and the mechanism envisioned for the disposal, such as through competitive or direct sale, or exchange. The BLM would also like to work with the Sponsor on boundary modifications to accurately reflect the intended acreage and location of existing easements. We also recommend modifying the bill to include a definition of “disposal agreement” and clearly identify the terms of the agreement.

The BLM has concerns with the transfer of 21 acres that are currently owned by Carson City to the Department, as specified by Section 6. As currently drafted, Carson City would convey lands to the Secretary, who must accept them, and then the BLM would make those lands available for disposal with conditions regarding ongoing access for the city. Under FLPMA, the acquisition and disposal of lands are discretionary actions that must consider local conditions and needs and determine whether the lands will serve the national interest. The BLM recommends amending Section 6 to ensure the Secretary maintains the discretion to accept lands into Federal ownership and provide for public input. The BLM is concerned that requiring the city to convey lands to the Department and then immediately dispose of them would create unnecessary administrative delays as the city already has the authority to dispose of their own land. We would like to work with the Sponsor to ensure any land sales or transfers align with the processes established under FLPMA. We would also like to work with the Sponsor to ensure the Secretary retains discretion over the proceeds from any federal land sales under this bill.

Finally, while the BLM supports the goal of conveying the reversionary interests of the 75 acres of lands identified in Section 8 of bill, we would like to work with the Sponsor to ensure the intended use of the lands conforms with the R&PP Act or ensures the receipt of fair market value of the lands and interests transferred out of Federal ownership.

### **S. 1750, Wyoming Public Lands Initiative Act**

S. 1750 designates over 15,000 acres of Wilderness Study Areas (WSA) as wilderness; releases from WSA status approximately 130,000 acres of BLM-managed WSAs; and designates four special management areas (SMA), three management areas, a motorized recreation area, and a National Conservation Area on approximately 94,000 acres of lands released from WSA status in the State of Wyoming. Additionally, the bill directs the BLM to study the potential for the development of special motorized recreation areas in Fremont County, and to pursue the exchange of State lands within the Lander Slope and Red Canyon Areas of Critical Environmental Concern (ACEC) for other lands managed by the BLM.

### ***Analysis***

Wilderness and WSAs are an essential component of conservation. The Biden Administration recognizes wilderness is a fundamentally important part of the American landscape, for practical and scientific values, and for the beauty, majesty, and solitude it provides. Wilderness and WSAs generate significant economic benefits to local communities by providing recreational opportunities while simultaneously supporting community and ecosystem health and biodiversity. The BLM does not support S. 1750, which would remove over 130,000 acres of

public lands from conservation status. The BLM defers to the USDA regarding the bill's provisions affecting the management of lands under their jurisdiction.

FLPMA provides a clear statement on the retention and management of lands administered by the BLM. Section 603 of FLPMA provided direction under which the BLM became a full partner in the National Wilderness Preservation System established by the Wilderness Act of 1964. The first step of the Section 603 process—to identify areas with wilderness characteristics—was completed in 1980. The BLM identified over 800 WSAs encompassing more than 26 million acres of BLM-managed lands. The second step of the process, begun in 1980 and concluded in 1991, was to study each of the WSAs and make a recommendation to the President on their suitability or non-suitability for preservation as wilderness. The President was then directed to send wilderness recommendations to Congress within two years of receiving the Secretary of the Interior's recommendation.

The President's 1992 and 1993 wilderness recommendations to Congress are now 30 years old, and the on-the-ground analysis of their wilderness suitability is as much as 40 years old. During that time, resource conditions have changed, our understanding of natural resources has changed, and public opinion has changed. Today, WSAs remain undeveloped federal lands that retain their primeval character and influence, without permanent improvements or human habitation, and are managed so as not to impair their suitability for designation as wilderness.

S. 1750 designates BLM-managed lands within the Encampment River Canyon, Prospect Mountain, Sweetwater Canyon, and Bobcat Draw Badlands WSAs as wilderness. The BLM supports these wilderness designations, and if this bill moves forward, recommends the inclusion of additional acreage within the Encampment River Canyon and Bobcat Draw Badlands WSAs as wilderness. The BLM would like to work with the Sponsor to prevent the creation of small and isolated parcels of wilderness created by the exclusion of portions of the WSAs from wilderness designations.

Under the bill, the Bennett Mountain, Sweetwater Rocks, and Cedar Mountain SMAs are designated on lands released from the Bennett Mountain, Lankin Dome, Split Rock, Savage Peak, Miller Springs, and Cedar Mountain WSAs. Additionally, the Fortification Creek, Fraker Mountain, and North Fork Management Areas are designated on lands released from the Fortification Creek, Gardner Mountain, and North Fork WSAs. While the BLM appreciates the sponsor's direction to maintain some of the varied resource values of these areas, the BLM recommends a more targeted approach rather than releasing WSAs in their entirety for other uses and management priorities. Further, the BLM cannot support the wholesale release of the Dubois Badlands WSA to create the Dubois Motorized Recreation Area and Dubois Badlands National Conservation Area as the WSA falls within an elk wintering area, which is critical winter range for mule deer, and encompasses at least two sage-grouse strutting grounds.

S. 1750 would also release the Copper Mountain, Whiskey Mountain, and Honeycombs WSAs to be managed in accordance with the laws generally applicable to BLM-managed lands. While these lands were not recommended for wilderness designation in the BLM's 1991 recommendations, if these suitability recommendations were made today, many of them would likely be different. The Copper Mountain WSA encompasses 6,858 acres of mountainous BLM-

administered land without any inholdings or split estate lands, while the Whiskey Mountain WSA and surrounding environments provide exceptional opportunities for backcountry hunting and host some of the largest concentrations of Rocky Mountain Bighorn Sheep in the United States. Lastly, the Honeycombs WSA consists of sharply eroded, strongly dissected badlands and rolling to steep hills that provide outstanding opportunities for solitude and primitive and unconfined recreation. The BLM cannot support release of these WSAs given their extensive wilderness characteristics including naturalness, solitude, opportunities for unconfined recreation, and special features.

Finally, the BLM notes that we support the direction of S. 1750 to pursue transfers in which land managed by the Bureau in Fremont County could be exchanged for land owned by the State that is within the boundaries of the Lander Slope and Red Canyon ACECs. Under the bill, these exchanges would occur in accordance with applicable laws. Further, the BLM supports the proposed study evaluating the potential for the development of special motorized recreation areas in Fremont County.

#### **S. 2254, Montana Headwaters Legacy Act**

S. 2254, the Montana Headwaters Legacy Act, would add approximately 376 miles of river systems in Montana administered by the Secretary of the Interior through the BLM and the Secretary of Agriculture through the USFS to the Wild and Scenic River (WSR) System. For the BLM, the bill applies to approximately 28 river miles of the Madison and Yellowstone Rivers.

Under the bill, the segments of the Madison River administered by the BLM would include a 13.5-mile “recreational” river segment from 2,000 feet downstream of the Hebgen Lake Dam, downstream to the point at which the river leaves BLM-managed land; a 7-mile “wild” river segment from 800 feet downstream of the Madison Dam Powerhouse, downstream to the Lee Metcalf Wilderness boundary; and a 7-mile “recreational” river segment from the Lee Metcalf Wilderness boundary downstream to the BLM boundary at the Black’s Ford Fishing Access Site. The segment of the Yellowstone River managed by BLM would consist of a 2,775 foot “recreational” river segment, part of a 19-mile segment from the Yellowstone National Park boundary in Gardiner, Montana, downstream to the confluence with Rock Creek and the Carbella Fishing Access Site.

#### ***Analysis***

Montana is known for its beautiful landscapes and free flowing rivers that draw thousands of visitors each year, supporting an extensive recreation economy. WSRs protect outstandingly remarkable values, free-flow, water quality, biodiversity and increase resilience to the impacts of climate change. The designation of these rivers will help ensure they continue to be an important natural resource and significant contributor to local economies for generations to come. S. 2254 aligns with the Administration’s conservation goals, and the Department supports the bill.

The BLM defers to the USDA regarding the bill’s provisions affecting the management of lands under its jurisdiction.

#### **S. 2708, Land Grant-Mercedes Traditional Use Recognition & Consultation Act**

S. 2708, the Land Grant-Mercedes Traditional Use Recognition and Consultation Act, requires the Department and the USDA – in consultation with the New Mexico Land Grant Council, the governing bodies of qualified land grant-mercedes, and Indian Tribes – to develop within two years written guidance pertaining to the management of lands within certain land grant-mercedes in New Mexico. Specifically, the guidance would describe the historical-traditional uses a community user or governing body of a qualified land grant-merced may conduct for noncommercial use on Federal land, as well as the activities that would require a Federal permit. The guidance would also clarify the permissible use of motorized vehicles and mechanized equipment for historical-traditional uses, and what is considered routine maintenance, or major or minor improvements to certain infrastructure owned or used by a qualified land grant-merced.

The bill specifies that the guidance also include policies and procedures for notice and comment on planning decisions, routine engagement, and major Federal actions that could impact historical-traditional uses of qualified land grant-mercedes. The bill directs the Secretaries where authorized to consider the socioeconomic conditions of community users and the annual operating budgets of governing bodies of qualified land grant-mercedes when determining whether to reduce or waive permit fees for historical-traditional uses.

S. 2708 also provides for additional consideration for historical-traditional uses by qualified land grant-mercedes when developing land use plans. Under the bill, the Departments would be required to provide for and evaluate impacts to historical-traditional uses in developing, maintaining, and revising land management plans under the FLPMA and the National Forest Management Act.

Finally, S. 2708 states that none of the bill’s provisions shall be construed to impact the State’s authority to regulate water rights or the management of game and fish; to impact any valid existing right or valid permitted uses, including grazing permits; to create any right to graze on Federal lands; or to impact any rights reserved for an Indian Tribe or members of an Indian Tribe.

### ***Analysis***

The BLM supports S. 2708, as it aligns with the Administration's priorities outlined in E.O. 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, and with the Secretary’s priorities to build healthy communities and economies and advance environmental justice. We recognize the importance of the historical-traditional uses outlined in the bill to the land grant-mercedes communities, and we also appreciate the goal of enhancing the communication of Federal agencies with these communities.

The BLM works closely with New Mexico’s land grant-mercedes and appreciates the cultural and historical role they have played and continue to play throughout New Mexico. The BLM has a liaison who interfaces with the New Mexico Land Grant Council, a state agency which represents the land grant-mercedes. The BLM liaison attends the Council’s regular monthly meetings and keeps the council abreast of BLM activities that may be of interest to the land grant-mercedes throughout the state. The BLM also initiated a pilot process for online fuelwood permitting, which enables members from land grant-mercedes to apply for fuelwood permits online rather than requiring them to travel to obtain the permits in person. Furthermore, the BLM

invites those land grant-mercedes that are political subdivisions of the State of New Mexico to participate as cooperating agencies on planning efforts. This provides land grant-mercedes the ability to meet with the BLM throughout the planning process.

We would also welcome the opportunity to work with the Sponsor on some technical aspects of the bill. The BLM recommends the Sponsor provide a clear definition of “Federal Land” that does not include Federal Land held in trust for the benefit of Indian tribes or Pueblos. We would also recommend additional language to ensure that any Spanish grants that overlap with Tribal lands be excluded from the provisions of the bill. In addition, we would like to work with the Sponsor to clarify the use of the word "consultation" to ensure it does not conflict with the official Tribal consultation process.

The BLM defers to the USDA regarding any changes to the management of lands under its administration.

### **S. 2980, Wildlife-Livestock Conflict Resolution Act**

S. 2980, the Wildlife-Livestock Conflict Resolution Act, directs the Secretary of the Interior and the Secretary of Agriculture to accept the donation of any valid existing grazing permits or leases within the State of New Mexico. Up to ten permits or leases may be donated in each fiscal year. When a permit or lease is donated, the Secretary is directed to permanently end grazing on the land covered by the donated permit or lease. In the case of common allotments, the donated permit or lease would result in an adjustment to the total grazing use allowed on the common allotment. Following a donation, the total grazing use on the common allotment may not exceed the average grazing use of the remaining permittees or lease holders for the five-year period preceding the donation.

### ***Analysis***

President Biden has recognized and honored the leadership role that farmers, ranchers, forest owners, hunters, and anglers already play in conserving the nation’s lands, waters, and wildlife, and has made clear that his Administration supports voluntary stewardship efforts. This commitment includes a clear recognition that maintaining ranching in the West – on both public lands and private lands – is essential to maintaining the health of wildlife, the prosperity of local economies, and an important and proud way of life. At the same time, collaboration and consensus-building have led to significant conservation outcomes. Livestock grazing is an integral part of the BLM’s multiple-use mission, and the BLM supports the goals of S. 2980 and the sponsor’s efforts to advance locally-led and focused voluntary conservation to promote the health of landscapes.

The BLM has successfully implemented the legislated donation of grazing permits in the past, including donations within designated Wilderness units in Owyhee County, Idaho, the Cascade-Siskiyou National Monument and the California Desert Conservation Area. The term “donation” in S. 2980 is interpreted by the BLM to carry the same meaning, i.e., to be a voluntary relinquishment of the permit or lease to graze on a public land grazing allotment and the preferential position that the permittee or lessee enjoyed, in relation to other applicants, to receive that permit or lease. In the case of common allotments, the BLM notes that the adjustment of total grazing use to an amount not to exceed the five-year average of the remaining

permittees or leaseholders could result in a decrease in the grazing available to the remaining permittees or leaseholders of the common allotment. Under existing legislative authorities, donations of grazing permits on common allotments permanently reduce authorized grazing only by the amount of the donated permit and do not also affect the grazing permits of the remaining permittees who are not a party to the donation.

Finally, the BLM would like to work with the Sponsor on minor modifications to the bill to ensure an opportunity for public comment prior to donation. Providing for public comment would ensure that both the BLM and permit or lease holders have an opportunity to be informed by additional information and input regarding livestock grazing within specific areas. 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.

### **S. 3046, Root & Stem Project Authorization**

S. 3046 authorizes the BLM and USFS to enter into contracts and agreements to conduct “Root and Stem” projects, which involve stewardship contracts to improve, maintain, or restore forest or rangeland health; restore or maintain water quality; improve fish and wildlife habitat; and reduce danger from wildfires, as outlined in section 604 of the Healthy Forests Restoration Act of 2003. Under the bill, Root and Stem projects must be designed and implemented through a collaborative process, be proposed prior to completing the environmental review process under NEPA, and may not exceed a period of ten years. S. 3046 establishes a statute of limitations of 120 days for legal action challenging a Root and Stem project or any activity under a Root and Stem project. Finally, the bill prohibits courts from enjoining Root and Stem projects if the court determines that the plaintiff is unable to demonstrate that their claim is likely to succeed on the merits.

### ***Analysis***

In the context of the BLM forestry program, “Stewardship” refers to the ability to trade forest products for land management services. Stewardship contracting authority includes agreements with nonprofits, best-value contracts, and a goods for services arrangement. Congress permanently authorized stewardship contracting through the 2014 Farm Bill, ensuring that the BLM will always have available this valuable tool. The BLM supports the goals of S. 3046 to facilitate efficient forest management and collaborative partnerships, and would like to work with the Sponsor to provide greater opportunities for judicial review.

S. 3046 requires environmental review for Root and Stem projects under NEPA to be conducted by an independent third party, selected by the entity carrying out a Root and Stem project and approved by the Secretary. Further, the NEPA work must occur after the parties enter into the contract or agreement. The Secretary is directed to review the independent third party for conflicts of interest, including any conflicts between the independent third party and the entity carrying out the Root and Stem project. The BLM interprets this provision as allowing Root and Stem contracts to include both NEPA review and the service work performed to achieve land management objectives. The BLM notes that new information gained during the NEPA process may have an impact on the scope of the service work necessary to achieve land management goals. While including NEPA review and service work in a single contract may improve

efficiency, new information could necessitate contract modifications and detract from any efficiency achieved.

S. 3046 limits judicial review to 120 days from the date on which the Secretary concerned provides public notice of the award of a contract or agreement, and the date the Secretary issues a decision approving the Root and Stem project. The BLM recommends allowing concerned parties more than 120 days to bring action. Finally, the BLM recommends modifications to the bill allowing courts to issue injunctions when necessary to prevent irreparable harm.

### **S. 3129, M.H. Dutch Salmon Greater Gila Wild & Scenic River Act**

S. 3129, the M.H. Dutch Salmon Greater Gila Wild and Scenic River Act, would designate nearly 450 miles of rivers and creeks of the Gila River system managed by the BLM and the USFS in New Mexico as components of the National WSR System. The BLM-managed sections in the bill include 2.1 miles of the Gila River in the area known as the Gila Lower Box to be designated as a recreational river; 6.1 miles of the Gila River in the Gila Lower Box as a wild river; and 2.4 miles of the Gila River in the area known as the Gila Middle Box as a wild river.

The bill requires the Department and the USDA to consult with Tribal governments, applicable political subdivisions of the state, and interested members of the public when preparing the comprehensive management plan for such segments. Any nonfederal land within or adjacent to a WSR segment designated by the bill that is acquired by the United States would be incorporated in and administered as part of the applicable segment. However, the bill prohibits the United States from acquiring such land without the owner's consent.

The bill also authorizes the Department and the USDA to construct, maintain, or replace fish barriers or other projects if necessary for the recovery of a species listed as endangered or threatened, if the species is identified as an outstandingly remarkable value of the river segment, or if the barrier is included in the applicable species recovery plan. Lastly, the bill would transfer 440 acres of land from the Gila National Forest to the Gila Cliff Dwellings National Monument, which is administered by the NPS.

### ***Analysis***

The Gila River and its watershed are part of one of the most iconic river systems in the Southwestern United States. The area provides habitat to many rare and unusual birds, and has one of the highest bird diversities in the state. In addition to its scenic, cultural, and ecological values, the river provides opportunities for canoeing or rafting during spring runoff, hunting, and year-round fishing and camping. The President's America the Beautiful initiative specifically emphasizes the value of conserving the nation's natural resources, recognizing that multiple uses of our lands and waters can be consistent with the long-term health and sustainability of natural systems. S. 3129 aligns with the Administration's goals to conserve at least 30 percent of our lands and waters by 2030, and the Department supports the bill.

The BLM's Mimbres Resource Management Plan (RMP) recommends designation of the Gila Lower Box and the Gila Middle Box as Wild and Scenic River Study Areas due to their free-flowing nature and the presence of Outstandingly Remarkable Values (ORVs). The BLM notes that S. 3129 would designate all but .84 miles of the river within the Gila Lower Box as a Wild

and Scenic River, and the BLM recommends that the Sponsor consider including this remaining portion within the designations provided by the bill. In addition, the BLM recommends that the Sponsor consider a wild designation for those river segments that cross through WSAs and Areas of Critical Environmental Concern.

The bill also proposes to transfer 440 acres of land from the Gila National Forest to the Gila Cliff Dwellings National Monument. The NPS already manages these lands and associated facilities through an agreement with the USFS. This transfer, which is supported by both agencies, would provide administrative clarity and improve efficiency. The NPS would not anticipate any substantial changes to the uses of the transferred lands.

In addition, the FWS is concerned that S. 3129 may hinder recovery efforts for native species in the Gila River basin, and would welcome the opportunity to work with the Committee and the bill's Sponsors to ensure the Service can continue to manage native species in the Gila basin.

The BLM defers to the USDA regarding the bill's provisions affecting the management of lands under their jurisdiction.

### **S. 3144, Sutton Mountain & Painted Hills Area Wildfire Resiliency Preservation & Economic Enhancement Act**

S. 3144 would establish the 65,000-acre Sutton Mountain National Monument in north central Oregon. The bill directs the development of a comprehensive management plan for the long-term conservation of the monument, a travel management plan, and a wildfire risk assessment and mitigation plan. S.3144 releases the Sutton Mountain and Pat's Cabin WSAs, 28,878 acres and 9,817 acres respectively, within the boundary of the monument from WSA status while including direction to manage the lands to maintain their existing wilderness character.

Further, the bill directs the Secretary of the Interior to accept the voluntary relinquishment of any valid existing grazing permits or leases on lands within the monument. When a permit or lease is donated, the Secretary is directed to permanently end grazing on the land covered by the donated permit or lease. The bill also provides for three equal value land exchanges, including 825 acres of non-Federal land and 847 acres of Federal land, and conveys 1,486 acres of BLM-managed lands to the City of Mitchell and Wheeler County, Oregon, for recreation or other public purposes. Lastly, the bill withdraws the lands within the monument from operation of the public land, mining, and mineral and geothermal leasing laws, with an exception for the use of saleable minerals for road maintenance.

### ***Analysis***

The lands proposed for designation as the Sutton Mountain National Monument provide the public with opportunities to enjoy the scenic beauty of the Sutton Mountain, Pat's Cabin, and Painted Hills areas, while also learning about their natural history and early settlement history. These lands provide habitat to pronghorn, deer, and elk as well as recreational opportunities for adventurous thrill-seekers and mellow nature enthusiasts alike. Visitors to the area engage in hiking, primitive camping, big game and upland hunting, horseback riding, back-country exploration, photography, and rock and fossil study in steep, challenging terrain. The national monument designation provided by the bill will conserve and protect these cherished public

lands. The BLM supports S. 3144 as it aligns with the Administration's conservation goals, and we would welcome the opportunity to work with the Sponsor on minor modifications.

### **Establishment of Sutton Mountain National Monument**

The proposed Sutton Mountain National Monument would be composed of upper and lower units managed to address their unique characteristics, resources, objects, and values. S. 3144 directs the creation of a Monument Management Plan within two years of enactment. The bill requires the plan to direct the Upper Unit, including the Pat's Cabin and Sutton Mountain WSAs, to be managed to maintain wilderness characteristics; enhance nonmechanized, primitive, and unconfined recreation opportunities; and include passive habitat management. The management of the Lower Unit would be directed to prioritize new and expanded opportunities for both mechanized and nonmechanized recreation and include active habitat restoration. The BLM appreciates the Sponsor's efforts to maintain wilderness characteristics of the upper unit following release of the Pat's Cabin and Sutton Mountain WSAs. We would like to work with the Sponsor to develop legislative text further outlining how the released WSAs of the Upper Unit should be managed to preserve wilderness character.

Additionally, S. 3144 requires the BLM to develop a Comprehensive Travel Management Plan establishing specific requirements for the Upper and Lower Units. Under the bill, the Comprehensive Travel Management Plan must prohibit motorized and mechanized use in the Upper Unit with limited exceptions for administrative purposes, access to inholdings, and the construction of motorized routes necessary for public safety. In the Lower Unit, temporary motorized routes may be developed to assist with the removal of juniper. The BLM recommends the addition of legislative text defining administrative purposes to clarify whether the motorized use exception for the Upper Unit applies only to governmental administrative purposes or also applies to grazing permit holders and special recreation permit holders, among others. Further, the BLM recommends the addition of language allowing for construction and maintenance of motorized routes and parking areas to mitigate potential adverse impacts to wildlife habitat and to ensure parking facilities for persons with disabilities in the Lower Unit.

### **Voluntary Relinquishment of Voluntary Grazing Permits or Leases**

S. 3144 allows grazing established before the monument's designation to continue subject to applicable law, policy, and regulations. Further, the bill directs the Secretary to accept the voluntary relinquishment of any valid existing grazing permits or leases on lands within the proposed monument. When a permit or lease is relinquished, the Secretary is directed to permanently end grazing on the land covered by the donated permit or lease. If a permit or lease holder voluntarily relinquishes less than the full level of grazing use authorized under the permit or lease, the Secretary must reduce the authorized grazing level to reflect the voluntary relinquishment. The BLM supports this effort to advance locally-led and focused voluntary conservation to promote the health of unique and treasured landscapes.

### **Land Exchanges & Conveyances**

Under the bill, the BLM is directed to accept offers to exchange three specific parcels of non-Federal lands for three parcels of BLM-managed lands for equal value. Combined, the exchanges would impact 825 acres of non-Federal land and 847 acres of Federal land. Should either the Federal or non-Federal parcels exceed the value of the other, the exchange will be equalized by

adjusting the acreage to be exchanged. Appraisals of the land must be conducted under nationally recognized appraisal standards. The BLM recommends including provisions addressing encumbrances, requiring Environmental Site Assessments to determine if hazardous waste is present, and requiring any necessary remediation prior to the exchange.

S. 3144 also directs the BLM to convey 1,327 acres of BLM-managed lands to the City of Mitchell and 159 acres to Wheeler County for recreation or other public purposes consistent with the R&PP Act. Not more than 50 acres may be used for either senior housing or economic development. Under the bill, should the parcels cease to be used for these purposes, the lands would revert to the United States. The BLM recommends the addition of legislative text directing that any lands to be reverted to the United States remain under city and/or county ownership if any hazardous material remediation work is required and is not yet completed.

The BLM notes that the Treaty of 1855 with the Confederated Tribes of the Warm Springs provides rights to the Tribes to harvest fish, game, and other foods outside the reservation boundaries, including the lands to be conveyed. The BLM recommends amending the bill to require an assessment of the impact of the proposed conveyances on Tribal treaty rights before the conveyances are executed, and conditioning conveyances upon the assurance of satisfaction of tribal treaty rights.

### **Withdrawal**

Lastly, S. 3144 withdraws the lands within the monument from operation of the public land, mining, and mineral and geothermal leasing laws. The bill creates an exception to permit the continued development of saleable minerals for road maintenance from a specified gravel pit in the monument. The BLM notes there are additional gravel pits within the boundaries of the proposed monument and recommends the addition of language clarifying the Sponsor's intent regarding the additional gravel pits.

### **S. 3269, the Unrecognized Southeast Alaska Native Communities Recognition & Compensation Act**

S. 3269 would amend the Alaska Native Claims Settlement Act (ANCSA) (P.L. 92-203) to authorize the Southeast Alaska Native communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell to organize as Urban Corporations under Sealaska Corporation, the regional corporation for Southeast Alaska. The bill also directs the Secretary to convey approximately 23,040 acres of surface estate in the Tongass National Forest to each urban corporation, and to convey the subsurface estate underlying the same lands to Sealaska Corporation. S. 3269 further notes that Congress intends such conveyances to be made within two years from the date the corporations are formed.

### ***Analysis***

In 1971, Congress passed ANCSA, which settled aboriginal land claims in Alaska by entitling Alaska Native communities to select and receive title to 46 million acres of Federal land. The Act established a corporate structure for Native land ownership in Alaska under which Alaska Natives would become shareholders in one of over 200 private, land-owning Alaska Native village, group, urban, and reserve corporations and/or one of 12 private, for-profit, land-owning

regional corporations. Most Alaska Natives are enrolled in two corporations; the corporation representing the community where they lived in 1970 and a regional corporation.

Each regional corporation encompasses a specific geographic area and is associated with Alaska Natives who had traditionally lived in the area. For each corporation, whether village or regional, ANCSA provided at least two potential acreage entitlements through which it could select and receive ownership of Federal lands. For Alaska Natives who were non-residents of the state at the time the Act was signed into law, ANCSA authorized a non-landowning 13th Regional Corporation.

Due to a monetary settlement of aboriginal title prior to ANCSA (*Tlingit and Haida Indians of Alaska and Harry Douglas, et al. v. United States*, 182 Ct. Cl., 130, 389 F.2d 778, 1968), land entitlements in Southeast Alaska differ from those in the rest of the state. Section 16(a) of ANCSA withdrew lands for 10 specific Native villages located in Southeast Alaska, which did not include the communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell.

The communities of Haines, Ketchikan, and Tenakee have previously applied for eligibility for lands and benefits under ANCSA. The Bureau of Indian Affairs (BIA) originally determined Haines as eligible to receive land and benefits under ANCSA but reversed its decision in February of 1974. The BIA also determined Tenakee and Ketchikan to be ineligible.

All three appealed the BIA's decisions to the Alaska Native Claims Appeal Board (ANCAB), an *ad hoc* Interior appellate board established specifically to hear appeals on ANCSA matters. The ANCAB found that Congress intended to grant benefits only to the 10 villages listed in Sec. 16(a) of ANCSA and affirmed BIA's decisions. Petersburg and Wrangell did not apply for eligibility, and none of the five villages filed land selection applications.

As the Secretary of the Interior's designated survey and land conveyance agent, the BLM is the Federal agency tasked with transferring to Alaska Native corporations title to the 46 million acres as required by ANCSA. The BLM's Alaska Land Transfer program administers the transfer of lands to individual Alaska Natives under the Alaska Native Allotment and Alaska Native Veterans Allotment Acts, the transfer of 46 million acres to Alaska Native communities under ANCSA, and the conveyance of 104.5 million acres to the State of Alaska under the Alaska Statehood Act.

The Department appreciates the Sponsor's efforts to resolve this long-standing dispute regarding ANCSA eligibility for the Alaska Native communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell. The Department would like to work with the Sponsor on a few technical modifications to ensure that previous and future allocations to regional corporations are unaffected by this bill, as well as the public easement process outlined in S. 3269, so it more closely aligns with current BLM procedures. The Department defers to the USFS on issues related to the land designated by the bill to be transferred, as the designated lands are all within the Tongass National Forest.

### **S. 3370, University of Utah Research Park Act**

S. 3370, the University of Utah Research Park Act, would release, without consideration, the Federal government’s reversionary interest in a 593-acre parcel conveyed by patent to the University of Utah (University) under the R&PP Act.

### *Analysis*

The BLM regularly transfers public land to local governments and nonprofits for a variety of public purposes. These transfers are typically accomplished under the provisions of the R&PP Act or through direction supplied through specific Acts of Congress. The R&PP Act is a statute frequently used by the BLM to help States, local communities, and nonprofit organizations obtain lands – at no or low cost – for important public purposes such as parks, schools, hospitals and other health facilities, fire and law enforcement facilities, courthouses, social services facilities, and public works.

Because these public purpose lands are conveyed at far below market value, R&PP Act conveyances and many similar legislated conveyances include a reversionary clause requiring that lands be used for public purposes or revert to the Federal government. Over the years, the BLM has consistently required the payment of fair market value for the reversionary interest, in accordance with FLPMA requirements for disposal of lands or interests in land.

In the 1930s, the U.S. Department of the Army decommissioned Fort Douglas near Salt Lake City, Utah, and transferred ownership of this property to the Department. On October 18, 1968, the BLM issued to the University a R&PP patent, numbered 43-99-0012, “for purposes of academic expansion of the University of Utah, in Salt Lake City Utah, for an arboretum, and for highway and utility rights-of-way to serve those purposes.” Today, the lands identified in S.3370 – commonly referred to as “Research Park” – contains a complex of technology, education, and medical buildings, among other uses. Over the years, the University has approached the BLM to request additional uses on the property, which in some cases were for uses not allowed under the R&PP Act.

FLPMA, which is the authority under which the BLM generally disposes of public land or interests without limit, requires receipt of fair market value for public lands or interests transferred out of public ownership. This serves to ensure that taxpayers are fairly compensated for the conveyance of public lands or interests out of Federal ownership. The BLM supports the bill’s goal of conveying the reversionary interest in this parcel to the University. As with previous such proposals, we recommend amending S. 3370 to ensure the payment of fair market value for the reversionary interest. However, the Department recognizes that there may be circumstances, as determined by Congress, in which the public benefits of a proposed transfer outweigh financial considerations.

### **S. 3644, BLM Land Acquisition Data Collection**

S. 3644, requires the BLM to collect data on lands and interests acquired through the LWCF. The bill also requires the BLM to develop guidance to ensure that land acquisition data is accurate and stored in a centralized data system. Additionally, under the bill, the BLM must provide a report to Congress within one year of enactment, and annually thereafter, describing the agency’s data collection efforts.

### *Analysis*

The LWCF was established by Congress in 1964 to fulfill a bipartisan commitment to safeguard natural areas, water resources, and cultural heritage, and to provide recreation opportunities for all Americans. The BLM is committed to transparency and accessibility regarding decisions about LWCF acquisition projects and how they support specific conservation, recreation, and related projects that enhance management of and public access to existing public lands and resources. In response to recommendations from a May 2019 GAO report, the BLM is continuing to take steps to collect centralized data on the lands and interests it obtains using the LWCF and improve our ability to track lands acquired using LWCF funds.

The BLM appreciates the Sponsor's interest in ensuring transparency for this important program and notes that LWCF land acquisition data is currently available to the public and meets the intent of S. 3644. An interactive web map of BLM's LWCF acquisitions may be viewed on the BLM.gov website:

<https://blm-egis.maps.arcgis.com/apps/webappviewer/index.html?id=939554120e1947be8370437e637885ac>

The data includes the acquisition fund used, the acres and interest acquired, the appraisal value, the payment made, and links to photos of the property. The public may also download geospatial data there as well:

<https://gbp-blm-egis.hub.arcgis.com/datasets/BLM-EGIS::blm-natl-land-and-water-conservation-fund-lwcf-polygons/about>.

The BLM further notes that the Great American Outdoors Act (P.L. 116-152) requires Federal agencies to include detailed account, program, and project allocations for LWCF deposits as part of the annual budget submission to Congress. We would like to work with the Sponsor to clarify their intent regarding the potentially duplicative reporting requirement under the bill.

### **S. 4062, Helping Open Underutilized Space to Ensure Shelter (HOUSES) Act**

S. 4062, the HOUSES Act, would amend the FLPMA to authorize the conveyance of public lands to state or local governments for residential development, open space, green space, and allowable community amenities. Under the bill, a state or local government may nominate parcels of public lands for the Secretary of the Interior's consideration for residential development. The bill prohibits the Secretary from considering whether other adjacent lands could prudently or feasibly be used for the same purposes. It also specifies that up to 15 percent of the nominated lands may be used for commercial purposes.

In addition, the bill requires the sale price of nominated public land parcels to follow a Payment in Lieu of Taxes (PILT)-discounted formula reducing the fair market value of the lands. The gross proceeds of the sale of public lands would be available to the Secretary, subject to appropriations, for capital improvements in national parks, hazardous fuels treatments and wildfire prevention, development of public water infrastructure on Federal lands, and restoration of critical habitat.

### *Analysis*

FLPMA set a national policy to retain the public lands in Federal ownership and guides the BLM's multiple use and sustained yield mandate. The BLM opposes the bill because S. 4062 would undermine these foundational principles by requiring the BLM to sell land without sufficient evaluation of the values to the public or to future generations, or sufficient compensation to the American taxpayer.

Under FLPMA, public lands may be identified as potentially available for disposal through the BLM's land use planning process. Lands that are identified as eligible for disposal in a RMP generally require site-specific analysis prior to disposal to identify special circumstances that may act as impediments to disposal—such as the presence of threatened or endangered species, cultural or historic resources, mining claims, mineral leases, rights-of-way, hazardous materials, or grazing permits—and must also be appraised before a decision on disposal can be made. Furthermore, because land use plans may be decades old, lands identified as potentially available for disposal in an RMP may be found later to be unsuitable because of new circumstances such as solar or wind energy development, a new conservation designation, oil and gas leasing, the listing of new threatened and endangered species, the establishment of rights-of-way, or other encumbrances.

Section 203 of FLPMA allows BLM to sell public lands provided specific disposal criteria are met. The proceeds from sales are deposited into the General Fund of the Treasury. Typically, these sales have been for low value lands or lands that are difficult or uneconomic to manage, such as isolated parcels surrounded by private land. Land sales conducted under FLPMA occur at the discretion of the Secretary and are made at fair market value in accordance with Federal law.

The BLM also regularly leases and conveys lands to local governments and nonprofit entities for a variety of public purposes. These leases and conveyances are typically accomplished under the provisions of the R&PP Act or through direction supplied by specific Acts of Congress. Such direction allows the BLM to help States, local communities, and nonprofit organizations obtain lands for public purposes at nominal cost. As a matter of policy, the BLM generally supports these legislative conveyances at nominal cost if the lands are appropriate for disposal, will be used for public purposes consistent with the R&PP Act, and if the conveyances include reversionary clauses to enforce this requirement.

Additionally, the Federal Land Transaction Facilitation Act (FLTFA) allows the BLM to sell public lands identified for disposal through the land use planning process and retain the proceeds from those sales in a special account through the Treasury. These funds can then be used by the BLM to acquire lands with high conservation or recreation value, or interests therein, from willing sellers.

The BLM notes some of the eligible projects described in S. 4062 can already be achieved under existing authorities provided under FLPMA and the R&PP Act, such as the transfer of public lands to a State or local government for open space, green space, or certain community amenities and infrastructure. As mentioned, the BLM generally supports the conveyance of public lands when such conveyances are in the public interest and consistent with publicly approved land use plans. However, as discussed further below, the BLM cannot support S. 4062.

### **Conditions for Nominating Lands for Sale**

Section 2 of S. 4062 amends Section 203 of FLPMA by adding a new subsection that outlines the nomination process by which States and local governments could select BLM-administered public lands within their boundaries for sale for residential and commercial purposes. Under this process, these entities may nominate one or more tracts except for selecting lands that are defined in the bill as “federally protected lands.” While there is no discernable limit to the number of tracts these entities may nominate, Section 2(h)(3)(C)(ii) of the bill appears to limit the size of an individual tract to 640 acres. The BLM notes that the list of “federally protected lands” in the bill omits special designations and protections for public lands developed through the land use planning process, such as areas of critical environmental concern and lands with wilderness characteristics, as well as all lands within the National Landscape Conservation System.

### **Eligibility Requirements for Sales of Nominated Lands**

Section 2 also specifies the requirements for an eligible project under the bill, and requirements by which the Secretary must review the projects. Under the bill, the Secretary would be required to promulgate new regulations to carry out the amendment to FLPMA within 180 days of the bill’s enactment and finalize the regulations within one year. Subparagraphs (C), (D), and (E) of the bill describe the percentages of lands that projects may use for residential, commercial, and industrial purposes; restrictions on density of housing; the acreage limit of individual residential lots; and conditions for commercial development on the nominated public land tracts. Regarding the eligible project requirements, the BLM notes these provisions pertaining to the zoning of residential and commercial lands in local jurisdictions is well outside of the Bureau’s purview and authority under FLPMA. Decisions regarding how communities’ zone residential and commercial uses is best determined by local governments, not the BLM.

### **Requirements for Secretary’s Oversight of Land Sales**

Under the bill, the Secretary would be responsible for reviewing nominations of public lands to be sold. S. 4062 directs the Secretary to prioritize proposals that use public lands to address “housing shortages” over any other use of the lands, except for protecting prior existing rights. The bill prohibits the Secretary from considering whether such housing shortages could be prudently or feasibly addressed on lands other than the nominated public land. Further, the BLM notes the provisions in S. 4062 requiring the Secretary to oversee the compliance of a State or local government’s residential or commercial development project would not be possible to enforce. Once a parcel of public land has been sold out of Federal ownership, there is no authority under FLPMA or other Federal law allowing the Secretary to regulate the use of that land. We are concerned that attempts to enforce compliance of the terms of a proposal authorized under S. 4062 would likely result in legal challenges and significant costs to the Federal government, especially if residential housing has been built and occupied.

### **Compliance Requirements Process for Nominated Lands**

The bill requires the Secretary to consider a nominated tract of public land that is identified as eligible for disposal under any applicable law as automatically approved for sale. Nominated public lands that are not identified as eligible for disposal must be reviewed and a determination made regarding their approval or disapproval for sale within a year. If the review process is not

completed within one year, the conveyance would be considered approved. As discussed above, before the BLM takes any action on lands identified as potentially suitable for disposal, appropriate reviews and clearances in accordance with the NEPA and other Federal laws, along with cadastral surveys and appraisals to determine fair market value are conducted. Additionally, based on our experience, we believe the timeframes provided in S. 4062 are insufficient to review and finalize the necessary environmental documents, adjudicate existing encumbrances, conduct appraisals, complete cadastral surveys and legal descriptions, and prepare title documents. Further, the automatic approval provisions in S. 4062 would prevent the Bureau from meeting its obligations for public engagement and thorough environmental review in the sale of public lands.

In addition, we are concerned that one year may not be sufficient to complete analysis of any historic and sacred sites as required under the Native American Graves Protection Act and the National Historic Preservation Act (NHPA). The Administration is committed to strengthening the involvement of Tribal Nations in the Federal policies and actions that affect Tribal communities.

### **Discounted Price for Land Sales**

S. 4062 as written, also undermines a bedrock principle under FLPMA: that American taxpayers receive fair market value for the use of their public lands and resources. Under the bill, lands nominated for sale and approved for conveyance would be subject to reduced pricing based on a formula described under 31 U.S.C. 69 (PILT). The BLM believes land sales should allow for competitive or modified competitive bidding consistent with 43 CFR 2710, and afford the Secretary full discretion to determine whether a sale is in the public interest and consistent with approved RMPs.

### **State Approvals for Land Conveyances**

Likewise, S. 4062 would disrupt the existing coordination framework under FLPMA between the Federal government and States or local governments by restricting the Secretary from executing a conveyance proposed under this new subsection without written approval from the Governor of the State. Under FLPMA and its implementing regulations, the BLM works in partnership with State, local, and Tribal governments, as well as the public, to manage public lands and resources. Before any land is sold, a notice is published in the Federal Register and advertised in local media. Notices are also sent to the Governor of the State where the land is located, to appropriate local officials, and to interested parties, not less than 60 days prior to sale. The purpose of this notification is to give State and local governments involved an opportunity to amend zoning or other regulations to take into account the impending change in land status. We believe the special role of States and other non-Federal government entities in the administration of public lands should be preserved in its current form; and object to the provisions of S. 4062 that would subordinate the authority of the Federal government to execute land sales to State approval.

### **Disposition of Proceeds**

Finally, S. 4062 specifies how the gross proceeds from the sale of public lands under this legislation would be used. While the BLM does not necessarily object to the specified uses of the gross proceeds for activities on Federal lands under the bill, we believe these proceeds should be deposited into the FLTFA Federal Land Disposal Account. The BLM notes this existing

Treasury account and authority allows the Bureau, the USFS, the NPS, and the FWS to use those funds to acquire non-Federal lands that improve manageability of existing public lands, contain exceptional resources, and improve public access for recreation. Also, the provision giving States the gross proceeds of a sale of Federal land conflicts with BLM's longstanding policy and practice of ensuring that American taxpayers are fairly compensated for the removal of public lands from Federal ownership.

### **S. 4080, Berryessa Snow Mountain National Monument Expansion Act**

S. 4080, Berryessa Snow Mountain National Monument Expansion Act, would add approximately 3,900 acres of land managed by the BLM to the Berryessa Snow Mountain National Monument in Lake County, California. Befitting the area's cultural significance to the many Tribes in this region, the bill renames the area commonly known as "Walker Ridge" to Condor Ridge, or Molok Luyuk in the Patwin language. The bill directs the Board of Geographic Names and the BLM to formally change all references in law, map, regulation, or other records to reflect the name change.

The bill (Section 4) also directs the BLM and the USFS to complete a comprehensive management plan for the National Monument within one year of enactment. It requires the agencies to consult with affected Federally recognized Indian Tribes on the development of the monument plan and to establish parameters for continued meaningful engagement in subsequent management decisions.

Finally, S. 4080 (Section 5) provides opportunities for the BLM and the USFS to enter into cooperative agreements and other financial partnership instruments with Federally recognized Indian Tribes for management of the National Monument.

### ***Analysis***

The Berryessa Snow Mountain National Monument was established by President Obama's Presidential Proclamation 9298 on July 10, 2015, in order to protect its rich biodiversity, including rare endemic species, unique serpentine outcrops, relic prairies, and riparian habitats. In addition to providing essential habitat for fish and wildlife, the area is important for scientific study, prehistoric and historic preservation, and exceptional outdoor recreational opportunities. The lands within the national monument are some of the most scenic in northern California, ranging from rolling oak-studded hillsides to steep canyons and ridgelines with expansive views. These lands retain deep cultural significance for roughly two dozen Federally recognized Indian Tribes who inhabited them for at least the last 11,000 years.

Encompassing more than 330,000 acres of public land, the Berryessa Snow Mountain National Monument is jointly managed by the BLM (approximately 133,000 acres) and the USFS (approximately 197,000 acres). The addition of Molok Luyuk to the Berryessa Snow Mountain National Monument as outlined in S. 4080 aligns with the Administration's conservation goals, and the Department supports the bill.

The BLM would like to work with the Sponsor on a few modifications including extending the timeframe outlined in S.4080 to complete the comprehensive management plan for the monument. The BLM notes that thoughtful and deliberative land use planning efforts can take

several years to complete, including public involvement and fulfilling requirements under the NEPA and each agencies' planning regulations. Including more achievable timelines would allow for robust public comment and coordination with Tribes through the planning process.

The Department appreciates the bill's direction to continue to work with Federally recognized tribes for the management of the National Monument. Since its establishment, both the BLM the USFS have worked to carefully manage the objects and values identified in Presidential Proclamation 9298. The agencies have held several community conversations to gather public input and build a shared vision for stewardship of the monument, including a workshop held in January with the Yocha Dehe Wintun Nation, where the BLM discussed projects and possible collaboration with the Tribe. Additionally, the BLM has created and filled a new Tribal Liaison position in California to facilitate consultation and collaboration with Tribes.

The BLM notes this aspect of the bill aligns with the Administration's efforts to strengthen opportunities for Tribal engagement in the management of Federal lands. In January 2021, President Biden established his commitment to strengthen nation-to-nation relationships in his Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships. Consultation and collaboration are essential for Tribal governments to shape decisions for the protection of sacred sites and traditional cultural properties, conservation of native plants and wildlife, recreation, and other uses and values of the monument.

Furthermore, President Biden recently built upon this commitment in announcing that the Department the USDA created the "Tribal Homelands Initiative." Through a joint Secretarial Order 3403, the two Departments codified a policy to facilitate agreements with Tribes to collaborate in the co-stewardship of Federal lands and waters. Moreover, the Departments have also entered into a memorandum of understanding signed by eight agencies, which will increase collaboration with Tribes to ensure stewardship and access to sites, and incorporate traditional ecological knowledge into management, treatment, and protection procedures. The Administration recognizes and affirms that the United States' trust and treaty obligations are an integral part of each Department's responsibilities for managing Federal lands.

#### **S. 4227, Excluding Certain Federal Minerals from Federal Drilling Permit Requirements**

S. 4227 eliminates the requirement that an oil and gas operator submit to the BLM a Federal Application for Permit to Drill (APD) in instances where there is non-Federal surface estate and where the subsurface mineral estate is less than 50 percent Federal in drilling and spacing units. Under the bill, a state would be required to provide the Secretary of the Interior a copy of the state approved drilling permit within 45 days of approval. Without a Federal permit, the NEPA, NHPA, and Endangered Species Act requirements for the exploration, development, or production of oil and gas would no longer apply. S. 4227 also states that nothing in the bill alters the amount of royalties due to the United States from production of Federal oil and gas.

#### ***Analysis***

The BLM opposes the modifications to the oil and gas permitting process outlined in S. 4227. Since taking office through April 2022, this Administration has approved more than 4,700 APDs, leaving industry with more than 9,000 approved APDs available for drilling. The total review time for APDs has also decreased by more than 40 percent since 2011.

The Department has concerns that S. 4227 would remove the Secretary's discretion to ensure that oil and gas operations are conducted safely, are following all applicable environmental laws, and are consistent with the BLM's multiple use and sustained yield mandate under the FLPMA. Essentially, the bill would transfer Federal decision-making authority to the State. By requiring the state to merely notify the Secretary within 45 days of the State's approval of an APD, S. 4227 would eliminate the Secretary's existing discretion with respect to these approvals, which would be a significant change from current law that would undermine the BLM's core responsibility to ensure that permitted and regulated activities occurring on Federal lands are in compliance with Federal requirements designed specifically to protect the environment, nearby communities, other landowner interests, and taxpayers.. The provision would not allow the Secretary to withhold approval, where appropriate, nor does it contain any requirement for the proponent's request to be fully complete prior to submission.

The APD is the important final step in the Federal oil and gas development process before development can occur. The bill fails to address several key oversight roles the BLM plays in ensuring that Federal minerals – and that lands that are used to access them – are protected as the mineral resources are developed, nor does it allow for inspection and enforcement to verify production. The BLM has robust drilling and production standards that are applied to all wells that intersect Federal minerals. Without these Federal drilling standards – including those related to blowout preventer tests and cementing and casing requirements – the BLM has concerns for the protection of water zones and other potential risks that would result from the bill. Any shortcomings resulting from a state's permitting process would inappropriately leave Federal taxpayers responsible for obligations created by the state.

Further, During the APD review, the BLM is required to complete a site-specific environmental analysis of the permitting action, which does not generally occur in the BLM's land use planning process or in the leasing analysis. Additionally, during this process, the public has their final opportunity to engage in the decision-making process, which helps the BLM identify public health and safety concerns and other potential resource conflicts related to a proposed drilling action on resources owned by the public. S. 4227 would take away important public involvement, where Federal, state, Tribal, and local entities participate in the environmental review process through the posting of APDs on the BLM national public database and within the responsible field office.

If enacted, S. 4227 would require the state to approve all APDs within drilling and spacing units with less than a 50 percent Federal mineral interest. The BLM notes that there are units where individual wells could be more than 50 percent Federal minerals, and these wells would also not require a Federal APD. As a result, the bill could potentially apply to significantly more APDs than the Sponsors intended.

***In addition to the BLM testimonies above, the Department submits the following two statements from the U.S. Geological Survey and the Bureau of Ocean Energy Management:***

**S. 2568, Open Access Evapotranspiration Data Act**

S. 2578, the Open Access Evapotranspiration Data Act (OpenET), would require the Secretary of the Interior, acting through the Director the U.S. Geological Survey (USGS), to establish an

OpenET Data Program to operationally deliver satellite-based, field-scale estimates of evapotranspiration (ET) to advance the quantification of evaporation and consumptive water use to sustain and enhance water resources in the United States.

The bill specifies various duties and components of the OpenET Data Program which include that the USGS evaluate, use and modify sources of satellite-based ET data based on best available science and technologies, along with coordinating and consulting with relevant Federal agencies and partners. Program partners are defined as institutions of higher education, State agencies, nongovernmental organizations and the private sector.

Furthermore, in carrying out the program, the Secretary would support the development and maintenance of ET data and software systems, and associated research and development that are reflective of best available science.

### *Analysis*

The Department is supportive of continuing research to improve reporting of ET data. The value of improved ET reporting is widely understood in the water resources science and management community. Accurate information on ET is required to balance water supply and water demand in a watershed and ensure that adequate water supplies for multiple uses are available over time. The USGS has actively engaged with an OpenET team to help develop and test a prototype system. This engagement has provided USGS with unique insights into the program and its potential as well as current limitations.

Sections 4(a) and (b) of the bill authorize the Department to advance the quantification of evaporation and consumptive water use as well as provide data users with field-scale estimates of evapotranspiration data across large landscapes over certain periods of time. Although the Department is supportive of improving ET reporting at the national scale, we would like to work with the Committee to ensure that we can responsibly plan efforts to expand beyond the reporting currently being done as part of the OpenET consortium's pilot effort for irrigated lands in the West. Specifically, the Department believes that satellite-based methods of determining ET values should be combined with other types of ET estimation methods that can validate and augment satellite-based delivery of nationwide ET data.

Section 4(f) of the bill would require USGS to enter into cooperative agreements with and provide non-reimbursable cost share to unspecified program partners for operational delivery. This is a productive way to research and test the applicability of various methods for estimating ET; however, relying on these partners to continually deliver ET data as part of a plan to operationally deliver ET data nationally is uncertain for the long term. External partners are an important contributor to researching potential techniques and methods, but the responsibility for operational delivery, and the mechanisms with which to do so, should belong to USGS to ensure long-term continuity and success.

Section 5 of the bill requires a status update on the operational incorporation of program data into modeling, water planning, and reporting efforts of relevant Federal agencies no later than 4 years after enactment. Given that the research-to-operations timeline would take 3-5 years, the Department would like to work with the Committee to extend the status report timeline to 5 years

instead of the 4 years currently included in the legislation. This will ensure that USGS has adequate time to conduct the research needed to bring the program to an operational status. Section 5 also authorizes \$14,000,000 annually from 2022-2026; however, the full cost estimates for the program are not yet known as an assessment has not been done to date. The Department would like to work with the Committee to develop a timeline for developing an estimate of what the costs would be as the program is established at USGS.

The Department continues to be supportive of continuing research to improve reporting ET nationally, we would like to work with the Committee to address these issues.

### **S. 2996, Alaska Offshore Parity Act**

The Department, through the Bureau of Ocean Energy Management, manages energy and mineral resources located in Federal waters of the Outer Continental Shelf (OCS) with authority granted by the Outer Continental Shelf Lands Act (OCSLA). Under Section 8(g) of OCSLA, a portion of Federal offshore oil and gas revenues generated from leases located in the first three nautical miles of Federal waters past the boundary with state waters is shared with the adjacent coastal states. S. 2996 proposes expanding revenue sharing provisions to areas of the Alaska OCS not already subject to Section 8(g) of OCSLA. As part of this bill, 50% of Alaska OCS oil and gas revenues generated from leases outside of the 8(g) zone, other than revenues from the forfeiture of financial security instruments, would go to the Treasury, with the remaining split between the State of Alaska (42.5%) and coastal political subdivisions within the State (7.5%). The bill lists allowable uses for revenues received by the State of Alaska, including coastal protection and restoration, funding onshore infrastructure projects, installation of energy systems to reduce energy costs and greenhouse gas emissions, other purposes approved by the Governor and State legislature, and more.

### ***Analysis***

The Department is committed to ensuring that American taxpayers receive a fair return from the development of offshore mineral resources, which are owned by all Americans. The Department also recognizes the importance of increasing investments in coastal protection and other climate change mitigation funds for the State of Alaska. However, the Administration has concerns that any re-direction of OCS revenues from the Treasury reduces the net return to taxpayers and funding available for other priorities, and fosters dependence on an uncertain and unpredictable source of revenue. The Administration also has concerns with the scope of eligible uses for State revenues under the legislation, which does not ensure that the funding will be committed to mitigating coastal damage or protecting communities and natural resources that are at the highest risk of harm due to climate change. We look forward to further discussion with the Sponsor and the Committee.

### **Conclusion**

Thank you for the opportunity to provide testimony on these bills, and I look forward to your questions.