

**Statement of  
John Ruhs  
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Bureau of Land Management  
U.S. Department of the Interior  
Senate Energy and Natural Resources Committee  
Subcommittee on Public Lands, Forests, & Mining  
S. 32, California Desert Protection and Recreation Act  
July 26, 2017**

Thank you for the opportunity to testify on S. 32, the California Desert Protection and Recreation Act. This bill, which amends the California Desert Protection Act of 1994 (CDPA, Public Law 103-433), provides direction for the future management of Federal lands within the California Desert Conservation Area (CDCA).

The Department of the Interior (Department) recognizes the work of members of the California delegation to attempt to address a wide array of resource issues and management concerns in the California desert. Secretary Zinke is committed to implementing the America First Energy Plan, which is an “all-of-the-above” plan that includes oil and gas, coal, and renewable resources. Public lands in California are integral to the development of these important energy resources. In addition, Secretary Zinke, through Secretarial Order 3347, has pledged to expand access to America’s public lands and increase hunting, fishing, and recreational opportunities nationwide. While we support the goals of S. 32 that align with these important priorities, we do not support the bill as currently written because many of its proposed designations and administrative provisions could ultimately decrease public access, limit outdoor recreation, and impede energy development.

The Department would like the opportunity to work with the sponsors and Subcommittee to address a number of concerns outlined in this statement. In particular, we note that the sponsors and Subcommittee may wish to consider a more geographically focused or county-specific approach for some of the designations proposed by S. 32. The bipartisan Washington County, Utah, and Owyhee County, Idaho, land management legislation advanced during the 110th Congress could serve as good examples. Finally, we defer to the Department of Agriculture and the Department of Defense regarding provisions in the bill concerning the lands and interests they administer.

Because of the complexity of this legislation and the importance of these issues to the Department, my statement will address each of the bill’s provisions individually.

**Background**

The CDCA contains over 25 million acres and includes 16 million acres of public lands administered by the Department. It was singled out for special management in the Federal Land Policy and Management Act of 1976 (FLPMA). Section 601 of FLPMA recognized the unique location of the CDCA, which is adjacent to the major metropolitan areas of southern California and over 20 million residents. This location has always meant that the management of the CDCA must consider the public’s desire for recreational activities, public access, energy

development, rights-of-way, conservation, and other important uses. The CDCA Plan of 1980 and its associated amendments were vast in their scale, ambitious in their goals, and designed to accommodate a variety of uses and users.

By the early 1990s, increased development pressures on the desert and new public awareness led many to believe that further measures were necessary to adequately conserve the special places of the California desert. After careful deliberation and an extensive public process, Congress in 1994 enacted the CDPA, which established Death Valley and Joshua Tree National Parks and the Mojave National Preserve, designated wilderness, and provided strong protections for traditional cultural uses of the area by various Tribes. The areas conserved by the CDPA serve as invaluable natural and recreational resources for the people of the California desert and the nearby Los Angeles metropolitan area.

### **Title I – California Desert Conservation & Recreation**

Title I of S. 32 creates three new wilderness areas and expands two existing Wilderness Areas; expands wilderness in Death Valley National Park, and releases portions of six Wilderness Study Areas (WSAs). Title I also establishes the Vinagre Wash Special Management Area and Alabama Hills National Scenic Area; designates potential wilderness areas; expands three units of the National Park System; and establishes six National Off-Highway Vehicle (OHV) Recreation Areas, along with other miscellaneous provisions.

#### ***Wilderness***

Section 1301 would designate the approximately 88,000-acre Avawatz Mountains Wilderness, the approximately 8,000-acre Great Falls Basin Wilderness, and the approximately 80,000-acre Soda Mountains Wilderness. In addition, this section would expand the existing Golden Valley Wilderness by approximately 1,300 acres, the Kingston Range Wilderness by approximately 53,000 acres, and Death Valley National Park Wilderness by approximately 92,000 acres. The Department supports Congressional action to resolve wilderness designation and WSA release issues on public lands across the West, and we welcome opportunities to further those efforts. Only Congress can determine whether to designate WSAs as wilderness or to release them for other multiple uses. We would like to work with Congress to achieve this important goal.

The Department notes that the lands proposed for wilderness designation by S. 32 generally serve as habitat for a diversity of plant and animal life and provide important opportunities for hiking, hunting, rock climbing, horseback riding, and other forms of outdoor recreation in the California desert. Pursuant to the priorities outlined by Secretary Zinke, we would like the opportunity to work with the sponsors and the Subcommittee to ensure that wilderness designation is the best mechanism for protecting these resources while restoring balance to other important uses. Alternative management approaches could conserve sensitive resources while still accommodating the full range of uses and activities permitted on other BLM-managed lands. If Congress opts to proceed with designation of these lands as wilderness, we would like to work on some management language modifications in section 1302 to ensure that the BLM and the NPS retain the flexibility to coordinate on cross-boundary issues.

A provision that the Department would recommend adding to Title I is the conversion of an approximately 1-acre area from designated wilderness to designated potential wilderness. This

area, known as the Mormon Peak Communication Area, serves as a major communications hub for the Death Valley National Park community. We would like to see it identified as potential wilderness until such time that a technological alternative becomes available to the present system.

Section 1303 proposes to release over 130,000 acres of BLM-managed public lands from WSA status, allowing these areas to be managed according to the existing BLM land use plans. As discussed above, we support this provision. These lands are small portions of WSAs that were not designated wilderness by this or previous legislation.

### ***Vinagre Wash***

Sections 1401 through 1404 create the approximately 82,000-acre Vinagre Wash Special Management Area (SMA) and would designate approximately 112 miles of trails for motorized recreation, horseback riding, mountain biking, and hiking. In recognition of the importance of the lands within the SMA to the Quechan Indian Nation and other Indian Tribes, section 1403 includes special protections of cultural resources and provides for a two-year study of those resources and related needs. Finally, section 1404 identifies four potential wilderness areas within the SMA. The Secretary is directed to preserve the character of the potential wilderness areas for eventual inclusion in the National Wilderness Preservation System, with limited specific exceptions for military uses. Designation would occur when the Secretary, in consultation with the Secretary of Defense, determines that all activities on these lands are compatible with the Wilderness Act of 1964.

The Department strongly supports efforts to facilitate and enhance recreational opportunities on America's public lands. We are also committed to the principle of tribal self-determination and efforts to strengthen tribal communities, including the preservation of cultural heritage. As with other lands proposed for wilderness designation by S. 32, however, we would like the opportunity to work with the sponsors and Subcommittee to ensure that the proposed potential wilderness designations are the most effective method of protecting sensitive resources while restoring balance to other important uses within the proposed SMA. We note that other management approaches could also conserve these resources while still allowing for the full range of uses and activities available on other BLM-managed lands, which may not be permitted under the Wilderness Act. The Department would also like to work with the sponsors on amendments to the language to ensure consistency with existing plans and laws, including boundary adjustments for manageability.

### ***National Park System Additions***

At Mojave National Preserve, 25 acres would be transferred from the BLM to the NPS. The NPS owns a maintenance facility situated on this parcel. No additional maintenance costs for the NPS would be incurred through the transfer.

At Joshua Tree National Park, approximately 2,900 acres of BLM land would be transferred to the NPS. An additional approximately 1,600 acres would be donated by the Mojave Desert Land Trust. These lands, which are contiguous to several places along the northern boundary of the park, would help provide a more cohesive, logical northern boundary and ensure the protection

of primary wildlife corridors that run through the park and adjoining public lands in the Mojave Desert.

The NPS would also be authorized to acquire and administer the Joshua Tree Visitor Center, currently located outside the park boundary and owned by the Joshua Tree National Park Association. The Association currently leases the structure to the NPS, and lack of permanent Federal property ownership prevents the park from making basic repairs or enhancements to the visitor center. Purchasing the structure would save the NPS annual rental expenses.

Although these land transfers would be beneficial to both NPS and BLM over the long term, we are concerned that a significant majority of the lands to be transferred to NPS under this bill has not been investigated for environmental conditions. These lands include areas that have been subject to mining, military operations, and other uses that may have created contamination necessitating cleanup. The Department recommends amending this section of the bill to ensure consistency with Departmental policy and the Comprehensive Environmental Response, Compensation, and Liability Act, and to require that prior to the transfer of any of the above-described lands to the NPS, they be fully investigated for any contamination in accordance with applicable environmental due diligence standards and that any contamination be remediated.

#### ***Off-Highway Vehicle Recreation Areas***

Section 1601 designates six OHV Recreation Areas totaling about 200,000 acres on BLM-managed public lands. The Department is committed to expanding access to public lands and increasing recreation opportunities nationwide. As such, we support each of these designations as they would provide congressionally designated areas for this popular recreational activity in the California desert. The Department notes that the Dumont Dunes, El Mirage, Rasor, Spangler Hills, Stoddard Valley, and Johnson Valley OHV Recreation Areas would be consistent with BLM management goals for these areas. We would like to work with the sponsors and the Subcommittee on amendments to this section to address management discretion for commercial uses, consistency in naming, the requirement for additional planning activities, and timeframes.

#### ***Alabama Hills National Scenic Area***

Sections 1701 through 1707 establish the Alabama Hills National Scenic Area, which would encompass approximately 19,000 acres of BLM-managed public lands and would be administered as a unit of the BLM's National Conservation Lands. These sections also provide for the transfer of about 40 acres of U.S. Forest Service land to the BLM; direct that 132 acres of Federal land be taken into trust for the benefit of the Lone Pine Paiute-Shoshone Reservation; and provides for an acquisition by a private landowner to resolve an ongoing trespass issue. The Alabama Hills contain unique geologic features that have attracted photographers, cinematographers, and recreationists for generations. The area provides stunning views of Mount Whitney and the Sierra Nevada Mountains and has spectacular natural arches, rolling hills, and vibrant wildflowers. The Alabama Hills also serve as a backdrop for iconic Hollywood movies and remains a popular location for commercial filming.

The Department's understanding is that Senators Feinstein and Harris, Congressman Cook, and their staffs have worked to assemble a diverse coalition of stakeholders, including Inyo County, the Lone Pine Chamber of Commerce, the Lone-Pine Paiute-Shoshone Tribe, local business

owners, and other key stakeholders, to reach consensus on the management and conservation of this area. The Department notes that each of the National Conservation Areas (NCAs) and similar designations established by Congress and managed by the BLM is unique. However, all of these designations have certain critical elements in common, including withdrawal from the public land, mining, and mineral leasing laws; limiting off-highway vehicles to roads and trails designated for their use; language that charges the Secretary of the Interior with allowing only those uses that further the purposes for which the area is established; and language ensuring that lands within such designations are managed at a higher level of conservation than the lands outside.

The Department could support the protection of the Alabama Hills as a part of the National Conservation Lands and the other provisions in this section, but we would like to work with the sponsors and Subcommittee on language to address management of utility rights-of-way, to ensure consistency with management of other units of the National Conservation Lands, and to address other minor technical issues.

### ***Miscellaneous Provisions***

Section 1801 provides for the transfer of approximately 1,000 acres of the Table Mountain Wilderness Study Area to the California Department of Parks and Recreation for administration as a unit of Anza-Borrego Desert State Park. This area contains 12 active mining claims, and the transfer would occur after claims are terminated. The Department does not necessarily object to this transfer, but we would like to work with the sponsors on language to ensure clarity of the transfer process and release language of the Wilderness Study Area status prior to transfer to California State Parks.

Section 1803 requires a study to assess the impacts of climate change on the CDCA within two years. The Department believes such study is unnecessary and notes that the analysis already conducted as part of the BLM's Desert Renewable Energy Conservation Plan largely met the requirements of this section.

Section 1804 establishes certain restrictions on the use of acquired or donated lands within the CDCA. The Department does not necessarily object to these restrictions, which we understand are related to various plans and agreements made under Federal and State laws, but we would like to work with the sponsors to ensure consistency with other existing agreements and requirements, to provide for discretion and public input, and to ensure technical accuracy. Section 1805 provides for access by members of Indian tribes and requires the Secretary to develop a Tribal Cultural Resources Management Plan for the Xan Kwatchan Trail network.

Section 1806 would transfer the Federal reversionary interest in certain lands and minerals to the Metropolitan Water District of Southern California. All costs associated with this conveyance would be the responsibility of the Metropolitan Water District. The BLM, as a matter of both policy and practice, and in accordance with FLPMA, generally 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 removal of public lands from Federal ownership. The Department supports the goal of conveying the reversionary interest outlined in this section. As with previous such proposals, we recommend amending the legislation 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. We would also like to work with the sponsors and Subcommittee on amendments to address issues of technical clarity.

Section 103 requires the Secretary to work with the California State Lands Commission to develop a process for exchange of State parcels within the new conservation designations. The Department has no objection to this process but would like to work with the sponsors on minor modifications to ensure it is consistent with existing authorities.

Section 104 amends the Wild and Scenic Rivers Act (16 U.S.C. 1274[a]) by adding segments of five rivers to the National Wild and Scenic River System. Three of these segments, the Amargosa River, Surprise Canyon Creek, and Whitewater River, cross public lands managed by the BLM and the NPS. All three of these are important riparian areas in the deserts of southern California and provide habitat for a number of threatened, endangered, and sensitive species. With that said, we would like the opportunity to work with the sponsors and the Subcommittee to ensure that wild and scenic river designation is the best mechanism for protecting such resources. Alternative management approaches could conserve sensitive resources while still accommodating the full range of uses and activities permitted on other BLM-managed lands. If Congress opts to add these segments to the National Wild and Scenic River System, we would like to work with the Subcommittee on technical issues, including correcting what we believe is an error in the legal description.

Section 105 contains a number of conforming amendments, some of which could significantly impact management of areas designated under the bill. We would like to work with the sponsors and the Subcommittee on the language regarding avoiding establishment of buffer zones. The section pertaining to Native Groundwater Supplies would preclude the Secretary from authorizing the use of any right-of-way or lease to extract, consume, export, transfer or distribute groundwater on certain BLM-managed public lands in quantities that collectively exceed the estimated perennial safe yield or annual recharge rate, as determined by the United States Geological Survey. The Department supports working landscapes across the West and is committed to keeping public lands healthy and productive. The Department would like to work with the sponsors and Subcommittee on amendments to this section to ensure that the BLM retains its ability to manage these public lands on the basis of multiple-use and sustained yield.

## **Title II – Development of Renewable Energy on Public Lands**

Title II of S. 32 establishes a new process for disposition of revenues received for the development of wind or solar energy on BLM-administered lands throughout the West. Under this title, 25 percent of revenues would be distributed to States and 25 percent to Counties. For ten years, 15 percent of revenues would be used for the processing of renewable energy permits, while 35 percent would be deposited in a Renewable Energy Resource Conservation Fund (Fund). After ten years, the permit processing funds would also be deposited in the Fund. The Secretary would be permitted to make amounts in the Fund available to other Federal and State agencies for five purposes: 1) protection and restoration of important wildlife habitat and corridors and water resources; 2) conducting research with Universities on restoration and protection activities; 3) securing recreational access to Federal lands; 4) carrying out activities

authorized under the Land and Water Conservation Fund; and 5) establishing, operating, and maintaining a trans-State desert tortoise conservation center. The Secretary is also required to establish an Advisory Board to provide recommendations and guidance on the amount of funds expended from the Fund.

The Department notes that all revenues from solar and wind energy authorizations on public lands currently go to the U.S. Treasury. We do not support the diversion of solar and wind energy receipts and have concerns with the potential long-term costs associated such diversion. The Department would like to work with the sponsors and the Subcommittee to determine how best to achieve the overall goal of this title.

Additionally, under existing authorities and regulations, the BLM currently collects full cost recovery as costs are incurred throughout the wind and solar application process. Due to the difficulty in estimating the total cost for processing an application upfront, the Department recommends continuing its current cost recovery process.

### **Conclusion**

The Department recognizes the work of members of the California delegation on S. 32 and supports certain goals of the bill that align with the Secretary's priorities of expanding access to and recreational opportunities on public lands. However, we do not support S. 32 as currently written. We would like to work with the sponsors and the Subcommittee on a number of substantive and technical modifications to the bill as it moves through the legislative process.

**Statement of  
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Senate Energy and Natural Resources  
Subcommittee on Public Lands, Forests, and Mining  
S. 90, Red River Gradient Boundary Survey Act**

**July 26, 2017**

Thank you for the opportunity to present the views of the Department of the Interior on S. 90, the Red River Gradient Boundary Survey Act. S. 90 addresses a complex set of issues concerning the location of the southern boundary of the public domain along the Red River, which since the early 1800s has eluded final resolution. Enacting legislation would be a constructive approach toward long-term resolution of the Red River issues, and the Department supports the overall intent of the bill – obtaining certainty on the location of federal land in relation to adjacent private land.

**Background**

Along approximately 116 miles of its length, the southern bank of the Red River (as defined by the Supreme Court in 1923) forms the boundary between Federal and non-Federal lands. The vegetation line as described in the Red River Boundary Compact establishes the state line between Oklahoma and Texas. Because of treaties between the United States and Spain that followed the Louisiana Purchase, and the 1867 treaty between the U.S. and three American Indian Tribes that established the Kiowa, Comanche, and Apache (KCA) reservation, there remains a 116-mile strip of public domain land that lies between the medial line and the southern bank of the Red River, from the North Fork of the river east to the 98<sup>th</sup> Meridian. Under the Act of June 12, 1926, specific percentages of the fluid mineral development royalties on that public domain are deposited into a trust account for the KCA, with the remaining percentage going to the State of Oklahoma.

Identification of the exact boundaries of the public lands along the Red River is challenging for a multitude of reasons. The Department has attempted to survey portions of the area in order to identify the boundaries of certain Indian allotments.

**S. 90, Red River Gradient Boundary Survey Act**

S. 90 requires the Secretary of the Interior to commission and fund a gradient boundary survey along 116 miles of the Red River. The survey would be conducted by surveyors that are selected jointly by and operating under the joint direction of the Texas General Land Office and both the Attorney General of the State of Oklahoma and Oklahoma Commissioners of the Land Office, in consultation with each affected federally recognized Indian tribe. Surveyors will also survey individual parcels and identify property boundaries of private parties' property interests. Once



conducted, these surveys would be submitted for approval to the specified Texas and Oklahoma authorities. The surveys would not be submitted to the Secretary for approval. After receiving a notice from specified Texas and Oklahoma authorities of the approval of a survey related to an individual parcel, the Department would be required to identify and provide notice of the completed survey to each private owner of land adjacent to that parcel.

The Department would like to work with the sponsor and the Committee on a number of issues, including modifications to provide clarity on the resolution of private property claims. Under S. 90, the Federal contract for a survey of the South Bank Boundary of the Red River would include surveys of individual parcels along the river, which the States of Texas and Oklahoma, respectively, would approve or disapprove, in consultation with affected Federally recognized tribes. We encourage the sponsor to clarify whether the term “individual parcels” refers to private lands owned in either the State of Texas or the State of Oklahoma, as well as whether this term is intended to include parcels allotted to individual Indians. If it is intended to refer to the latter, there is some question as to whether the bill—assigning approval authority for the survey of individual parcels to the states of Texas and Oklahoma—is consistent with the Federal government’s trust responsibilities toward these individual Indian allottees. In any event, if “individual parcels” is intended to encompass private landowners’ parcels, we encourage the sponsor to include in the legislation an appropriate mechanism for affected private landowners to dispute surveys completed pursuant to the legislation.

The Department further notes that section 3(c) appears to associate completion of individual parcel surveys with a determination of which individuals own a parcel. If a private surveyor is expected to make determinations of individual ownership in addition to conducting surveys of individual parcels, the legislation and the Department’s contract with the surveyor should state this clearly, and whether the survey authorized by this bill would supersede any prior surveys and associated deeds.

Especially because the legislation appears to provide for private surveyors making determinations about private property owners’ parcels, the Department would like to work with the sponsor on modifications to ensure notification to landowners by an appropriate agency about these determinations. Under section 3(c)(2), within 30 days after receiving a notice of individual parcel approval from the Texas or Oklahoma authorities, the Secretary of the Interior is required to provide notice of the approval to each landowner adjacent to the individual parcel. Because the Secretary of the Interior has no authority to survey privately owned lands that are not coincident with a Federal boundary, the Department has no records of private land ownership in Texas. The Texas General Land Office and the Oklahoma Commissioners of the Land Office have all the information needed to identify private owners of land adjacent to any particular parcel. It may be more appropriate for those offices to notify private property owners in their respective states versus the Secretary of the Interior.

The survey required by S. 90 differs in a key respect from regular surveys that are conducted under contract with the Department. The S. 90 survey would be performed under the direction of the Texas General Land Office and both the Attorney General of the State of Oklahoma and Oklahoma Commissioners of the Land Office, in consultation with each affected Federally recognized Indian tribe; the Secretary of the Interior is explicitly excluded from directing and approving the survey results.

S. 90 divests the Department of the Interior of its role as surveyor of record to identify the boundaries of public lands, a role it has fulfilled since the Land Ordinance of 1785 and the Northwest Ordinance of 1787. The authority to identify the limits of Federal ownership—in this case, the boundary between Federal and private lands along the Red River—is a responsibility vested in the Secretary. The purpose is to assure that no clouds on title exist for lands conveyed out of Federal ownership. For the past two centuries, the Federal Government has surveyed public lands into townships and sections (Public Land Survey System), establishing legal records that formed the basis on which the government transferred public land to railroads, homesteaders, and others until 1976. The legal descriptions contained in these land records may also form the basis for modern title records and private real estate sales and purchases. The Department also conducts cadastral surveys that establish the boundary between Federal and private lands. The Department would like to work with the sponsor on modifications to ensure that the overall goals of the bill are achieved without divesting the Secretary of his responsibility to review and approve associated surveys.

The Department would also like to work with the sponsor on modifications to ensure consistency with the laws governing Federal contracts. S. 90 requires the Secretary to enter into a Federal contract with a contractor selected by third parties (the Texas General Land Office and the Oklahoma Commissioners of the Land Office, in consultation with the attorney general of the State of Oklahoma and each affected Federally recognized Indian tribe) to perform work that the third party directs and approves. Generally, standard Federal contracting law requires an agency to offer an open competition and to review the qualifications and capacities of the firms responding to the contractual solicitation. Moreover, it would be helpful to the Department if S. 90 clarified the dispute resolution procedures to be used in case a dispute arises between the contractor and the third parties, as well as clarifying which party bears responsibility for enforcing terms in the legislation; for example, the two-year time period for completing the surveys. The Department's role in evaluating whether the contractor fully performed the terms of the contract is also unclear.

Finally, section 4 provides that nothing in the Act modifies any interest of the States of Oklahoma or Texas, or of any Federally recognized Indian tribe, relating to land located north of the South Bank boundary line; modifies any land patented under the "Color of Title Act;" modifies or supersedes the Red River Boundary Compact enacted by the States of Oklahoma and Texas and consented to by Congress pursuant to P.L. 106-288; creates or reinstates any Indian reservation or any portion of such a reservation; or alters any valid right of the State of Oklahoma or the Kiowa, Comanche, or Apache Indian tribes to the mineral interest trust fund established under the Act of June 12, 1926. The Department encourages the sponsor to add individual Indian allottees to the list of parties exempted from effect of this Act. Also, we understand that the Department of Justice would like to work with the subcommittee to address a constitutional concern with some of the text in the bill.

### **Conclusion**

Thank you for the opportunity to present these views. I would be pleased to answer any questions.

**Statement of  
John Ruhs,  
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Bureau of Land Management  
U.S. Department of the Interior  
Senate Committee on Energy and Natural Resources  
Subcommittee on Public Lands, Forests, and Mining  
S. 357, Santa Ana River Wash Plan Land Exchange Act  
July 26, 2017**

Thank you for the opportunity to present the views of the Department of the Interior on S. 357, the Santa Ana River Wash Plan Land Exchange Act. S. 357 would direct the exchange of approximately 327 acres of public lands managed by the Bureau of Land Management (BLM) for approximately 310 acres of land managed by the San Bernardino Valley Water Conservation District (WCD) in San Bernardino County, California.

The Department supports the bill but would like to work with the sponsor and the Subcommittee on a few modifications. We appreciate Senator Feinstein's support of this land exchange, which will help consolidate ownership of lands, allow for infrastructure improvements, further mineral development, and contribute to habitat protection and conservation efforts in the Upper Santa Ana River Wash.

**Background**

For over twenty years, the BLM has been an active participant in coordinated land use planning and conservation efforts in the Upper Santa Ana River Wash (Wash Planning Area). This area is approximately one mile below the Seven Oaks Dam, near the City of Redlands, California, and involves a mix of both public and private land ownership.

The Wash Planning Area is regionally important for flood control, groundwater recharge, recreation, and habitat for threatened and endangered species. The area is also an important source for aggregate for concrete products and roadway construction materials. Under a Public Law from 1909 ("Act of February 20, 1909"), Congress set aside certain lands within this area for water recharge and excluded mining on BLM-managed lands. The diverse resource values within the region served as an impetus for the formation of a task force in 1993 to help coordinate land uses irrespective of land ownership boundaries. City and county officials, industry representatives, WCD officials, and the BLM were key members of the task force.

After 15 years of collaboration and engagement with stakeholders representing water, mining, flood control, wildlife, and municipal interests, the task force finalized a Regional Plan to coordinate the uses of the Wash Planning Area. Based on this Regional Plan, the users of the Wash Planning Area are developing a Habitat Conservation Plan (HCP) with the U.S. Fish and Wildlife Service. Taken together, these management strategies serve to guide land uses and activities while also improving the wildlife habitat in the Upper Santa Ana River Wash.

***Public Land Exchanges***

Under the Federal Land Policy Management Act of 1976 (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. FLPMA provides the BLM with a clear multiple-use and sustained yield mandate that the agency implements through its land use planning process.

Among other purposes, land exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into non-Federal ownership for local needs and the consolidation of scattered tracts. The BLM conducts land exchanges pursuant to Section 206 of FLPMA, which provides the agency with the authority to undertake such exchanges, or when given specific direction by Congress. To be eligible for exchange under Section 206 of FLPMA, BLM-managed lands must have been identified as potentially available for disposal through the land use planning process. Extensive public involvement is critically important for such exchanges to be successful. The Department notes that the process of identifying lands as potentially available for exchange does not include the clearance of impediments to disposal or exchange, such as the presence of threatened and endangered species, cultural or historic resources, mining claims, oil and gas leases, rights-of-way, and grazing permits. Under FLPMA, this clearance must occur before the exchange can be completed.

### **S. 357**

S. 357 would require within two years of the bill's enactment the exchange of approximately 327 acres of BLM-managed public lands for approximately 310 acres of WCD-administered private lands in San Bernardino County, California. The purpose of the exchange would be to transfer public lands to the WCD for economic development and to acquire environmentally sensitive private lands for consolidated management of public lands.

The land exchange would be subject to valid existing rights, appraisals would be conducted, and it would be completed pursuant to FLPMA Section 206. The WCD would be responsible for all costs associated with the exchange. If the value of the public lands proposed for exchange exceeds the value of the private lands, up to 59 additional acres of private lands may be added to the proposed exchange to equalize values. If the additional private lands are insufficient to equalize values, the WCD must make a cash equalization payment in accordance with the land exchange provisions of FLPMA or terminate the exchange. If the value of the private lands proposed for exchange exceeds the value of the public lands, up to an additional 90 acres of public lands may be added to the proposed exchange to equalize values. In the event that the additional public lands are insufficient to equalize values, the Secretary is not required to make a cash equalization payment to the WCD.

The bill would also exempt any public lands proposed for exchange to the WCD from the "Act of February 20, 1909." The private lands proposed for exchange to the BLM, however, would continue to be subject to the continued use, maintenance, operation, construction, relocation, or expansion of groundwater recharge facilities to the extent that such activities are not in conflict with the HCP. Finally, the bill revokes Secretarial Order 241 from November 11, 1929, which withdrew a portion of the public land for a transmission line that ultimately was not constructed.

### **Analysis**

The Department supports the completion of land exchanges that consolidate ownership of scattered tracts of lands, thereby streamlining land management tasks and enhancing resources

protection and providing opportunities for resource development. In this particular exchange, the BLM would acquire quality habitat for the Federally-listed Santa Ana River woolly-star, slender-horned spinyflower, coastal California gnatcatcher, and the San Bernardino kangaroo rat, while facilitating mineral and infrastructure development for local communities across the region.

We have a few concerns with the bill's provisions, however, and we would like the opportunity to work with the sponsor and Subcommittee to incorporate in the bill standard appraisal and equalization of values language, which has been used in many other successful legislated land exchanges. The Department is committed to continuing its adherence to the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standards of Professional Appraisal Practice and recommends the appraisal process be managed by DOI's Office of Valuation Services. The Department notes that the public lands proposed for exchange have not yet been fully analyzed under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), or the FLPMA public interest determination. These review requirements provide for public engagement, opportunities to consider environmental and cultural impacts, and help ensure that unknown or unforeseen issues are not overlooked. Finally, we understand that the Department of Justice would like to work with the subcommittee to address a constitutional concern with some of the text in the bill.

### **Conclusion**

Thank you for the opportunity to provide testimony on S. 357, the Santa Ana River Wash Plan Land Exchange Act. The Department supports the bill, but would like to work with the sponsor and the Subcommittee on a few modifications. I would be happy to answer any questions.

**Statement of  
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Senate Energy and Natural Resources Committee  
Subcommittee on Public Lands, Forests, and Mining  
S. 436, San Juan County Settlement Implementation Act  
July 26, 2017**

Thank you for the opportunity to present the views of the Department of the Interior (Department) on S. 436, which would authorize the Secretary of the Interior to retire a certain type of Federal coal lease rights – preference right lease applications (PRLA) – in exchange for issuance of equivalent value coal bidding rights which the PRLA holder could use elsewhere on Federal lands; authorize the Navajo Nation to substitute certain land selections; and designate wilderness areas in northern New Mexico.

The Department appreciates the work of Senators Heinrich and Udall to address concerns on previous versions of this legislation. While we support the bill's proposed resolution to long-standing issues concerning mineral development and tribal land selection, we believe that its wilderness designation components could be best achieved through standalone legislation. The Department notes that this type of approach could accommodate additional stakeholder perspectives concerning the most appropriate method of protecting the important resources and uses on these lands. We would also like to continue discussions with the sponsors and the Committee on a few remaining issues.

**Background**

***Exchange of Coal Preference Right Lease Applications***

Prior to 1976, the Secretary was authorized by the Mineral Leasing Act (MLA) to issue permits to prospect for coal on public lands in areas where no known coal deposits existed. If coal was discovered, the prospector could file a preference right lease application (PRLA). If commercial quantities of coal were demonstrated, the prospector was entitled to a “preference right lease,” – a noncompetitive, exclusive right to mine coal on these public lands for an initial 20-year term.

The Federal Coal Leasing Amendments Act of 1976 repealed the Secretary’s authority to issue prospecting permits and terminated the preference right leasing program for coal, subject to valid existing rights. However, coal prospecting permittees who had filed a PRLA prior to 1976 continue to be recognized as having valid existing rights that require adjudication by the BLM. In 1982 and 1987, the BLM promulgated regulations exclusively for processing these pre-1976 PRLAs.

To date, all coal PRLAs have been processed, except for eleven held by the Ark Land Company (Ark Land), covering approximately 21,000 acres in northern New Mexico. These PRLAs are within three miles of Chaco Culture National Historical Park and in the Ah-shi-sle-pah Wilderness Study Area (WSA), Fossil Forest Research Natural Area, and North Road and Ah-shi-sle-pah Road Areas of Critical Environmental Concern (ACECs). These areas are not an

ideal site for commercial development of the coal because they have cultural, archaeological, paleontological (dinosaur fossils), and primitive recreational significance. In the interest of protecting the important resources in the area, in 2012, after extensive investigation, litigation and negotiation, the BLM and Ark Land signed a settlement agreement that would seek to exchange the eleven PRLAs for an equal value in Federal bidding rights for Federal coal within the border of the State of Wyoming. S. 436 clarifies that the bidding rights would be applied to 50 percent of a bonus bid or a royalty payment. This language seeks to ensure that use of the Federal bidding rights will not interfere with payment of the State's share of bonus, rentals, or royalties that would be paid from Federal receipts to the State of Wyoming or any other State under the bid-sharing formula in the Mineral Leasing Act (30 U.S.C. 191).

### ***Navajo-Hopi Land Settlement Act***

As part of the Navajo-Hopi Land Settlement Act (P.L. 93-531), the Navajo Nation selected approximately 12,000 acres of lands which overlap the PRLAs and are within protected areas such as the Ah-shi-sle-pah WSA and south of the Bisti/De-Na-Zin Wilderness and the Ah-shi-sle-pah Road ACEC. These selections have not yet been completed due to the encumbrance of the PRLAs. The Navajo Nation has sought to "deselect" these lands and select others, but is unable to complete the action without further legislation. The new legislative authority in S. 436 would allow the Navajo Nation to finalize its land selections authorized under the Settlement Act.

### ***Ah-Shi-Sle-Pah WSA & Bisti/ De-Na-Zin Wilderness***

The Ah-Shi-Sle-Pah Wilderness Study Area (WSA), comprising 6,563-acres located about 40 miles south of Farmington, New Mexico, is rich in petrified wood, fossils, and exposed geologic formations and is popular for day hikers and photographers who enjoy its unique geologic history.

The Bisti/ De-Na-Zin Wilderness, an area of approximately 41,170-acres located 28 miles south of Farmington, New Mexico, offers some of the most unusual scenery found in the Four Corners Region. Natural sandstone weathering has created hoodoos – tall, thin spires of rock rising up out of the ground – pinnacles, cap rocks, and other unusual formations. This area recently received national attention following the discovery of two fossilized Pentaceratops dinosaur skeletons.

### **S. 436**

#### ***Exchange of Coal Preference Right Lease Applications (Section 2)***

S. 436 would authorize the Secretary to retire coal PRLAs by issuing bidding rights in exchange for relinquishment of the PRLAs. The bill defines a "bidding right" as an appropriate legal instrument that may be used in lieu of a monetary payment for 50 percent of a bonus bid in a coal sale under the MLA, or as monetary credit against 50 percent of a rental or royalty payment due under a Federal coal lease. Thus, a bidding right could be used in lieu of cash for part of a winning bonus bid in a subsequent coal lease sale, or used in lieu of cash for part of rental or royalty owed under a Federal coal lease.

S. 436 further provides for payment in cash of 50 percent of the amount of the bidding right used in the state where the new coal lease is issued – or where the royalty payment is made. The

revenue sharing obligation of the MLA to the state would be made from the cash payments received by the Secretary when bidding rights are exercised under this Act. Under S. 436, bidding rights would be fully transferrable to any other person and the bidding rights holder would have to notify the Secretary of the transfer. The bidding rights would terminate after seven years, unless the rights could not be exercised within the 7-year period under certain conditions outlined in the bill.

The Department supports the goal of S. 436 to provide legislative authority for a solution to the long-standing coal PRLA issue in northern New Mexico. However, the Administration is concerned about the likely costs associated with this legislation as drafted. Based on the terms of the legislation, and in the context of the Ark Land settlement agreement, it appears these costs could be substantial, which raises significant challenges for identifying suitable offsets. The BLM would like to work with the sponsors and the Committee on language regarding the timing of the valuation of the coal within the PRLAs, and ensure the Department's Office of Valuation Services and BLM will determine the fair market value of the resources consistent with standard valuation practices.

### ***Navajo Nation Land Selection (Section 3)***

Section 3 of S. 436 would cancel certain land selections made by the Navajo Nation pursuant to the Navajo-Hopi Land Settlement Act of 1974, and would authorize the Navajo Nation to make new selections of equal value to replace those canceled. S. 436 adds the Fossil Forest Outstanding Natural Area (formerly known as the Fossil Forest Research Natural Area) to the lands ineligible for selection.

The Department supports the bill's provisions to allow for new land selections by the Navajo Nation and providing for the deselection of the lands now encumbered by the PRLAs. We would like to continue to work with the sponsors and Committee on language to ensure consistency with the original intent of the Navajo-Hopi Settlement Act.

### ***Ah-Shi-Sle-Pah Designation & Bisti/De-Na-Zin Wilderness Expansion (Secs. 4 & 5)***

Section 4 of S. 436 would designate approximately 7,250 acres of BLM-managed lands in northwestern New Mexico as the Ah-shi-sle-pah Wilderness, including nearly all of the existing Ah-shi-sle-pah WSA and releasing the remainder from WSA status. Section 5 of the bill would enlarge the existing Bisti/De-Na-Zin Wilderness by adding approximately 2,250 acres of BLM-managed lands directly south of the area.

The Department supports Congressional action to resolve wilderness designation and WSA release issues on public lands across the West, and we welcome opportunities to further those efforts. Only Congress can determine whether to designate WSAs as wilderness or to release them for other multiple uses. We stand ready to work cooperatively with Congress to achieve this goal.

We believe that the wilderness designations proposed by S. 436 could be best achieved through a standalone legislative proposal, similar to the approach taken in the bipartisan Washington County, Utah, and Owyhee County, Idaho, public lands legislation advanced during the 110th Congress. Secretary Zinke is focused on restoring full collaboration and coordination with local



communities and making the Department a better neighbor. We recognize the significant work of the sponsors on this proposal. As a general matter, the Department believes that wilderness decisions are best made as part of a locally driven process that incorporates the views of a wide range of stakeholders. In reaching consensus, stakeholders could ultimately determine that alternative management approaches are the best mechanism for protecting important resources of these areas while still accommodating the broad number of uses and activities permitted on other BLM-managed lands.

**Conclusion**

Thank you for this opportunity to present testimony on S. 436. The Department thanks the sponsors and the Committee for their dedication to this issue. We look forward to continuing to work with the sponsors to achieve these goals.

**Statement of  
John Ruhs  
Acting Deputy Director for Operations  
Bureau of Land Management  
U.S. Department of the Interior  
Senate Energy and Natural Resources Committee  
Subcommittee on Public Lands, Forests, and Mining  
S. 467, Mohave County Federal Land Management Act  
July 26, 2017**

Thank you for inviting the Bureau of Land Management (BLM) to testify on S. 467, the Mohave County Federal Land Management Act. This bill provides for the disposal of BLM-managed land, at fair market value, in Mohave County, Arizona, that has been designated as potentially suitable for disposal by the Kingman Resource Area Resource Management Plan (RMP), Lake Havasu Field Office RMP, or the Arizona Strip Field Office RMP. The Department supports the goals of the bill but would like to work with the sponsor on modifications that would benefit Mohave County and the public.

**Background**

Mohave County, located in the northwestern corner of Arizona, is home to over 200,000 people. Approximately 71 percent of Mohave County is in federal ownership with the BLM managing over 4.8 million acres for a wide range of uses, including mineral development, livestock grazing, and recreation. Currently the three BLM RMPs (Kingman Resource Area, Lake Havasu Field Office, and the Arizona Strip Field Office) in Mohave County have identified over 80,000 acres of lands potentially suitable for disposal.

***Public Land Sales***

It should be generally noted that the Secretary of the Interior (Secretary) is staunchly opposed to the wide-scale sale or transfer of federal lands. He firmly holds that our treasured public lands are to be maintained and preserved according to the inscription on the Yellowstone National Park Arch that reads “for the benefit and enjoyment of the people.” That said, the Secretary is interested in working with Congress on proposals of this nature in an effort to preserve access and recreation for future generations.

In 1976, with the passage of the Federal Land Policy and Management Act (FLPMA), Congress directed the BLM to retain management of most public lands, thereby reducing the acreage that had been available for disposal in earlier years. Under 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. FLPMA also provides the BLM with a clear multiple-use and sustained yield mandate that the agency implements through its land use planning process.

Public land sales remain a component of the BLM’s land management strategy when such sales are in the public interest and consistent with publicly-approved land use plans. The primary land sale authority of the BLM is found in Section 203 of FLPMA. Land sales conducted under FLPMA occur at the discretion of the Secretary and are made at fair market value in accordance with Federal law. Sales are generally conducted under competitive bidding procedures to ensure

a fair return to the American taxpayer. In such cases, sales are widely advertised through public notices, media announcements, and on appropriate BLM websites.

The Department also acknowledges that the process of identifying lands as potentially suitable for disposal through sale or exchange does not include the review of potential impacts to important existing uses and resources, such as the presence of mining claims, oil and gas leases, rights-of-way, threatened and endangered species, cultural or historic resources, and grazing permits. Under FLPMA, this review must occur before a disposal action can be completed. The BLM's work contributes significantly to the economic and financial health of the country and the states where BLM-managed lands and resources are found. In Fiscal Year 2015, activities associated with BLM-managed lands and minerals contributed an estimated \$88 billion to the Nation's economic output, supporting nearly 374,000 jobs. During the same period in Arizona, the BLM's management of public lands supported more than 5,000 jobs and had an overall economic impact of an estimated \$430 million. Further, while the BLM receives just over \$1.0 billion in annual discretionary appropriations to support programs nationwide, this work has contributed to the collection and distribution of more than \$5 billion to the U.S. Treasury and to State and local governments in recent years.

#### **S. 467**

S. 467 directs the Secretary to conduct the sale of lands that have been identified as potentially suitable for disposal by the BLM in Mohave County, Arizona. The bill directs the Secretary to jointly select land parcels with Mohave County and sell the selected parcels through a competitive bidding process. The competitive bidding process will be for not less than fair market value based on an appraisal and adjoining land owners will be offered first option to match the highest bid. The Department supports this process and is committed to continuing its adherence to the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standards of Professional Appraisal Practice and recommends that the bill be modified to clarify that the appraisal process will be managed by DOI's Office of Valuation Services.

Once the land has been jointly selected by the Secretary and Mohave County, the bill withdraws the selected lands from location and entry under the mining laws and from operation of the mineral leasing and geothermal leasing laws until it is sold or two years have passed since the selected parcels were offered for sale. The withdrawals are subject to valid existing rights. The Department supports the temporary withdrawal of the land to be sold, but notes that the administrative process for land sales often exceeds two years and may be particularly challenging in this case because there are currently over 100,000 mining claims in Mohave County. As such, we have concerns with the duration of the withdrawal provision in this bill and would like the opportunity to work with the sponsor and the Subcommittee on technical modifications to address this issue.

In addition, the Department notes that the public lands proposed for sale have not yet been analyzed under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), or the FLPMA public interest determination. These review requirements provide for public engagement, opportunities to consider environmental and cultural impacts, and will help ensure that unknown or unforeseen issues are not overlooked.

Finally, the majority of the proceeds from the land sales will go to the Treasury for deficit reduction. The Secretary is allowed to keep up to 20 percent, after consulting with Mohave County, to reimburse the administrative costs of preparing the sales. The Department appreciates the ability to retain sale proceeds for the purposes of reimbursement, but would like to work with the sponsor on language that would provide greater flexibility.

One avenue that Congress could consider would be the reauthorization of the Federal Land Transaction Facilitation Act (FLTFA), which provided the BLM with an important tool to facilitate land tenure adjustments. FLTFA expired in 2011. Reauthorization would allow the BLM to sell lands identified as potentially suitable for disposal in recent land use plans, and then use the proceeds from those sales to acquire other lands, including State trust land inholdings, for the purpose of increasing public access, enhancing outdoor recreation like hunting and fishing, conserving wildlife habitat, protecting water quality, preserving historic and cultural resources, and other important benefits. Proceeds from FLTFA would also provide the BLM with a robust mechanism for funding administrative costs associated with the land sales envisioned by this bill. We support the reauthorization of FLTFA as requested in the FY 2018 President's Budget.

### **Conclusion**

Thank you for this opportunity to present testimony on S. 467. The Department supports the goals of this bill and we look forward to continuing to work with the sponsor and the Subcommittee to address minor and technical modification as the bill moves through the legislative process.

**Statement of  
John Ruhs  
Acting Deputy Director for Operations  
Bureau of Land Management  
U.S. Department of the Interior  
Senate Energy and Natural Resources Committee  
Subcommittee on Public Lands, Forests, & Mining  
S. 468, Historic Routes Preservation Act  
July 26, 2017**

Thank you for the opportunity to present testimony on S. 468, the Historic Routes Preservation Act, which aims to establish a procedure for resolving claims to rights-of-way (ROWs) under Revised Statute (R.S.) 2477. The Department of the Interior (Department) sincerely appreciates the sponsors' efforts to address a broad range of challenging management and resource issues associated with claimed R.S. 2477 ROWs. We support the sponsors' goal of achieving judicial and administrative efficiency for, and reducing the costs associated with, resolving these claims. We would like the opportunity to work with the sponsors on modifications to the bill to address several issues outlined in this statement and to provide technical assistance.

**Background**

R.S. 2477 was enacted as part of the Mining Law of 1866 to promote the settlement and development of the West. R.S. 2477 was the primary authority under which many existing State and county highways were constructed and operated over Federal lands and did not require notification to the United States because the roads were automatically conveyed as a matter of law once certain conditions were met. In 1976, Congress repealed R.S. 2477 through the passage of FLPMA as part of a national policy shift to retain public lands in Federal ownership unless disposal "will serve the national interest." The repeal of R.S. 2477 did not affect valid rights in existence when Congress passed FLPMA.

R.S. 2477 ROWs were self-executing, meaning that they could be established without any government approval or public recording of title. As a result, there is considerable uncertainty regarding the existence of R.S. 2477 ROWs that may have been established on public lands prior to the enactment of FLPMA. This uncertainty has resulted in substantial litigation between State and local governments, which generally claim title to R.S. 2477 ROWs, and the United States and Federal land management agencies, particularly the Bureau of Land Management (BLM), National Park Service (NPS), and the Forest Service.

Over the years, the Department has issued a number of policies concerning R.S. 2477 claims. These policies have attempted to: 1) identify administrative processes to accommodate or assess the validity of unadjudicated R.S. 2477 ROWs; 2) interpret the meaning of R.S. 2477 itself, particularly the words "construction," "highway," and "not reserved for public use;" and 3) to define the respective rights of the ROW holder and the land managing agency.

Despite such attempts to address the issues related to R.S. 2477, considerable uncertainty remains. This impacts State and County governments, which consider these ROWs as part of their transportation systems, and Federal land management agencies' ability to manage and

protect important natural and historic resource values underlying and adjacent to adjudicated and unadjudicated R.S. 2477 ROWs.

While R.S. 2477 is an issue in every State with Federal lands that were open to operation of the statute before 1976, Utah has been a focal point of litigation. Between 2005 and 2012, the State of Utah and 22 counties in Utah filed numerous lawsuits under the Quiet Title Act, seeking to quiet title to over 12,000 R.S. 2477 ROWs. All of the cases have been filed in Federal district court in Utah. The vast majority of these claimed ROWs are on BLM-managed lands, but at least 60 claims are pending within National Park units, including Canyonlands, Capitol Reef, and Zion National Parks, Dinosaur National Monument, and Glen Canyon National Recreation Area. To date, only two cases involving 16 claimed ROWs have been litigated through the appellate level – one involving the BLM and the other involving the NPS.

#### **S. 468, Historic Routes Preservation Act**

S. 468 aims to resolve claims to R.S. 2477 ROWs by setting a new filing deadline for claimants, establishing mandatory procedures for considering and acting on claims, and requiring Federal administrative action for final resolution of such claims. Under section 4 of the bill, all previous statutes of limitations regarding claimed R.S. 2477 ROWs would be waived, and any party asserting public acceptance of such a ROW would be permitted to file a claim with the Secretary for the relevant land management agency within 25 years after enactment. Claims not filed within 25 years would be considered to have been irrevocably abandoned, and individuals or entities involved in litigation to determine the validity of claimed R.S. 2477 ROWs before enactment would be prohibited from filing. In addition, section 4 of S. 468 requires claimants to provide appropriate notice within specified periods of time. While the circumstances of individual claims vary, section 4 as currently drafted is likely to provide more time for claimants to file claims for ROWs to be granted than is currently permitted under existing law.

Section 5 of the bill sets forth the type and number of particular forms of evidence needed for claimants to prove the validity of claimed R.S. 2477 ROWs, places the burden on the claimant to prove an R.S. 2477 claim by a preponderance of the evidence, and details any relevant presumptions. If the claimant submits the evidence identified in section 5, then the claimant is presumed to have met the burden of proof and conclusively established that the R.S. 2477 ROW was publicly accepted. Under these circumstances, section 5 requires that the relevant Secretary relinquish all right, title, and interest to the ROW unless the Secretary determines that it had been previously abandoned by the claimant.

Sections 6 through 10 of S. 468 include various provisions regarding judicial review, other applicable law, extensions that may be made for deadlines in the bill, timeframes for completing any necessary policies, procedures, and any other actions necessary for implementation, and the repeal of an appropriations rider related to R.S. 2477.

The Department recognizes the significant work of Senators Flake, McCain, Heller, and Hatch and the Subcommittee to attempt to reach consensus on R.S. 2477, and we believe that S. 468 serves as a good starting point to resolve this challenging land management issue. As such, we would welcome the opportunity to work with the sponsors on several modifications to the bill

that we believe will streamline R.S. 2477 claim resolution and make implementation more effective.

First, the Department notes that the bill as currently drafted could result in impacts to Federal land resources managed by the BLM and other Department bureaus, including National Conservation Areas and similar designations, as well as Wilderness Study Areas (WSAs), which are pending final review and resolution by Congress, given the location of claimed R.S. 2477 ROWs in these areas. We would like to work with the sponsors and Subcommittee on language ensuring consistency, to the extent possible, with existing legislatively protected conservation designations.

Second, the Department is concerned that S. 468 as currently written could inadvertently increase rather than decrease agency workloads. For example, each claim would likely require a thorough review of the history and use of the ROW before 1976, including substantial records research and perhaps on-site inspections. This could be especially challenging if the Secretary were to receive a significant number of claims at once or over a short period. Depending on the volume of claims, administrative processing of R.S. 2477 ROWs by the BLM's State and Field Offices could also limit the BLM's ability to process other lands and realty applications, such as transmission lines, communication sites, leases, and conveyances, in a timely manner. The Department would like to work with the sponsors on language clarifying the terminology and definitions, ensuring that the BLM can continue to meet its other responsibilities under FLPMA and other laws, and providing the BLM and other Department bureaus with sufficient time to carry out the bill's provisions.

### **Conclusion**

Thank you for the opportunity to provide testimony on S. 468, the Historic Routes Preservation Act. The Department is committed to safe and responsible development on public lands and understands the importance of maintaining transportation infrastructure that meets the needs of State and local governments, and we look forward to working with the Subcommittee and Congress on this important issue. I would be happy to answer your questions.

**Statement of  
John Ruhs,  
Acting Deputy Director for Operations  
Bureau of Land Management  
U.S. Department of the Interior,  
Senate Energy and Natural Resources Committee  
Subcommittee on Public Lands, Forests, and Mining  
S. 614, RPPA Commercial Recreation Concessions Pilot Program Act  
July 26, 2017**

Thank you for the opportunity to testify on S. 614, the RPPA Commercial Recreation Concessions Pilot Program Act. S. 614 would amend the Recreation and Public Purposes Act (R&PP Act) to require the Secretary of the Interior (Secretary) to establish a commercial recreation concessions pilot program for lands transferred or leased under the R&PP Act (R&PP Act lands, covered lands).

The Department of the Interior (Department) supports working with State and local governments to resolve challenging land use issues and enhance the use and enjoyment of America's public lands. We understand that allowing third party commercial recreation concessions on R&PP Act lands could help the Department meet this important objective. The Department supports the goal of S. 614, and would like to work with Senator Flake and the Subcommittee to address a number of issues raised in this testimony. In addition, we would like to work with the sponsor on language granting the BLM explicit recreation concessions authority, which would create jobs, benefit local economies and communities, and enhance recreational opportunities on all public lands, not just those associated with R&PP Act leases.

**Background**

The Bureau of Land Management (BLM) frequently exercises authority under the R&PP Act to help States, local communities, and nonprofit groups obtain lands at no or low cost for important, specified public purposes. Examples of public purposes allowed under the R&PP Act include establishment of parks, schools, hospitals and other health facilities, fire and law enforcement facilities, courthouses, social services facilities, and public works. Since the R&PP Act's passage in 1926, the BLM has transferred approximately 410,000 acres of public lands to qualifying entities in the form of over 1,600 R&PP Act patents. The BLM also currently manages over 630 R&PP Act leases totaling approximately 76,000 acres.

Because the R&PP Act allows for the transfer and lease of public lands at prices far below fair market value, the State, local, and nonprofit entities that receive the lands must agree to always use them for bona fide public purposes. This stipulation is the foundation of the R&PP Act, and it is the basis for a limitation imposed on for-profit activities on covered lands. Under longstanding BLM policy, any revenue collected by State and local governments or nonprofit organizations on lands leased or transferred under the R&PP Act must be used on those lands. This restriction prevents public lands obtained at little or no cost from being used for large-scale revenue generation without a fair return to the American taxpayer.



The BLM includes reversionary clauses in the transactions to enforce the terms of the original agreements that State and local governments and nonprofit organizations enter into upon applying for and receiving R&PP Act transfers and leases. These provisions help ensure R&PP Act lands will either be used for public purposes in perpetuity or revert to Federal management, in accordance with the R&PP Act. The BLM has addressed requests to eliminate the Federal reversionary interests in covered lands by replacing R&PP Act leases with a commercial lease at fair market value or by allowing an R&PP patentee an opportunity to purchase the Federal reversionary interest at fair market value. Fair market value in each case is determined by the uniform appraisal process managed by the Department's Office of Valuation Services.

#### **S.614**

S. 614 would amend the R&PP Act to require the Secretary to establish a commercial recreation concessions pilot program to cover R&PP Act lands. Under the pilot program, the Secretary would enter into agreements with one to 10 parties to whom R&PP Act lands have been patented or leased for the establishment of commercial recreation concessions on the covered lands. The agreements between the Secretary and these parties could last up to 20 years based on specific financing criteria, and they could be extended once for no longer than their original terms.

In addition, S. 614 would allow R&PP Act land holders who have such agreements with the Secretary to enter into subsequent agreements with third parties for the establishment of commercial recreation concessions pursuant to the initial secretarial agreements. The bill also includes language that would open covered lands to a broad array of agricultural, industrial, or commercial uses without being considered a change in use under the R&PP Act. Finally, S. 614 would allow revenue collected by the R&PP Act land holders pursuant to the commercial concessions to be spent without restriction.

Taken together, these provisions would permit public lands obtained for very little or no cost to be used for large-scale revenue generation by third party users without providing a fair return for the American taxpayer. The BLM, as a matter of both policy and practice, and in accordance with the Federal Land Policy and Management Act (FLPMA), generally 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 removal of public lands from Federal ownership. 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. If Congress opts to move forward with the pilot approach envisioned by S. 614, we recommend amendments to tailor the bill more closely to recreation concessions, align with the original goals of the R&PP Act, and ensure consistency with FLPMA and other Federal laws. In addition, we would like to work with the sponsor to clarify some other key aspects of the bill, including general selection criteria and how designated pilot programs should be distributed across rural and urban areas.

Finally, we would welcome the opportunity to work with the sponsor and Subcommittee to provide the BLM with explicit concessions authority as recommended by a March 30, 2015 Office of Inspector General report titled, "Review of Bureau of Land Management's Concessions Management Practices." The Department believes that providing such authority would further the bill's intended objectives and would enable the BLM to manage recreation

concessions in a manner consist with the Department's other bureaus, thereby increasing efficiency and effectiveness of the agency's visitor facilities and services while also expanding access and recreational opportunities. This authority would also provide the BLM with a longer-term solution that would create jobs and benefit small businesses, local economies and communities, and the recreating public on all of America's public lands, not just those associated with R&PP Act leases. The Department would welcome the opportunity to work with Senator Flake and the Subcommittee on drafting concessions authority language.

### **Conclusion**

The Department appreciates the work of Senator Flake on S. 614 and recognizes the unique role that recreation concessions can play in enhancing the use and enjoyment of America's public lands. We have a number of substantive as well as minor and technical modifications to recommend, and we look forward to continuing to work with Congress to address these important issues as this bill moves through the legislative process.

**Statement of  
John Ruhs  
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Bureau of Land Management, U.S. Department of the Interior  
Senate Energy and Natural Resources Committee  
Subcommittee on Public Lands, Forests and Mining  
S.785 Alaska Native Veterans Land Allotment Equity Act**

**July 26, 2017**

Thank you for the opportunity to present the views of the Department of the Interior (Department) on S.785, the Alaska Native Veterans Land Allotment Equity Act. S.785 amends the 1971 Alaska Native Claims Settlement Act (ANCSA) to allow any Alaska Native veteran (or heir) who served during the period of August 5, 1964, through May 7, 1975, who has not yet received a Native allotment under the 1906 Allotment Act, to apply for an allotment of up to 160 acres of Federal land.

The Department supports equitable treatment of Alaska Natives and Alaska Native Veterans in the Alaska Land Conveyance program. We appreciate the sponsor's continuing interest in extending to Vietnam-era Alaska Native Veterans opportunities to apply for an individual allotment in recognition of their service to our country. The Department supports the goals of S. 785 and looks forward to working with the sponsor and the Committee to provide technical edits to further enhance this legislation and offer timely and efficient resolution of longstanding Native allotment processes.

**Background**

Several laws govern disposition of lands in Alaska. The Alaska Statehood Act and ANCSA provide for conveyance of broad swaths of land to the State and to Native Corporations. Land transfers to individual Alaska Natives were first authorized by the Alaska Native Allotment Act of 1906. The Allotment Act, as amended, authorized the Secretary of the Interior to convey up to 160 acres of "vacant, unappropriated, and unreserved non-mineral" land to individual Alaska Natives who could prove as head of household "substantially continuous use and occupancy of that land for a period of five years." Over 10,000 Alaska Natives filed allotment applications before 1971.

ANCSA, enacted in 1971, included a provision repealing the 1906 Allotment Act but with a savings provision allowing the Department to finalize the approximately 15,000 individual allotment claims then pending before the Department. In 1981, Section 905 of the Alaska National Interest Lands Conservation Act (ANILCA) legislatively approved the vast majority of the pending Allotment Act applications.

As of this date, there remain pending approximately 272 applications under the 1906 Act, most of which will require the State of Alaska to voluntarily re-convey title to the United States government before a conveyance can be made to the individual allotment claimant. The BLM

has prioritized the completion of individual allotments, and to date has completed final patent to approximately 98 percent (over 13,100 parcels) of individual Native allotments.

Another act authorizing land transfers to individual Alaska Natives is the Alaska Native Vietnam Veterans Allotment Act of 1998 (P.L. 105-276). This Act authorized the Department to provide a new 18-month filing period, ending in January 2002, to qualifying Alaska Native Vietnam-era veterans who were unable to file a claim under the 1906 Allotment Act before its repeal in 1971 because they were on active military duty during the three years (1968 -1971) prior to repeal of the 1906 Act. Certificates for 255 allotments have been issued, and seven parcels remain pending.

Members of Congress concerned about the low number of Alaska Native Vietnam-era veterans obtaining allotments under the 1998 Act identified three obstacles to that goal: 1) Alaska Native Vietnam veterans were able to apply only for land that had been vacant, unappropriated, and unreserved; 2) the eligible service dates did not encompass the full term of Vietnam war (1964–1975); and 3) veterans were required to prove they had been using the allotment for which they applied in a substantially continuous and independent manner for five or more years.

In addition, concerns have been raised that the lack of available land nullifies the very purpose of granting Native Vietnam-era veterans an allotment benefit. A recurring congressional concern has been that there is virtually no land available for selection and allotment in southeast Alaska because such land is located within the Tongass National Forest or conservation units, or has been conveyed to the State of Alaska or ANCSA Native Corporations.

### **S. 785**

S. 785 is intended to address the obstacles in the 1998 Act and the lack of land available for selection and allotments. The bill authorizes allotment of Federal lands to individual Alaska Native veterans of the Vietnam era. It amends ANCSA to allow any Alaska Native veteran (or heir) who served during the period of August 5, 1964, through May 7, 1975, who has not yet received a Native allotment for a full 160 acres under the 1906 Allotment Act, to apply for an allotment of up to 160 acres of Federal land. Lands available for selection under S. 785 are any vacant Federal land in the state of Alaska that is located outside of the Trans-Alaska Pipeline right-of-way, a unit of the National Park System, a National Preserve, or a National Monument. Available lands in S. 785 include wildlife refuges, national forests, wilderness areas, acquired lands, national defense withdrawn lands, and lands selected by, or already conveyed to, the State of Alaska or an Alaska Native Corporation. The Department would like to work with the sponsor to develop criteria for adjudication and for the determination of superior rights to lands in these categories.

S. 785 also authorizes compensatory acreage only for Native Corporations that voluntarily relinquish land selected in order to make such land available for Alaska Native Veteran allotments. There is no similar provision for State selections. The bill does not mention compensatory acreage for land re-conveyed by the State of Alaska. We would like to work with the sponsor to develop options to address the goals of this legislation while reducing the impact to established land patterns and minimizing delays in fulfilling entitlements in progress.

The bill requires the Secretary of the Interior to publish implementing regulations, after consultation with Alaska Native organizations, within one year of the enactment of S. 785. Within five years after the date of enactment, S. 785 requires the Secretary to approve and certify allotment applications filed under this Act. The legislation further requires the Secretary to contact, in coordination with Alaska Native organizations, each individual potentially affected by S. 785 to explain the process by which the person may apply for an allotment. The Secretary is also required to contact each person or entity that has an interest in land that is potentially adverse to the interest of an applicant with notice of how to contest the allotment. We would like to work with the sponsor to develop a timetable and outreach strategy that supports the entire process for Alaska Native Veterans to select and receive allotments.

### **Conclusion**

The highest priority of the BLM's Alaska Land Transfer program is to fulfill existing statutory mandates by completing title transfer to individual Alaska Natives that includes equitable opportunities for Alaska Native Veterans, as well as to fulfill remaining entitlements under ANCSA and the Statehood Act. We welcome the opportunity to work with the sponsor and the Committee to address the technical issues raised in this testimony in order to enhance the legislation.

Thank you for the opportunity to testify. I would be glad to address any questions.

**Statement of  
John Ruhs  
Acting Deputy Director for Operations  
Bureau of Land Management  
U.S. Department of the Interior  
Senate Committee on Energy and Natural Resources  
Subcommittee on Public Lands, Forests, and Mining  
S. 837, Southern Utah Open OHV Areas Act  
July 26, 2017**

Thank you for the opportunity to present testimony on S. 837, the Southern Utah Open OHV Areas Act, which legislates an exchange between the Bureau of Land Management (BLM) and the State of Utah's School and Institutional Trust Lands Administration (SITLA) and provides for the conveyance, at no cost, of approximately 19,000 acres of BLM-managed lands to Washington County, Utah, and the Washington County Water Conservancy District (WCWCD).

As a matter of policy, the Department of the Interior supports the completion of land exchanges that further the public interest, consolidate ownership of scattered tracts of land to make them more manageable, and enhance resource protection. We also support working with States and local governments to resolve land tenure and land transfer issues that advance worthwhile public policy objectives. The Department is mindful that legislated land exchanges and transfers often promote varied public interest considerations; part of our role is to help inform Congress and the public about the tradeoffs associated with such proposals. The Department is committed to advancing the important public access and recreation goals outlined by Secretary Zinke in Secretarial Order 3347, *Conservation Stewardship and Outdoor Recreation*. As such, we support the sponsor's goals of enhancing outdoor recreation and consolidating land ownership and recommend a number of amendments to address several issues raised below, particularly the significant reduction in public lands open to cross-country motorized recreation.

Based on an initial analysis of the bill and its accompanying legislative map, the exact lands proposed for conveyance and exchange are unclear, as well as the extent to which the proposal meets the objectives of interested stakeholders. We would welcome the opportunity, in cooperation with the sponsor, to create a legislative map for the purposes of this bill that reflects land status data and delineates the proposed exchange and conveyances more clearly.

**Background**

Washington County, Utah, covers nearly 2,500 square miles, and has been among the fastest growing counties in the country. The population of Washington County increased by 52 percent between 2000 and 2010. Rapid population growth directly impacts public lands and poses management challenges for a variety of resources. For over 20 years, the BLM has worked closely with Washington County, the State of Utah, area Tribes, and Federal agency partners to manage sensitive resources in a way that prevents conflicts and facilitates continued growth.

***Sand Mountain Special Recreation Management Area***

In 1999, the BLM established the approximately 40,000-acre Sand Mountain Special Recreation Management Area (SRMA), located just east of the city of St. George, Utah. The goal of the

SRMA is to provide long-term stability and recreation opportunities for user groups such as the off-highway vehicle (OHV) community. As a result of increasing urbanization and land use restrictions, the OHV community had lost much of their traditional open use areas.

The SRMA hosts a variety of popular recreational activities, including casual OHV riding and competitive events, horseback riding, climbing, scenic driving and viewing, visiting historical and paleontological sites (such as Fort Pearce and the Warner Valley Dinosaur Track), and undeveloped camping. Approximately 21,000 acres of the SRMA are designated as the Sand Mountain Open OHV Area, which features sand dunes and slickrock that appeal to all types of motorized recreation users, including 4x4, ATV, UTV, and motorcycle enthusiasts. The Open OHV Area provides local residents and visitors an enjoyable recreation experience in close proximity to the five largest cities in Washington County, and more than a dozen very popular commercial and competitive motorized recreation events take place annually in the area.

Since 1999, dramatic population growth in Washington County has triggered demand for new water storage facilities, highways, energy transmission rights-of-way, and other land use authorizations on public lands within and adjacent to the SRMA. As a result of various legislated conveyances, transportation grants, and Recreation and Public Purposes Act (R&PP Act) leases, the overall size of the SRMA has decreased by approximately 6,000 acres.

#### ***Utah School and Institutional Trust Lands Administration***

The Utah School and Institutional Trust Lands Administration (SITLA) manages approximately 3.4 million acres of land and 4.5 million acres of mineral estate within the State of Utah. Many of these parcels are interspersed with public lands managed by the BLM, including in the areas under consideration in this bill. Although State trust lands support select public institutions, trust lands are not public lands. State trust lands generate revenue to support designated State institutions, including public schools, hospitals, teaching colleges, and universities.

#### ***Public Land Exchanges***

In 1976, with the passage of the Federal Land Policy and Management Act (FLPMA), Congress directed the BLM to retain management of most public lands, thereby reducing the acreage that had been available for disposal in earlier years. Under FLPMA, the BLM is directed to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. FLPMA also sets forth the BLM's multiple-use mission, directing that public lands be managed for a variety of uses, such as conventional and renewable energy development, livestock grazing, conservation, mining, watershed protection, hunting, fishing, and other forms of recreation, and requires that various resources be managed on a sustained yield basis.

The BLM conducts land exchanges pursuant to Section 206 of FLPMA, or when given specific direction by Congress. Among other purposes, land exchanges consolidate ownership of scattered tracts for more efficient management, and allow the BLM to acquire environmentally sensitive areas while transferring public lands into non-Federal ownership for local needs. To be eligible for exchange under Section 206 of FLPMA, BLM-managed lands must have been identified as potentially available for disposal through the land use planning process. Extensive public involvement is critically important for such exchanges to be successful.

The Department notes that the process of identifying lands as potentially available for exchange does not include the review of potential impacts to important existing uses and resources, such as the presence of threatened and endangered species, cultural or historic resources, mining claims, oil and gas leases, rights-of-way, and grazing permits. Under FLPMA, this review must occur before a disposal action can be completed.

The BLM manages nearly 22.9 million acres of public lands within the State of Utah for a wide range of uses, including energy production, recreation, livestock grazing, and conservation. In the recent past, the BLM has completed three large-scale exchanges with the State of Utah at the direction of Congress through the Utah Recreational Land Exchange Act of 2009 (Public Law 111-53), the Utah West Desert Land Exchange Act of 2000 (Public Law 106-301), and the Utah Schools and Land Exchange Act of 1998 (Public Law 105-335). Through these exchanges, over 296,000 acres of Federal land were conveyed to the State of Utah, and the United States acquired over 596,000 acres from the State, based on equalization of appraised value or as otherwise directed by Congress. An additional exchange directed by the FY 2017 National Defense Authorization Act (Public Law 114-328) of approximately 98,000 acres of public lands for approximately 71,000 acres of State owned lands and approximately 14,000 of State owned mineral estate is currently in progress.

### ***Public Purpose Conveyances***

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 Act (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 for important public purposes. The Department generally supports appropriate legislative conveyances at nominal cost if the lands are to be used for purposes consistent with the R&PP Act, if the lands are appropriate for disposal, and if the conveyances have reversionary clauses to enforce this requirement.

### **S. 837**

#### ***Land Exchange (Section 3)***

Section 3 of S. 837 would require the exchange of approximately 2,200 acres of State-owned land within the northern portion of the SRMA for approximately 1,500 acres of BLM-managed public lands within and adjacent to the southwestern portion of the SRMA. The purpose of these exchanges would be to consolidate ownership of isolated State parcels and to transfer public lands to the State for economic development.

Under the bill, the land exchanges would be completed subject to valid existing rights, and appraisals would be conducted. The Secretary of the Interior would be required to reimburse the State of Utah for 50 percent of the appraisal costs. If the value of the public lands proposed for exchange exceeds the value of the State lands, the value must be equalized through the addition or elimination of land or by the State making a cash payment to the United States. If the value of the State lands proposed for exchange exceeds the value of the public lands, the value must be equalized through the elimination of land or by the Secretary making a cash payment to the State.



The Department supports the completion of major land exchanges that consolidate ownership of scattered tracts of land, thereby easing BLM and State land management tasks. As detailed below, we have several concerns with the land exchange provisions in this bill. We would like the opportunity to work with the Subcommittee and the sponsor on amendments and other technical modifications to address these issues.

First, the public lands proposed for exchange with the State contain a number of important resources and uses, including portions of active BLM grazing allotments and very popular areas for cross-country OHV recreation access. The Department would like the opportunity to work with the Subcommittee and the sponsor on language and boundary modifications to ensure the protection of these resources and uses.

In addition, the Department notes that the public lands proposed for exchange have not yet been analyzed under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), or the FLPMA public interest determination. These review requirements provide for public engagement, opportunities to consider environmental and cultural impacts, and help ensure that unknown or unforeseen issues are not overlooked.

The Department is also committed to continuing its adherence to the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standards of Professional Appraisal Practice and recommends the appraisal process be managed by the Department's Office of Valuation Services. The Office of Valuation Services provides credible, timely, and efficient valuation services to ensure public trust in Federal real property transactions.

Finally, based on an initial review of the bill and the legislative map, the exact lands proposed for exchange, including total acreages, are somewhat unclear. We would welcome the opportunity to create a legislative map for the purposes of this bill that reflects land status data and more clearly identifies which lands would be exchanged.

***Conveyances to Washington County & the Washington County Water Conservancy District (Section 4)***

Section 4(a) of the bill directs the BLM to convey at no cost approximately 19,000 acres of public lands within the SRMA to Washington County, Utah, for use as an open OHV riding area, subject to valid existing rights. Washington County is required to pay all survey costs and other administrative costs associated with the conveyance, and to release the United States from liability for any injury or damage that may arise from uses carried out on the land prior to the conveyance. Before this land is conveyed to Washington County, sections 4(g) and 4(i) of the bill require the BLM to issue rights-of-way for water and transmission infrastructure to the Washington County Water Conservancy District (WCWCD). Under section 4(h) of the bill, the BLM is also required to convey to the State or the WCWCD approximately 215 acres of public lands for the construction, operation, maintenance, and repair of the Hurricane Cliffs Afterbay water storage facility.

As discussed above, the Department has previously supported legislated, no-cost public purpose conveyances if they meet standards under the R&PP Act and are determined to be appropriate

for transfer out of Federal ownership. The Department notes that the lands to be conveyed under section 4(a) appear to include the entirety of the SRMA's Open OHV Area, which is popular with the public and has substantial recreation use. The BLM has invested more than \$120,000 in recent years at this site to improve infrastructure (such as boundary and trail signage and restroom facilities), enhance road access, and support free public access for casual use. The Department is concerned that this section as currently drafted could result in the conveyed lands being used for purposes incompatible with cross-country OHV travel, including the construction of fire stations, municipal buildings, and other public facilities consistent with the R&PP Act. This could result in a significant reduction in the public lands available for this important recreational activity. In addition, the Department notes that this section could result in the State converting the conveyed lands area into a fee site, potentially limiting recreational access for members of the public.

Visitors to public lands enjoy countless types of outdoor adventure, and the BLM strives to provide unparalleled recreational experiences for the American people. The Department would like the opportunity to work with the sponsor and Subcommittee on language to improve the quality of outdoor recreation throughout the SRMA and to ensure that the Sand Mountain Open OHV Area in particular remains available to cross-country motorized recreation.

As with the exchange proposed in section 3 of the bill, it is unclear from the legislative map accompanying the bill exactly which lands are proposed for conveyance. We would welcome the opportunity to create a legislative map for the purposes of this bill that reflects land status data and more clearly identifies which lands would be conveyed. Finally, we understand that the Department of Justice would like to work with the Subcommittee to address a constitutional concern with some of the text in the bill.

### **Conclusion**

Thank you for the opportunity to provide testimony on S. 837, the Southern Utah Open OHV Areas Act. The BLM is committed to supporting all types of outdoor recreation on America's public lands, and we look forward to working with the Subcommittee and Congress on this important issue. I would be happy to answer your questions.

**Testimony of**  
**John Ruhs**  
**Acting Deputy Director**  
**Bureau of Land Management**  
**Department of the Interior**  
**Senate Energy & Natural Resources Committee**  
**Subcommittee on Public Lands, Forests, and Mining**  
**S. 884, Small Miners Waiver Act**  
**July 26, 2017**

Thank you for the opportunity to testify today on S. 884. In communities across the country, hardrock mining provides jobs, supports a diverse and vital economy, and brings important commodities to market that are essential to maintaining a high quality of life for all Americans. The public lands are a significant source of these mineral resources, and mineral development is an important land use within the Bureau of Land Management's (BLM's) multiple-use mandate. The Department of the Interior (Department) greatly appreciates the work of Chairman Murkowski and the Subcommittee in support of environmentally-responsible mineral development from the nation's public lands.

S. 884 would require the BLM to allow mining claimants a chance to "cure" their failure to meet certain required filing deadlines. The bill would also give private relief to a small number of mining claimants whose mining claims have been deemed abandoned for failure to comply with applicable laws and regulations. The BLM appreciates the sponsor's work on this legislation and supports S. 884's goal of providing flexibility to small miners who have missed their filing deadlines. The BLM would welcome the opportunity to work with the sponsor and the Subcommittee on language to clarify the legislation and promote accountability.

**Background**

The Omnibus Budget Reconciliation Act of 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 \$155 per lode mining claim or site and \$155 per every 20 acres or portion thereof for a placer claim. The maintenance fee statute also gave the Secretary of the Interior (Secretary) 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 maintenance fee waiver for "small miners." These regulations state that in order to qualify for the waiver under the maintenance fee statute, the mining claimant must, among other things, file a maintenance fee waiver certification that certifies 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 certification 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 certifications to also be September 1 for the coming assessment year. The Secretary's decision to make the regulatory deadline for filing maintenance fee waiver certifications 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.

Unlike mining claimants who pay the annual maintenance fee, mining claimants who file maintenance fee waiver certifications are not exempt from the annual filing requirements in section 314 of the Federal Land Policy and Management Act (FLPMA). As such, mining claimants who file maintenance fee waivers certifications must also submit an annual filing – either an affidavit that they have done sufficient work on their claim in lieu of the maintenance fee, or a notice of intention to hold – on or before December 30, following the submission of the waiver and after the close of the assessment year for which a waiver was sought. Failure to submit either the waiver certification or the required filing under FLPMA results in forfeiture or abandonment of the mining claim by operation of law.

When Congress amended the maintenance fee statute in 1998 to change the filing deadline from August 31 to September 1, as noted above, it also amended the maintenance fee statute to allow mining claimants seeking a maintenance fee waiver to cure a “defective” waiver certification. The amendment required the BLM to give mining claimants filing timely "defective" maintenance fee waiver certifications notice of the defect and 60 days from the receipt of written notice to “cure” that defect or pay the annual maintenance fee due for the applicable assessment year. Failure of the mining claimant to cure the defect results in the forfeiture of the mining claim.

#### **S.884**

S.884 would amend the maintenance fee statute to allow mining claimants an opportunity to "cure" a defective maintenance fee waiver certification for any reason, including if the claimant failed to timely file the waiver. 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 bill would also provide the same 60-day cure period for an untimely annual filing under section 314(a) of FLPMA. S.884 would also give private relief to certain mining claimants whose mining claims have been deemed abandoned for failure to comply with applicable laws and regulations. The BLM has concerns with the bill as written and would like to opportunity to work with the sponsor to better achieve the bill’s goals.

#### **Analysis**

##### ***Altering Deadlines***

The BLM generally supports the goals in Sec. 1(a) that would allow miners flexibility when filing the small miner fee waiver. As written, the BLM has concerns with the proposed legislation, as it would effectively eliminate the September 1 deadline in the maintenance fee statute as well as the annual filing deadlines in section 314(a) of FLPMA. Amending the maintenance fee statute and section 314 of FLPMA to make failure to timely file a curable defect would require the BLM to accept late filings after the deadline, no matter how late. This would shift the administrative review and notification to the BLM, increasing the cost of administering the mining law program. Further, it would enable a mining claimant to hold the mining claims or sites in suspense until the BLM is able to identify the deficiency and notify the mining claimant. This would effectively extend the applicable deadlines by removing any penalty for failing to comply in a timely manner. In an effort to limit the administrative burden, and hold miners accountable to timely pay the maintenance fee or file a timely maintenance fee waiver, the BLM would like to work with the sponsor on language to provide limitations on the number of times a small miner can have an untimely filing or perhaps institute a monetary fee associated with it.

### ***Curing Defective Waivers***

Under Sec. 1(a) of S. 884, if a mining claimant files either an untimely maintenance fee payment, an untimely maintenance fee waiver certification, or fails to make any filing at all, including a maintenance fee payment, the BLM would no longer be able to simply declare the mining claim or site void by operation of law, as authorized under the current maintenance fee statute since 1994. Rather, under this new provision, if any mining claimant fails to pay the annual maintenance fee or file a maintenance fee waiver certification by the deadline, the BLM would have to first determine whether each mining claimant qualifies as a “small miner” and, if so, would have to give notice and opportunity to cure – whether or not the mining claimant had any intention of paying the fee or filing a maintenance fee waiver certification. Moreover, because the BLM would have no way to determine if a mining claimant who qualified as a “small miner” had simply decided not to pay the fee or file the maintenance fee waiver certification and intentionally relinquish their mining claims, the BLM would have to send a "defect" notice to all such mining claimants who fail to either timely pay their maintenance fees or timely file a maintenance fee waiver certification and give them the opportunity to cure.

Similar considerations apply with respect to the provisions in S. 884 that allow mining claimants an opportunity to "cure" defective annual filings under section 314 of FLPMA. In addition, the amendments to FLPMA need clarification for other reasons. Section 1(a) of the proposed legislation purports to limit the opportunity to “cure” only to “an affidavit of annual labor” and only where “associated with the application.” However, section 1(c) amends section 314 of FLPMA to extend the opportunity to “cure” to all required annual filings under section 314(a), regardless of whether it is an affidavit of annual assessment work, and regardless of whether it is associated with a maintenance fee waiver certification. These provisions appear to be potentially contradictory, and we would like the opportunity to work with the sponsor to clarify these requirements.

### ***Covered Claimholder***

The mining claims described under Section 1(b) belonged to several different claimants in Alaska. Section 1(b) would give the mining claimants the opportunity to "cure" the defects that led to their mining claims being declared abandoned and void, consistent with the amendments to the maintenance fee statute and section 314 of FLPMA that are proposed here.

The first “covered claimholder” (for mining claims AA023149, AA023163, AA047913, AA047914, AA047915, AA047916, AA047917, AA047918, and AA047919) is from Girdwood, Alaska. The mining claimant held nine mining claims located in the Chugach National Forest in southeastern Alaska. The BLM determined these mining claims to be statutorily abandoned in January 2005 when the mining claimant failed to file annual assessment work documents in accordance with FLPMA, and the Interior Board of Land Appeals (IBLA) subsequently upheld the BLM's decision to declare these mining claims null and void.

Finally, as the legislation is currently written, the BLM could not verify the remaining mining claim serial numbers identified in the bill. We would like to work with the sponsor to ensure that the bill text accurately identifies the mining claim serial numbers associated with the “covered claimholders” to whom this bill is seeking to provide relief. The BLM would welcome the opportunity to work with the sponsor on ways the Department can better serve the hardrock mining community.

**Conclusion**

Thank you again for the opportunity to testify on S. 884. I would be glad to answer your questions.

**Statement for the Record  
U.S. Department of the Interior  
Before the**

**Public Lands, Forests and Mining Subcommittee  
Committee on Energy and Natural Resources  
U.S. Senate**

**S. 1230, the Water Rights Protection Act of 2017**

**July 26, 2017**

Thank you for providing the Department of the Interior with the opportunity to present our views on S. 1230, the Water Rights Protection Act of 2017. S. 1230 aims to prohibit the federal land management agencies from requiring the transfer of water rights recognized under state law directly to the United States as a condition of permit issuance or renewal. The Department supports the goals of S. 1230, and looks forward to working with the Committee to ensure the bill is calibrated to appropriately balance privately held water rights allocated under state law with the federal government's interest in managing public lands in the best interests of the American people.

**Background**

Any understanding of the settlement of the western United States would be incomplete without a discussion involving the role of water. Settlers of the West were fueled by the pursuit of economic advancement and stability, generally electing to settle along the rivers of the West in order to access trade and water supplies for farming, ranching, and use within the home. The federal government encouraged western expansion throughout the early 19th century through various laws and policies. For instance, soldiers were promised lands in return for enlisting in the American army during the War of 1812. Congress provided land grants and appropriated funding for the transcontinental railroad, which further consolidated the U.S. hold on the West. Under the Homestead Act of 1862, Congress authorized individuals to acquire title to 160 acres of public land. The Mining Act of 1866, the Desert Land Act of 1877, the Reclamation Act of 1902, among others all sought to encourage the development of the West.

Federal policy encouraging the settlement of the West, however, came at a price. Our Nation still grapples with the harm caused to our Nation's Native American population. The impact of many of these policies on Native Americans was profound and permanent. In terms of the conflict surrounding the allocation of water resources in the West, many of the seeds of this conflict, to both Indians and non-Indians, were planted during the rapid western expansion of the 19th century.

As our Nation struggled with the appropriate role of the federal government in western expansion, either by law or through investment in water infrastructure, western settlers could not depend upon the federal government to provide a system for water allocation. Rather, settlers developed their own customs, laws, and judicial interpretations to administer the allocation of water supplies. Settlers acquired water rights through the simple system of “first in time, first in right,” whereby the individual who first appropriates water and puts it to beneficial use acquires a vested right to continue to divert and use that quantity. Traditional beneficial uses included irrigated agriculture, mining, stock watering, domestic uses, and power production. This concept later became memorialized by states as they entered the Union, and this system of “prior appropriation” remains largely intact in every state west of the 100th Meridian.

In the 20th Century, as our Nation’s population continued to grow in the West, state-acquired water rights holders and the federal government began to increasingly collide. While Congress regularly deferred to the states in their authority to allocate water rights, federal courts also upheld the federal government’s authority to reserve certain waters and exempt them from appropriation under state laws.<sup>1</sup> The conflict between state-acquired water rights holders and the federal government continued as Congress granted public land management agencies additional authorities to manage public lands or regulate activities. Legislation such as the Federal Land Policy Management Act, National Environmental Policy Act, Clean Water Act, and the Endangered Species Act often set regulatory limits on the exercise of state-acquired water rights. Now that we are over 168 years into the existence of our Department, this conflict remains real, and often acute, in parts of the West.

The Department of the Interior now manages 492 dams and operates 338 reservoirs with a total storage capacity of 245 million acre-feet of water, serving 31 million people. Interior manages more than 530 million acres of surface land, 409 units of the national park system, and 566 national wildlife refuges. Interior upholds the Federal trust responsibility to Indian Tribes and maintains relationships with 567 federal recognized Tribes. These figures serve as a constant reminder of the importance of maintaining an appropriate balance between (1) the Department’s mission to protect and manage the Nation’s natural resources and cultural heritage, provide scientific and other information about those resources, and honor its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities; and (2) the Department’s aim to ensure our activities and policies to not have an adversarial impact on the state and local communities we interact with on a daily basis. Getting this balance is essential when allocating finite water resources.

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<sup>1</sup> *United States v. Rio Grande Dam & Irrig. Co.*, 174 U.S. 702 (1899), *United States v. Winans*, 198 U.S. 371 (1905), and *Winters v. United States*, 207 U.S. 564 (1908).



Water supply is essential to supporting our Nation's public lands, which provide Americans with the opportunity to hike, fish, camp, and enjoy the great outdoors. These same lands serve as a lifeblood to many communities, which rely on them to graze, harvest timber, mine, and provide our nation with critical energy.

That is why the Department's management of public lands and water resources in the West often intersect with the water rights administered by states. Despite the inevitable conflicts over the allocation of finite water resources in the arid West, compounded during times of drought and due to growing populations, the federal government should avoid aggravating these conflicts. We can be careful stewards of our Nation's public lands and water resources while respecting the water rights of our neighbors. The Secretary of the Interior has pledged as one of his first priorities to restore trust and work with rather than against local communities and states. The distrust, anger and even hatred against some federal management policies is real, and the Secretary views this issue as an opportunity to facilitate further dialogue, rather than serving as a deaf adversary. It is with that mindset that we turn to our views on S. 1230.

### **S. 1230**

Broadly speaking, the bill re-enforces the state's primary authority over water allocation, in particular as it relates to establishing and recognizing rights to use water. The federal government owns a wide variety of water rights, whether obtained under state law or through federal reservation, and has a wide variety of responsibilities for managing those water sources, such as allocating the waters of the Colorado River through the Boulder Canyon Project Act or utilizing unreserved waters for federal purposes or in the aid of navigation. At the same time, the Department recognizes the goals of the bill to prohibit the Secretaries of the Interior and Agriculture from conditioning any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement (hereinafter "permit") on the transfer of a private party's state water right to the United States. S. 1230 would also prohibit the Secretaries of the Interior and Agriculture from requiring any water user to apply for or acquire water rights in the name of the United States under state law as a condition of the issuance, renewal, amendment, or extension of any permit for the use of public lands. Both provisions, included in Section 3 of the bill, aim to prevent the federal government from acquiring a water right under state law for which it would otherwise have to acquire for itself.

While the Department is not aware of any broad program or policy that requires an applicant to transfer or relinquish privately held water rights to the federal government as a condition of a permit for the use of public lands, we will be conducting further analysis to determine scenarios where this may have occurred. We would like to work with the sponsor and the Committee to ensure that Section 3 has no bearing on voluntary, mutually beneficial water-sharing or water-use agreements between the federal government and private water rights holders, such as rangeland improvements, conservation easements administered by the U.S. Fish and Wildlife Service, or

partnerships to allow the use of groundwater on public lands for recreational use. The Department supports the goals of this provision, and looks forward to working with the sponsor and Committee to make additional revisions to the bill to ensure that both private property rights and public resources are protected.

The Department looks forward to working with the sponsor and this Committee to ensure Section 3(3) of the bill does not conflict with existing statutory authority pertaining to the management of public lands, and to ensure federal public land managers are not prohibited from carrying out their congressionally mandated mission of managing the use of public lands when those public lands are used in conjunction with the exercise of state-acquired water rights. Additionally, the Department would like to ensure that Section 3(3) does not interfere or impact Indian water rights. We also understand the concern among some water rights holders that absent legislation, public land managers may have the ability to severely limit the use of a state acquired water right. We look forward to working with you to ensure the proper balance between these two co-equal interests.

Section 4 of S. 1230 requires the Secretary of Agriculture and Interior to recognize the long-standing authority of states to manage and allocate water resources, and to coordinate with states to ensure that federal actions are consistent with, and impose no greater restriction or regulatory requirement than applicable state water law allows for purposes recognized by state law. Section 4 also prohibits the Secretary of Agriculture and Interior from adversely affecting states' permitting for the beneficial use of water and adjudicating water rights, adversely affecting any definition established by a state with respect to the term "beneficial use", "priority of water rights", or "terms of use", or asserting any connection between surface and groundwater that is inconsistent with a state's recognition of such connection.

The Department also notes that Section 4(2)(B) may limit public land manager's ability to rely upon the best available science to determine the hydrologic nexus between groundwater and surface water, which could have an adverse impact on public lands. We look forward to working with the sponsor and the Committee to ensure this provision does not harm groundwater-dependent resources on public lands.

The Department appreciates the savings clause in Section 5, which recognizes the importance of Bureau of Reclamation contracts, the Endangered Species Act, Federal Power Act, and state-acquired water rights owned by the United States. We particularly appreciate the recognition of the unique role of federally reserved Indian water rights, which will allow the Department to continue pursuing the settlement of Indian water rights disputes in order to break down barriers to social and economic programs for Tribes and help create conditions that improve water resources management by providing certainty as to the rights of all water users who are parties to the dispute. The Department also recommends subsections 5(a), 5(d), and 5(f) be amended to

delete the word “existing”, in order to ensure existing and future Interior authorities and federal reserved water rights are protected by the savings clause.

The Department notes that Title VII of HR 23, the *Gaining Responsibility on Water Act of 2017*, which passed the House of Representatives on July 12<sup>th</sup>, addressed many of the elements we raised in our testimony today.

### **Conclusion**

The Department recognizes the interest in re-enforcing the state’s authority over water allocation. The Department also recognizes that the federal government retains the right and obligation to manage federal lands under the Constitution. This right and obligation includes the authority to both reserve water rights and mitigate against the impacts of the exercise of privately held water rights on public lands. Congress, on the other hand, is charged with directing the Executive Branch’s implementation of those rights and obligations. As such, we look forward to working with you on this bill to affirm the Department’s commitment to private water rights, while maintaining our responsibility to manage public lands for the benefit of all Americans.