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**BEFORE THE
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
REGARDING**

**S. 1665, the SOAR Act, S. 1967, the Recreation Not Red Tape Act, and
S. 1723, the Ski Area Fee Retention Act
October 31, 2019**

Introduction

Thank you for the opportunity for the U.S. Department of Agriculture (USDA), Forest Service, to provide views on S. 1967, the Recreation Not Red Tape Act; S. 1665, the Simplifying Outdoor Access for Recreation Act, or “SOAR Act”; and S. 1723, the Ski Area Fee Retention Act.

The Forest Service is deeply committed to connecting all Americans to the outdoors, and we value the important role played by outfitters and guides, resorts, non-profit organizations, and others as partners in connecting people to recreation opportunities on national forests and grasslands. Outdoor recreation attracts people to visit, live and work in gateway and rural communities and supports the health, well-being, and economic vitality of those communities. Recreation on National Forest System lands contributes more than \$11 billion to America’s gross domestic product and supports more than 148,000 full and part-time jobs, the vast majority of which are in gateway and rural communities.¹

With certain exceptions, USDA supports the goals of S. 1665, S. 1967 and S. 1723 to improve recreational access to National Forest System lands and looks forward to working with the bills’ sponsors to effect necessary changes to achieve their goals. Our comments on these bills pertain to their effect on the Forest Service, including management of National Forest System lands. USDA defers to DOI on the effects of these bills on DOI bureaus and the federal lands under their jurisdiction.

Background

The USDA Forest Service manages 155 national forests and 20 national grasslands, comprising 193 million acres in 41 states and Puerto Rico. These lands contain 3 million acres of lakes, 400,000 miles of streams, 122 Wild and Scenic Rivers for rafting, kayaking and other watersports, and 159,000 miles of trails for horseback riding, hiking, snowmobiling, mountain biking, and more.

¹ 2018 National Visitor Use Monitoring survey. These numbers reflect total benefits (direct, indirect, and induced).

Outdoor recreation is a significant use of the National Forest System. The number of recreation visits to the National Forest System rose from about 143 million in 2009 to nearly 150 million in 2018. Annual visitation to national forests and grasslands increases to 450 million visitors if we account for the number of people who pass through our beautiful forests to enjoy the scenery and travel on our scenic roads and byways.

Moreover, recreation on National Forest System lands sustains more private sector jobs (full- and part-time) than any other Forest Service program and provides the single largest stimulus for many local economies containing National Forest System lands. Outdoor recreation opportunities and amenities are consistently ranked as one of the primary reasons people move to rural towns and can be a leading contributor to small town economies.

The Forest Service administers over 30,000 recreation special use authorizations for activities that generate nearly \$2 billion to their holders. In particular, the Forest Service administers 122 ski area permits and approximately 8,000 outfitter and guide permits. The agency issues between 1,500 to 2,000 new outfitting and guiding permits each year. These permits enable private sector professionals and educational institutions to lead a range of activities on National Forest System lands, from whitewater rafting, downhill skiing, horseback riding, and big game hunting to youth education trips in the wilderness and scenic jeep tours. For many, these activities represent their first introduction to the outdoors, and the outfitters and guides they employ are often small businesses that generate jobs and income for local communities.

In addition to these economic benefits, recreation on federal lands instills a greater understanding of their meaning and value. In a 2013 survey, 7 out of 10 Americans responded that protecting the national history and beauty of National Forest System lands is one of the best things we do.²

S. 1665 (the SOAR Act) and Title I of S. 1967 (the Recreation Not Red Tape Act)

S. 1665 (Section 4) and S. 1967 (Section 103): Permitting Process Improvements

The Forest Service supports the overall intent of these sections. Since 2016, we have taken steps to implement several of the objectives of these sections, including reducing the number of expired permits by more than 50% in the last 3 years. Specifically, we have conducted the Lean Six Sigma Analysis of our permitting process and are currently implementing recommended actions, many of which align with the intent of this bill. Additionally, we recently published proposed revisions to the Forest Service's NEPA regulations, some of which are specific to permitting for recreation opportunities and will enable the Forest Service to issue and reissue these permits more quickly. The Agency is also piloting an online application platform for special use permits and plans to continue expanding the capabilities of this digital platform.

Although the Agency is supportive of the intent of these sections, we are concerned that the language duplicates our current work. We would like to work with the Committee to remove any redundancy and ensure that the language accomplishes its intent.

² National Forest Foundation survey, 2013 (<https://www.nationalforests.org/who-we-are/press-news/survey-reveals-americans-overwhelming-support-for-our-national-forests>) .

S. 1665 (Section 6) and S. 1967 (Section 105): Permit Administration

These sections would require the Forest Service to notify the public of available permit opportunities online. We have concerns about how this requirement would align with our current prospectus process for long-term outfitting and guiding opportunities. Additionally, we have concerns regarding the timeline for implementation because the notification requirement could create a significant additional workload for our permit administration staff. The Agency would like to work with the Committee to ensure that the Agency's current practices and processes of open seasons and prospectus announcements provide adequate notification of permit opportunities within our existing resource capabilities.

S. 1665 (Section 7) and S. 1967 (Section 106): Multi-Jurisdictional Permits

We support the intent of these sections to authorize the issuance of a single joint permit issued by the lead agency for multi-jurisdictional trips under a single set of authorities (the lead agency's authorities). We would like to work with the Committee to provide technical changes to the bill language that would achieve this intent. Specifically, the bill should be clarified to provide express statutory authority for the lead agency to apply its authorities to the lands covered by the permit under the jurisdiction of the other associated agency. This clarification would ensure that the lead agency is authorized to apply its statutes, regulations, and policies to lands under the other agency's jurisdiction. Otherwise, a second permit subject to the other agency's authorities would still be required for those lands. We also would like to work with the Committee on appropriate cost recovery provisions for the implementation of this program.

S. 1665 (Section 9) and S. 1967 (Section 108): Liability

Subsections (a) and (b) would allow permit holders to require their customers to sign a liability waiver. While we support authorizing use of waivers of liability, we are concerned about the requirement that customers sign a waiver with an indemnification requirement that would make them liable to both the permit holder and the United States for damages caused by the permit holder, not the customer. If the customer indemnification requirement is retained in the bill, we recommend that it be limited to damage caused by the customer.

Subsection (c) would exempt governmental entities from indemnifying the United States if they are precluded by state or local law from doing so. This provision should be clarified to state that the exemption would apply only to indemnity for tort, and not environmental, liability. Additionally, the insurance requirements for governmental entities are an insufficient substitute for indemnification of the United States because the insurance provisions do not require naming the United States as an additional insured. Many states' self-insurance covers only state employees and cannot be extended to an additional insured entity like the United States. We would like to work with the Committee to make targeted changes to address these important issues.

S. 1665 (Section 10) and S. 1967 (Section 109): Cost Recovery Reform

The Forest Service supports efforts to responsibly apply cost recovery for processing permit applications. However, we do not support these provisions in the bills because they would reduce our ability to process both simple and complex permit applications. Cost recovery has

provided more resources to the Forest Service, enabling the Agency to enhance customer service by processing applications faster. Small recreation service providers such as outfitters and guides are generally exempt from cost recovery fees under Forest service regulations. Expanding the exemption as proposed in the bill would generally benefit large recreation service providers and would adversely affect customer service, thereby counteracting the efficiencies gained from other provisions in the bill. The Agency believes that these efficiencies would reduce processing times sufficiently to obviate the need to limit our cost recovery authority further.

Titles II to IV of S. 1967, the Recreation Not Red Tape Act

Section 411, Interagency Trail Management

Section 411 directs the Secretaries of Agriculture and the Interior to establish an interagency trail management plan to uniformly maintain and manage trails that cross jurisdictional boundaries between federal land management agencies. The Forest Service supports the intent of this section of the bill. However, we would like to provide technical assistance to improve implementation and to minimize potential redundancy and process inefficiencies.

Trails crossing multiple federal jurisdictions include National Scenic and National Historic Trails, as well as hundreds and possibly thousands of other trails. In compliance with the National Trails System Act, National Scenic and National Historic Trails are managed in accordance with interagency comprehensive management plans that establish trail-wide management guidance and trail marking standards. Additionally, federally managed trails are subject to federal land management plans. The interagency trail management plan required by section 411 would need to take these existing plans into account and would add an unnecessary level of complexity.

Incorporating and applying standard management tools such as the Forest Service's Trail Management Objectives and working collaboratively through the interagency National Trails System Council to implement the intent of section 411 could be effective means for accomplishing its objectives without further legislative action.

S. 1723, the Ski Area Fee Retention Act

S. 1723 would amend the Omnibus Parks and Public Lands Management Act of 1996 to provide for the establishment of a Ski Area Fee Retention Account.

USDA supports the intent of S. 1723, as fee retention authority for ski area permits would improve ski area permit administration and customer service, increase efficiencies in processing proposals for ski area improvements and related infrastructure, and enhance avalanche-related safety education.

In 2019, \$55 million in ski area permit fees were submitted to the United States Treasury from National Forest System lands. The current five-year average for annual ski area permit fees is \$47 million. Based on the formula in the bill, we expect approximately \$24 to \$26 million in permit fees would be retained by the Forest Service each year. Retained permit fees would be

used to improve recreation opportunities that contribute to local economic activity across 122 ski resort communities operating on National Forest System lands in 14 states. It is anticipated that these improvements would spur industry growth and generate additional revenue for ski areas and additional permit fees to the federal government that exceed the value of current permit fees. The ski area permit fees retained under the bill would supplement cost recovery fees collected and retained under other authorities, but would also score under the “Pay as you Go” rules because it would divert these funds from going to the Treasury.

We would like to work with the Committee to further inform you about how the Forest Service delivers a full spectrum of services in the ski areas that are covered by this bill.

Conclusion

The Department appreciates the Committee’s interest in these important topics. The Department strongly supports efforts to foster recreational use of federal lands and looks forward to working with the bill sponsors and the Committee on the bills to promote these important goals.