

**Statement of
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**Before the
Subcommittee on Forest and Forest Health
Committee on Resources
United States House of Representatives**

**Concerning
H.R. 2907 – Northern Arizona National Forest Land Exchange Act of 2003
H.R. 3247 – Trail Responsibility and Accountability for the Improvement of
Lands Act of 2003**

October 21, 2003

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present the Department's views on H.R. 2907, the Northern Arizona National Forest Land Exchange Act of 2003, and H.R. 3247, the Trail Responsibility and Accountability for the Improvement of Lands Act (TRAIL Act) of 2003. The Department supports the concept of the land exchange embodied within H.R. 2907, and supports the goal of

H.R. 3247, but would like to work with the Subcommittee and sponsors on some modifications that we believe would improve the bills.

H.R. 2907 – the Northern Arizona National Forest Land Exchange Act of 2003

The Department supports the concept of a land exchange between Yavapai Ranch Limited Partnership, the Northern Yavapai, L.L.C. and the Forest Service, which would consolidate the largest remaining checkerboard ownership in Arizona. We do however, have some concerns related to the parcel deletion order, enforcement provisions associated with the conservation easements, the costs of the appraisal, and compensation for persons holding grazing permits within the parcels identified for transfer. We would like to work with the Subcommittee on some clarifications to this bill.

H.R. 2907 would authorize the exchange of approximately 55,000 acres of Federal and non-Federal land in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership. Pass-through provisions allows for some of the Federal land acquired by Yavapai Ranch Limited Partnership and the Northern Yavapai L.L.C. to be reconveyed to the cities of Flagstaff, Williams, and Camp Verde, Arizona, and to summer organizational camps identified in the bill.

This exchange can offer substantial benefits to all parties involved. The Forest units involved would benefit from simplified boundary management, reduced administrative costs, and the acquisition of lands adjacent to the Juniper Mesa Wilderness, which has significant forest,

wildlife, and recreation values. Consolidating 110 square miles into solid Forest Service ownership is a significant gain from both administrative and resource standpoints.

The Department has suggestions to improve four sections in the bill. First, Section 4(a)(3)(B) establishes conservation easements on the Camp Verde and Cottonwood parcels, which are located on the Prescott National Forest. H.R. 2907 needs greater detail concerning: (1) how a memorandum of understanding with the State of Arizona will be developed to enforce the conservation easements; (2) when the memorandum will take effect and for how long; and (3) how the Federal government will be removed from liability. We would be happy to work with the Subcommittee and the bill sponsors to provide additional details.

In addition, the Department is concerned that the valuation of the Federal parcels due to the conservation easements could result in the transfer of far more Federal land to the owners of the Yavapai Ranch and its related limited liability corporation than would otherwise occur if the market value of the Federal estate were valued without this encumbrance. The Federal government will hold these conservation easements in perpetuity, thus reserving the value.

Our second concern involves Section 5(c)(2), which describes the order for deleting Federal parcels. If the final appraised value of the Federal land exceeds the final appraised value of the non-Federal land, the intended deletion order could result in undesirable boundaries.

Third, Section 6(d) states the costs of implementing the land exchange will be borne by the Secretary of Agriculture (for the Federal land) and Yavapai Ranch (for the non-Federal land).

The costs of implementing the exchange should be borne equally by both parties since both parties are benefiting from this land exchange; specifying each type of cost is not needed in the bill. Also, the Department believes reimbursement to Yavapai Ranch for using independent third party contractors should only be done where the Forest Service has agreed to the contractor, scope of work, cost estimate, and formally accepts the work performed.

Fourth, Section 9 states that persons holding grazing permits for land transferred into private ownership shall be compensated for any loss of grazing associated with the transfer. The Department believes this section should be deleted. Grazing on National Forest System land has been determined by the courts to be a privilege, not a right. The Department does not believe this grazing privilege should be compensated since Forest Service regulations allow for a grazing permit to be canceled, modified, or suspended, in whole or in part, where lands grazed under the permit are to be devoted to another public purpose including disposal. In these cases, except in an emergency, no permit shall be cancelled without two years' prior notification (36 CFR 222.4).

However, the Federal Land Policy and Management Act of 1976 provides compensation for permittees' interest in authorized permanent improvements. Forest Service regulations at 37 CFR 222.6 states, "Whenever a term permit for grazing livestock on National Forest land in the 16 contiguous western States is canceled in whole or in part to devote the lands covered by the permit to another public purpose, including disposal, the permittee shall receive from the United States a reasonable compensation for the adjusted value of his interest in authorized permanent improvements placed or constructed by him on the lands covered by the canceled permit. The adjusted value is to be determined by the Chief, Forest Service. Compensation received shall not

exceed the fair market value of the terminated portion of the permittee's interest therein." Any compensation is based on amortization over the life of the permanent improvement, thus the Department would need an amortization schedule from the permittee for all permanent improvements to be claimed, including receipts of purchase, labor costs, or any other costs. The Department believes these are the only costs where compensation is appropriate.

H.R. 3247 – the Trail Responsibility and Accountability for the Improvement of Lands Act (TRAIL Act) of 2003

The Department supports the goals of H.R. 3247, but would like to work with the Subcommittee on some modifications that we believe would improve the bill. We commend Mr. Tancredo and the co-sponsors of H.R. 3247 for their efforts through this bill to raise the public's awareness of the laws pertaining to Federal lands to protect the public's natural resources, and the consequences of violating them. We also thank the subcommittee for seeking innovative approaches for providing resources to the Department to rehabilitate National Forest System lands once a criminal violation has occurred.

H.R. 3247 makes consistent the penalties for violating regulations of the National Park Service, Bureau of Land Management, and the Fish and Wildlife Service in the Department of the Interior, and the Forest Service in the Department of Agriculture. We support such a concept as we work closely with our fellow land management agencies in enforcement activities, including local cross-designations of authority. Consistent enforcement authority would make this cooperation much easier, aid the public in understanding regulations and penalties, and assist prosecutors and courts that must handle cases arising from different federal jurisdictions. The

bill would change the penalty for violation of our regulations from one level of offense to two levels. We will work with the Department of Justice and the federal courts to best ensure advantages of consistent criminal penalties are fulfilled.

The Department has been working with the Department of Justice, the Department of the Interior, and the Subcommittee on similar bills dealing with enforcement and violations. We are willing to offer suggested changes to H.R. 3247, which we believe will strengthen the bill while still allowing the flexibility for enforcement. These suggested changes to the Forest Service Organic Act deal with fines.

The Department would like to work with the Subcommittee, the Department of the Interior, and the Department of Justice to clarify section 2 of the bill dealing with Class A and Class B misdemeanors. Creating these separate offenses provides both the land managers and the Department of Justice with much greater flexibility to deal with criminal violations of land management regulations. The Forest Service has authority to issue Class B misdemeanors for a violation of agency regulations as stated in the Forest Service Organic Act of 1897. H.R. 3247 would create a new Class A misdemeanor for certain offenses committed on National Forest System lands by any person who knowingly and willfully violates any such rule or regulation. The bill adopts the most onerous requirement of “knowingly and willfully”, which generally requires greater proof of wrongdoing. Thus, in a prosecution involving the “knowing and willful” standard, the government must prove that the defendant specifically intended to violate the law, a difficult standard to meet. Proof that an offense was committed “knowingly” merely requires proof of the facts that constitute the offense. This means that in a criminal prosecution

involving the “knowing” standard, the government must only prove that the defendant was aware of his acts, performed them intentionally, and did not act by mistake or accident.

In addition, section 3 of the bill needs to be clarified concerning use of collected fines. H.R. 3247 identifies how collected fines will be used by providing authority to the Secretary to use all fines, including collaterals, collected as a result of a violation of Forest Service regulations to cover the cost to the United States of any improvement, protection, or rehabilitation work on National Forest System lands rendered necessary by the action which led to the fines. Congress has previously approved the use of fines by other Departments in other critical environmental legislation, including the Endangered Species Act of 1973 and the Migratory Bird Treaty Act of 1918. H.R. 3247 also would establish an innovative and effective means of putting the penalties paid by violators of Federal regulations to use to cover some of the costs of damage caused by violations. The bill also would authorize the use of moneys received from fines, forfeitures, judgments, settlements, and compromises to be used for prevention and education programs to help prevent future violations and losses.

To effectuate fully the authority provided by H.R. 3247 to retain and spend fines and collaterals collected for criminal violations of Forest Service regulations, the Department recommends that paragraph (A), as added by section 3(d) of the bill governing the use of moneys collected by the Forest Service be amended by expanding the use of such moneys to cover the costs of repair and replacement of other government property damaged by the action that led to the fine, forfeiture, judgment, compromise, or settlement.

Final Testimony

We appreciate the interest of the sponsor and the Subcommittee in addressing violations of law on National Forest System lands and their penalties, and your willingness to work with us to address the many law enforcement challenges we face.

This concludes my statement. I would be pleased to answer any questions that you may have.