

**STATEMENT OF
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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE
UNITED STATES SENATE
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS
COMMITTEE ON ENERGY AND NATURAL RESOURCES**

February 27, 2008

CONCERNING

**S. 2229 – Wyoming Range Legacy Act of 2007
H.R. 1285, S. 2601 - Snoqualmie Pass Land Conveyance Act
H.R. 2110, S. 2508 - Colorado Northern Front Range Mountain Backdrop Protection Study Act**

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify today on three bills that pertain to the U.S. Department of Agriculture (USDA), Forest Service.

S. 2229 – Wyoming Range Legacy Act of 2007

S. 2229 would provide for the establishment of the Wyoming Range Withdrawal Area, consisting of 1.2 million acres of the Bridger-Teton National Forest withdrawn from all forms of appropriation or disposal under the public land laws; location, entry, and patent under the United States mining laws; and disposition under laws relating to mineral and geothermal leasing or mineral materials. The bill would also allow for the voluntary retirement and repurchase of existing oil and gas leases and other mineral leases within the withdrawal area.

The Administration supports this bill, and looks forward to working with the Congress to address issues such as the potential budgetary impact and necessary offsets. The Department of Agriculture does have concerns with the bill as drafted, and would like to work with the Department of the Interior and the Committee to address those concerns. I would like to offer some suggested amendments for the Committee to consider.

Because of the national need for energy, the Department supports the appropriate development of energy resources on National Forest System lands, in collaboration with stakeholders, while effectively protecting the environment. This Administration is committed to cooperative conservation, as reflected in Executive Order 13352, Facilitation of Cooperative Conservation. In this case, we recognize the interest of a wide variety of stakeholders in the goals of this bill. The list of supporters within Wyoming is long and varied, including local government officials and the Governor in a state that has been very supportive of energy development in other areas.

The Forest Service shares authority with the Bureau of Land Management (BLM), to varying extents depending upon the minerals in question and the lands on which they are found, to ensure that management goals and objectives for mineral exploration and development activities are achieved, that operations are conducted to minimize effects on natural resources, and that the land affected by mineral operations is reclaimed.

All the existing leases in the area covered by this legislation are consistent with the Bridger-Teton's Land and Resource Management Plan. However, there are a number of pending oil and gas leases in this area that have been sold at competitive sales but are awaiting a final decision on issuance due to an Interior Board of Land Appeals ruling and the need for supplemental environmental analysis under the National Environmental Policy Act.

We recommend the following clarifications to the proposed bill language. Section 2(b) of the bill sets out the purposes of the Act, including the withdrawal of areas in the Wyoming Range from location, entry, leasing, and patent under the United States mining laws. However, the language in Section 3(a), which effects the withdrawal, withdraws those areas from the laws governing mineral leasing, geothermal resource leasing and disposition of mineral materials. We recommend that the language in Sections 2 and 3 be aligned. We would like to work with the Committee to more accurately determine boundaries and acreage associated with the withdrawal.

Section 3(a) of the bill also provides that the withdrawal under S. 2229 is subject to "valid rights in existence on the date of enactment," for the oil and gas leases that have already been issued by BLM. The term "valid rights" may have been intended to include the oil and gas leases that have been sold, but not issued, but that would not be consistent with Interior Board of Land Appeals precedent. Current supplemental environmental analysis efforts are being conducted by the Bridger-Teton National Forest to determine if it is appropriate to issue those leases. The Committee should modify this section to clarify that those leases which have been sold, but have not been issued, may be issued notwithstanding the withdrawal, following completion of the ongoing environmental analysis.

In Section 3(a)(3), we suggest that "mineral materials" be excluded from the withdrawal. Mineral material supplies are critical to the maintenance of Forest Service roads and facilities on the forest. Mineral materials include sand and gravel as well as other materials utilized in the construction and maintenance of Forest Service roads and facilities. Maintaining roads and facilities is necessary to ensure proper conditions and safety for the public and Forest Service employees. This withdrawal would prohibit the Forest Service from using locally obtainable mineral materials for public purposes--including access to hunting and fishing--that are consistent with the management of the national forests. Replacement would be at greatly increased cost.

Section 3(c) of the bill provides that land for which valid existing rights exist becomes subject to the withdrawal's effect upon the termination of those rights. This provision is not necessary. The withdrawal made by the legislation already precludes new dispositions by the United States.

Section 3(e) would provide that the forest plan applies to areas in the National Forest that are not withdrawn by the bill or to any leases of that land. By implication, the forest plan in its entirety would not apply to areas that are withdrawn. We recommend that subsection (e) be deleted so that there would be no uncertainty that the forest plan applies to the withdrawn area. Alternatively, we would like to work with the Committee to develop technical edits.

Section 4 would allow for retirement and repurchase of mineral leases, including oil and gas leases, for lands within the Wyoming Range. We recommend that the language be modified to also permit the retirement and repurchase of mining claims within the Wyoming Range located pursuant to the United States mining laws if those mining claims constitute valid existing rights. There are 26 mining claims in existence within the proposed withdrawal area. Those claims may constitute valid existing rights if they were properly located, a discovery of a valuable locatable mineral deposit was made within the confines of the claim prior to the date that the claimed lands are withdrawn from appropriation under the United States mining laws, and those mining claims are thereafter properly maintained.

By agreement with the Department of the Interior, the Forest Service prepares mineral examination reports to determine whether a mining claim embracing National Forest System lands constitutes a valid existing right following the withdrawal of those lands from the operation of the United States mining laws. The Department of Agriculture recommends that the appropriations for the administrative costs of conducting validity examinations and performing appraisals of any mining claims which constitute valid existing rights, if those actions are necessary, be included in Section 4 so as to not create a financial impact on the Government.

We look forward to working with the bill's sponsor and the committee to clarify the bill.

H.R. 1285, S. 2601 - Snoqualmie Pass Land Conveyance Act

This testimony concerns both S. 2601 and H.R. 1285, as passed by the U.S. House of Representatives. The bills would require the Secretary of Agriculture to convey, without consideration, approximately 1.5-acres of land on the Wenatchee National Forest to the King and Kittitas Counties Fire District #51 for use as a site for a new Snoqualmie Pass fire and rescue station.

The Fire District currently has a fire station located on National Forest System lands under a special use permit, several miles away from the property covered by this legislation. We understand that the Fire District wants to construct an updated facility situated at an interchange on Interstate 90 to improve response times to the many emergency situations that occur in that area. We agree that the proposed 1.5-acre parcel will meet this need. Among other administrative procedures necessary to facilitate the conveyance, a land survey will be needed to properly locate and describe the property. As is required under the Townsite Act and exchange authorities, the Fire District would normally be expected to pay administrative costs of making the conveyance, such as the survey.

The Department does not support the bills in their present form. We appreciate that the acreage has been reduced from the original House proposal of 3 acres to 1.5 acres. We do not object to conveying the lands, but we oppose the bills because they do not require market value

compensation for the conveyance, although the bill does require the District to cover the survey costs associated with the conveyance. It is long-standing policy that the taxpayers of the United States should receive market value for the sale, exchange, or use of their National Forest System lands.

We also believe that this legislation is unnecessary because the Forest Service can meet the bill's objectives through current statutes that allow the Forest Service to convey this parcel to the Fire District for land or cash value. For example, under the Townsite Act, the Secretary of Agriculture may convey, for market value, up to 640 acres of land to established communities located adjacent to National Forests. Under the General Exchange Act, the Secretary of Agriculture can conduct a land for land exchange with non-Federal entities, including State and Local governments. These laws require the Secretary of Agriculture to obtain market value for exchanges or sales of National Forest lands.

Although we can not support the bills, we are eager to continue discussions with the sponsors, the Fire District, and the committee, in the hopes of assisting the District in achieving its desire to improve its capacity to provide necessary fire and rescue services.

H.R. 2110, S. 2508 - Colorado Northern Front Range Mountain Backdrop Protection Study Act

This testimony concerns both this bill and H.R. 2110 for which previous testimony was provided on March 9, 2006, before the House Subcommittee on Forests and Forest Health. S. 2508 provides for a study of options for protecting the open space characteristics of certain lands in and adjacent to the Arapaho and Roosevelt National Forests in Colorado. In addition, the Secretary of Agriculture, acting through the Chief of the Forest Service and in consultation with appropriate State and local agencies, would review the lands within a study area and report to Congress on the present ownership of undeveloped lands, identify the undeveloped lands that may be at risk of development and identify and recommend actions that could be taken by all parties to preserve the open and undeveloped character of the lands.

The Department does not oppose the bills. We would like to work with the Committee and the sponsors on amendments to specify Federal, State, and local entities cooperating in the study and to provide that recommendations for actions outside of National Forest boundaries would be made by state government or the appropriate local land use planning and zoning authority, rather than the Secretary. The Department is also concerned the study boundary is not delineated on a geological or ecological feature but instead on human created boundaries identified in Section 2(b)(1). Moreover, the Department is particularly concerned with the cost associated with the bill which, if enacted, could be significant and would be funded at the expense of other work within the region or elsewhere within the Forest Service.

Loss of open space was identified by former Chief Dale Bosworth as one of the Four Threats to our Nation's forests. Loss of open space poses a tremendous challenge to effective land management. It causes loss of biodiversity and contributes to the degradation and loss of wildlife habitat. Loss of open space has three aspects:

- Habitat fragmentation – the division of habitats in forest and rangeland ecosystems into small isolated patches;
- Ownership fragmentation – the conversion of large acreages into smaller parcels; and
- Use fragmentation – the transformation of large single tracts used for forestry, farming, and ranching converted into multiple-use small tracts.

The Forest Service recently completed the “Forests on the Edge” (FOTE) report which highlights the threat to private forests from housing development. Based on the FOTE research, some 44.2 million acres (over 11 percent) of private forest across the conterminous United States could experience substantial increases in housing density by 2030. In September 2007, the Forest Service completed phase two of the FOTE which assessed housing density projections up to 10 miles from the edge of each National Forest and Grassland boundary. The report showed that the Arapaho-Roosevelt National Forest is projected to experience a moderate increase of residential development on 10% to 24.9% of adjacent private lands.

In December 2007, the Forest Service also announced the release of an “Open Space Conservation Strategy.” The objective of the Strategy is to facilitate, encourage, and galvanize voluntary land conservation to help ensure that forests and grasslands across the landscape can continue to provide valued services and benefits for society. The Strategy allows the Forest Service to be a more effective partner in open space conservation. Open space benefits American citizens by providing clean air, abundant water, outdoor recreation, connected fish and wildlife habitat, scenic beauty, improved human health, renewable resource products, and quality of life. The Forest Service plans to achieve these benefits through collaboration and partnerships by working with willing landowners, conservation groups and state and local governments to promote voluntary land conservation. The study being proposed in this bill would be a local example of the Forest Service’s Open Space Conservation Strategy.

This concludes my testimony. I would be happy to answer any questions you may have.