

**H.R. 2907 AND H.R. 3247**

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**LEGISLATIVE HEARING**

BEFORE THE

SUBCOMMITTEE ON FORESTS AND  
FOREST HEALTH

OF THE

COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

—————  
Tuesday, October 21, 2003  
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**LEGISLATIVE HEARING ON H.R. 2907, TO PROVIDE FOR A LAND EXCHANGE IN THE STATE OF ARIZONA BETWEEN THE SECRETARY OF AGRICULTURE AND YAVAPAI RANCH LIMITED PARTNERSHIP; AND H.R. 3247, TO PROVIDE CONSISTENT ENFORCEMENT AUTHORITY TO THE BUREAU OF LAND MANAGEMENT, THE NATIONAL PARK SERVICE, THE UNITED STATES FISH AND WILDLIFE SERVICE, AND THE PROTECTION OF PUBLIC LANDS UNDER THE JURISDICTION OF THESE AGENCIES, TO CLARIFY THE PURPOSES FOR WHICH COLLECTED FINES MAY BE USED, AND FOR OTHER PURPOSES.**

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**Tuesday, October 21, 2003  
U.S. House of Representatives  
Subcommittee on Forests and Forest Health  
Committee on Resources  
Washington, DC**

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The Subcommittee met, pursuant to notice, at 10:03 a.m., in Room 1334, Longworth House Office Building, Hon. Rick Renzi, presiding.

Present: Representatives Renzi, Duncan, Tancredo, Hayworth, Flake, Pearce, Inslee, Kildee, Tom Udall of New Mexico, and Mark Udall of Colorado.

**STATEMENT OF HON. RICK RENZI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Mr. RENZI. Good morning. The Subcommittee on Forests and Forest Health will come to order. The Subcommittee is meeting today to hear testimony 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 of 2003.

Under Committee rule 4(g), the Chairman and the Ranking Minority Member may make opening statements. If any other member has statements, they may be included in the hearing record under unanimous consent.

Members of the Subcommittee, I appreciate the Subcommittee's consideration of my bill, H.R. 2907, the Northern Arizona National Forest Land Exchange Act of 2003. H.R. 2907 facilitates a land exchange in Northern Arizona of private land within the Yavapai Ranch for Forest Service land in the northern portion of the State.

Mr. RENZI. I would like to recognize local representatives in the First District of Arizona, including the Mayor of Camp Verde, Mitch Dickinson, the Mayor of Clarkdale, Mike Bluff, and the Mayor of Cottonwood, Ruben Jauregui.

H.R. 2907 accomplishes several goals in Northern Arizona. First, it will preserve the pristine areas within the Yavapai Ranch for the wildlife and recreation purposes. Second, H.R. 2907 provides the City of Flagstaff with the opportunity to acquire land to expand and improve Pulliam Airport. H.R. 2907 will allow the City of Flagstaff to develop a new city park and recreational areas and obtain ownership of land near their water treatment plant. This is critical to the City of Flagstaff's future by providing economic development and affordable housing.

The Northern Arizona National Forest Land Exchange Act will also allow the City of Williams to acquire land for its well sites, water storage tanks, and wastewater facilities and drinking water treatment plants. Until recently, the City of Williams relied completely on surface water supplies to service the community. However, surface water reservoirs in Williams are currently at a minimal 8 percent of capacity. H.R. 2907 will assist Williams in meeting their water challenges in the future, providing new land for well drilling sites.

In the Verde Valley, this bill provides the Town of Camp Verde with a unique opportunity to acquire lands for open space to protect their view shed. The Camp Verde Fire District will be provided with land adjacent to Interstate 17 for an emergency response and urgent care facility for faster response. A planned development along I-17 will provide Camp Verde with additional tax base and job opportunities.

A residential development in Clarkdale and Cottonwood will diversify the housing market and provide new lands for their tax base. I am assured that language in H.R. 2907 ensures that water conservation and water use restrictions must be met for any future development. In addition, any development must also comply with the State of Arizona's surface and groundwater laws, as well as local community planning standards.

Finally, this legislation ensures that six summer youth camps, serving between 6,000 and 8,000 children per year, have the opportunity to acquire the land and benefit from full ownership and management of this land. Included in this exchange are YoungLife Lost Canyon Camp, Friendly Pines Camp, YMCA Sky-Y Camp, Pine Summit Camp, Temple Beth Israel's Camp Charles Pearlstein, and the Roman Catholic Church of Phoenix Patterdale Pines Camp.

In the past few months, I have received many letters and phone calls providing input and information on this exchange. I have also held several town halls and town meetings in the districts to discuss many complex issues surrounding this exchange. I have visited and toured Yavapai Ranch and the exchange parcels and have witnessed firsthand the equity this land exchange can bring to the area. Bringing the Yavapai Ranch into Federal ownership is in the best interest of the public and the general good, and the Forest Service has indicated that it would otherwise be unable to afford to acquire these parcels.

H.R. 2907 will benefit the public, the many communities and camps in Northern Arizona that will receive opportunities for future economic development and the natural beauty of the Yavapai Ranch. The hearing on H.R. 2907 today represents another step in this legislative process. I appreciate the Subcommittee's consideration of the Northern Arizona National Forest Land Exchange Act of 2003.

[The prepared statement of Mr. Renzi follows:]

**Statement of The Honorable Rick Renzi, a Representative in Congress from the State of Arizona, on H.R. 2907**

Good morning, Chairman McInnis and members of the Subcommittee, I appreciate the Subcommittee's consideration of my bill, H.R. 2907, the Northern Arizona National Forest Land Exchange Act of 2003. H.R. 2907 facilitates a land exchange in northern Arizona of private land within the Yavapai Ranch for Forest Service land in the northern portion of the state.

H.R. 2907 accomplishes several goals in northern Arizona. First, it will preserve the pristine areas within Yavapai Ranch for wildlife and recreation. Second, H.R. 2907 provides the City of Flagstaff with the opportunity to acquire land to expand and improve Pulliam Airport. H.R. 2907 will allow the City of Flagstaff to develop a new city park and recreational areas and obtain ownership of land near their water treatment plant. This is critical to the City of Flagstaff's future by providing economic development and affordable housing.

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In the Verde Valley, this bill provides the Town of Camp Verde with a unique opportunity to acquire land for open space to protect their view shed. The Camp Verde Fire District will be provided with land adjacent to Interstate 17 for an emergency response and urgent care facility for faster response. A planned development along Interstate 17 will provide Camp Verde with additional tax base and job opportunities.

A residential development in Clarkdale and Cottonwood will diversify the housing market and provide new lands to their tax base. I have ensured that language in H.R. 2907 ensures that water conservation and water use restrictions must be met for any future development. In addition, any development must also comply with the State of Arizona's surface and ground water laws, as well as local community planning standards.

Finally, this legislation ensures that six summer youth camps, serving between six and eight thousand children a year, have the opportunity to acquire the land and benefit from full ownership and management of this land. Included in this exchange are YoungLife Lost Canyon Camp, Friendly Pines Camp, YMCA Sky-Y Camp, Pine Summit Camp, Temple Beth Israel's Camp Charles Pearlstein and the Roman Catholic Church of Phoenix Patterdale Pines Camp.

In the past few months, I have received many letters and phone calls providing input to this exchange. I have also held several town halls and town meetings in the district to discuss the many complex issues surrounding this exchange. I have visited and toured the Yavapai Ranch and the exchange parcels and have witnessed first hand the equity of this land exchange. Bringing the Yavapai Ranch into federal

ownership is in the best interest of the public, and the Forest Service has indicated that it would otherwise be unable to afford to acquire these parcels.

H.R. 2907 will benefit the public, the many communities and camps in northern Arizona that will receive opportunities for future economic development, and the natural beauty of the Yavapai Ranch. The hearing on H.R. 2907 today represents another step in the legislative process. I appreciate the Subcommittee's consideration of the Northern Arizona National Forest Land Exchange Act of 2003.

Mr. RENZI. At this time, I would like to recognize the Ranking Member, Mr. Inslee, for any statements that he might have.

**STATEMENT OF HON. JAY INSLEE, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF WASHINGTON**

Mr. INSLEE. Thank you. Just briefly, I look forward to this. I think there are a lot of interesting issues. I look forward to a discussion of this water conservation movement issues, its enforceability in particular, and I am sure we will have a lot of other good questions. Thank you, Mr. Chair.

Mr. RENZI. I thank the Ranking Member.

I would like to invite the first panel to join us at the table, please, and I would like to introduce our witnesses today.

As the gentlemen are making their way to the table, I would like to recognize the gentleman who originally helped to author this bill during the 107th Congress, the Congressman from the Sixth District of Arizona—

Mr. HAYWORTH. Or what used to be the Sixth District, now the Fifth with the realignment.

Mr. RENZI. Now the fifth.

Mr. HAYWORTH. Yes, sir.

**STATEMENT OF HON. J.D. HAYWORTH, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF ARIZONA**

Mr. HAYWORTH. Mr. Chairman, it is good to see you in the chair today and I am grateful for the opportunity to talk about this important legislation. Let me commend you, Mr. Renzi, for all your hard work in bringing this before the Forest Subcommittee. I would also like to join the Chairman in welcoming my friends from Arizona who join us in the Committee Room today and thank them for making the trip back to Washington to participate in this hearing.

Although you may not agree on every jot and tittle of the legislation before us, I think it is safe to say that we all agree that we have a common goal. I look forward to working with each of you toward that goal, which is to ensure that the environment, ecosystem, watershed, and forested lands of Northern Arizona are protected and preserved.

As the Chairman mentioned, H.R. 2907 is very similar to a bill I sponsored in the last Congress, together with our friend the late Bob Stump. The concept of a land exchange to consolidate the Yavapai Ranch lands just made sense. Through this land exchange, the Federal Government will receive pristine forest lands that truly belong under the stewardship of the U.S. Forest Service to preserve for future generations.

This exchange was originally initiated by the Forest Service to consolidate a massive checkerboard parcel of land and to protect



the Juniper Mountains forested area from future development. Watershed management, wildlife habitat, and outdoor recreation in the consolidated land parcel will be preserved through this action.

Additionally, many of the land parcels the Forest Service will trade to accomplish these goals are eagerly sought by the local communities for a variety of worthwhile civic purposes, including expansion of airports, parks, and other municipal facilities. As the Chairman mentioned, six summer camps that currently lease lands from the Forest Service would be able to acquire their leased areas.

There have been numerous meetings between Forest Service personnel and various communities and citizen groups. As a result, the bill has been endorsed by the city councils of Flagstaff, Williams, Camp Verde, Cottonwood, Clarkdale, as well as the Yavapai County Board of Supervisors, the Salt River Project, the Arizona Game and Fish Department, the Flagstaff Chamber of Commerce, the Greater Flagstaff Economic Council, the Williams Chamber of Commerce, the Camp Verde Chamber, the Cottonwood Chamber, the Grand Canyon Trust, the Sedona Verde Valley Realtors, the Wildlife Conservation Council, the Arizona Antelope Foundation, the Arizona Mule Deer Association, the Central Arizona Land Trust, and the Arizona Republic Newspaper editorial board.

This bill makes good sense for our forest and for the people of Arizona. The savings for the Federal Government and obviously for U.S. taxpayers associated with this land exchange are significant, but much more importantly, this exchange will ensure that one of the last largest pristine forested parcels in Arizona will pass out of private hands and be protected from development indefinitely.

We have several questions for our witnesses today, and obviously welcome them and look forward to their testimony.

Again, Mr. Chairman, I commend you for your hard work on this and am glad to be a part of this hearing today. Thank you, sir. I yield back my time.

Mr. RENZI. Thank you, J.D.

[The prepared statement of Mr. Hayworth follows:]

**Statement of The Honorable J.D. Hayworth, a Representative in Congress from the State of Arizona, on H.R. 2907**

Mr. Chairman, I am grateful for the opportunity to discuss this important legislation today, and commend the gentleman from Arizona, Mr. Renzi, for his hard work in bringing this before the Forests Subcommittee. I also want to welcome my friends from Arizona who join us in the Committee Room today and thank them for coming to Washington to participate in this hearing. All of you may not agree on every jot and tittle of the legislation before us, but I think it is fair to say that we all agree that we have a common goal. I look forward to working with each of you toward that goal, which is to ensure that the environment, ecosystem, watershed, and forested lands of Northern Arizona are protected and preserved.

As you know, H.R. 2907 is very similar to a bill I sponsored in the last Congress, together with our friend, the late Rep. Bob Stump. The concept of a land exchange to consolidate the Yavapai Ranch lands just makes sense. Through this land exchange, the federal government will receive pristine forest lands that truly belong under the stewardship of the U.S. Forest Service to preserve for future generations.

This exchange was originally initiated by the Forest Service to consolidate a massive "checkerboard" parcel of land, and to protect the Juniper Mountains' forested area from future development. Watershed management, wildlife habitat and outdoor recreation in the consolidated land parcel will be preserved through this action. Additionally, many of the land parcels the Forest Service will trade to accomplish these goals are eagerly sought by local communities for a variety of worthwhile civic purposes, including expansion of airports, parks and other municipal facilities. Also, six

summer camps that currently lease lands from the Forest Service would acquire their leased areas.

There have been numerous meetings between Forest Service personnel and various communities and citizen groups. As a result, this bill has been endorsed by the City Councils of Flagstaff, Williams, Camp Verde, Cottonwood, Clarkdale, as well as the Yavapai County Board of Supervisors, Salt River Project, Arizona Game and Fish Department, Flagstaff Chamber of Commerce, Greater Flagstaff Economic Council, Williams Chamber of Commerce, Camp Verde Chamber of Commerce, Cottonwood Chamber of Commerce, Grand Canyon Trust, Sedona-Verde Valley Realtors, Wildlife Conservation Council, Arizona Antelope Foundation, Arizona Mule Deer Association, Central Arizona Land Trust, and the Arizona Republic, among others.

This bill makes good common sense for our forests and for the people of Arizona. The savings for the federal government (and, therefore, the U.S. taxpayer), associated with this land exchange are significant. But much more importantly, the exchange will ensure that one of the last, largest pristine forested parcels in Arizona will pass out of private hands and be protected from development indefinitely.

I have several questions for our witnesses today, and look forward to their testimony. And again, I commend Congressman Renzi for his hard work on this important legislation and thank him for the chance to partner with him on this bill.

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Mr. RENZI. At this time, I would like to introduce our witnesses on H.R. 2907. On panel one, we have the Honorable Mark Rey, Under Secretary of Natural Resources and Environment with the U.S. Department of Agriculture; the Honorable Mitch Dickinson, Mayor of the Town of Camp Verde; Mr. Peter Andrew Groseta, Owner of Groseta Ranches, LLC; and Ms. Aileen Roder, Program Director, Taxpayers for Common Sense. Welcome and good morning to you all. I am thankful.

We begin with a little reminder that I would ask that you limit your statements to 5 minutes. Mr. Rey, I would now recognize you for your 5-minute statement.

**STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, U.S. DEPARTMENT OF AGRICULTURE**

Mr. REY. Thank you, Congressman Renzi, and thank you for the opportunity to present the Department of Agriculture'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 of 2003. I will limit my remarks on this panel to the first of those two bills and summarize accordingly.

The Department supports the land exchange embodied within H.R. 2907 and supports the goal of H.R. 3247. We would like to work with the Subcommittee and the sponsors on some modifications that we believe would improve both bills.

With regard to H.R. 2907, the Department supports the land exchange between Yavapai Ranch Limited Partnership, the Northern Yavapai LLC, and the Forest Service, which would consolidate the largest remaining checkerboard ownership in Arizona. We do, however, have some concerns related to the partial deletion order, the enforcement provisions associated with the conservation easements, the cost of the appraisal, and compensation for persons holding grazing permits within the parcels identified for transfer. Both of those, or all of those issues, we believe, can be resolved by technical corrections to the bill and we would like to work with the Subcommittee on these kinds of corrections.

This exchange will offer substantial benefits to all of the 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. Savings in just land line locations alone would amount to \$1 million. So the bill has significant benefits for all of the parties involved.

The Department supports enactment of the legislation and we would be happy to work with the Committee to that end. Thank you very much.

Mr. RENZI. Thank you, Mr. Rey.

[The prepared statement of Mr. Rey follows:]

**Statement of Mark Rey, Under Secretary, Natural Resources and Environment, U.S. Department of Agriculture, on H.R. 2907 and H.R. 3247**

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 benefitting 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 cosponsors 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.

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.

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Mr. RENZI. Mitch, it is good to have you here this morning.

Mr. DICKINSON. Thank you, sir. I am happy to be here.

Mr. RENZI. Thank you for coming all the way to Washington. I am interested to hear your statement. Please begin.

**STATEMENT OF MITCH DICKINSON, MAYOR, TOWN OF CAMP VERDE, ARIZONA; ACCOMPANIED BY MICHAEL R. BLUFF, MAYOR, CLARKDALE, ARIZONA; AND RUBEN JAUREGUI, MAYOR, COTTONWOOD, ARIZONA**

Mr. DICKINSON. My name is Mitch Dickinson and I am the Mayor of the Town of Camp Verde. I am also a sixth generation Camp Verde native and I believe I have a strong understanding of the issues important to Northern Arizona.

I appear before you today as a spokesperson for the towns of Camp Verde, Cottonwood, Clarkdale, Flagstaff, Williams, Prescott, Chino Valley, and Prescott Valley, all of whom strongly endorse this land exchange. Four of these communities, including my hometown, will receive lands via this exchange that are very important in our efforts to plan for and accommodate future growth and economic development in a challenging rural area while preserving and protecting open space, the Verde River, and the Ponderosa Pine Forest. We were disappointed last year when the bill was not

passed and we are here today to encourage you and support passage this session.

The Forest Service and Yavapai Ranch have worked with the local communities for more than 5 years now and I would emphasize that we have an extraordinary consensus in Northern Arizona about this trade. Specifically, this land exchange has the strong support of every single city or town that has land involved in the exchange and every town that has land abutting the exchange. It also has the support of the numerous organizations that were mentioned previously. There could not possibly be a broader base of support for this bill.

I would like to briefly describe why our communities are so interested in seeing this exchange. I will begin with Flagstaff. As was mentioned earlier, Flagstaff needs room to expand their airport. They need more room for runways to bring in regional jets that will help accommodate business and tourist travelers to the economy of all of Northern Arizona. They also need to acquire Forest Service land on which its water treatment plant is located, and this would help to meet the Forest Service goal that has been stated publicly in my hometown, that the Forest Service would like to get out of the land leasing business.

Turning to Williams, the problems with water there were mentioned. Last year, their water capacity reservoirs were down to 4 percent. This year, they are up to 8 percent. Out of all of the communities, they are probably the most anxious about its passage. They need additional lands to develop wells for proper water resources for their community. When water levels get this low, there is also a problem with water quality and water filtration, so it really is a public health issue to Williams.

The next communities involved in the exchange are Cottonwood and Clarkdale. Clarkdale Mayor Mike Bluff and Cottonwood Mayor Ruben Jauregui are here with me today to support this bill. Both communities need this land exchange to accommodate their planned future growth and to improve the regional mix of housing available to its residents and to increase needed tax revenues while also maintaining open space along the foothills. These lands would give them the ability to make those smart growth planning decisions.

Mayor Bluff has corrected stated in letters to Senators McCain and Kyl that this trade will save water. The water conservation easements that had been agreed to are unprecedented in Arizona. This legislation will require conservation methods that will be an example to future development in Arizona.

Now, I will turn to my own Town of Camp Verde, where our town council strongly favors this land exchange. In the election held last spring, this issue was the most prominent and the pro-exchange candidates ran strongly on this issue for the growth and planning of our community and they were elected overwhelmingly. That was an accurate indication of how the people of Camp Verde think on this issue.

Camp Verde understands that this exchange will provide us the opportunity for highway frontage land to build a commercial tax base that is currently Forest Service land. It will also provide land to our fire department and hazmat and emergency teams to have

a response facility that is essential to their ability to handle emergencies along the Interstate 17 and Highway 260 corridors in a timely manner.

We must build a commercial tax base in order to have sufficient revenue stream to provide basic services to our residents. Business wants to be located near a highway that passes 11 million vehicles a year and brings tourist dollars with it that will help to make these developments be successful. The Forest Service owns the land along the highway. This land is arid, low-lying scrub-brush that is not very scenic by Verde Valley standards. It is, however, ideal for commercial development.

Right now, you cannot buy a pair of shoes in Camp Verde. Our residents are forced to drive 15 miles or more to neighboring towns to do most of their shopping, and that is an inefficient circumstance in an ever-growing area. This trade will work to help development occur where it belongs, along the highway, well away from the riparian belts of the Verde River and the low-lying valley.

I am aware that some have questioned the enforceability of the water conservation easements in the legislation. Arizona statutes authorize those easements and I can assure you that the towns of Camp Verde, Cottonwood, and Clarkdale are concerned about water and that we are ready, willing, and able to monitor and enforce them.

We think the exchange is a win-all for Northern Arizona for future jobs, smart economic growth, and for protection and preservation of open space. We think it is fair to all the parties, including the cities and towns, Yavapai Ranch, and the Forest Service, and for all of these reasons, we ask you to promptly pass this bill. I would like to say that there are several letters of support that have been submitted and I would ask that they be included in the record.

This concludes my statement. Mayor Jauregui, Mayor Bluff, and myself are here to answer any questions you may have.

Mr. RENZI. Mitch, thank you for your leadership on this and your comments.

[The prepared statement of Mr. Dickinson follows:]

**Statement of The Honorable Mitch Dickinson, Mayor,  
Town of Camp Verde, Arizona, on H.R. 2907**

Mr. Chairman and Members of the Subcommittee:

My name is Mitch Dickinson, and I am the Mayor of the Town of Camp Verde, Arizona. I appear before you today on behalf of the mayors of Camp Verde, Chino Valley, Clarkdale, Cottonwood, Flagstaff, Prescott, Prescott Valley and Williams, all of whom strongly endorse the land exchange proposals of H.R. 2907.

Four of those communities, including my home town of Camp Verde, will receive lands via this exchange that are very important in order to accommodate future planned growth and economic development, provide critical new municipal services, and preserve and protect open space and the Verde River.

Mr. Chairman, our communities need these lands now, before it is too late. This land exchange has been the most discussed in the history of Arizona. We were extremely disappointed when Congress adjourned last year without taking final action on the exchange legislation, even though the House passed it unanimously. Thus, we are asking that H.R. 2907 be passed by the Congress this fall.

As you have already heard, the Forest Service has been working with the Yavapai Ranch Partnership and our city and town governments to put this land exchange together for more than five years now. I would emphasize that we have developed an extraordinary consensus about it. Specifically, this land exchange has the strong support of:

- Every single City and Town that has land involved in the exchange or land which abuts the exchange;
- The Coconino County Board of Supervisors and numerous elected officials;
- Six summer camps for children which will receive land via the exchange—land which is needed to avoid future management conflicts with the Forest Service;
- The Arizona Game and Fish Department;
- The Navajo Nation, and Hopi and White Mountain Apache Tribes;
- The Arizona Republic, our state's largest newspaper, along with Flagstaff's Arizona Daily Sun, Williams' Grand Canyon News and the Verde Independent;
- Numerous environmental, conservation and sportsmen's groups, including the Central Arizona Land Trust and the 35 affiliated groups of the Wildlife Conservation Council; and
- Numerous local Chambers of Commerce, Economic Development Organizations, unions and other civic and community organizations.

Mr. Chairman, there could not possibly be a broader base of support for H.R. 2907 than what exists today.

My official role here today is as the spokesperson for the cities of Northern Arizona, and so, with your indulgence, Mr. Chairman, I would like to briefly describe why the communities of Flagstaff, Clarkdale, Williams, and my own Town of Camp Verde are so interested in seeing this exchange completed at the earliest possible date.

I will begin with Flagstaff. As Congressmen Renzi and Hayworth are so acutely aware, the City of Flagstaff desperately needs to retain and improve commercial airline service for its business and tourist travelers. By 2006, Flagstaff's air carrier will have changed its fleet to regional jets that need a longer runway to land at and take off from Flagstaff's Pulliam Airport. To do that, Flagstaff will need to lengthen its runway. This exchange will help facilitate Flagstaff's efforts to do exactly that. Land around the airport that is not acquired by Flagstaff will become available for future business park or light industrial development that will diversify the region's employment base. Other land may be used for affordable housing and new municipal parks. Flagstaff would also acquire the Forest Service land on which its water treatment plant is located. For all these reasons, the land exchange is vital for Flagstaff's citizens and northern Arizona's economy. Flagstaff and the Forest Service agree it makes sense for Flagstaff to acquire the lion's share of the 1500-acre Federal parcel identified in H.R. 2907.

Turning to the City of Williams, some 30 miles to the west of Flagstaff on Historic Route 66, the situation urgently requires passage of this legislation. Williams faces an absolute water crisis. Last year, its water reservoirs were depleted to only 4 percent of storage capacity—I repeat—4 percent of capacity—by the ongoing drought. This year, its reservoirs have “recovered,” if you can call it a recovery, to 8% of capacity. As Dennis Wells, who is the Williams City Manager, pointed out in last month's testimony to the Senate, when water levels are that low, it not only jeopardizes Williams' ability to provide even basic water services, but also triggers water quality and filtration problems. For this reason, Williams is extremely anxious to see immediate passage of H.R. 2907 so it can acquire from the Forest Service sites to drill new water wells to provide additional drinking water. Williams will then be able to implement its comprehensive water and wastewater program, which includes improvements to its water filtration plant and storage tanks, and the wastewater treatment facility. The severe drought in Arizona is ongoing, and may well be the worst drought in the past 100 years, so it is critical that the City of Williams acquire the new well sites at the earliest possible date.

In addition, Williams is one of the main gateways to Grand Canyon National Park, and needs to improve its airport. The public golf course, municipal park, water filtration and wastewater treatments plants are all located wholly or partially on National Forest land. Williams wants to acquire these lands, and the Forest Service wants to exchange them, so Williams can own the land on which these municipal facilities are located. The Yavapai Ranch land exchange would enable this to happen.

The next communities with lands involved in the exchange are the Town of Clarkdale and the City of Cottonwood, both of which are located some 20 miles northwest of Camp Verde. Clarkdale Mayor Mike Bluff and Cottonwood Mayor Ruben Jauregui are here with me today to support H.R. 2907. Clarkdale has already annexed the land adjacent to its boundaries. Both communities need this land to accommodate future planned growth, to improve the regional mix of housing available to its residents, and to add needed tax revenues.

In addition, as Mayor Bluff has stated in previous letters to Senators McCain and Kyl, this trade saves water. The water conservation easements that have been agreed to are unprecedented in the Verde Valley. This legislation will require



conservation methods to be put in place and we can use these as an example for future development. It is also important to note that many of our communities are landlocked by Forest and other public lands. Because additional land is not available, land prices have escalated. This additional land will help the market and make it easier for young families to reach the American dream of home ownership.

Finally, Mr. Chairman, I turn to my own Town of Camp Verde, where our Town Council strongly favors this land exchange. Indeed, in the election held in our town last spring, approval of the Yavapai Ranch land exchange was the single most important issue on the voters' minds. In that election, pro-exchange candidates were all elected by a 70% to 30% margin. That gives you an indication of how our community feels about this issue.

Mr. Chairman, Camp Verde voters understand that this exchange offers them a commercial tax base to fund needed municipal services. Camp Verde and the local Fire District need land for an emergency response facility with fire, hazmat and medical services that are essential for a rapid response to emergencies along rural stretches of Interstate I-17.

We also need to expand our regional commercial and residential tax base, which includes a regional shopping center. Right now, Camp Verde residents drive 15-20 miles to Cottonwood to do most of their shopping—that is not very efficient in terms of traffic congestion and pollution, nor does it enhance our residents' quality of life. Although there is private land in Camp Verde that could accommodate future growth, much of it is located along the beautiful Verde River or on the Verde River's floodplain.

So our choice is relatively clear: either we have more commercial development along the River, which our residents would like to see preserved, or we can locate it on the Forest Service land, west of Interstate 17. This tract is arid and not very scenic. It is located upslope and away from the Verde River, and can be developed without any visual or other impacts on the River's riparian habitat.

I also have been told that a member of Arizona's Congressional staff has questioned the enforceability of the water conservation easements. Arizona's statutes authorize those easements, and the Town of Camp Verde is ready, willing and able to enforce them.

We think the proposed exchange is a win for our Town, for future jobs and growth, and for the protection and preservation of our open space and the Verde River riparian lands which make our community so beautiful. I also would like to introduce letters of support from our local firefighters union, from mayors, citizens and business, and an editorial from our local newspaper, the Verde Independent, which was published just last week on October 8. That editorial urges you to pass this bill.

In summary, Mr. Chairman, you can see why the elected officials from so many towns and cities in north central and northern Arizona think H.R. 2907 is a great piece of legislation, and why our four towns in particular need it to be enacted as soon as humanly possible. We think that H.R.2907 is fair to all parties, including our cities and towns, Yavapai Ranch and the Forest Service. For all these reasons, we ask you to promptly pass H.R. 2907 this fall.

That concludes my testimony. Mayor Bluff, Mayor Jauregui or I would be happy to answer any questions the Subcommittee might have. Thank you.

Mr. RENZI. Andy, good morning. Good to see you.

**STATEMENT OF PETER ANDREW "ANDY" GROSETA, OWNER, W  
DART RANCH, DBA, GROSETA RANCHES, LLC, COTTONWOOD,  
ARIZONA**

Mr. GROSETA. Good morning, Mr. Chairman. Mr. Chairman and members of the Subcommittee, my name is Peter Andrew Groseta and I am a third generation cattle rancher from the Verde Valley in North Central Arizona. My family came to the Verde Valley at the turn of the last century to work in the copper mines in Jerome, Arizona. In 1922, my father's family moved to a ranch in Middle Verde, and in 1936 to Cottonwood, where our ranch headquarters are today.

We are a family run ranching operation. My father passed away in May of 2000. My wife, Mary Beth, and I have raised three

children, one son and two daughters, who are all enrolled at the University of Arizona, majoring in agriculture. Our son would like to come back to the ranch after he receives his degree and operate the ranch.

I am here today representing my family's ranch, which will be adversely impacted if the proposed Yavapai Ranch land exchange is passed by Congress, unless Groseta Ranch is fully compensated for the real losses it will suffer as a result of the exchange. If this exchange is passed by Congress, it will cause a substantial adverse financial loss for my family.

Despite what some might say, my family's loss will be very real. The exchange will constitute a taking in the truest sense of the word. The marketplace and the Internal Revenue Service take the value of grazing permits, improvements, and other factors into account every day in the evaluation of rangelands for the purposes of death and gift transfers, purchases and sales. If the Internal Revenue Service can dramatically increase a value of a rancher's base property because of a grazing permit and improvements for the purposes of imposing estate taxes and capital gains taxes, how could the Federal Government take away these very same values from a citizen and not compensate him or her? And how can anyone ignore the financial impact on a ranch of permanently losing a substantial amount of its capacity to raise a sufficient number of cattle to cover fixed expenses and debt service?

I begin my testimony with an emphasis that there is much local controversy, not only in the towns of Camp Verde, Cottonwood, and Clarkdale regarding this proposed exchange, but also in the unincorporated areas of Yavapai County. All of this controversy is totally apart from the Groseta Ranch issues. The Camp Verde Town Council has reversed its position on this proposed exchange three times, and the Clarkdale Town Council has reversed its position two times. That should tell you that this proposed land exchange is very, very controversial in the Verde Valley.

At the outset, it is important to note that the Groseta Ranch prefers that the Camp Verde and Cottonwood-Clarkdale parcels simply be dropped from the exchange.

We recognize that the proposed H.R. 2907 will greatly benefit Arizona, particularly many counties and municipalities. We believe the public goals of such an exchange can be effectively completed without including the Camp Verde and Cottonwood-Clarkdale parcels. There is already a substantial amount of undeveloped private land in the Verde Valley to support economic growth and increase the population base.

However, if the exchange as presented is passed by Congress, it will cause a severe economic loss to our family's ranch. We have researched this matter and have found that according to the Federal Land Policy and Management Act Title 43, Section 1752(g), statutory authority is provided for compensation to grazing permittees in the event a land exchange occurs.

The following economic issues result from the exchange. Number one, if the proposed exchange is implemented, approximately 2,200 acres of real U.S. Forest Service property with grazing rights would be eliminated from Groseta Ranch's cattle operation, known as the Camp Verde parcel. This lost business opportunity would result in

a permanent reduction in grazing of at least 47 head of cattle, or 25 percent of the carrying capacity of this holding. This will cause a permanent loss of net income to Groseta Ranch, which puts an additional burden on Groseta Ranch's ability to pay its bills and debt service.

Number two, in addition to the loss of grazing rights, vested water rights would be impacted on the Camp Verde parcel.

Number three, improvements, such as right-of-ways, fences, roads, and trails, water pipelines, water troughs, wells, and corrals would be lost. Photographs of these improvements are included in Exhibit A, which will be submitted for the record.

Number four, there would be a significantly diminished value for Groseta Ranch's fee simple real property interest in the Hayfield base holding, not contiguous to the Camp Verde parcel, but as a part of the grazing allotment.

Number five, there will be a significant permanent loss of production and, therefore, income by Groseta Ranch as a result of the significant reduction in its carrying capacity.

Number six, presently, the U.S. Forest Service Cottonwood-Clarkdale parcel, which consists of 820 acres, is landlocked. Any prescriptive easement the Forest Service or its transferee may obtain in the future will not support a use other than running livestock. Lack of legal access and water conservation easements are both factors which will encumber the parcels and reduce fair market value when they are appraised. This should take the parcel out of the proposed exchange altogether.

We believe the transferee-developer hopes to get this parcel at a greatly reduced value and then find a way to get around the legal prohibitions to its development. There is no other possible explanation why he wants this parcel in the exchange. This would be a disservice to the American people, who would be basically giving this parcel away.

In conclusion, the following is a summary of the real losses, calculated on a conservative basis, as detailed in Exhibit A, which is submitted for the record that will be sustained by my family as a result of the exchange. Loss of grazing permits, \$105,000. Loss of value in base property, \$141,900. Loss of vested water rights, \$9,000. Loss of improvements, \$153,688. Legal and other related costs, \$25,000. Loss of business capacity, \$111,236. This adds up to a total loss to the Groseta Ranch of \$545,824.

A detailed memorandum submitted to Congressman Renzi and Senators McCain and Kyl on July 9, 2003, is attached as Exhibit A, which is submitted for the record.

Groseta Ranch's first choice, however, is to have the controversial Camp Verde and Cottonwood-Clarkdale parcels excluded altogether from the exchange and not suffer any of these losses. Even with both of these parcels being excluded from the exchange, the exchange itself still offers substantial benefits to all parties involved. The proponent of the exchange can be compensated for removing these parcels by conveying alternative Federal land to him on the Yavapai Ranch, the Flagstaff Airport, or other selected Federal lands the Federal Government desires to exchange in Northern Arizona.

However, in closing, if the above-mentioned compensation to our family is included in the proposed bill, we can support the bill. This concludes my testimony and I would be pleased to answer any questions. Thank you.

Mr. RENZI. Thank you, Mr. Groseta.

[The prepared statement of Mr. Groseta follows:]

**Statement of P. Andrew (“Andy”) Groseta, Owner, W Dart Ranch, dba, Groseta Ranches, LLC, on H.R. 2907**

Mr. Chairman and Members of the Subcommittee:

Good morning. My name is Peter Andrew Groseta, and I am a third-generation cattle rancher from the Verde Valley in north central Arizona. My family came to the Verde Valley at the “turn of the last century” to work in the copper mines in Jerome, Arizona. In 1922, my father’s family moved to a ranch in Middle Verde, and in 1936 to Cottonwood, where our Ranch Headquarters are today.

We are a family-run ranching operation. My father passed away in May of 2000. My wife, Mary Beth, and I have raised three children, one son and two daughters, who are all enrolled at the University of Arizona, majoring in agriculture. Our son would like to come back to run the ranch, after he receives his college degree.

I am here today representing my family’s ranch, which will be adversely impacted if the proposed Yavapai Ranch/USFS Land Exchange is passed by Congress, unless Groseta Ranch is fully compensated for the real losses it will suffer as a result of the exchange. If this exchange is passed by Congress, it will cause a substantial, adverse financial loss for my family. Despite what some might say, my family’s loss will be very real. The exchange will constitute a “taking” in the truest sense of that word. The marketplace and the Internal Revenue Service take the value of grazing permits, improvements and other factors into account every day in the valuation of rangeland for the purposes of death and gift transfers, purchases and sales. If the Internal Revenue Service can dramatically increase the value of a rancher’s base property because of a grazing permit and improvements for the purposes of imposing estate taxes and capital gains taxes, how could the federal government take away these very same values from a citizen and not compensate him or her? And how can anyone ignore the financial impact on a ranch of permanently losing a substantial amount of its capacity to raise a sufficient number of cattle to cover fixed expenses and debt service?

I begin my testimony with an emphasis that there is much local controversy, not only in the Towns of Camp Verde, Cottonwood and Clarkdale regarding this proposed exchange, but also in the unincorporated areas of Yavapai County. All of this controversy is totally apart from the Groseta Ranch issues. The Camp Verde Town Council has reversed its position on this proposed exchange three times; and the Clarkdale Town Council has reversed its position two times. That should tell you that this proposed land exchange is very, very controversial in the Verde Valley.

At the outset, it is important to note that Groseta Ranch prefers that the Camp Verde and Clarkdale parcels simply be dropped from the exchange.

We recognize that proposed H.R. 2907 will greatly benefit Arizona, particularly many counties and municipalities. We believe the public goals of such an exchange can be effectively completed without including the Camp Verde and Clarkdale/Cottonwood parcels. There is already a substantial amount of undeveloped private land in the Verde Valley to support economic growth and increase the population base.

However, if the exchange as presented is passed by Congress, it will cause a severe economic loss to our family ranch. We have researched this matter, and have found that, according to the Federal Land Policy and Management Act, 43 USC § 1752(g), statutory authority is provided for compensation to grazing permittees in the event a land exchange occurs.

The following economic issues result from the exchange:

1. If the proposed Exchange is implemented, approximately 2,200 acres of real property U.S. Forest Service (USFS) grazing rights would be eliminated from Groseta Ranch’s cattle operation (the “Camp Verde parcel”). This lost business opportunity would result in permanent reduction in grazing of at least 47 head of cattle, or 25% or more of the carrying capacity of this holding. This will cause a permanent loss of net income to Groseta Ranch, which puts an additional burden on Groseta Ranch’s ability to pay its bills and debt service;

2. In addition to the loss of grazing rights, vested water rights would be impacted on the Camp Verde parcel;

3. Improvements such as right-of-ways, fences, roads and trails, pipelines, wells, troughs and corrals would be lost. Photographs of these improvements are included in Exhibit A, which will be submitted for the record;

4. There would be a significantly diminished value for Groseta Ranch's fee simple real property interest in the Hayfield base holding (not contiguous to the Camp Verde parcel, but the base property of the Verde Grazing allotment);

5. There will be significant, permanent loss of production, and therefore, income by Groseta Ranch as a result of the significant reduction in its grazing capacity; and

6. Presently, the USFS Cottonwood/Clarkdale parcel (820 acres) is landlocked. Any prescriptive easement the USFS or its transferee may obtain in the future will not support a use other than running livestock. Lack of legal access and water conservation easements are both factors which will encumber the parcels and reduce fair market value when they are appraised. This should take the parcel out of the proposed exchange altogether. We believe the transferee/developer hopes to get this parcel at a greatly reduced value and then find a way to get around the legal prohibitions to its development. There is no other possible explanation why he wants this parcel in the exchange. This would be a disservice to the American people who would basically be giving this parcel away.

In conclusion, the following is a summary of the real losses (calculated on a conservative basis as detailed in Exhibit A, which is submitted for the record) that will be sustained by my family as a result of the proposed exchange:

Loss of Grazing Permits — \$105,000  
 Loss of Value in Base Property — \$141,900  
 Loss of Vested Water Rights — \$9,000  
 Loss of Improvements — \$153,688  
 Legal and Other Related Costs — \$25,000  
 Loss of Business Capacity — \$111,236  
 Total: — \$545,824

A detailed memorandum submitted to Congressman Renzi and Senators McCain and Kyl, on July 9, 2003, is attached as an Exhibit A, which is submitted for the record.

Groseta Ranch's first choice, however, is to have the controversial Camp Verde and Cottonwood/Clarkdale parcels excluded altogether from the exchange, and not suffer any of these losses. Even with both of these parcels being excluded from the exchange, the exchange itself still offers substantial benefits to all parties involved!

The proponent of the exchange can be compensated for removing these parcels by conveying alternative federal land to him on the Yavapai Ranch, the Flagstaff Airport, or other selected federal lands the federal government desires to exchange in Northern Arizona. However, in closing, if the above-mentioned compensation to our family is included in the proposed bill, we can support the bill. This concludes my testimony. I would be pleased to answer any questions.

[NOTE: The attachment to Mr. Groseta's statement has been retained in the Committee's official files.]

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Mr. RENZI. I now recognize Ms. Roder.

**STATEMENT OF AILEEN RODER, PROGRAM DIRECTOR,  
 TAXPAYERS FOR COMMON SENSE**

Ms. RODER. Thank you. Good morning, Chairman Renzi, Congressman Inslee, and other distinguished members of the Subcommittee. I am Aileen Roder, Program Director at Taxpayers for Common Sense, a national nonpartisan budget watchdog group. I would like to thank you for inviting me to testify today regarding H.R. 2907, which would convey approximately 21,000 acres of Forest Service land to Yavapai Ranch in exchange for lands within the boundaries of the Prescott National Forest in Arizona.

Taxpayers for Common Sense strongly opposes H.R. 2907 and is concerned about land transfers and land exchanges in general. In 1998, TCS testified urging that taxpayers deserve a fair return on the public's investment. Under fair market terms, both U.S. taxpayers and local interests can benefit from land exchanges. However, due to recent controversies surrounding the management of

Federal lands, we believe that a temporary moratorium on all land exchanges should be implemented.

We need to fix the system administratively. The legislative process should be eliminated because it lacks a process for public input and raises the specter of political influence dictating outcomes.

H.R. 2907 allows Yavapai Ranch to have its cake and eat it, too, with Yavapai Ranch keeping its grazing allotment and part of its water rights on the lands it is exchanging to the Federal Government while receiving extremely valuable lands throughout the Verde Valley. H.R. 2907 also requires the Forest Service to reimburse grazing rights of those entities that are currently grazing on the Federal lands that Yavapai will receive. The cost of reimbursing these grazing rights should not fall upon taxpayers.

The conservation or water restriction easements on two parcels of Federal lands to be given to Yavapai will decrease the fair market value of the Federal property. Due to an apparent loophole in H.R. 2907, these water restrictions will reduce the estimated value of the two parcels while not actually achieving the goal they are seeking.

Local communities in the Verde Valley are extremely concerned regarding this land exchange, with 15 out of 31 local elected officials opposed to this land exchange being legislated. Under a legislated land exchange, the public will not see the appraisal of Federal and non-Federal lands until the land exchange is complete. Secrecy in completing land deals is bad public policy and it hurts the public trust in the process.

The General Accounting Office investigated Federal land exchanges conducted by BLM and the Forest Service and documented numerous cases in which the Federal Government did not ensure that the land being exchanged was appropriately valued or that land exchanges served the public interest or met other land exchange requirements. The GAO found that agencies have given more than fair market value for the non-Federal land they acquired and accepted less than fair market value for Federal land that they conveyed. The agencies did not follow their requirements that help show that the public benefits of acquiring the non-Federal land in an exchange matched or exceeded the public benefits of retaining the land.

As a result, GAO stated, "We believe that Congress may wish to consider directing the Service and the Bureau to discontinue their land exchange programs." BLM and Forest Service must be cognizant of the serious issues raised by GAO. In response to these concerns, the Department of Interior recently announced the creation of a new team that will plan to consolidate appraisal functions performed by various agencies within the Department of Interior.

In conclusion, H.R. 2907 raises numerous taxpayer concerns, both to the specific land exchange and the Federal land exchange system in general. Congress should eliminate legislative land exchanges because they are too susceptible to the political influence. Simply put, land exchanges are an administrative function and should be removed from the political arena.

Specifically, the Yavapai land exchange reveals many questions regarding valuation of Federal and non-Federal lands, the right of

the Yavapai Ranch to retain water and grazing rights, local community opposition, and the inability of taxpayers to see appraisals until after the land exchange is completed. These problems raise concerns of fundamental fairness to both local communities and American taxpayers.

Thank you again for the opportunity to testify today, and I would be happy to answer any questions you might have.

Mr. RENZI. Thank you for your articulation, Ms. Roder.

[The prepared statement of Ms. Roder follows:]

**Statement of Aileen Roder, Program Director,  
Taxpayers for Common Sense, on H.R. 2907**

Good morning, Chairman McInnis, Congressman Inslee, and other distinguished members of the Subcommittee. I am Aileen Roder, Program Director at Taxpayers for Common Sense (TCS), a national, non-partisan budget watchdog group. I would like to thank you for inviting me to testify at this hearing regarding H.R. 2907, which would provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership.

Taxpayers for Common Sense strongly opposes H.R. 2907. This bill, introduced in July by Congressmen Renzi (R-AZ) and Hayworth (R-AZ), would convey approximately 21,000 acres of Forest Service land to Yavapai Ranch in exchange for lands within the boundaries of the Prescott National Forest, Arizona.

Unfortunately, H.R. 2907 is just one more example of the controversy and problems associated with the federal land exchange system. In June 2000, the General Accounting Office (GAO) documented numerous cases in which the federal government "did not ensure that the land being exchanged was appropriately valued or that exchanges served the public interest or met other exchange requirements."<sup>1</sup>

Taxpayers for Common Sense favors privatizing or devolving certain federal assets to state or local government in appropriate circumstances. Under fair market terms and conditions, both U.S. taxpayers and local interests can benefit from land exchanges. However, due to the extreme controversy surrounding the management of federal land exchanges in recent years, TCS believes that we need to have a temporary moratorium on all land exchanges until the system can be fixed. The administrative process should be revamped to be fully transparent and serve taxpayer, not private interests. The legislative land exchange process should not exist, period. The legislative process, such as it is, lacks a process for public input and visibility and raises the specter of political influence dictating outcomes. Simply put, land exchanges are an administrative function and should be removed from the political arena.

*Federal Land Exchange System in Desperate Need of Reform*

In order for a land exchange to occur under federal law, the estimated value of the nonfederal land must be within 25 percent of the estimated value of the federal land and the public interest must be well-served.<sup>2</sup> In its June 2000 report, GAO investigated federal land exchanges conducted by the U.S. Bureau of Land Management (BLM) and the U.S. Forest Service between 1989 and 1999.<sup>3</sup> During that time period, the Forest Service completed approximately 1,265 land exchanges, valued at over \$1 billion, and acquired a net total of about 950 square miles.<sup>4</sup> BLM does not track exchanges, but instead counts transactions (two can occur for every land exchange).<sup>5</sup> Between 1989 and 1999, BLM completed about 2,600 transactions, acquiring approximately 550 square miles.<sup>6</sup>

The GAO found<sup>7</sup>:

1. "The agencies have given more than fair market value for nonfederal land they acquired and accepted less than fair market value for federal land they conveyed because the appraisals used to estimate the lands' value did not always meet federal standards."

<sup>1</sup> Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest. June 2000, (GAO/RCED 00-73).

<sup>2</sup> P.L. 94-579, October 21, 1976.

<sup>3</sup> GAO/RCED 00-73.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

2. "The agencies did not follow their requirements that help show that the public benefits of acquiring the nonfederal land in an exchange matched or exceeded the public benefits of retaining the federal land, raising doubts about whether these exchanges served the public interest."
3. BLM "sold federal land, deposited the sales proceeds into interest-bearing escrow accounts, and used these funds to acquire nonfederal land (or arranged with others to do so). Current law does not authorize the Bureau to retain or use proceeds from selling federal land; it instead requires the Bureau to deposit sale proceeds into the Treasury and to use appropriations to acquire nonfederal lands. In using these funds and the interest earned on them to purchase land, the Bureau augmented its appropriations. The Bureau also did not comply with its sale authority when it sold the land, and none of the funds retained in escrow accounts or used in this manner were tracked in the Bureau's financial management system."

As a result, GAO stated, "[W]e believe that the Congress may wish to consider directing the Service and the Bureau to discontinue their land exchange programs."<sup>8</sup>

GAO's findings raise serious concerns about federal land exchanges. Although there are times when exchanging federal lands for nonfederal lands may appear like a good solution, BLM and the Forest Service must be cognizant of the issues raised by GAO. In fact, the Department of Interior recently announced the creation of a new team that will provide an action plan for consolidating appraisal functions performed by various agencies within the Department of Interior.

TCS believes that land exchanges that occur through the legislative process are more prone to misuse and political influence than those occurring through the administrative process. Legislative land exchanges that are conducted for political reasons are less likely to ensure that land is properly valued and the public interest is protected.

Taxpayers for Common Sense has been concerned with land exchanges for years. In 1998, TCS also testified about land transfers and exchanges. Then as now, TCS urged that taxpayers deserve a fair return on the public's investment.

*Specific Taxpayer Concerns Regarding H.R. 2907*

Under H.R. 2907, Yavapai Ranch will keep its grazing allotment and water rights to three wells on the properties that it transfers (the Forest Service will be entitled to half the production in each of the wells up to 3,100,000 gallons a year). In effect, H.R. 2907 allows Yavapai Ranch to "have your cake and eat it too." Yavapai Ranch can continue its ranching activities and water usage on the lands it has exchanged to the federal government while receiving extremely valuable land throughout the Verde Valley.

The conservation, or water restriction, easements on two parcels of federal lands to be given to Yavapai will decrease the fair market value of the federal property. It appears that these restrictions could be evaded or irrelevant to actual potential water use, therefore obviating the utility of water restriction easements on these two parcels of land. As a result, these water restrictions would reduce the estimated value of these two parcels of federal land without actually achieving their goal.

Along with allowing Yavapai Ranch to keep its grazing rights, H.R. 2907 also requires the Forest Service to reimburse grazing rights of those entities that are currently grazing on the federal lands that Yavapai will receive. The cost of reimbursing these grazers should not fall completely on taxpayers.

Under a legislated land exchange, the public will not see the appraisal of federal and nonfederal lands to be exchanged until after the deal is completed. This leaves the public with little recourse to affect the land exchange. Secrecy in completing land deals is bad policy and hurts the public trust in the process. It makes taxpayers and local communities feel like their interests and concerns are secondary. Instead, appraisals should be a matter of public record prior to the signing of land exchange deals. By making the federal land exchange appraisal process more transparent, BLM and the Forest Service can get more public buy-in to the end result, thereby reducing controversy and concerns around pending land exchange deals.

Under this bill, if the Secretary of Agriculture lacks adequate staff or resources to complete the land exchange, Yavapai can hire third-party contractors, subject to mutual agreement of the Secretary and Yavapai Ranch, to carry out activities necessary to complete the exchange by 18 months after H.R. 2907 becomes law. The Secretary must reimburse Yavapai for costs associated with these contractors. This provision sets up a potentially strange dynamic where a private entity can force

<sup>8</sup>Ibid.



congressional appropriators to fund administrative costs for a land exchange, even if those appropriators chose for policy reasons to defund federal land exchanges.

Finally, local communities in the Verde Valley are extremely concerned regarding this land exchange. Letters and petitions have been sent. Fifteen out of 31 elected officials in the Verde Valley are opposed to this land exchange being proposed. This is further evidence that the public would like more input into the process rather than being excluded from negotiations. Based on this and other public and taxpayer concerns, this land exchange should not be legislated, but should instead go through the administrative process. Allowing the public to be more involved could go a long way towards ensuring local communities and federal taxpayers that their concerns are being taken seriously and addressed.

#### *Conclusion*

In conclusion, H.R. 2907 raises numerous taxpayer concerns related both to this specific land exchange and to the federal land exchange system in general. Congress should implement a moratorium on all land exchanges until such time that the public can be ensured that “the land being exchanged was appropriately valued or that exchanges served the public interest or met other exchange requirements.”<sup>9</sup> We should eliminate legislative land exchanges because they are too susceptible to political influence. Instead, land exchanges are an administrative function and should be removed from the political arena.

Specifically, the Yavapai land exchange raises numerous questions regarding valuation of the federal and nonfederal properties, the right of Yavapai Ranch to retain water and grazing rights, local community opposition, and the inability of the taxpayers to see land appraisals until after the exchange deal has been completed. These problems raise concerns of fundamental fairness to both local communities and American taxpayers.

Thank you again for the opportunity to testify today and I would be happy to answer any questions you might have.

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Mr. RENZI. At this time, we would like to move to questions of the members. I remind the members under Rule 3(c), we impose a 5-minute limit on questions. At this time, I would like to recognize the gentleman from Arizona, Congressman Hayworth.

Mr. HAYWORTH. Thank you, Mr. Chairman.

Mr. Rey, thank you for joining us this morning. If my understanding is correct, I believe you testified at the Senate hearing that it could take seven to 8 years to complete this exchange if we do not do it by legislation. Is that still the correct estimate?

Mr. REY. That would be the optimistic scenario absent any appeals or legal action that might follow a major land exchange like this.

Mr. HAYWORTH. As is often the case in panels, and for the record, I thought it was interesting to hear critical discussions as if we are not taking into account different points of view, and we welcome all of the panelists because there are substantially different points of view on this that is now being made part of the public record even as we speak.

Mr. Rey, you also mentioned in your testimony that this exchange could result initially in \$1 million worth of savings, I believe I heard in your testimony. Could you expound upon that?

Mr. REY. That is just an example. That may be the simplest one to describe because we won't be doing land line locations throughout an extended checkerboard ownership and we can quantify that directly in terms of what our average land line costs are per linear foot.

But more broadly, you know, you have to consider that the status quo is not going to remain static absent this exchange. Within that

<sup>9</sup>GAO/RCED 00-73.

checkerboard are areas that are susceptible to development. If some of those checkerboard private acres are developed, then our costs for managing our ownership within the checkerboard will escalate dramatically. Just our fire fighting and fire suppression costs alone will go through the roof because we will be bound to try to protect some of the subdivisions that are created within that checkerboard.

So this is an important land exchange to get us out of a land ownership pattern that is archaic and dates back over 160 years.

Mr. HAYWORTH. Thank you, Mr. Rey.

Mayor Dickinson, you have testified that the 2,200 acre Camp Verde parcel is a local place for future community growth and that placing a regional shopping center and other development in that area, if possible, is a better place to channel future development in your town than along the bottom lands of the Verde River. Do your fellow council members agree with that assessment?

Mr. DICKINSON. Yes, that is indeed correct. At the current time, we have a seven-person council, and six members of which are in favor of this exchange, and the idea of putting the development on the freeway, where there is proper access, away from the Verde—I mean, any other land that we have available for commercial development, it is a piece here, a piece there, mixed in with residential, not proper access. It is just really along the freeway is where we need to build a tax base for our community.

Mr. HAYWORTH. And the council vote was six to one—

Mr. DICKINSON. Our current council sits six to one, and Mr. Groseta was indeed correct. It has been an issue that got arm wrestled out. But the community at this point, for about the last 9 months now, has been real strong on it and in recent months the logical sense of all of this has really come to the forefront. Our council is strongly in support of this.

Mr. HAYWORTH. Mr. Mayor, I would appreciate that, and I think we would note in public policy it is rare when we get complete unanimity on questions of these types. Our friend, the late John Rhodes, used to say that public policy results in the art of what is possible, not what is always agreed to throughout, and so certainly we are dealing with this today and we welcome all the testimony.

One final question for Mr. Rey. Mr. Rey, recently, the environmental group Public Employees for Environmental Responsibility, or PEER, claimed that violence against Federal employees has increased due to Bush administration policies. Have you had a chance to review that analysis to verify its accuracy, and how would you respond to the claims of PEER in general?

Mr. REY. When we saw that release a couple of months ago, I asked Forest Service law enforcement to go back into the data base that PEER requested through the Freedom of Information Act to use to build that claim. What we found, and I will make this report available for the Subcommittee's record, is that the threats and assaults against Forest Service employees actually declined by 40 percent over the last year. So it is an enigma to me how PEER managed to mis-analyze the data to show an increase when the data actually show a reduction.

The second allegation, that these are somehow the result of Bush administration resource management policies, ignores the fact that

most of the threats or assaults were made by drunks, drug runners, and devoted environmental protesters.

Mr. HAYWORTH. Mr. Rey, I thank you for your response and I thank all of the panelists. I think we have a new definition of peer pressure. I yield back.

[Laughter.]

Mr. RENZI. I thank the gentleman from Arizona.

I recognize now the gentleman from Washington, Mr. Inslee.

Mr. INSLEE. Thank you. Mr. Rey, I am sure you don't lump all those groups together.

Mr. REY. No.

Mr. INSLEE. It was just a coincidence that—

Mr. REY. Those were just the three largest categories.

Mr. INSLEE. I appreciate that clarification.

[Laughter.]

Mr. INSLEE. Maybe I could just ask the panel in general about this issue, and not knowing the area, not very well versed in this conservation easement issue, but is this mechanism different than a water rights retention, and if not, why not? Why not a water right—why not a transfer or retention of water rights as opposed to a, quote, “conservation easement”?

As I understand the conservation easement, you are trying to affect the surface usage of the land but not necessarily specifically adjudicating or handling the specific water right. Is my understanding correct, and maybe you could just address the effectiveness of this. I know a question has been raised about a potential loophole of one or two of the municipalities being able to use this one aquifer. If all of you, if you can, address the enforceability and how this affects the water rights itself. That is an open question to anyone.

Mr. DICKINSON. The enforceability in Camp Verde, we feel like is going to be done through the zoning and the planning and zoning process. When this land goes into private ownership, it is going to carry the current zoning on it, which is RCU-2A, which historically was a zoning classification designated by Yavapai County in the late 1950s, early 1960s as they were unsure about how Yavapai County would develop. It stands for Residential or Conditional Use, Two Acre Minimum. So when somebody acquires Forest Service land, they have two-acre zoning.

Obviously, two-acre residential zoning along a busy freeway, where it is a prime spot for commercial development, is not the zoning that is going to be needed. As soon as this legislation is passed, the town of Camp Verde would move to adopt those conservation easements as part of the land use and the zoning on that so that any applicant that comes forward with a planned area development or any development issue whatsoever would be forced, if that zoning did not look like that it met those water conservation easements, it wouldn't be approved.

The underlying factor of this is also, as you may or may not know, in our State, Salt River Project carries a pretty big stick about water issues, as well, and they are going to be monitoring that. The 700 acre feet that have been allotted for the Camp Verde piece, we think is a fair and accurate allocation of water. It is not

too much. It is not too little. But it was sensible enough that the Salt River Project was involved in those negotiations.

So just through this planning and zoning process, we feel locally we can control that water usage.

Ms. RODER. Congressman, we have concerns that there are ways to get around this, similar to the concerns raised by the Department of Agriculture, that there is a loophole with the ability to go out to the private water market and which would mean that we would potentially devalue the Federal lands that are being exchanged to Mr. Ruskin without actually achieving any of the conservation goals that we are seeking.

Mr. INSLEE. Could you describe how that would work? When you say go out to the private water market, what do you mean?

Ms. RODER. Well, there is a provision, Congressman, that they potentially can, from our reading of it, go above the 700 acre feet within the one parcel and the 150 acre feet within the other parcel on the water market and purchase additional water, which would mean that the actual goal of conserving water in this area, which seems to be one of the greatest concerns of the people of the Verde Valley, as the folks that I have talked to, would then be obviated. At the same time, we would devalue the Federal land, making the deal a lot worse for Federal taxpayers.

Mr. INSLEE. Is the conservation easement a retention independent of the municipal zoning? Is that correct? In other words, there would be in the title an easement, is that correct?

Mr. REY. That is correct.

Mr. INSLEE. And is there a retention of water rights itself or a transfer of water rights itself in the proposed legislation?

Mr. REY. The easement is a transfer of water rights, or the use, the right to use water.

Mr. INSLEE. I am trying to wrap my arms around that, because to me, a conservation easement is a restriction of land usage, whereas a water right would be a legal right to the usage of the water itself. What I am hearing is there is the former, namely there is a restriction of land usage, which by implication you would assume would reduce or sort of compel certain usages of water, but there is not a specific legislative description of the water right. Am I correct on that, or do I misunderstand this?

Mr. REY. I think—let me see if I can explain it, and I don't hold myself out as an expert in water rights. In this particular case, the water is the value. Without water, the land has a much reduced value. What many proponents of the exchange would like to assure occurs is that the lands are not developed beyond the point such that the water usage associated with that development becomes a problem within the Verde Valley.

So what the easement does is essentially purchase part of the water right and convey it into public ownership, or retain it in public ownership. Now, that will have the effect of devaluing the land, but since we are retaining the value of the water in public ownership, the devaluation of the land isn't of great concern to us. It all evens out.

Now, if it is theoretically possible to purchase water from the outside, and I doubt that it is given the scarcity of water in this particular area, but even if it is theoretically possible, the cost of

purchasing that water is going to be an added cost to whatever landowner wants to try to do it. The government isn't losing anything by breaking up the water and the land rights in this case because we are retaining the water rights.

Mr. INSLEE. Thank you.

Mr. RENZI. Thank you. I will move to Mr. Duncan for a statement or questions.

Mr. DUNCAN. Thank you, Mr. Chairman. I don't have any questions, but I will say that I note that Mayor Dickinson is here representing eight different mayors, he says all of whom strongly support this legislation. I do hope that Mr. Groseta's concerns can be taken care of in some way.

But I heard the last witness say that the politics should be removed and the political influence should be removed. Actually, politics is just a way for the people to have some say-so in or control over their own government. It seems to me that to be a very elitist attitude to say that the will of the great, great majority of the people should be ignored and that this decision should be left with unelected bureaucrats, and it is obvious that the great, great majority of people there do support this, with the support of the members of Congress and all the mayors in the cities, and so it appears to me that this is good legislation which we should support.

I yield back the balance of my time.

Mr. RENZI. I thank the gentleman.

Mr. Udall?

Mr. MARK UDALL. Thank you, Mr. Chairman. At this time, I don't have any questions. I did want to thank the panel for taking the time to join us. It has been very helpful to me to get a better sense of what we face. Thank you.

Mr. RENZI. I thank the gentleman.

Mr. Flake?

Mr. FLAKE. I will just echo Mark's comments, or the Congressman from Colorado. I am glad to have the panel here. I am sorry I was not able to hear most of the testimony, but I have read some of it and I am in support of this deal and am glad to hear the supporting comments from the panel. Thanks.

Mr. RENZI. Thank you, Mr. Flake.

Mr. Udall of New Mexico?

Mr. TOM UDALL. Thank you, Chairman Renzi. My question goes to the waiver of the NEPA process. I see there are a number of letters here, one from the North Central Arizona Regional Water Consortium that talks about there is no mechanism for ensuring the people of the United States receive fair value in exchange for public lands. It also talks about why aren't we going through a public process. A lot of these considerations that are out there ought to be fleshed out in a public process rather than just having one hearing here in Washington. Somebody else raises the issue there is currently not enough water in this area to support the land that is already owned.

Can you speak to the issue of why we are waiving NEPA, which is a process that normally allows planning and public input there at the local level?

Mr. REY. It is not uncommon in large legislated land exchanges for the Congress to decide that the legislative process will stand as

an adequate or more than adequate substitute for the public process associated with NEPA. The legislative process is, I think, a public process. This is the third hearing at which I have personally testified, so it has been exhausting for me, at least, speaking for nobody else comfortably. But it is not unusual for a legislated land exchange to waive NEPA.

Mr. TOM UDALL. Well, I know that is not unusual, Mr. Rey, but why are you doing it under these circumstances?

Mr. REY. I am not.

Mr. TOM UDALL. What is the argument for—are you support it? Is the Department of Agriculture supporting the waiver in this legislation?

Mr. REY. We have indicated, in the context of the amount of analysis that has already been done as well as the amount of review that Congress has put to this land exchange, that we don't object to NEPA being waived. There is some question as to what additional utility a full-blown NEPA review would serve. It would certainly delay the culmination of this exchange significantly. It would establish additional grounds for litigating an exchange which presumably, if it passes Congress, the Congress wants to see done. And it would probably cost us and/or the other parties to the exchange a couple of additional extra million dollars to process the NEPA documents.

Ultimately, the Congress has to decide whether you want NEPA complied with, but as has been the case in virtually every other legislated land exchange, Congress has decided that their own deliberations stand as a more than adequate substitute for agency proceedings under NEPA.

Mr. TOM UDALL. It seems to me, with all the controversies that are here in these documents, that the NEPA process would be a better one in terms to try to accommodate those at the local level and I am a little surprised that your agency isn't more deferential to local people and the planning process.

I would like to ask Ms. Roder the same question and if she has any comments on this issue.

Ms. RODER. Thank you, Congressman. I would definitely agree that we need to go through the administrative process here. That would allow public hearings within Arizona, where the people are actually being affected. And there are 3,800 people, constituents in this area, who have signed a petition asking for the removal of the Clarkdale and Camp Verde sections of this land exchange. They are not able to be here in Washington, D.C., to speak to all of you and we believe that they should have that opportunity.

We also believe we should have the opportunity to see an appraisal prior to this land exchange. I mean, once it is completed, I can go for public inspection in the offices of several national forests, but that doesn't really help us once we have actually completed a land exchange.

I have received calls from Jerome Vice Mayor Jay Moore, Cottonwood's council member Diane Jones, Camp Verde council member Tony Drea, and I know that there are numerous other elected officials in this area who are deeply concerned about this and they should have the opportunity to go through the administrative process and be able to speak their minds about this issue so that we

can make sure it is the best deal for both Mr. Ruskin and the Federal taxpayer. Mr. Ruskin has admitted to reporter Ken Olson in an article that this land exchange, he would not be able to get it through without Congress's help, which to me says something about the process that we are going through here.

Mr. TOM UDALL. Thank you. It also seems to me that NEPA would direct the Forest Service to look at alternatives under that process and then maybe some of the more controversial parcels could be excluded from this particular deal.

With that, Mr. Chairman, thank you very much and I yield back. Thank you to the panel.

Mr. RENZI. Thank you, Mr. Udall.

Let me take privilege here and use my 5 minutes on a couple of—to help clarify a couple issues.

First of all, this exchange has taken many, many years. Ms. Roder, there have been over 80 public meetings, hearings, town halls. I have had five town halls myself in Yavapai, in the Verde Valley area, in Sedona. I met with the opposition, visited the land three times. Over 80 public hearings and meetings, going all the way back to 2000.

It is a complicated trade and we took our time with it in my office. It was introduced in the 107th by the gentleman from Arizona, Congressman Hayworth, on the Senate side by Senator McCain. The Grand Canyon Trust, who is not normally friendly to many of my positions, has endorsed it.

And one of the reasons why we are looking at trying to come up with a legislative process and have now moved away from the administrative process is because it has taken so long. There have been 90 jobs last year lost in Flagstaff with one company who has moved out of the area because they have inability to get in and out of the airport, which is landlocked by Federal land.

Williams is out of water. The people in Williams will not drink, and the water they drink now is 8 percent of their capacity, unless we fix this. As has been said, over 6,000 or 7,000 children will benefit. Never mind the fact that the largest private Ponderosa pine forest in Arizona, with the largest non-fenced antelope range in Arizona will be exchange, pristine land for impacted land.

For all these reasons and the greater good, I got behind this, and I took my time with it because I was concerned, as you were, particularly with the water conservation areas that Mr. Inslee talked about. But the water conservation portion written by Mr. Kyl limits the amount of water that the Yavapai Ranch can use.

You talked about the fact that you think there is a loophole and the fact that they could use a private water company. We are still talking about one house per two acres. So whether they go down and drill their own well and stay out of the Aluvian, which feeds into the Verde River, or they tap into the local water company, they still can only use the amount of water that supports a family of one house per two acres. And so in itself, it restricts the amount of water that will be used, and it is a compromise that we reached out to with the environmental community, and particularly those concerned with water use.

I would like to move to Mr. Groseta's issue, Mr. Rey, as it relates to the cattlemen. I felt it would be a hypocrisy for me to be pushing

legislation in the next few months in developing a Cattlemen's Bill of Rights and not address the issue of reimbursements for our cattlemen in America as it relates to loss of use for its betterments and improvements. Historically, your agency has done a wonderful job of reimbursing cattlemen as it relates to betterments and improvements. The cattleman goes on the land. He gets a contract, permit for 10 years, puts wells in, corrals, invests his life savings into it, many times has to borrow second mortgages to do it, and then we come along and tell him, well, you have got 2 years to get off the land.

Fundamentally, let me understand, when we take our cattlemen off the land—and let me just back up for a second. The Tonto Range the gentleman from Arizona represented so well for many years used to support 50,000 cattlemen. We are now down to less than 500. Not just the drought, but policies are forcing the Arizona beef industry and the cattlemen off the land.

I would ask you, where is it we are missing in recognizing loss of use for our cattlemen?

Mr. REY. Let me try to describe how the current situation works, and it is hopefully a little bit simpler than the water issue. We have well-established procedures that if we need to reduce or terminate usage of one of our permittees, that we will reimburse them for improvements that they have made on the range, and typically when we have to do that, we normally arrive at an acceptable result in terms of the value of those improvements.

As far as the loss of use, however, it is at present well established law in the Tenth Circuit and elsewhere in Arizona and New Mexico—Arizona is in the Ninth Circuit, New Mexico is in the Tenth Circuit, but I think both circuits have held the same holding—that a permit to graze on Federal lands is a privilege and not a right.

So there is a disconnect in the legal system, I guess you could say. On the one hand, for taxation purposes, the IRS looks at a grazing permit as an asset that has value that is taxable. On the other hand, insofar as regulating grazing use on Federal lands, we have established as a matter of law that grazing use is not a privilege and, therefore, not compensable if it is reduced or eliminated.

If the decision in this bill is to reimburse Mr. Groseta for the loss of use, I don't think you will have much problem from the administration. I would suggest, however, that if you do that, that you make it clear that you are not trying to establish a precedent in this bill to change the established jurisprudence on the status of a grazing permit, and you might also want to just work on establishing what the number is—

Mr. RENZI. I appreciate it.

Mr. REY. —and save both Mr. Groseta and us some time.

Mr. RENZI. It is not just Mr. Groseta. There are three permittees which I particularly emphasize to my colleagues includes the Yavapai Apaches in Camp Verde. Fundamentally for me, I recognize that when you kick cattlemen off the land, that there is a loss of use, and I think it is a philosophical argument that we can carry forward.

I think we will go for a second round here. Congressman Hayworth from Arizona?



Mr. HAYWORTH. Thank you, Mr. Chairman. Just a couple of questions.

Mr. Rey, to follow up, it has been cited in testimony by others in a June 2000 report on land exchanges. What changes has the Forest Service made as a result of that GAO report in June of 2000?

Mr. REY. The June 2000 GAO report was followed in short order by a Department of Agriculture Office of Inspector General report. We have issued a new set of directives to the field to respond to the recommendations of both the GAO and the Inspector General. I will make those new directives available for the Subcommittee's record. I would suggest that much of the concern raised about previous Forest Service procedures have been addressed by those directives.

Mr. HAYWORTH. Thank you very much, Mr. Rey.

In listening to some of the questions and some of the responses in the first panel, Mr. Chairman and my colleagues, it seems there is a paradox here. On one hand, we received testimony that this would be a waste of taxpayers' money. On the other hand, there are those who want to see an administrative process continue that would eventually cost taxpayers more money, and we fail to take into account what might transpire in terms of economic enterprise for communities such as Camp Verde and what that would do for the tax base, and also what the open space provisions would do environmentally. And indeed, as the Chairman pointed out, there are some environmental groups who have endorsed the project.

Ms. Roder, I thank you for coming today and offering your testimony and I was especially interested to hear your take that the administrative process is, in your view, far more desirable than the process of Congress dealing legislatively with land exchanges. I would respectfully submit that the essence of public interchange and scrutiny comes through the elective process. All of my colleagues here, Republican, Democrat, Libertarian, vegetarian, Independents, all of us who serve in the Congress of the United States must stand at the bar of public opinion every 2 years. We are ultimately accountable to the people.

And while I appreciate the fact that you cited some public officials who had a different take on this who are unable to come to Washington, I think the reverse might be asked of you. Have you had a chance to visit Arizona and visit with Mr. Renzi's constituents firsthand on the property site and see what is transpiring there with this land and with the exchange.

Ms. RODER. I have been to Arizona, Congressman—

Mr. HAYWORTH. No, the question—

Ms. RODER. —but not to this particular land exchange.

Mr. HAYWORTH. That is my question. Have you been to visit firsthand with the people there, the land holdings there, that you this morning testify against?

Ms. RODER. No, Congressman, but 3,800 people—

Mr. HAYWORTH. That speaks volumes, ma'am. I have no further questions.

Mr. RENZI. I thank the Congressman.

We will get one more question out of the gentleman from Washington and we will take a break.

Mr. INSLEE. This may sound like a rookie question, but I am going to ask it. Essentially, what we are doing in this legislation is we are directing the Forest Services to go out and do these appraisals and giving, as I understand it, a preapproval to whatever appraisal process they come up with and the lands they select. Is that correct?

Mr. REY. Not quite. What you are directing us to do is to use the Uniform Standards of Federal Appraisal, so that is a known appraisal process, and the legislation does then put together a list of the order for the exchanges to occur. So there are more knowns in what you are directing us to do, given that we know what the Uniform Standards of Federal Appraisal will do.

Mr. INSLEE. So if you were going to pick a percentage, if you were going to draw a map today of what you think would be involved in these exchanges, what parameters are there that change in the appraisal process, do you figure?

Mr. REY. I would say that the changes will be on the margin. What you are doing is anticipating what the rough appraised value would be. That will then go through the formal appraisal, and then if we have to adjust, there are provisions in the bill for adding or deleting tracts at the bottom end to make sure that it is a value for value exchange.

Mr. INSLEE. Thank you.

Mr. RENZI. I have one more question and then we can take a break. The gentlemen can leave anytime they want for the vote.

I want to recognize the mayor from Clarkdale, Mike Bluff, to help me—early on, he helped me understand an issue as it relates to access. Mike, do you mind rising? Without objection from the panel, I would like to recognize Mayor Bluff.

Mr. Groseta talked about access, in particular near Clarkdale, and one of the reasons being that he would like to see that parcel dropped out. Can you help me understand that a little bit better?

Mr. BLUFF. Sure. Thank you very much for giving me the opportunity to speak. The portion that is in Clarkdale was annexed about 2 years ago and that actually abuts our town limits right now. So there is—from my perspective, it is not landlocked. It touches our boundaries now. There is access from the existing Town of Clarkdale into that area or we wouldn't be able to annex it. There is not a road through there now, but you can access the parcel that we are talking about, the Clarkdale parcel, through the Clarkdale, the existing Clarkdale town limits.

Mr. RENZI. Mayor Bluff, the parcel that Clarkdale would be receiving or that you would be working on as far as rezoning and all then would not be landlocked from your perspective? You know the parcel better than anyone.

Mr. BLUFF. Absolutely not. Absolutely not.

Mr. RENZI. OK. I appreciate that.

One other just real quick question, Ms. Roder. When you talk about the appraisal process and you talk about not having it disclosed ahead of time, the Forest Service would be able to pick from a credible appraiser, certified appraiser, that would then have the objective to go out and conduct the public interest, in the public good. Are you suggesting that they don't have the ability to do that?

Ms. RODER. We are suggesting, Congressman, that there needs to be more openness in the process. We do need to have independent appraisals so that we can make sure that lands are being properly valued, and as was found by the GAO, they were having a hard time accomplishing that goal, and as such, we think that an independent appraisal process needs to occur and it needs to be revealed to taxpayers prior to land exchanges.

Mr. RENZI. Ms. Roder—

Mr. REY. Can I offer a clarification there, because I think we are missing something.

Mr. RENZI. Yes, sir.

Mr. REY. First of all, per the GAO recommendation, we do use independent appraisals and we do use the Uniform Federal Rules of Appraisal. Second, appraisals are never made available to the public in any land exchange until they are completed and reviewed, because preliminary information may be wrong or, in some cases, sensitive.

Mr. RENZI. Thank you. Fundamentally, what the argument goes to, I think, is that somehow the public would be ripped off on this deal. What I need to really point out for the record is that the pristine lands that are owned by Yavapai Ranch right now, again, the largest stand of Ponderosa pine forest in Northern Arizona, could be developed right now. Golf courses could be put in. All the water use up there—the Ruskin family owns 24 pond and well sites and they are willing to give up 21 of them and only retain three, in exchange for impacted land along a freeway, impacted land that has a dump and a shooting site, a little part-time shooting range right now, and it has, when I went up there, people who camp out on it.

And so I want at least the element of truth for a guy who walked the parcel three times and met with groups on both sides and came into this only trying to look at what would be the greater good. It needs to be understood that we are talking about exchanging pristine land which is next to a wilderness area, the Juniper Wilderness Area, in exchange for impacted land.

And with that, I want to thank all of you for your testimony, for coming here to Washington, D.C., for your expertise and for a good debate. Thank you so much.

We will take a break now for votes.

[Recess.]

Mr. RENZI. Thank you. I appreciate your patience coming back from that vote.

We are going to introduce the second panel, testifying on H.R. 3247.

Mr. RENZI. On panel two, we have Congressman Tom Tancredo of the Sixth District of the State of Colorado; Mr. Mark Rey of the United States Department of Agriculture; Mr. Larry Parkinson, Deputy Assistant Secretary for Law Enforcement and Security, U.S. Department of Interior; Mr. Larry Smith, Executive Director of Americans for Responsible Recreational Access; and Mr. Dave Jenkins, Director of Conservation and Public Policy, American Canoe Association.

I welcome you all to what is almost this afternoon. Thank you for coming.

Let me remind the witnesses on Committee rules. You have 5 minutes for your oral testimony. I would like to now begin by recognizing the gentleman from Colorado, Mr. Tancredo.

**STATEMENT OF HON. THOMAS TANCREDO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO**

Mr. TANCREDO. Thank you, Mr. Chairman. Thank you for holding this hearing today on H.R. 3247, the Trail Responsibility and Accountability for the Improvement of Public Lands Act of 2003. I am pleased of the number of cosponsors on this Committee, including Mr. Udall and Mr. Beauprez, along with other gentlemen on the Committee, and I want to thank you for that cosponsorship.

Those of us privileged to represent Western States here in Congress know of the long-running battle between Federal land agencies and private interests. This is especially so since the Federal Government is the landlord of so much of the land in the Western part of the United States.

Historically, issues of contention have often arisen surrounding grazing rights, mining and drilling rights. Today, these public land debates are often characterized by access to public lands for different recreational activities, all of which have an enormous and positive economic impact on the communities we represent.

In the last 20 years, Americans have found new ways to enjoy their public lands and waterways beyond just hiking, horseback riding, or power boats. Today, mountain bikers, ATVs, SUVs, and snowmobiles also use our public lands. Many of these vehicles represent the only access to the great outdoors to a whole segment of our population, like senior citizens and the disabled, that might not otherwise be able to get out and visit the beautiful places like the Pike National Forest in my district.

The economic impact for Colorado of these kinds of recreational activities contributes more than \$200 million a year to our economy, creating more than 3,100 jobs. With those economic benefits, however, there have come conflicts and some irresponsible people.

No one here will say that there haven't been problems with certain individuals and groups abusing, misusing, and in some instances destroying valuable property on our Federal lands. Over the Memorial Day weekend in 1997, vandals destroyed a national treasure, the Eye of the Needle, an 11-foot sandstone arch on BLM land in the Upper Missouri National Wild and Scenic River Area in Montana that was so impressive that Lewis and Clark wrote about it in their journals. Because of the actions of these thoughtless people, future generations have been deprived of the opportunity to view the unique natural wonder.

Two years ago, on New Year's Eve, thousands of off-road enthusiasts convened at the Imperial Sand Dunes Recreational Area in California. One Forest Service ranger described the situation this way, quote, "We don't want to send any officers down there because we can't be sure it is safe." In describing the problem, one off-road enthusiast put it this way. "It is a total weekend warrior thing. A handful screw up for the masses." For the good of our public lands and for those citizens who behave responsibly, we cannot ignore such instances.

I visited the Coronado National Forest, the Organ Pipe Cactus National Monument in Southern Arizona. These places are home to some of the most spectacular terrain and wildlife habitat in the American Southwest. They are also home to some of the worst vandalism you can imagine. Graffiti covers rock formations and cactus. Garbage is strewn across the desert. Unauthorized roads and trails mar the landscape. If we are to preserve these areas for future generations, we must make those who intentionally destroy them pay a price.

As I have said, outdoor recreation on our public lands and waterways will continue to grow, and it should. It is now time we equip our land managers with the means to appropriately and evenhandedly enforce land use regulations. The TRAIL Act accomplishes this by creating consistent fines and penalties among all of our land use agencies. In doing so, the bill also increases fines and penalties substantially for people who knowingly engage in inappropriate behavior.

The bill also allows the agencies to retain the fines that are collected for repair and maintenance on these public lands and for outreach and educational programs to train outdoor enthusiasts on what is and what is not appropriate behavior.

Mr. Chairman, I look forward to hearing from the witnesses today. If they have suggestions on how we might improve this legislation, I hope they will share these ideas with us. I also hope that in the not-too-distant future, our Committee will report this measure to the full House for its consideration. Our public lands are too important to be left unattended by inadequate penalties for inappropriate behavior. The law enforcement ability of our Federal land agencies needs to be strengthened, and I believe H.R. 3247 is a major step in that direction.

Mr. RENZI. I thank the gentleman from Colorado.

[The prepared statement of Mr. Tancredo follows:]

**Statement of The Honorable Thomas Tancredo, a Representative in Congress from the State of Colorado, on H.R. 3247**

Mr. Chairman:

Thank you for holding this hearing today on H.R. 3247, the Trail Responsibility and Accountability for the Improvement of Lands Act of 2003. I am pleased that you have joined in cosponsoring this measure along with our colleagues from Colorado, Mr. Udall and Mr. Beauprez, along with many of our other colleagues on this Committee from both sides of the aisle. I also want to recognize and thank you for the past work you have done on similar enforcement legislation. Today's legislation was built upon your work.

Those of us privileged to represent western states here in the Congress know of the long-running battle between Federal land agencies and private interests. This is especially so since the Federal Government is the landlord of so much of the land in the western part of the U.S.

Historically, issues of contention have often surrounded grazing rights, mining and drilling rights. Today, issues of contention now include the matter of access to public lands for recreational activities—activities have an enormous and positive economic impact on the communities that we represent.

In the last twenty years, Americans have found new ways to enjoy their public lands and waterways beyond just hiking, horseback riding, or powerboats. Today, mountain bikes, ATVs, SUVs, snowmobiles, and personal watercraft are used in a variety of ways on our public lands and waterways. Many of these vehicles represent the only access to the great outdoors to a whole segment of our population—folks like senior citizens and the disabled—that might not otherwise be able to get out and visit beautiful places like the Pike National Forest in my district.

In some states like California, registrations of off-highway vehicles have doubled in the last 20 years. At the same time, we have seen an increasing amount of public lands placed “off limits” to this kind of recreation. The growth in the popularity of this activity, coupled with a reduction in the amount of available land to pursue it, has led to conflict and a challenge for public lands managers.

In my own State of Colorado, outdoor recreation has become increasingly popular among our citizens. From 1995-2003, snowmobiling has grown by more than 100%, jet skiing by nearly 100%, and horseback riding by 30%, to name just a few types of outdoor sporting activities on the rise. These statistics simply confirm what many of us already know: Coloradoans love to be outdoors and to enjoy our beautiful State—and one thing is certain: This type of recreation will only increase in the coming years.

The economic impact for Colorado of these types of recreational activities is revealing. OHV use in Colorado contributes more than \$200 million to our economy, creating more than 3,100 jobs. More than 130,000 Colorado resident and non-resident households use motorized vehicles for recreation in our State.

The economic impact of white-water rafting jumped from \$75 million in 1993 to \$125 million in 2001. Bicycling generates over \$1 billion, and ski and snowboard equipment and apparel expenditures exceed \$1.1 billion annually in our State. I could go on with more statistics, but the important thing to remember is that outdoor recreation is important to Colorado; it is important for the physical well-being of our citizens and it is important to the economic well-being of our State. In short, Coloradoans cannot afford to ignore outdoor recreation issues on our federal lands.

No one here will say that there haven’t been problems with certain individuals and groups abusing, misusing and, in some instances, destroying valuable property on our Federal lands. Over the Memorial Day weekend in 1997, vandals destroyed a national treasure—the Eye of the Needle, an 11-foot sandstone arch on BLM land in the Upper Missouri National Wild and Scenic River area in Montana that was so impressive that Lewis and Clark wrote about it in their journals. Because of the actions of these thoughtless people, future generations have been deprived of the opportunity to view this unique natural wonder.

Two years ago on New Year’s Eve, thousands of off-road enthusiasts convened at the Imperial Sand Dunes Recreation Area in California. One Forest Service Ranger described the situation this way: “We don’t want to send any officers down there because we can’t be sure they’d be safe.” In describing the problem, one off-road enthusiast put it this way: “It’s a total weekend warrior thing. A handful to screw it up for the masses.” For the good of our public lands and for those citizens who behave responsibly, we cannot ignore such instances.

As I have said outdoor recreation on our public lands and waterways will continue to grow—and it should. It is now time we equip our land managers with the means to appropriately and evenhandedly enforce land use regulations. The TRAIL Act accomplishes this by creating consistent fines and penalties among all of our land use agencies. In doing so, the bill also increases fines and penalties substantially for people who knowingly and willfully engage in inappropriate behavior. The bill also allows the agencies to retain the fines that are collected for repair work and maintenance on these public lands, and for outreach and educational programs to train outdoor enthusiasts on what is and what is not appropriate behavior.

Mr. Chairman, I look forward to hearing from our witnesses today. If they have suggestions on how we might improve this legislation, I hope they will share those ideas with us. I also hope that in the not too distant future, our Committee will report this measure to the full House for its consideration. Our public lands are too important to be left unattended by inadequate penalties for inappropriate behavior. The law enforcement ability of our federal land agencies needs to be strengthened, and I believe H.R. 3247 is a major step in that direction.

Mr. RENZI. Staying within the Great Mountain State of Colorado, cosponsor of the bill, Mr. Udall.

**STATEMENT OF HON. MARK UDALL, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF COLORADO**

Mr. MARK UDALL. Thank you, Mr. Chairman, and I want to again express my appreciation to you for holding this hearing on H.R. 3247.

Let me begin by saying that I am glad my colleague from the great State of Colorado, Mr. Tancredo, has introduced the bill. I

joined as a cosponsor because I also want to improve the ability of our land-managing agencies to adequately enforce the rules that apply to uses of the Federal lands.

I introduced a related bill, H.R. 751, the Responsible Off-Road Vehicle Enforcement and Response Act, and if you run out the acronym, that results in ROVER being the acronym for that particular bill. My bill is narrow in scope. It deals only with the enforcement of the regulations that apply to using vehicles on national forest lands and public lands managed by the BLM.

H.R. 3247 goes much further. In addition to the forests and BLM lands, H.R. 3247 also applies to lands managed by the National Park Service and the refuges managed by the Fish and Wildlife Service. It addresses also the enforcement of all regulations, not just those related to the use of vehicles.

I do think enforcement of regulations is an area where legislation can be helpful. However, we need to recognize that it is only one part of a bigger picture. Even more than new legislation, it seems to me the agencies need more resources, more money and more people, if we want them to do a better job, and I intend to explore that particular matter with some of the witnesses as well as to ask about some of the differences between my bill and my colleague, Mr. Tancredo's bill.

Mr. Chairman, if I might, in today's Rocky Mountain News, there is a letter from the Supervisor of the Pikes and Isabel National Forest in Colorado. The letter discusses "mud-bogging," quote-unquote, and other activities that violate Forest Service rules, including the indiscriminate dumping of trash and discharging firearms in ways that can endanger people for miles around. This is the sort of thing that prompted me to introduce my bill, H.R. 751, and to cosponsor Congressman Tancredo's bill, H.R. 3247. I would ask unanimous consent that the letter be included at an appropriate place in the record of today's hearing and would yield back whatever time I have remaining.

Mr. RENZI. Without objection.

[The letter submitted by Mr. Mark Udall follows:]

From the Rocky Mountain News  
Letters to the Editor  
October 21, 2003

#### **Seeking solutions to destruction in forests**

One of the pleasures of living along the Front Range in Colorado is being able to gaze up at the mountains to the west and idly dream of being in the green forest, with clean running water, clean air and just getting away from it all. But there's something happening in that forest that is disturbing.

They call it "mud bogging." After 10 or 12 four-wheel-drive vehicles have tried to make it through a wet meadow, it's neither lush nor green anymore. After several more attempts, it is nothing but a worn-out mud hole.

These private natural-resources demolition teams move over a few feet and try it again.

These mud holes can be very costly for the Forest Service to clean up and revegetate, if even possible.

Often times, adjacent to the mud hole, is an area where other equally disturbing activities take place: indiscriminate shooting and the dumping of trash. In a few cases, there has been no natural backstop to this shooting, which could put people several miles away in jeopardy. This is not what you or I envision as we gaze up at the mountains.

Policing these areas to stop the activity works, but perpetrators often merely move to a new area. Policing the whole Rampart Range at one time is virtually impossible. We must have a new means of managing these degrading and dangerous activities.

Everyone should be able to enjoy these precious public lands. It should be a place to "get away from it all" and feel safe. It's the Forest Service's responsibility to provide such an environment. Therefore, I cannot ignore the problem, but must provide a solution. Coloradans will no doubt hear more about this in the future as we solicit their opinions and ideas.

In the meantime, if anyone sees people engaging in these activities, please report the incident and the description of any vehicles to the nearest Forest Service Ranger District Office or County Sheriff's Office.

Bob Leaverton  
Forest Supervisor, Pike/San Isabel National Forests and Cimarron and Comanche National Grasslands

Mr. RENZI. We move now to an opening statement by Mr. Mark Rey. Mr. Rey?

**STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, U.S. DEPARTMENT OF AGRICULTURE, ON H.R. 3247**

Mr. REY. Thank you, Congressman Renzi. The Department of Agriculture supports H.R. 3247. We have some technical changes that we would like the Subcommittee to consider.

H.R. 3247 makes consistent the penalties for violating regulations of the National Park Service, the Bureau of Land Management, the Fish and Wildlife Service, and the Department of the Interior, and the Forest Service and 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, and we will work with the Department of Justice and the Federal courts to best ensure advantages of consistent criminal penalties are fulfilled upon passage.

I would be happy to respond to any of your questions after the other panel members have spoken.

Mr. RENZI. Mr. Rey, thank you for your testimony.

I move now to Mr. Parkinson.

**STATEMENT OF LARRY R. PARKINSON, DEPUTY ASSISTANT SECRETARY, LAW ENFORCEMENT AND SECURITY, U.S. DEPARTMENT OF THE INTERIOR**

Mr. PARKINSON. Thank you, Mr. Chairman. I will make this brief, submit my written statement for the record, and then open it up to questions.

We strongly support the goal of H.R. 3247. As Mr. Rey indicated, we also have some suggested technical amendments that we think would improve the legislation. We look forward to working with the Committee and the Department of Agriculture and the Department of Justice to do that.



This has two themes to it. One is consistency in law enforcement authority and the second is flexibility in law enforcement authority. Those are both virtues that we strongly support.

The Department of Interior has three bureaus that are primarily responsible for enforcing these regulations, as was indicated in the opening statements, BLM, the National Park Service, and the Fish and Wildlife Service, and of those three, we have three different penalty structures. Conceptually, that doesn't make a lot of sense. The regulations that those three agencies are enforcing are comparable and I think ought to be treated comparably.

One other point that I would just highlight in my opening remarks is we do urge the Committee to adopt the "knowingly" standard as opposed to the "knowing and willful" standard that is now set forth in the legislation. We think the best model that exists out there is the model that exists currently in the National Wildlife Refuge System Administration Act, which provides both Class A and Class B misdemeanors, but has a "knowing" standard but no "willful" standard.

Thank you very much.

Mr. RENZI. Thank you, Mr. Parkinson.

[The prepared statement of Mr. Parkinson follows:]

**Statement of Larry R. Parkinson, Deputy Assistant Secretary for Law Enforcement and Security, U.S. Department of the Interior, on H.R. 3247**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Larry Parkinson and I am the Deputy Assistant Secretary for Law Enforcement and Security at the Department of the Interior. I am here to present the Department's views on H.R. 3247—the Trail Responsibility and Accountability for the Improvement of Lands Act of 2003.

As discussed further below, the Department agrees that our land management bureaus should have consistent enforcement authority, and we strongly support the goal of H.R. 3247. The investigative and enforcement simplicity offered through the option of applying a Class A or Class B misdemeanor, as proposed in H.R. 3247, is an attractive tool for law enforcement personnel. However, we would like to work with the U.S. Forest Service in the Department of Agriculture, as well as the Department of Justice, to provide the Subcommittee with specific changes to ensure that the authority provided by this bill does not conflict with or, duplicate, our existing authorities.

As currently drafted, H.R. 3247 is intended to amend the existing enforcement authorities of the National Park Service (Park Service), the Bureau of Land Management (BLM), and the U.S. Fish and Wildlife Service (Fish and Wildlife Service), as well as the Forest Service, to make consistent the ability of these bureaus to charge misdemeanor offenses for violations of bureau rules and regulations.

As noted above, the Department agrees that consistent enforcement authority serves important and useful interests. For example, currently the BLM and Park Service operate under different rules for criminal penalties for violations of rules regulating the use of fire by visitors and others on their respective lands. For the NPS, these violations are classified as Class B misdemeanors, which may result in a fine of up to \$5,000 or up to six months in prison. Class B violations are strict liability in nature, which means that intent need not be proved. However, under the current enforcement provisions of the Federal Land Policy and Management Act, BLM penalties for violations of land use regulations are set as Class A misdemeanors for all "knowing and willful" violations; BLM does not currently have authority to charge for a Class B misdemeanor. Therefore, similar violations of rules regulating the use of fire by visitors and others on public lands are Class A misdemeanors for the BLM, which may result in a fine of up to \$100,000 or imprisonment for up to one year and requires a demonstration that the party knowingly violated the law.

The changes advanced by this legislation will also further the economy of law enforcement resources. Under Class A misdemeanor violations, a defendant has a right to a jury trial, which frequently results in dismissed cases as prosecutors are deterred from proving a "knowing and willful" intent, and judges, who already have

large dockets, are less likely to take on lengthy and expensive jury cases. In contrast, under a Class B misdemeanor offense, a citation can be used as the charging instrument, and defendants can be tried directly by a Magistrate Judge. The ability to apply a lower lever penalty, as provided in H.R. 3247, for violations that are not committed in a "knowing and willful" manner will also simplify investigative and enforcement tasks that officers must currently undertake compared to that required when prosecuting Class A misdemeanor offenses.

In addition, we urge the Committee to review the intent language to determine whether it is necessary to include a "willful" element in addition to the "knowing" element. We would caution against such an inclusion and understand that Department of Justice will be providing a views letter that will specifically address this issue, as well as other issues. We intend to work with the Forest Service and Department of Justice to provide specific language addressing these concerns.

As noted above, we would also like to work with the Forest Service and the Department of Justice to provide the Subcommittee with specific changes to ensure that this new authority accomplishes the intended result and does not conflict with or duplicate our existing authorities.

For example, while the substance of the provisions in H.R. 3247 nearly mirror those provided to the Fish and Wildlife Service in the 1998 amendments to the National Wildlife Refuge System Administration Act, Pub. Law No. 105-312, the Fish and Wildlife Service's current language is structured so that Fish and Wildlife law enforcement personnel can charge an offender under two alternative provisions, an option that would not be available under H.R. 3247 as currently drafted.

The Department also supports the changes made by Section 3 of H.R. 3247, which calls for the use of fines collected by the affected agencies for the limited purposes of improvement, protection, or rehabilitation work on public lands made necessary by the actions which led to the fine, as well as to increase public awareness of regulations and other requirements regarding use of the public lands. The provisions are limited in nature and require that excess funds be transferred to miscellaneous receipts and cannot be retained by the agency.

Again, Mr. Chairman, I want to thank you and the Members of this Subcommittee for your continued interest in our law enforcement issues. We at the Department look forward to continuing positive dialog to improve our federal law enforcement capabilities. This concludes my statement and I am happy to answer any questions that you might have.

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Mr. RENZI. Mr. Larry Smith?

**STATEMENT OF LARRY E. SMITH, EXECUTIVE DIRECTOR,  
AMERICANS FOR RESPONSIBLE RECREATIONAL ACCESS**

Mr. SMITH. Thank you, Mr. Chairman. I serve as Executive Director of ARRA, Americans for Responsible Recreational Access. ARRA was founded in June of 2000 because of a growing concern that opportunities for recreational activities on public lands and waterways were being eliminated by the closure of many of these areas to the American people. ARRA is comprised of a number of national, State, and regional trade associations, as well as thousands of Americans who have registered on the ARRA website.

First, I want to thank Mr. Tancredo for sponsoring this legislation and for Mr. Udall of Colorado for cosponsoring it, and thank you, Mr. Chairman, for holding the hearing. It has been a pleasure to work with your respective personal staffs and the Subcommittee staff in the development of this legislation.

Every single day, more and more Americans are seeking recreational opportunities on our public lands and waterways. As our cities and suburbs become more congested, Americans are increasingly turning to public lands as a means to relieve the stress of everyday living. Maintaining access to these public lands, therefore, becomes an important element for the health and well-being of millions of Americans.

We are not here today to say to this Subcommittee that there aren't problems with some individuals behaving inappropriately when visiting public lands. Let me be clear about this. Problems do exist. However, all too often, a simple response to such problems on the part of some interest groups is to advocate denying access to these public lands for all Americans and not just to those few who choose not to be good stewards of these lands.

Closing access to public lands does nothing to address the real problem of inappropriate behavior. In fact, as more areas are designated off-limits to all Americans, a greater concentration of recreational activities and overuse will likely occur in those areas still remaining accessible. Therefore, until the problem of inappropriate behavior is directly addressed, all public lands remain threatened.

Clearly, the present day response of closing public lands is a flawed policy. All this policy does is penalize all Americans for the misdeeds of a few. Fortunately, H.R. 3247 seeks a different solution. This legislation seeks to penalize only those individuals or groups who choose to misuse our public lands and not those who abide by land use regulations. We believe this legislation strikes an appropriate balance between those who might unknowingly violate land use regulations and those who willfully and knowingly seek to do harm.

The penalties and fines for Class B and Class A misdemeanors are scaled appropriately for the behavior associated with the purported violations. The greater the damage to our public lands, then the stiffer the penalty should be to those who cause such damage. H.R. 3247 allows for consistent penalties among the four major agencies responsible for the stewardship of our public lands.

As members of this Subcommittee know, it is often difficult for a visitor to know when U.S. Forest Service land ends and BLM land begins. Does the present day inconsistency of fines and penalties among these agencies mean that the land holdings of one agency are less or more important to the American people? We think not. We are pleased that this legislation seeks to remedy this inconsistency.

More often than not, land agencies lack adequate funds to restore, repair, or maintain the public lands that are extensively used by the general public. Under this legislation, agencies will be able to use the fines collected for restoration work as well as to educate the general public on what is and is not appropriate behavior when visiting public lands.

Since our inception, we have taken the position that all recreation activities do not belong in all areas of public lands. We believe that there are areas that truly should be designated as wilderness areas, as well as other areas that should be designated for certain types of recreational activities. Having said that, we also firmly believe that the Federal land agencies need to do a better job of providing a broader range of recreational opportunities so more Americans can enjoy their public lands.

As we have said, we find it distressing that certain public interest groups approach public lands management issues by advocating closure rather than addressing the issue of abuse or misuse. When someone breaks our traffic laws, society's response is not to ban all traffic on the highways. Rather, we increase enforcement and we

prosecute law breakers. The same should hold true for activities on Federal lands and waterways.

Mr. Chairman, ARRA seeks to solve problems that inhibit public enjoyment of our public lands and waterways. We believe that public lands should be made available to all Americans regardless of age or physical well-being for their enjoyment and use in a responsible manner. With enhanced enforcement and stiffer penalties for those who disobey the rules of proper land use, our Federal land agencies should be able to pull down the “Do not enter” signs and replace them with signs that say, “Welcome to your public lands.”

Again, thank you for inviting us to participate. We would be happy to respond to any questions you or the other members might have.

Mr. RENZI. Mr. Smith, thank you for your substantive remarks, well researched. I am grateful.

[The prepared statement of Mr. Smith follows:]

**Statement of Larry Smith, Executive Director,  
Americans for Responsible Recreational Access, on H.R. 3247**

Mr. Chairman:

My name is Larry Smith and I serve as the Executive Director of ARRA, Americans for Responsible Recreational Access. ARRA was founded in June of 2000 because of a growing concern that opportunities for recreational activities on public lands and waterways were being eliminated by the closure of many of these areas to the American public.

ARRA is comprised of the following organizations: the American Horse Council, the Motorcycle Industry Council, the Specialty Vehicle Institute of America, the American Council of Snowmobile Associations, the National Marine Manufacturers Association, the American Motorcyclist Association, the Personal Watercraft Industry Association and the National Off-Highway Vehicle Conservation Council. In addition, there are a number of state and regional organizations affiliated with ARRA.

First, I want to thank Mr. Tancredo for sponsoring this legislation and to you, Mr. Chairman, for cosponsoring this measure and for holding this important hearing. It has been a pleasure to work with your respective personal staffs and with the Subcommittee staff in the development of this legislation.

Every single day, more and more Americans are seeking recreational opportunities on our public lands and waterways. As our cities and suburbs become more congested, Americans are increasingly turning to public lands and waterways as a means to relieve the stress of everyday living. Maintaining access to these public lands, therefore, becomes an important element for the health and well-being of millions of Americans.

We are not here today to say to this Subcommittee that there aren't problems when some individuals behave inappropriately when visiting public lands. Let me be clear about this—problems do exist. However, all too often, the simple response to such problems on the part of some interest groups is to advocate denying access to these public lands for all Americans and not just to those few who choose not to be good stewards of these lands.

Closing access to public lands does nothing to address the real problem of inappropriate behavior. In fact, as more areas are designated “off limits” to all Americans, a greater concentration of recreational activities and overuse will likely occur in those areas still remaining accessible. Therefore, until the problem of inappropriate behavior is directly addressed, all public lands remain threatened.

Clearly the present day response of closing public lands is a flawed policy. All this policy does is penalize all Americans for the misdeeds of a few. Fortunately, H.R. 3247 seeks a different solution. H.R. 3247 seeks to penalize only those individuals or groups who choose to misuse our public lands and not those who abide by land use regulations.

We believe that H.R. 3247 strikes an appropriate balance between those who might unknowingly violate land use regulations and those who “willfully and knowingly” seek to do harm. The penalties and fines for Class B and Class A misdemeanors are scaled appropriately for the behavior associated with the purported violation. The greater the damage to our public lands, then the stiffer the penalty should be to those who cause such damage.

H.R. 3247 allows for consistent penalties among the four major agencies responsible for the stewardship of our public lands: the U.S. Forest Service, the Bureau of Land Management, the National Park Service and the U.S. Fish and Wildlife Service. As members of this Subcommittee know, it is often difficult for a visitor to know when U.S. Forest Service land ends and BLM land begins. Does the present day inconsistency of fines and penalties among these agencies mean that the land holdings of one agency are less or more important to the American people? We think not. We are pleased that this legislation seeks to remedy this inconsistency.

More often than not, land agencies lack adequate funds to restore, repair or maintain public lands that are extensively used by the general public. Under this legislation, agencies will be able to use fines collected for restoration work as well as to educate the general public on what is and is not appropriate behavior when visiting public lands.

Since ARRA's inception, we have taken the position that all recreational activities do not belong in all areas of public lands. We believe that there are areas that truly should be designated as wilderness areas as well as other areas that should be designated for certain types of recreational activities. Having said that, we also firmly believe that Federal land agencies need to do a better job of providing a broader range of recreational opportunities so more Americans can enjoy their public lands.

As we have said, we find it distressing when certain public interest groups approach public lands management issues by advocating closure rather than addressing the issue of abuse or misuse. When someone breaks our traffic laws, society's response is not to ban all traffic on our highways. Rather, we increase enforcement and we prosecute lawbreakers. The same should hold true for activities on Federal lands and waterways. If penalties are insufficient to deter violators, then ARRA believes strengthening our laws and penalties is the proper course of action rather than embracing the closure of our Federal properties.

Mr. Chairman, ARRA seeks to solve problems that inhibit public enjoyment of our public lands and waterways. We believe that public lands should be made available to all Americans regardless of age or physical well-being for their enjoyment and use in a responsible manner. With enhanced enforcement and stiffer penalties for those who disobey the rules of proper land use, our Federal land agencies should be able to pull down the "Do Not Enter" signs and replace them with signs that say "Welcome to Your Public Lands."

Again, thank you for holding today's hearing and for inviting us to participate. We hope that the Resources Committee will report this measure to the House Floor for action by the entire House of Representatives. Doing so will be of benefit to all Americans who enjoy visiting our public lands.

Mr. Chairman, I would be happy to respond to any questions that you or members of the Subcommittee might like to ask regarding ARRA's support for this legislation.

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Mr. RENZI. We will move now to Mr. Dave Jenkins of the American Canoe Association.

**STATEMENT OF DAVID JENKINS, DIRECTOR OF CONSERVATION AND PUBLIC POLICY, AMERICAN CANOE ASSOCIATION**

Mr. JENKINS. Thank you, Mr. Chairman, for allowing me this opportunity to address the Committee regarding H.R. 3247. The American Canoe Association is the nation's oldest and largest organization representing people who enjoy canoeing and kayaking. It has over 50,000 members nationwide, members who regularly depend on the nation's public lands and waters for recreation.

Today, our public lands and waters are in higher demand than ever before. Much of this demand is related to the increasing popularity of outdoor recreation. Participating in kayaking, for example, up 182 percent over the past 7 years, is growing faster than any other outdoor activity. The popularity of other outdoor recreation activities, such as hiking, backpacking, mountain biking, and climbing, is also up significantly. As a result, people are flocking to these protected resources seeking a wide variety of recreational opportunities.

The task of managing these resources to provide the public with quality recreational experiences, while at the same time safeguarding them for future generations, is a very challenging and increasingly difficult balancing act. It is a balancing act that depends on resource managers being able to effectively manage recreational use. Failure to adequately manage recreational use not only results in the degradation of the resource, it also leads to more user conflicts and reduces visitor satisfaction.

One of the most difficult challenges facing managers and all of us who care about these places is the effective management of motorized recreation. Use of motorized vehicles, off-road vehicles in particular, is causing serious damage to our public land and waters. This damage includes erosion and other visual impacts to the landscape, sediment pollution in rivers and streams, damage to wetlands, and adverse impacts on wildlife. Motorized use is also encroaching the most on the recreational experiences of others by eliminating quiet and secluded areas and by emitting visible air and water pollution.

Much of these motorized use impacts are the result of people failing to recreate responsibly, often in direct violation of the law. Whether I talk to managers from the Forest Service, the Park Service, or BLM, they all express the frustration and disillusionment at the enormity of this problem and at the lack of adequate resources for enforcement. It is common for the Forest Service and BLM to have one law enforcement agent covering more than a million acres of land.

While I commend the sponsors of H.R. 3247 for trying to improve the enforcement of regulations, I am concerned that this legislation falls short of providing the full range of enforcement tools that our resource managers so desperately need. Addressing any inconsistencies in enforcement authority between agencies is certainly welcome, but there are bigger barriers to effective enforcement that also need addressing.

One common theme I hear from resource managers is that the fines imposed are so low and the likelihood of getting caught so remote that those who intentionally violate regulations consider the fine as simply a potential user fee that they are more than willing to pay. In order for any kind of law enforcement to work, both the chances and consequences of getting caught have to be high enough to alter behavior. H.R. 3247 is not going to get us there.

I hope that more comprehensive legislation will be forthcoming. A significant increase in the number of agency law enforcement personnel is desperately needed, as are increases in the collateral schedule of fees for ORV violations. Provisions contained in H.R. 751, sponsored by Representative Udall, targeting fines and facilitating restitution by offenders merits serious consideration.

Much of the problem of fines being too low to deter illegal behavior results not from a lack of authority to impose significant fines, but from an unwillingness by judges and others to assess fines that are sufficient to deter. For this reason, the establishment of mandatory minimum penalties and condemnation authority should also be considered, especially for specific types of violations that reflect intentional disregard for the law and for those who are repeat offenders.

One common example of a violation that shows intentional disregard for the law is the removal of signs that declare a specific trail or area off-limits to motorized vehicles. By removing such signs, willful violators are able to disguise their own conduct as an innocent mistake.

For ACA members and other self-reliant, nature-oriented outdoor enthusiasts, their enjoyment of public lands and waters is very dependent on the quality of the natural environment and its wildness. The desire to protect these resource qualities is why our members invest the time and effort to practice “leave no trace” ethics and to dedicate countless hours volunteering for stewardship projects.

Please help us ensure that the irresponsible, destructive, and illegal actions of some are not allowed to ruin the outdoor recreation experience for the rest of us.

I have two newspaper articles that illustrate common enforcement problems and an editorial from the Denver Post that I ask be included in the record. I thank you and will be glad to answer any questions.

Mr. RENZI. Without objection. Thank you for your testimony.

[The prepared statement of Mr. Jenkins follows:]

**Statement of David Jenkins, Director of Conservation and Public Policy,  
American Canoe Association, on H.R. 3247**

Thank you for allowing me this opportunity to address the Committee regarding H.R. 3247, the Trail Responsibility and Accountability for the Improvement of Lands (TRAIL) Act. The American Canoe Association is the nation’s oldest and largest organization representing people who enjoy canoeing, kayaking and rafting. It has over 50,000 members nationwide, members who regularly depend on the nation’s public lands and waters for recreation. While these members belong to the American Canoe Association because of their interest in canoeing and kayaking, many of them also access our public lands to hike, backpack, ski, climb, hunt and fish.

Today our public lands and waters are in higher demand than ever before, and much of this demand is related to the increasing popularity of outdoor recreation. Participation in kayaking for example, up 182% over the past seven years, is growing faster than any other outdoor activity—on land or water. The popularity of other outdoor recreation activities such as hiking, backpacking, mountain biking, and climbing is also up significantly. As a result, people are flocking to these protected resources seeking a wide variety of recreational opportunities.

The task of managing these resources to provide the public with quality recreational experiences, while at the same time safeguarding them for future generations, is a very challenging and increasingly difficult balancing act. It is a balancing act that depends on resource managers being able to effectively manage recreational use. Failure to adequately manage recreational use not only results in the degradation of the resource, it also leads to more user conflicts, and reduces overall visitor satisfaction.

One of the most difficult challenges facing managers, and all of us who care about these places, is the effective management of motorized recreation. Use of motorized vehicles, off-road vehicles (OHV) in particular, is causing very serious damage to our public lands and waters. This damage includes erosion and other visual impacts on the landscape, sediment pollution in rivers and streams, damage to wetlands, and adverse impacts on wildlife. Motorized use is also encroaching the most on the recreational experiences of others, by eliminating quiet and secluded areas and by emitting visible air and water pollution.

Much of these motorized use impacts are the result of people failing to recreate responsibly, often in direct violation of the law. Whether I talk to resource managers from the USDA Forest Service, the National Park Service or the Bureau of Land Management (BLM), they all express frustration and disillusionment at the enormity of this problem, and at the lack of adequate resources for enforcement. It is common for the Forest Service and BLM to have one law enforcement agent covering more than a million acres of land.

While I commend the sponsors of H.R. 3247 for trying to improve the enforcement of regulations, I am concerned that this legislation falls short of providing the full range of enforcement tools that our resource managers so desperately need. Addressing any inconsistencies in enforcement authority between agencies is certainly welcome, but there are far bigger barriers to effective enforcement that also need addressing.

One common theme I hear from resource managers is that the fines imposed are so low, and the likelihood of getting caught so remote, that those who intentionally violate regulations consider the fine as simply a potential user fee that they are willing to pay. In order for any kind of law enforcement to work, both the chances and consequences of getting caught have to be high enough to alter behavior. H.R. 3247 alone is not going to get us there.

I hope that more comprehensive legislation will be forthcoming. A significant increase in the number of agency law enforcement personnel is desperately needed, as are increases in the collateral schedule of fees (stiffer penalties) for OHV violations. Provisions contained in H.R. 751, a bill sponsored by Representative Udall, which apply fines directly to enforcement needs and facilitate restitution by offenders merit serious consideration.

Much of the problem of fines being too low to deter illegal behavior results, not from a lack of authority to impose significant fines, but from an unwillingness by judges and others to impose fines sufficient to deter illegal behavior. For this reason the establishment of mandatory minimum penalties and condemnation authority should also be considered, especially for specific types of violations that reflect intentional disregard for the law, and for those who are repeat offenders.

One common example of a violation that shows intentional disregard for the law is the removal of signs that declare a specific trail or area off-limits to motorized vehicles. By removing such signs, willful violators are able to disguise their own conduct as an innocent mistake. Another clearly willful violation is "mud-bogging," the increasingly prevalent practice of tearing up fragile meadows, wetlands or streambeds with four-wheel drive vehicles—a practice that often leaves ruts up to 6 feet deep.

The damage done to the resource by such actions and the costs to the public cannot be tolerated. At least 60,000 miles of "ghost roads" have already been carved out of national forests alone. An Associated Press story from this past July noted "A brief drive through the Umatilla National Forest in northeastern Oregon turns up at least a dozen large mud bogs visible from the dirt road. One year-old site is scarred by tire ruts 19 inches deep that have yet to sprout new grass." It also notes how a Forest Service law enforcement officer has seen his patrol area more than double in recent years to more than 1.2 million acres.

For ACA members and other self-reliant, nature-oriented outdoor enthusiasts, their enjoyment of public lands and waters is often dependent on the quality of the natural environment and its wildness. Having clean air and water, seeing wildlife, listening to the sounds of nature and escaping the noise of everyday life are essential parts of their recreational experience. The desire to protect these resource qualities is why our members invest the time and effort to practice Leave No Trace ethics and to dedicate countless hours volunteering for stewardship projects.

Please help us ensure that the irresponsible, destructive and illegal actions of some are not allowed to ruin the outdoor recreation experience for the rest of us who recreate responsibly. I will be glad to answer any questions.

[NOTE: The attachments submitted by Mr. Jenkins were copyrighted and have been retained in the Committee's official files.]

Mr. RENZI. We will move now to questions from the members, 5-minute questions beginning with the gentleman from Colorado and author of the legislation, Mr. Tancredo.

Mr. TANCREDO. Thank you, Mr. Chairman.

I have a question for Mr. Parkinson. If you could, please, expand a little bit on what you mean by, or what is the significance of separating out knowing and willful and just using knowing. What are the implications of that? Why do you support that?

Mr. PARKINSON. Mr. Tancredo, the implications of that is that if you require knowing and willful, it increases the burden of proof for the prosecution, and let me walk through that a little bit.



Knowingly, if the element of the offense is that it was a knowing violation, that simply requires proof of the facts that constitute the offense.

Mr. TANCREDO. I see.

Mr. PARKINSON. What the government must show in that case is that the defendant was aware of his acts, the defendant performed those acts intentionally, and third, that the defendant did not act by mistake or accident. Not a high burden of proof for the prosecution.

Willfully raises the burden of proof and that requires, in addition to what I mentioned, that would also require the government to prove that the defendant specifically intended to violate the law, and getting into someone's head, as a former prosecutor, I can safely testify that when you add that added mental element, state of mind element, it does increase the burden of proof and makes it harder to penalize those who commit the offense. So that is fundamentally the issue.

Mr. TANCREDO. Thank you. You are shaking your head, Mr. Rey. You agree with that observation?

Mr. REY. Yes. We have the same observation, the same view.

Mr. TANCREDO. Thank you very much.

Mr. Jenkins, in your testimony, there are certainly aspects of it with which I can agree and, I guess in particular, your desire to increase the number of people who are out there on the line to try and identify those folks who are violating the law. I certainly will support that and do support it.

I will also note that we had another bill here at a different time. I brought a bill forward to increase the penalties for those who knowingly and willfully violated the campfire bans and did have a minimum penalty as a part of it and the folks on the other side of the aisle here opposed it.

In this case, I am trying to look at what we would be gaining by doing that. There are concerns that have been raised by folks in the Service about the need for greater flexibility here. I must admit that someone wanders off of a trail, even knowingly wanders off a trail and commits some damage, I don't know that I can put that in the same category as trying to burn down the whole forest. But I appreciate your concerns and there are certain aspects of it, as I say, that I fully intend to support, given the opportunity, and that is an increased number of personnel.

I have no other questions, Mr. Chairman.

Mr. RENZI. I thank the gentleman.

The gentleman from Colorado.

Mr. MARK UDALL. Thank you, Mr. Chairman.

I would like to just start by thanking the panel for your helpful testimony, and again, I want to thank Congressman Tancredo for his work on the TRAIL bill and also would associate myself with his remarks in regards to Mr. Jenkins, your comments and the need to put more people on the ground to enforce the existing laws that we have.

If I might, I would like to direct this question, my initial question at Mr. Rey and Mr. Parkinson, and I want to compare my bill, H.R. 751, with Mr. Tancredo's H.R. 3247, and that has to do with how the money that is collected as fines could be used. Both bills

say the money could be used to increase public awareness of agency rules. Both bills would allow the agencies to use the money for damage repair or improvement work.

But under H.R. 3247, that would be limited to work that was made necessary by the violation that led to the fine, while under my approach, the money could be used for any necessary projects. Included in that, it would allow Agriculture or Interior to use the money that was left for, quote, "administrative, legal, and related expenses, including damage assessments, payments of rewards for information, and investigative costs." But under H.R. 3247, that wouldn't be permitted, and so any leftover fines would be returned to the general Treasury.

I wonder, wouldn't it be better to broaden this part of H.R. 3247 so the agencies could direct this money into the enforcement efforts and into some of the needs that we have identified here? Mr. Rey and Mr. Parkinson, if you would be willing to comment on that, I would appreciate it.

Mr. PARKINSON. I will begin, Congressman Udall. I have not had the opportunity to review H.R. 751 myself, but let me take a crack at this.

I think the approach that you described in H.R. 751 certainly would give more flexibility and certainly more discretion to the agencies that were using the fine money. My, and this is tentative because I think we need to take a closer look at this, but even allowing fine money to be used specifically to repair damage caused by the specific offender is something of a unique approach in our criminal law enforcement and I think it requires some study.

Normally, fine money would go into the Witness and Crime Victims Fund, so even departing slightly does raise some concerns, typically within the Justice Department and the administration because it is contrary to the typical way that fines are levied and then collected. So I suspect that that is one of the points that the folks were keeping in mind when they drafted this legislation, that we were taking a step that was unusual and it was a reasonable step and it also focused specific expenditure of money on violations that were tied to the offense.

Mr. MARK UDALL. Yes, I understand that rationale. It seems to me you could argue that at least one of the victims in this is the land itself, and in that context, it makes sense to have a fund, if you will, to repair the land.

Mr. REY. This is an area—

Mr. MARK UDALL. Mr. Rey?

Mr. REY. This is an area where I think we want to visit with the Justice Department and get back with you with some suggested language that may have a little bit more flexibility.

One area where we would have some concerns, though, is a proposal to utilize the money to hire more law enforcement people. That raises the specter that the average user of the Federal lands deals with our law enforcement agents in a context where they suspect that our agents have an incentive to be over-aggressive enforcers, because they are utilizing the fines to retain additional agents to essentially bolster their enforcement efforts.

We have some areas where we need to enhance our enforcement presence, there is no question about that, but I think that is better

done through appropriated dollars and not with a direct feedback loop to the fines.

Mr. MARK UDALL. That is a very good point. There are, of course, administrative costs that I would hope we could consider being covered by the excess amount that might be left from the fine structure.

I see my time is about to expire and I would want to ask the Chairman if I could include some additional questions, without objection, to the panel.

Mr. RENZI. Absolutely.

Mr. MARK UDALL. And if I could, I would like to ask Mr. Smith and Mr. Jenkins if they would respond to my initial question, as succinctly as you can, seeing that the red light is on.

Mr. SMITH. In terms of your question, the other thing I just might add, in addition to being able to use fines collected to repair damage caused by individuals or groups, the legislation also provides that the money can be used for educational outreach in order to educate people in what is appropriate and what isn't. We would certainly hope that any final legislation would continue to have that ability because we think that is very important.

Mr. MARK UDALL. Yes. I think we would agree that education is a key part of trying to reduce the number of infractions and, therefore, the damage to public lands.

Mr. JENKINS. My concern is that we get those law enforcement dollars, and if they can come through appropriations, I think that is great. You have another provision in your bill that would require some restitution by the offenders, I believe, or at least allow for that, and I think that may be another approach at getting to the restoration of the resource because the damage is really severe damage in a lot of cases and we really need a way to deal with that, and like maybe the previous person that sits here would say, not let the taxpayers be shouldered with that burden.

Mr. MARK UDALL. Yes. I think that is a very good point. Mr. Chairman, thank you for your indulgence.

Mr. RENZI. I thank the gentleman from Colorado and cosponsor and move to the gentleman from New Mexico.

Mr. TOM UDALL. Thank you, Chairman Renzi, and thank you, members of the panel, for being with us today.

Let me, first of all, applaud my cousin, Mr. Udall from Colorado and Mr. Tancredo, also from Colorado, for your piece of legislation and say that I don't think there is any doubt that fines for off-road vehicle violations are too low. I think we need to address this issue. I applaud you for attempting to get a trip on this problem.

In the spirit of you saying suggestions, Mr. Tancredo, in terms of improvement of this legislation, I just have a couple of comments, and I hope they are taken in the spirit of possible improvements here.

First of all, on a procedural, two procedural issues, apparently, the Department of Justice declined to send a witness to be before this panel today, and I really believe, since we are dealing with Department of Justice prosecutions, we are dealing with the Federal courts, much of this is overlap between this Committee and what the Department of Justice typically does. So I am disappointed that they couldn't find the time to send somebody. Apparently, there

was an availability issue. I would hope that maybe we could get their input in this Committee on these specific provisions, and so that would be one suggestion.

The second would be that the overlap in jurisdiction with other committees here in the House, the Judiciary Committee clearly has jurisdiction over these issues, also, because you are dealing with Federal prosecutors, Federal courts. The people that bring these cases, even if they are just citations, are all under the supervision of the Judiciary Committee and their oversight responsibilities. So I would urge you, if we not going to even get Justice to talk in this Committee, to urge the Judiciary Committee to assert some jurisdiction over this so that their input, the Judiciary input can be had.

On the substantive part of this, two other comments, also, and, I think, a question for the panel here. I worry a lot about putting in the hands of an enforcement agency the authority to keep the money. Whenever you do that, you raise a whole host of issues. One of the big issues is, are you giving the enforcement people the incentive to issue more tickets even though they—more tickets or more prosecutions, trying to collect more fines and more money, even though it isn't necessary to carry out law enforcement responsibilities?

I think this would be an unusual way to run Federal law enforcement. In fact, I think we have seen us move away from this in the forfeiture area. I think Chairman Hyde, when he was at Judiciary, sponsored a bill to take the forfeiture authority so that when Federal prosecutors move in to forfeit, they don't get to keep it because that would encourage them to use forfeiture maybe in inappropriate circumstances. So I just worry about the enforcing agency keeping the money because I think it pushes them to do things that maybe they wouldn't otherwise do.

And then the final—and let me ask the question to the panel on that specific point. Is there anyone that sees a problem with this as a revenue-raising measure, that you are going to be putting a bind on this? I know agencies love to get the money. I mean, I expect all of you to say, oh, no, we want the money. This is a great idea. We are going to do a good job. But I am asking you, is there anybody on this panel that thinks that this is a bad idea? I don't need to hear that it is a good idea, because I assume you are all for it. But is there anybody that is on the other side on that issue?

Mr. SMITH. Well, Mr. Udall, initially when we started studying this problem, we did have some initial concerns about this concept. But the more that we looked at it and understanding that these agencies, these land agencies are under some very tight fiscal constraints, we just feel it is very important that money be devoted to educational outreach for appropriate behavior, and if someone does damage to these Federal lands, that those fines be used for restoration work.

So I think the need is greater than the potential concern. I understand where you are coming from, but at the end of the day, we just felt that this is the appropriate way to deal with this problem.

Mr. REY. I think it is important to separate the enforcement from the use of the fine and that if the use of the fine is for purposes that are resource-related as opposed to additional enforcement

activities, you eliminate the prospect that people are going to view the Federal law enforcement agencies as bounty hunters.

We do have some experience with the Migratory Bird Treaty Act and the Lacey Act and the use of the fines there, and so far, that hasn't been a problem. But I think the reason it hasn't been a problem is that both of those statutes, as does this proposal, separates the enforcement from the fine.

Mr. TOM UDALL. Go ahead.

Mr. JENKINS. We deal with this issue every day as individuals when we face traffic violations and things like that. It is always a concern about what is motivating the enforcement. It seems to me that the more directly you tie the use of those dollars to actual damage done, the less there is an incentive, or broader incentive, for law enforcement to be too picky on the type of penalties and type of tickets they are issuing.

Mr. TOM UDALL. Thank you very much.

Mr. RENZI. I thank the gentleman.

Mr. TOM UDALL. I have additional questions, but I know I have exhausted on this particular round. Thank you, Mr. Chairman.

Mr. RENZI. You are welcome. I am going to yield my time to the gentleman from Colorado, Mr. Tancredo.

Mr. TANCREDO. Thank you, Mr. Chairman. I guess just a couple of very quick comments in response to my colleague from New Mexico.

To a certain extent, the purpose of this legislation is to encourage the agencies to actually be more aggressive. So I don't mind the thought, the idea that there may be some connection between the imposition of a fine and a more aggressive posture.

I think sometimes some of the agencies have actually—some people out in the field have simply ignored what was happening because they did not feel that there was really anything that was going to happen as a result of them even issuing a fine or a citation or something like that, and I think a lot of it has just been because it is confusing, because sometimes they didn't want to do it, because the restrictions of either their agency just having a Class A or Class B provision that, again, restricted their ability to be flexible, they decided not to do anything.

So I am going to give them greater flexibility. I want them, therefore, to be more aggressive in actually enforcing the laws that are on the books. And as long as we confine the use of the money, as we have here, and has been stated by the panel, as long as we confine the use of the money for these specific things, I don't feel as though they are going to be doing it in order to improve their own economic welfare, but just to actually enforce the laws as they are on the books and maybe reduce the amount of violators as a result of it.

Especially, I like the educational part. Education to me means, among other things, some big signage that tells you what the heck is going to happen to you if you do this stuff. You know, that is one thing I want people to know. That is part of this, as a deterrent, naturally, is to tell people, here are the possible fines and the possible ramifications for your actions here, which they may not know today. So I am hoping that that comes as a result of it.

Procedurally, I am certainly supportive of trying to get Justice to provide a little more participation in this process as we go through it here. Whether we need another referral or not, or referral to another committee, I guess I say that for a long time, I have listened to people on this panel and people in the Congress talk about the need to do something quickly to address the problems that are so endemic in our national parks and in the forests of this land. I don't know whether—if we can get that kind of cooperation from Justice right now through this process here in this Committee, I am all for it. Beyond that, I think we have got a lot of input with them. I know the agencies have talked to them themselves.

At any rate, I appreciate very much the panel being here and, Mr. Chairman, your willingness to provide some time in response.

Mr. RENZI. Thank you. Reclaiming my time, I am going to turn the Committee over now to Mr. Tancredo to finish up and to chair the hearing. I know Mr. Inslee has questions. I think Mr. Udall has a couple more questions. So Mr. Tancredo, thank you.

Mr. TANCREDO. [Presiding.] Thank you, Mr. Chairman. The other comment that I just wanted to make is that it is clear to me that when you deal with these kinds of violations that occur on Federal lands, the vast majority of agency violations are handled through citations and they are handled—we should be really clear about what is going on. This citation is comparable to a ticket. The penalty on the citation is not a fine but a collateral paid by the recipient to authorize termination of the proceedings. This is under the Federal Rules of Criminal Procedure. So this is the way most of the cases occur.

What I am concerned about is when you start giving more authority, is that authority going to be used well? My understanding within the Bureau of Land Management, which only has these Class A misdemeanors, is that what you have is a very aggressive approach by the agency, saying, oh, we are going to throw the book at these guys, and they are charging everybody with Class A misdemeanors and so they move forward along the process and they present their case. They don't actually do the charging, of course, but they want the people to be charged.

They go up to the Justice Department and the local U.S. Attorney and say, we have got these guys. We want you to charge them with a Class A misdemeanor. And what ends up happening is the Justice Department declines the cases because the cases haven't been put together to prove all the elements of the crime and the enhanced intent provisions.

And so we have had a record over in BLM, my understanding is, that it hasn't really worked very well with Class A. And so it is fine for all of us to talk about, you know, throw the book at the ORV guys and that is where we want to go, but the reality is that—and I used to do these cases when I was an Assistant United States Attorney and we would have 1 day a month and there would be all these misdemeanor cases before a magistrate and we didn't have very much time to deal with them because we were dealing with all these other felonies. And frequently, the law enforcement folks had very good intentions but they were not able to put the cases together, and so you had a lot of declinations at the last moment, which is not good for law enforcement, either.

So what I think we need to think about in doing this is make sure that all levels of the law enforcement people in the Federal agencies have the kind of training, they work closely with the Department of Justice to make the cases that are really going to stick, because the agencies frequently view that they are being tough by wanting to charge something when they could get a lot better result with a lesser penalty, but they could actually get a conviction or, as I said earlier, the overwhelming majority are where people pay the collateral on these citations.

So I don't know whether, Mr. Parkinson, you have been a former Federal prosecutor. I mean, this is a concern of mine. You work in supervising some of this law enforcement area. Is this a concern of yours? I mean, my understanding is we have got a lot of problems here in terms of the way these prosecutions proceed, and if we are going to give all this additional authority across the Federal Government, I think we are going to have to have a level of training to make sure that it is used wisely and that it is used effectively and that it is done in a cost efficient way.

Mr. PARKINSON. Congressman, you have made some very good points, sort of took me back to my former days as a prosecutor. I had the same experiences that you had. But what I think that does is it really highlights the need for this legislation.

One of the reasons that, particularly with BLM, having only Class A authority means that they were compelled to either do nothing or go to the Class A misdemeanor route. By allowing them the lesser charge under a Class B misdemeanor does permit that sort of more reasonable approach to law enforcement.

And, of course, as you said, training is a big component of that. I think some of the statements or some of the stuff that comes out from the field is lore, but I think it also has—there is a lot of reality to what you have been hearing. I don't necessarily conclude that it is a failure of training as opposed to a lack of an appropriate penalty structure, which this legislation is designed specifically to address.

Mr. TOM UDALL. Mr. Parkinson, if we have, in fact, had some problems with BLM in their Class A, which you seem to admit there have been some, then giving them Class B, I would agree with you, is a good idea, and that is why I applauded earlier the objective that Mr. Tancredo is moving toward.

But the Forest Service and the Park Service have not had Class A, so we are moving them into this whole new murky category where we have had problems at BLM. I would like some assurance that there is an understanding from the people that are supervising this, Mr. Rey for one, that it is going to be done in a way that it is successful and that the cases are presented in a way where there isn't this disconnect between Justice and the prosecutors and the people in the field and cases being dismissed and us not really getting enforcement done on these very important public lands and resource cases.

I guess my question in a way is to Mr. Rey. You are stepping into an area with Class A with the Forest Service, anyway, which they have never done, and I think you may have problems unless there is some level of training and understanding that it isn't just the attitude of an agency saying, we are going to throw the book at them,

and then Justice falls in line. It just doesn't work that way. Do you have any comment?

Mr. REY. Well, I think that is an area that we are going to be extremely mindful of. There is no benefit to be gained by bringing a case that can't be prosecuted, as you indicated earlier. The one advantage we have at this moment in history, should this legislation pass, is that our new Director of Law Enforcement, Ron Sprinkle, comes to us from the Department of the Interior, from the Park Service, and the Secret Service before that. So we are going to enter into this, should you give us this authority, with the benefit of their experience in how to use Class A misdemeanor enforcement wisely.

Mr. TOM UDALL. That is a welcome addition. Let me once again thank the panel for being here. I am finished with my questions at this point, and I thank Mr. Tancredo for his push to get tough on these ORVs. I don't think there is any doubt we need to do this. I just have questions as to exactly how we get there. Thank you very much.

Mr. TANCREDO. I understand and I appreciate the gentleman's concerns.

Mr. Inslee, do you have questions?

Mr. INSLEE. Yes. I appreciate this effort, too, having seen the damage that has been caused out there. It is pretty amazing in my neck of the woods.

But I have a question about this idea. If you accept the concept that we need to increase the sanction or perceived sanction for offenders in this manner, and if you accept the fact that the Federal judicial system is clogged to the gills and Federal prosecutors probably are going to put this on the lower level of their priority system if we go to more misdemeanor prosecutions, should we be focusing as much, or more, on raising the collateral forfeiture numbers, and hopefully we keep people out of the judicial system but still whack them harder and send a message to the user community in that regard?

Is that an equal or better sort of strategy here, because I have a concern that if we do this, we are going to get referrals that just aren't going to go anywhere, particularly since now we have this willful standard, too, that I think is worthy of some discussion. That is just an open question.

Mr. PARKINSON. Let me start. I think this legislation is a good solution. I think we start from—one of the introductory comments put it this way. I will boil it down, too. There are two classes of offenders generally. This may be a slight oversimplification, but I think it is useful. There are those who are committing violations without really intending to commit violations, and then there are the egregious offenders who know exactly what they are doing and they are out there, often repeatedly, normally repeatedly, violating the public lands.

It strikes me that when you start with that conceptual framework, there ought to be two law enforcement kinds of responses available. You ought to be able to have a Class B misdemeanor ability for those who are really not egregious offenders, but for those who are egregious offenders, you really ought to have a Class A kind of misdemeanor authority, which—and the other thing is



that you ought to have a structure within these four bureaus, the three Interior bureaus and the Forest Service, that is at least consistent. Right now, we have four different statutory frameworks for the four bureaus, and the confusion for prosecutors and law enforcement agents who might be cross-designated, as well as for the courts, I think conceptually just doesn't make any sense whatsoever. So—

Mr. INSLEE. Could you address the issue of fines? Do we need to somehow induce agencies to look at their fine structure? If so, how do we go about that?

Mr. PARKINSON. Well, I think this helps do that. I think, yes, a short answer is do we need to have agencies look at their fine structures, I think the answer to that is yes. We should always be taking a look at things like that and analyzing how we better enforce the statutes and regulations that are on the books, and I think this is the kind of legislation that is a vehicle for generating that kind of analysis and discussion.

Mr. INSLEE. Mr. Rey, how do we encourage you or get you to look at the fine structure?

Mr. REY. We continue to review our fine structures, but I think what Mr. Parkinson said is right in terms of the conceptual framework that you approach this issue with. I don't know that we are going to accomplish any additional enforcement by raising the collateral for an unwitting violator. Whether we get him for \$25 or \$200, he is still an unwitting violator. It is the people who are repeated knowing violators that this bill will give us the better opportunity to deal with by giving the Forest Service, for the first time, a Class A authority.

Mr. SMITH. Mr. Inslee, we represent user groups. Quite often, there are a lot of bad things happening out there and a lot of destruction is occurring and we really want the agencies to have the means to go after those people that are deliberately destroying our public lands. And so that is why we like the fact that there is a two-tiered approach here with a misdemeanor A and B. Somehow, we have got to get on top of this problem, and we think this is one way to begin addressing some of that destruction that is occurring.

Mr. INSLEE. I noted in the definition, it added the characteristic of willful to the prosecutorial standard. Is that necessary or is that really what we are after? I noted a memo here that—it's been so long since I have been in law school—that said willful means you actually had knowledge that this would be illegal. Is that really the meaning of willful nowadays?

Mr. PARKINSON. Let me take the first crack. I don't believe you were here when I made the comments in my opening. I do think, one, it is not necessary, and two, we ought to amend the legislation to eliminate the willful requirement.

Basically, what that does is it increases the burden of proof for the prosecutor. It requires the government to prove that the defendant specifically intended to violate the law, and I don't think that is necessary and I think it will impede the enforcement ability of the agencies.

Mr. INSLEE. Thank you. Thank you, Chairman.

Mr. TANCREDO. Thank you, Mr. Inslee, and thank you very much to the panel. I want to thank the witnesses on our second panel for their insights and members for their questions.

The members may have some additional questions for the witnesses. We ask that you please respond to these in writing. The hearing record will be held open for 10 days for these responses.

If there is no further business before the Subcommittee, I again thank the members of the Subcommittee and our witnesses. The Committee stands adjourned. Thank you very much.

[Whereupon, at 12:20 p.m., the Subcommittee was adjourned.]

[A letter submitted for the record by the U.S. Department of Justice on H.R. 3247 follows:]



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 21, 2003

The Honorable Scott McInnis  
Chairman  
Subcommittee on Forests and  
Forest Health  
Committee on Resources  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This letter sets forth the views of the Department of Justice on H.R. 3247, the "Trail Responsibility and Accountability for the Improvement of Lands Act of 2003." Among other things, H.R. 3247 would amend the organic statutes for several federal land management agencies to create both Class A and Class B misdemeanors for violations of regulations on lands administered by the Bureau of Land Management (BLM), National Park Service (NPS) and Fish and Wildlife Service (FWS), all of which are within the U.S. Department of the Interior, and the U.S. Department of Agriculture's Forest Service. We plan to work with the Department of Interior and the Forest Service to develop language to address concerns with the *mens rea* provision.

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. For BLM, the bill creates a new Class B misdemeanor, or "petty offense," for "a violation of any such regulation," and a new Class A misdemeanor for certain offenses committed on either NPS or National Forest System (NFS) lands by any "person who knowingly and willfully violates any such rule or regulation." The bill would also amend the National Wildlife Refuge System Administration Act (NWRAA), the organic statute for the National Wildlife Refuge System, which already contains the two-tiered offenses created by H.R. 3247, to make it consistent with the other provisions.

The petty offense provisions of the organic statutes, as currently written, require no *mens rea* for conviction and may be characterized as strict liability offenses. See *United States v. Unser*, 165 F.3d 755 (10<sup>th</sup> Cir.), *cert. denied*, 528 U.S. 809 (1999) (Forest Service regulations); *United States v. Pardee*, 368 F.2d 368 (4<sup>th</sup> Cir. 1968) (NPS regulations; "intent on the defendant's part to violate the regulation was not an element of the offense"). Although the new BLM petty offense provision would receive similar treatment, the bill adopts the most onerous *mens rea* requirement – "knowingly and willfully" – from the BLM statute to establish new Class A misdemeanors for the NPS and Forest

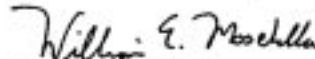
Service organic statutes and to amend the one for NWRAA. Proof that an offense was committed "knowingly" merely requires proof of the facts that constitute the offense. *Bryan v. United States*, 524 U.S. 184 (1998). This means that in a criminal prosecution involving the "knowing" *mens rea* standard, the government must prove that the defendant was aware of his acts, performed them intentionally, and did not act by mistake or accident. Proof that an offense was committed "knowingly and willfully," however, generally requires greater proof of wrongdoing. *Ratzlaf v. United States*, 510 U.S. 135, 137 (1994). This, in a prosecution involving the "knowing and willful" standard, the government must also prove that the defendant specifically intended to violate the law, a difficult standard to meet. Courts have typically interpreted the term "willfully" to require a higher degree of criminal intent than "knowingly." *E.g., United States v. Fountain*, 277 F.3d 714 (5<sup>th</sup> Cir. 2001).

The NWRAA currently utilizes a less onerous approach to create two-tiered offenses, establishing petty offenses as strict liability offenses and requiring proof that the defendant acted "knowingly" for Class A misdemeanors. 16 U.S.C. 6688d(f). Similar "knowingly and willfully" language was deleted from the Lacey Act when Congress adopted the Lacey Act Amendments of 1981. See Pub. L. No. 97-79, § 4, 95 Stat. 1074 (1981). Utilizing the NWRAA approach here would eliminate the term "willfully" from the BLM laws and merely add "knowingly" to the NPS and Forest Service laws for purposes of Class A misdemeanors, which would avoid any additional proof that the term "willfully" might require. Eliminating the willful standard will eliminate the argument that ignorance of law will excuse non-compliance with important public lands requirements. Moreover, if prosecutors must prove that the defendant acted "willfully," the practical effect may be to reduce the number of prosecutions.

Finally, if one of the goals of H.R. 3247 is to allow the agencies to recover certain costs through the disbursement of fines or collateral amounts collected to them, we would recommend that a comparable provision be inserted to allow victims, including the federal government, to obtain restitution from the perpetrators. Defendants convicted of Title 16 offenses are not specifically required to pay restitution, either mandatory or discretionary, under 18 U.S.C. 3663 or 3663A of the Federal Criminal Code that is generally applicable to many federal crimes. Instead, the sentencing court may, but is not required to, order restitution as a condition of probation, 18 U.S.C. § 3563(b)(2), or supervised release under 18 U.S.C. § 3583(d). To insure that restitution is paid, the mandatory restitution provisions of the Federal Criminal Code must include H.R. 3247's offenses. We further note that all fines and collateral amounts collected for federal crimes under this bill would not be deposited into the Crime Victims Fund as they otherwise would be under current law.

Thank you for the consideration of our views. If we can be of further assistance in this matter, please do not hesitate to contact us. The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

  
William E. Moschella  
Assistant Attorney General

cc: The Honorable Jay Inslee  
Ranking Member

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