

**PROMOTE WILDLAND FIREFIGHTER SAFETY; WATERSHED RESTORATION AND ENHANCEMENT AGREEMENTS; GATEWAY COMMUNITIES AND FEDERAL LAND MANAGEMENT PLANNING; AND LAND EXCHANGES IN THE TAHOE NATIONAL FOREST**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED NINTH CONGRESS  
SECOND SESSION  
ON

**S. 906**  
**H.R. 585**

**S. 2003**  
**H.R. 3981**

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**PROMOTE WILDLAND FIREFIGHTER SAFETY;  
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MENT AGREEMENTS; GATEWAY COMMU-  
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**WEDNESDAY, MAY 10, 2006**

U.S. SENATE,  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:30 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Larry E. Craig presiding.

**OPENING STATEMENT OF HON. LARRY E. CRAIG,  
U.S. SENATOR FROM IDAHO**

Senator CRAIG. Good afternoon, ladies and gentlemen. The Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources will be convened.

Let me welcome all of our witnesses from the Department of Agriculture and the Department of the Interior and our public witness to H.R. 585, Steve Duerr, executive director of the Jackson Hole Chamber of Commerce, along with Bob Warren, chairman of the National Alliance of Gateway Communities, from Redding, California. And I understand he has a support testifier today, in the form of a Congressman.

George? George Radanovich, welcome to the committee. We appreciate you being with us today. George is here to speak in relation to H.R. 585. That's the gateway community legislation. Of course, let the record show that Congressman Radanovich represents the 19th District of California.

We will also take testimony on S. 906, Senator Cantwell's bill to promote wildland firefighter safety; along with S. 2003, to make permanent the authorization of watershed restoration and enhancement agreements; H.R. 585, to require the Federal land managers to support, communicate, coordinate, and cooperate with designated gateway communities—I've already mentioned that one—along with H.R. 3981, to authorize the Secretary of Agriculture to carry out certain land exchanges involving small parcels of National Forest System lands in the Tahoe National Forest in the State of California, and for other purposes.

I will reserve my comments on most of these bills, but I would like to make this one comment on H.R. 585. I understand that some who are opposed to H.R. 585 believe the national parks were not set up to provide economic benefits to local communities, nor were parks intended to be these communities' exclusive playgrounds. But this bill is not just about national park gateway communities, it also addresses communities next to our national forests. I hope that we will work through the bill. All will remember what President Teddy Roosevelt told the Society of American Foresters, in 1903 at a meeting regarding the effort to form the Forest Service—he said, “And now, first and foremost, you can never afford to forget for a moment what is the object of our forest policy, for that object is not to preserve the forests because they are beautiful, even though that is good, in itself, nor is it because they are refuge for the wild creatures of wilderness, though that, too, is good, in itself, but the primary objective of our forest policy, as the land policy of the U.S. Government, is the making of prosperous homes.” That was the driving force behind the President, who created the forest preserves of our country. So, we are extremely pleased to have that bill before us.

I've been joined by some of my colleagues. And before I turn to Senator Wyden, the ranking member of this committee, to make opening comments, along with my colleague from Wyoming, I'd like to recognize Senator Wyden's long-time natural resource counsel, Sarah Bittleman, who is leaving that office to begin to work for the Governor of the State of Oregon. I have reason to question her sanity.

[Laughter.]

Senator CRAIG. Sarah, I know you have worked extremely hard for your Senator, and I appreciate the legislative progress that we have made together as I've worked with Senator Wyden and you over these last 8 years. The State of Oregon and Senator Wyden have been well represented by you and your work, and I know many of the committee join me in wishing you the best of future endeavors. Now, Sarah has been with us only 8 years, so she doesn't get a pin or a gold watch, but if Ron will throw a big party for her, I'll be happy to come.

[Laughter.]

Senator CRAIG. With that, let me turn to Senator Wyden for any opening comments he would like to make.

**STATEMENT OF HON. RON WYDEN, U.S. SENATOR  
FROM OREGON**

Senator WYDEN. Well, Mr. Chairman, thank you very much, not just for your typical courtesies as we move forward with some important bills, but particularly for singling out Sarah Bittleman.

She has been, in my view, the Bionic Woman. She has managed to be just about everywhere on natural resources issues, always working in a thoughtful and diplomatic way. And I would also note that Callie is here, and I think, between Sarah and Callie, we have had an especially professional duo. And it is one—we always say we really don't let anyone leave. Sarah is going to work for the Governor, but she is permanently going to have assignments, I think, with us, as well, as we consult with her late at night and

try to once again see if we can make magic on issues like county payments.

I think it's worth noting that between Sarah and Callie and Frank, especially, the staff folks that have handled it, we have, on Sarah's watch, been able to pass the only two pieces of major forestry legislation that have cleared the U.S. Senate in 15 years. Our good friend Senator Thomas is here. We have all watched, unfortunately, the kind of polarization and problems we've seen on natural resources, and Sarah, with Callie and Frank, have managed to cut through that and see two important pieces of legislation become law.

So, in the special bipartisan salute to Sarah Bittleman that was launched by the chairman, I want to offer my resounding thanks, as well. There will, in fact, be a Sarah party, and it will not include any 4-hour-and-40-minute speeches by me, as I was compelled to make on the oil royalty issues.

[Laughter.]

Senator WYDEN. I see that has brought great applause from Senator Thomas. But I can't think of a better way than to honor Sarah in a bipartisan way with the group that has worked so closely together over all these years. And I thank you especially for singling out Sarah, because when people talk about what's gone on in the last 15 years in natural resources, I think Sarah's name is going to be a key part of that history, and we're very, very appreciative of all of her contributions. Thank you for launching this special tribute, Mr. Chairman.

[Applause.]

Senator CRAIG. Ron, thank you very much.

Let me turn to my colleague, Senator Craig Thomas of Wyoming, for any opening comments he would like to make.

Senator THOMAS. Thank you, Mr. Chairman. I didn't realize this hearing was going to be about Sarah, so I'm not prepared.

I don't have any comments, particularly. I did want to welcome Steve Duerr, from Jackson Hole, Wyoming. I'm glad he's here today to testify on one of the bills.

Thank you very much.

Senator CRAIG. Well, thank you.

And now, with that, let us turn to Congressman Radanovich in relation to the legislation that he has sponsored through the House, H.R. 585.

George, welcome before the committee.

**STATEMENT OF HON. GEORGE RADANOVICH,  
U.S. REPRESENTATIVE FROM CALIFORNIA**

Mr. RADANOVICH. Thank you, Senator. It's a pleasure to be here today.

And, Sarah, may I wish you the best in Oregon, as well.

I'm going to make sure that my comments go in, too.

Thanks for the opportunity to come here and talk about the Gateway Communities Cooperation Act. It's H.R. 585. This bill was approved by the House on the suspension calendar last December, and it was also approved in the House in the 108th Congress.

If I can go back and describe my situation in my neck of the woods in California, I was born and raised in Mariposa, which is

right next to Yosemite National Park. It's a gateway community. And over the years, the county has had a checkered relationship with Yosemite. They cooperate, and the county provides very valuable services, like solid waste for the entire part of Yosemite National Park. There also have been times when we've had superintendents that, when they got this idea that there were too many cars in the park, the gate would shut down in the middle of the day and cause all kinds of havoc. And many times we've had superintendents—and I think that all of you who adjoin Federal lands, either forest lands or parks lands, know this—where they can pretend that the boundaries don't extend beyond the park, and give no consideration to things outside the park. Not only does this not benefit what we call the satellite communities, those small communities adjoining the park, but they do themselves, I think, a disservice, because in many—just by the proximity of some of these small towns and counties, they provide services to the Park Service and can be an asset for the development of the regional plans that the parks and Federal lands are required to do—for example, transportation, housing, many ways that satellite communities can be an asset.

So, what this legislation does is that it requires Federal agencies, when they begin their planning processes, to invite the local authorities, the local counties to participate in that planning process. They can choose not to, because it would cost them some money and effort, I think, to do that. But they are at least given the choice to begin providing information up front when Federal agencies like the Forest Service or the Park Service do begin to develop their national plans.

It's something that I think makes sense. And I would like to say that those people that might object to this, that it's—not only does it—it would help provide, I think, an economic—an ongoing, dependable economic asset to satellite communities, but also realize that satellite communities contribute a lot to the success and the planning, and can even do more to most of the Federal lands—BLM, Forest Service, and Park Service lands.

So, I would deeply appreciate the subcommittee's consideration of this bill. I would like to make myself available to answer any questions that might arise from that. I think we've got most of them hammered out, at least to be on a suspension on the House side, and would enjoy the same type of treatment on the Senate.

Senator Craig, thank you so much for bringing up this bill and allowing me to speak before you today.

[The prepared statement of Mr. Radanovich follows:]

PREPARED STATEMENT OF HON. GEORGE RADANOVICH,  
U.S. REPRESENTATIVE FROM CALIFORNIA

Thank you, Mr. Chairman—

I greatly appreciate this opportunity to testify before you today on H.R. 585. Your consideration of this measure is important to thousands of people who live in gateway communities throughout our nation.

I like to call H.R. 585 the "good neighbor act," even though its real name is the "Gateway Communities Cooperation Act." The purpose of the bill is to make certain that small communities, located just outside of federal properties, have input in the federal planning process.



This measure is critical to many of my constituents and important for numerous small communities throughout the country that are impacted by federal land planning decisions.

As someone who represents several small towns located just outside of Yosemite National Park and near the Stanislaus and Sierra National Forests, I know that—too often—these communities are left out of the federal planning process.

This bill ensures that communities serving as gateways to our nation's federal lands, including Park Service and Forest Service properties, have a voice in the federal planning process.

Gateway communities can greatly benefit or be severely harmed by the decisions of federal land managers, so it is critical that their views are heard before land managers make final decisions. This is why H.R. 585 encourages a more open discussion between federal agencies and local communities during the federal planning process.

For these reasons, Mr. Chairman, I encourage this Subcommittee to support H.R. 585, and move it favorably through the Committee process.

Senator CRAIG. George, thank you very much. I think it's a thoughtful and appropriate piece of legislation.

Are there any questions of the Congressman?

Senator WYDEN. Mr. Chairman, I want to commend the Congressman, as well. I think it's an excellent bill, and particularly for those of us in the West who see so often this situation with the Federal land managers. So often one hand doesn't know what the other hand is doing, and what you're talking about strikes me as very sensible. I commend you for it, and I'm going to do everything I can to help the legislation move.

Mr. Chairman, because we've got an intelligence meeting, I think, with your consent, let me also just say a word or two about S. 2003. You and I have worked on this for a number of years, going back to our days working with Senator Gorton on this, to try to promote watershed enhancement. It seems to me we still have strong bipartisan support for our efforts. This may be caught up in a larger bill that is coming—or is now before the Senate Agriculture Committee, and I think we should do everything we can not to see this caught up in a larger bill, and end up held up. And, if possible, I'd like us to continue to retain our bipartisan jurisdiction on it, and pass S. 2003 as soon as possible. I think we'll hear from the Forest Service about some minor kinds of changes. And if Frank and Sarah can finish that today, we'll get another bill done on Sarah's watch.

Thank you.

Senator CRAIG. Thank you.

Senator Thomas, any questions of the Congressman?

Senator THOMAS. Well, just in general, I guess, Congressman. I understand the importance of gateway communities and, of course, we have a number of those. On the other hand, we are supposed to have that relationship now, and I'm always concerned that additional laws like this might just cause more delay and more costs and so on. Are there additional requirements here? What would this require that shouldn't be happening now?

Mr. RADANOVICH. Well, nothing more than what should be happening now. I guess in my history of—long history of going through a lot of superintendents in Yosemite—and I think this can be demonstrated in any other park—you just don't know what you're going to get with a superintendent or an administration change. And while the relationship, I think, between the county, Mariposa County, and the current park superintendent is excellent, it comes

and goes. And what this does is just requires those Federal agencies to invite the local agencies to participate in the planning process from the beginning. They don't have to if they don't want to, but it requires them to make the ask. That's simply it.

Senator THOMAS. Well, I understand. I understand what you're saying. I just am a little concerned that some of the decisions we have to make now take a long time, and the more requirements that are there, the longer it takes to do these things. And a lot of people have involvement in these decisions, not just the gateways. So, I just raise the question of whether they'd require any special treatment, as opposed to everyone else.

Mr. RADANOVICH. No. No, actually, no more treatment than anybody else. It's just that they're required to make them ask. That's all.

Senator THOMAS. Thank you.

Senator CRAIG. Well, George, again, thank you very much for being with us today. We appreciate your time.

Mr. RADANOVICH. Great.

Senator CRAIG. And you can stay for the balance of the testimony, if you wish, by others. I suspect your schedule is as busy as ours.

Mr. RADANOVICH. We've got an energy mark-up over in Commerce, so I'm going to head on over there. But, Larry, I appreciate the opportunity to come over and testify on this.

Senator CRAIG. Well, go create some energy. We need it.

Mr. RADANOVICH. Yes, sir.

Senator CRAIG. Thank you.

Mr. RADANOVICH. Take care.

Senator CRAIG. We'll invite our first panel forward: Joel Holtrop, deputy chief, National Forest Systems, Department of Agriculture; and Chris Kearney, Deputy Assistant Secretary for Policy, Management and Budget, Department of Interior. Joel, we'll start with you. Please proceed.

**STATEMENT OF JOEL HOLTROP, DEPUTY CHIEF FOR THE NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE**

Mr. HOLTROP. Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today to provide the Department's views on four bills.

I submit my full testimony for the record and will provide you with this brief oral statement.

S. 906, the Wildland Firefighter Safety Act—since the Department of Interior and the Department of Agriculture work closely together in fire management, we are providing a joint statement on this bill. S. 906 requires the Secretaries to track funds expended for firefighter safety and training programs, along with additional related provisions. The Departments are concerned that a budget line item may not achieve the desired oversight of safety efforts and would carry unnecessary administrative complexities. The Departments do not consider training costs an effective means of determining a firefighter's ability to perform safely. Required training, recurrent training, required experience, and job performance cross multiple budget activities and are extremely difficult to track

at the budget line-item level. Federal and State agencies provide funding for national and advanced training academies, as well as training at more local levels. Virtually every firefighting training course includes some element of fire safety.

For these reasons, the Departments do not support S. 906 in its present form. Rather than focus on budget structure, the Departments suggest an annual report, which would focus on measurable firefighter performance and efficiency of our safety and training practices and activities, would better assist the Departments' continual improvement of safety and performance, and would provide information to Congress in its oversight capacity.

Indeed, actions are already underway to report to Congress. For fiscal year 2007, the Forest Service will report to Congress, as part of the national performance measures, the accident frequency rate for firefighter injuries during the suppression of fires under Forest Service jurisdiction.

We are taking additional action to improve tracking of firefighter safety and training measures, including requiring all firefighters to meet minimum interagency requirements for training, experience, and physical fitness to perform a specific job; implementation of a computer system which documents training, on-the-job experience and certification for each Federal firefighter; establishing a process to ensure that training by firefighting contract associations meet Federal standards; implementing new contract provisions for standardized language assessment to ensure that there are no communication barriers that would contribute to unsafe conditions; and use of the Interagency Wildland Fire Leadership Development Program, which trains firefighters and managers in leadership values through courses designed to span careers from entry level through management and leadership levels.

We believe that examining firefighter performance and safety as a whole, rather than simply tracking training costs, helps us to better assess overall quality and effectiveness of our programs. We welcome continuing oversight from Congress to help us make further progress in this area, and we believe that providing Congress an annual report on the performance and effectiveness of our overall firefighting program would produce the desired outcome.

S. 2003, the Watershed Restoration and Enhancement Agreements Act—this bill would permanently authorize the use of watershed restoration and enhancement agreements that the Forest Service has successfully used with many partners since its original enactment and subsequent reauthorizations. Commonly referred to as the Wyden Amendment, this authority has resulted in improved, maintained, and protected ecosystem conditions and increased operational effectiveness and efficiency for national forests and adjacent lands.

The Department supports enactment of S. 2003, and would like to work with the subcommittee on a short amendment to provide express authority for mutual benefit agreements as proposed by the administration.

H.R. 585, the Gateway Communities Cooperation Act—this bill has various provisions relating to the way that the Departments of the Interior and Agriculture work with communities near the borders of certain agency lands.

The Department agrees with the principles embodied by the legislation—namely, increased cooperation and collaboration with local communities in national forest management. In the past several years, we have made substantial progress in our ability to collaborate with communities, and we think that progress should be taken into account as the subcommittee considers this bill.

The administration could support H.R. 585, but only if amended. We will submit a letter with recommended amendments shortly.

The Departments would like to work with the subcommittee to continue to improve our service to gateway communities and assure that any legislation contributes to that goal.

H.R. 3981, Land Exchange in Tahoe National Forest—this bill would allow for the exchange of certain National Forest System lands in the Tahoe National Forest under the procedures of the Small Tracts Act, because its cases would not otherwise fall under the requirements of that Act. The Department is not opposed to H.R. 3981.

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

[The prepared statement of Mr. Holtrop follows:]

PREPARED STATEMENT OF JOEL HOLTROP, DEPUTY CHIEF FOR THE NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the Subcommittee: Thank you for the opportunity to appear before you today to provide the Department's views on S. 906—Wildland Firefighter Safety Act of 2005, S. 2003—Watershed Restoration and Enhancement Agreements Act of 2005, H.R. 585—Gateway Communities Cooperation Act, and H.R. 3981—involving Tahoe National Forest land exchanges. I am Joel Holtrop, Deputy Chief for the National Forest System, USDA Forest Service.

S. 906 WILDLAND FIREFIGHTER SAFETY ACT

Since the Department of the Interior and the Department of Agriculture work closely together in fire management, the two Departments are providing a joint statement on S. 906, the Wildland Firefighter Safety Act. The bill would require the Secretary of Agriculture and the Secretary of the Interior to track funds expended for firefighter safety and training programs and activities and to include a line item for such expenditures in annual budget requests. This bill would also require the Secretaries to jointly submit a report on the implementation and efficacy of wildland firefighter safety and training programs and activities to Congress each year. In addition, the bill would direct the Secretaries to ensure that any Federal contract or agreement with private entities for firefighting services requires the entity to provide firefighting training consistent with qualification standards set by the National Wildfire Coordinating Group. The Secretaries would be further directed to develop a program to monitor and enforce compliance with this contracting requirement.

The Departments are concerned that a budget line item may not achieve the desired oversight of safety efforts and would carry unnecessary administrative complexities. The Departments do not consider training costs an effective means of determining a firefighter's ability to perform safely.

Furthermore, section 2(a)(1) of bill applies only to the Secretary of the Interior with respect to public land managed by the Bureau of Land Management. It's important to recognize that wildland fire occurs not only on public lands but also on the other Federal lands administered by the Secretary of the Interior through the various other agency heads.

Required training, recurrent training, required experience, and job performance cross multiple budget activities and are extremely difficult to track at the budget line item level. Federal and state agencies provide funding for national and advanced training academies as well as training at more local levels. Virtually every firefighting training course includes some element of fire safety. For these reasons, the Departments do not support S. 906 in its present form.

Rather than focus upon budget structure, the Departments suggest that an annual report, which would focus on measurable firefighter performance and the efficacy of our safety and training practices and activities, would better assist the De-

partments' continual improvement of safety and performance and would provide information to Congress in its oversight capacity. Indeed, actions are already underway to report to Congress. For fiscal year 2007, the Forest Service will report to Congress (as part of the national performance measures) the accident frequency rate for firefighter injuries during the suppression of fires under Forest Service jurisdiction. The Department of the Interior tracks and reports the number of firefighter injuries and the amount of time lost from firefighter injuries as a proportion of all time spent firefighting. This information is reported as part of the 10-Year Comprehensive Strategy Implementation Plan for Reducing Wildland Fire Risks.

We are taking additional action to improve tracking of firefighter safety and training measures.

As this Subcommittee is aware, after the investigations of fatal fires in the last 10 years, we re-examined our safety and training policies, practices, and performance and implemented numerous significant changes. These changes have been developed in cooperation with the Occupational Safety and Health Administration, the Department of the Interior and other interagency partners through the National Wildfire Coordinating Group. In addition, an audit by the USDA Office of Inspector General (OIG) in 2004 of the Forest Service firefighter safety program and in 2006 of firefighting contract crews provided recommendations that assisted the Forest Service and the Department of the Interior agencies in identifying areas for improvement. We have made significant progress in improving safety, training, certification, accountability, and reporting.

The National Wildfire Coordinating Group (NWCG), made up of representatives from the Forest Service, Department of the Interior agencies, Tribes, and State forestry agencies, establishes minimum requirements for training, experience, physical fitness level, and currency standards for wildland fire positions. All participating agencies must meet these requirements for national mobilization. All firefighters—federal, tribal, state, local, or contract—carry a position qualifications document (known as a Red Card) that shows the firefighter has met all the training, experience, and physical fitness requirements to perform a specific job under NWCG standards. The Forest Service has augmented these standards to meet specific safety requirements for the Forest Service.

Certification of each firefighter is the responsibility of the employing agency. Firefighters must successfully complete coursework and multiple training assignments before they are certified for positions. Individual firefighters are trained to meet unit, regional and national needs. Performance based qualification standards, training courses, annual training to maintain currency, drills, and demonstrated successful performance prepare firefighters for conditions they may encounter.

I would like to give you an update of items we have improved in safety, training, certification, accountability, and reporting for firefighters and contract firefighting crews.

The Incident Qualifications Certification System (IQCS), now fully operational, responds to the need for accurate tracking of qualifications and centralized records as recommended in the 2004 USDA OIG report on firefighter safety. Training, on-the-job experience, and certification of each firefighter are documented and then added to the IQCS. Every federal firefighter must be qualified and in the system before they can be assigned by fire managers. State, local, and contract firefighters use different tracking systems.

The 2006 OIG review of crew contract firefighting programs reported the need for program oversight and gave several recommendations for improvements. As a result, experience requirements have been included in the 2006 crew contracts and qualification records were reviewed prior to contract awards. The Forest Service is working with the Pacific Northwest Coordinating Group to establish a process to ensure contract associations' training meet the National Wildfire Coordinating Group standards. Also included in the 2006 crew contracts is a provision for standardized language assessment to ensure that there are no communication barriers that would contribute to unsafe conditions. The Forest Service is coordinating with other Federal agencies to identify counterfeit documents used to obtain employment on contract crews. In addition, temporary workers—that is, workers hired on a short-term basis during an emergency—must also meet agency certification requirements.

The interagency Wildland Fire Leadership Development Program trains firefighters and managers in leadership values through a curriculum of courses designed to span the career of wildland firefighters from entry level through management and leadership levels. Individual firefighters and managers improve their leadership skills through self-directed continuing education efforts using the on-line resource ([www.fireleadership.gov](http://www.fireleadership.gov)) to prepare themselves for the decision-making demands of firefighting.

The Federal Interagency Firefighter Medical Qualifications and Standards program was developed by the Interagency Medical Standards Team under the direction of the National Fire and Aviation Executive Board. This program established medical qualifications, standards, and procedures to ensure that firefighters have an appropriate level of health and not be at unnecessary risk, or put other at risk, in performing arduous firefighter duties. The program is intended to ensure that sufficient information is available to make a medically sound judgment of whether an individual could safely perform the firefighter duties.

Mr. Chairman and members of the Subcommittee, we believe that examining firefighter performance and safety as a whole, rather than simply tracking training costs, helps us to better assess overall quality and effectiveness of our programs. We welcome continuing oversight from Congress to help us make further progress in this area, and we believe that providing Congress an annual report on the performance and efficacy of our overall firefighting program would produce the desired outcome.

S. 2003 “WATERSHED RESTORATION AND ENHANCEMENT AGREEMENTS ACT OF 2005”

This bill would amend Section 323 of the Department of the Interior and Related Agencies Appropriations Act of 1999 (commonly referred to as the “Wyden amendment”), to permanently authorize the Secretary of Agriculture to use Forest Service appropriations to enter into cooperative watershed restoration and enhancement agreements with governments or private nonprofit entities and landowners to carry out activities on NFS lands or on non-Federal lands within the same watersheds. Agreements are authorized for the protection, restoration, and enhancement of fish and wildlife habitat and other resources and/or the reduction of risk from natural disaster on public or private land to benefit resources in the watershed. The current authorization includes provisions on terms and conditions regarding technical assistance, sharing of costs, ensuring that expenditures are in the public interest, and that the public investment on non-Federal lands is protected.

The Department supports enactment of S. 2003, and would like to work with the Subcommittee on a short amendment to provide additional authority to more fully implement its provisions.

The Forest Service has successfully used the Wyden amendment since its original enactment and subsequent reauthorizations. Benefits include improved, maintained and protected ecosystem conditions through collaborative administration and implementation of projects as well as increased operational effectiveness and efficiency through coordination of efforts, services, and products to accomplish the highest priority work.

Of the many possible examples, work on the Siuslaw National Forest in Oregon illustrates the benefits of working across landscapes using this authority. Since 1998, the forest has implemented 26 projects, leveraging \$321,000 in Federal investments with \$387,000 in partner contributions to restore floodplains, riparian areas, and estuaries; install in-stream structures; monitor activities; and share information. Strategic use of this tool has brought a tremendous benefit to watersheds affecting National Forest System lands.

Two bills have been introduced in the 109th Congress that contain similar language to this provision. Last September, the Department testified in strong support of H.R. 3818, which includes authority for watershed restoration and enhancement agreements as part of a comprehensive Forest Service partnership bill. H.R. 3818, entitled the “Forest Service Partnership Enhancement Act”, was based on the Administration’s draft legislation transmitted to Congress under the same title. A similar bill, also with the same title, S. 2676, has recently been introduced by Senators Crapo and Lincoln.

These bills contain authority—not included in S. 2003—that would be important to the Forest Service’s future success to cooperatively carry out watershed restoration and enhancement agreements. That authority clarifies that watershed restoration and enhancement agreements are mutual benefit agreements. While the Department supports enactment of S. 2003, we would like the Subcommittee to consider the benefits of providing express authority for mutual benefit agreements as proposed by the Administration.

H.R. 585—GATEWAY COMMUNITIES COOPERATION ACT

This bill directs the Secretary of the Interior or the Secretary of Agriculture to: 1) solicit the involvement of gateway community leaders in the development of land use plans, programs, regulations, or other decisions that are likely to have a significant impact on gateway communities; 2) provide summary materials and, on request, offer training sessions to officials of gateway communities on meaningful par-

ticipation in development of plans, decisions, and policies; 3) on request, make available personnel to assist gateway communities in development of mutually compatible land use or management plans; 4) enter into cooperative agreements with gateway communities to coordinate the management of land use inventory, planning, and management activities; 5) coordinate plans and activities with other Federal agencies, when practicable; and 6) allow any affected gateway community the opportunity to be recognized as cooperating agencies under the National Environmental Policy Act of 1969.

While the Department agrees with the principles embodied by the legislation—namely increased cooperation and collaboration with local communities in national forest management—we can accomplish these goals under current authorities. In the past several years, we have made substantial progress in our ability to collaborate with communities, and we think that progress should be taken into account as the Subcommittee considers H.R. 585. The Administration could support H.R. 585, but only if amended. We will submit a letter with recommended amendments shortly.

This Administration strongly supports cooperative efforts, as reflected in Executive Order 13352, Facilitation of Cooperative Conservation, which calls for collaborative activity among federal, state, local, and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals. Last summer, the White House Conference on Cooperative Conservation convened stakeholders from around the nation and from all walks of life to discuss ways of facilitating collaborative work. At that conference, Secretary of Agriculture Mike Johanns affirmed that, “Conservation today is no longer about conflict. Instead, it’s about cooperation, about partnerships, about collaborative solutions from the bottom up.”

The Department is committed to building and maintaining strong, mutually beneficial relationships with communities, including full participation of communities in land management planning decisions. The National Forest Management Act, the National Environmental Policy Act, the Federal Advisory Committee Act, the Healthy Forests Restoration Act, among other statutes, provide a framework for including communities in agency planning. Resource Advisory Committees (RACs), established under the Secure Rural Schools and Community Self-Determination Act of 2000 have successfully brought together community members to use collaborative approaches to resource management. RACs are also being established to implement provisions of the Federal Lands Recreation Enhancement Act.

In addition, the Forest Service implementation the 2005 Planning Rule is improving the way it conducts land management planning. The 2005 Planning Rule emphasizes public participation and collaboration. In places where the new process is being used, communities have responded enthusiastically by joining collaborative work groups, participating in field trips and engaging at open houses.

For example, the Kootenai National Forest in western Montana and the Idaho Panhandle National Forest in northern Idaho are expected to release their proposed land management plans under the 2005 Planning Rule today. In developing this strategic vision for future land management, they convened over two hundred community-based workgroup meetings and many additional open houses and field trips. Forest Service personnel consulted with state and federal agencies as well as forty-two county commissioners, some of whom participated in the work groups. Throughout the process, government-to-government consultation occurred with seven Indian tribes. There will always be diverse opinions about the future of public lands, but we have already seen the benefits of facilitating interaction of stakeholders at the same table, working through issues together.

We currently have authority to take actions covered by this bill. Section 2(d)(7), for example, would allow any affected gateway community the opportunity to be recognized as a “cooperating agency” under the National Environmental Policy Act. The Departments currently have authority to designate cooperating agencies, under Council on Environmental Quality regulations (at 40 CFR 1501.6). These regulations specify that the cooperating agency must have jurisdiction by law or special expertise. A cooperating agency has specific responsibilities for contributing to the environmental analysis process.

The Department welcomes the opportunity to better coordinate our planning efforts with those of gateway communities. Better coordination would complement the goals of public land management to maintain healthy and sustainable ecosystems for current and future generations. We have made progress in actively pursuing collaboration with all communities of interest and place under our current authorities. Some of the provisions of the bill may have the unintended consequence of diminishing our ability to collaborate with a wide array of stakeholders. For example, providing special status to one community and not another could result in the appearance of differential treatment for affected communities.

Forest Service Chief Dale Bosworth has made it his goal to reduce what he has termed "process predicament". We are concerned that H.R. 585 could create additional process, and we would like to work with the Subcommittee to avoid this outcome.

The Departments would like to work with the Subcommittee to continue to improve our service to gateway communities and assure that any legislation contributes to that goal.

H.R. 3981—LAND EXCHANGE TAHOE NATIONAL FOREST

The Department is not opposed to H.R. 3981.

H.R. 3981 would allow for the exchange of National Forest System lands (NFS) on the Tahoe National Forest with lands of the Christensen and McCreary families. The proposed exchanges are not authorized under the Small Tracts Act because, in one case the family's tract does not meet the law's requirements of innocent encroachment and in the other case the family's tract does not qualify as a mineral survey fraction.

The Christensen exchange would involve seven acres of non-federal lands being exchanged for seven acres of federal lands. Both parcels are located within the North Yuba River Corridor.

The McCreary exchange would involve less than one acre of non-federal land being exchanged for less than one-acre of federal land. Both parcels are located adjacent to the town of Downieville, California. The non-federal parcel would provide valuable public trail access along the North Yuba River, if acquired by the Forest Service.

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

Senator CRAIG. Joel, thank you very much.

We've just been joined by our colleague, Maria Cantwell. Would you wish to make any opening comment or comments in relation to any of the bills, especially S. 906, before we proceed?

Senator CANTWELL. Mr. Chairman, I'll just get right to questions whenever appropriate.

Senator CRAIG. Thank you very much.

Now we'll turn to you. Chris, please proceed.

**STATEMENT OF CHRIS KEARNEY, DEPUTY ASSISTANT SECRETARY FOR POLICY, MANAGEMENT AND BUDGET, DEPARTMENT OF THE INTERIOR**

Mr. KEARNEY. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, good afternoon. Thank you for the opportunity to present the Department's views on H.R. 585, the Gateway Communities Cooperation Act.

The administration could support H.R. 585, but only if amended to address concerns that we've described in our testimony. We strongly support the bill's goals to promote communication, cooperation, and coordination between Federal land management Bureaus and the local communities that may be affected by the decisions of those Bureaus, but we'd like to work with the subcommittee to ensure that these goals are achievable and accomplished in an effective and efficient manner. We'll be submitting a letter jointly with the Forest Service with those recommendations shortly.

H.R. 585, among other things, would require Federal agencies to involve officials from impacted communities early in the development of Federal plans, programs, regulations, and decisions, and provide local officials with plain-English summaries of those assumptions, purposes, goals, and objectives of decisions and any anticipated impacts on the communities. It would also further authorize cooperative agreements and require greater coordination among



the agencies in engaging gateway communities in their planning process.

We realize that the resource management decisions we make can greatly impact local communities and the people who live in them. Often, these impacts are especially felt by gateway communities, including those on tribal trust land, and are adjacent to our Federal lands. As a result, we realize that we must work in partnership with the people who live on the private land and tribal lands that border our parks, our refuges, and other Federal lands, and work on—and who also work on those lands or who have access to resources on them.

Mutual benefits flow from cooperating with these communities. Gateway communities often take on additional infrastructure and environmental duties that come with visitors headed to nearby Federal lands. Additionally, some of these communities may also incur costs for additional services, such as law enforcement, search and rescue, public works. These additional costs, however, may also be offset by the increased employment income and tax revenue.

Given this close relationship with gateway communities, the Department and the Bureaus have made it a priority to ensure that we are actively working to engage those communities in our planning process.

I'd like to take a moment to share with you the collaborative practice of BLM, the Fish and Wildlife Service, and the Park Service, as well as some—just an example or two of some of the successful projects we've undertaken in collaboration with those communities.

Under current practice, the agencies and the—all the Department Bureaus already invite State, tribal, and local entities, in addition to Federal agencies, to participate as cooperating agencies during development of environmental impact statements under NEPA. Our departmental guidance sets forth the requirement to invite the participation of these entities, along with more specific guidance on the establishment of the relationship, including the development of a memorandum of understanding concerning respective roles, assignment of issues, schedules, and staff assignments.

The Department incorporates this requirement in guidance for application to all Bureaus in June 2005, shortly after BLM became the first Federal agency to promulgate land-use planning regs into requiring invitations to eligible gateway communities to participate as cooperating agencies and for environmental impact statements for land-use plans.

One quick example of a gateway community project that BLM's been involved in is in the gateway community of Sonoita, Arizona. Local citizens formed the Sonoita Valley Planning Partnership, which developed visions, goals, and desired future conditions for the areas. BLM then incorporated those objectives as the foundation for the resource management plan, thus providing the community with the means to articulate and achieve its goals through the management of the natural conservation area.

The Park Service and the Fish and Wildlife Service also have examples that are included in my testimony, which I won't get into, which also illustrates some of the success stories we've had with cooperating with local communities.

Through many of these efforts—these and other efforts, the Department is working to ensure that all of its management and policy decisions are made using a collaborative approach. While we believe that it can positively promote this goal to more effectively communicate, coordinate, and cooperate with gateway communities, we do have a few concerns, as well as technical concerns. And, in the interest of time, as I say, I will not get into them now, except to say—I’ll highlight one, for example, where we think the definition of “gateway community” could be better defined and clarified and strengthened a bit.

It is also worth noting that there are other areas throughout the bill, as it relates to technical assistance and other matters that the bill touches on, that we think, in working with the subcommittee, we could address those issues and reach a mutual agreed conclusion.

Thank you, Mr. Chairman, for your time this afternoon.  
[The prepared statement of Mr. Kearney follows:]

PREPARED STATEMENT OF CHRISTOPHER KEARNEY, DEPUTY ASSISTANT SECRETARY  
FOR POLICY, MANAGEMENT AND BUDGET, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to present the Department of Interior’s views on H.R. 585, the “Gateway Communities Cooperation Act.”

The Administration could support H.R. 585, but only if amended to address concerns cited below. We strongly support the bill’s goals to promote communication, cooperation, and coordination between federal land management bureaus and the local communities that may be affected by the decisions of those bureaus, but would like to work with the Subcommittee to ensure that these goals are achievable and accomplished in an effective and efficient manner. We will submit a letter with recommended amendments shortly.

H.R. 585 would require federal agencies to involve officials from impacted communities early in the development of federal plans, programs, regulations and decisions and to provide local officials with plain-English summaries of the assumptions, purposes, goals, and objectives of decisions, and any anticipated impacts on the community. H.R. 585 would require the Secretary to provide training sessions on agency planning processes and participation opportunities and to make available federal personnel to assist gateway communities in the development of land use plans. H.R. 585 would further authorize cooperative agreements and require greater coordination among federal agencies in engaging gateway communities in their planning processes. Finally, H.R. 585 would direct the Secretary to allow gateway communities “the opportunity to be recognized” as cooperating agencies under the National Environmental Policy Act (NEPA).

The Department’s bureaus manage more than one out of every five acres of land in the United States, with most of these lands in the West. For example, the Department manages 72 percent of Nevada, almost 50 percent of Utah, and 62 percent of Alaska. Lands under our jurisdiction include vast multiple-use areas, and our bureaus host almost half a billion visitors a year, creating economic engines for communities across the country.

Population growth and economic expansion have increased pressures on our undeveloped land, water resources, and wildlife. While countless species depend on the land to sustain life, families depend on the land for community and economic well-being. We realize that the resource management decisions we make can greatly impact local communities and the people who live in them. Often these impacts are especially felt by “gateway” communities—including those on Tribal Trust Lands—that are adjacent to our federal lands. As a result, we realize that we must work in partnership with the people who live on the private and tribal lands that border our National Parks, National Wildlife Refuges, and other federal lands, and work on those lands or have access to resources on those lands.

Mutual benefits flow from cooperating with these communities. Gateway communities often take on the additional infrastructure and environmental duties that come with visitors headed to nearby federal lands. This has the effect of reducing the pressure on federal resources while stimulating gateway economic growth and creating jobs in those communities. For example, according to a study entitled,

*Banking on Nature 2004: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation*, nearly 37 million people visited national wildlife refuges in 2004, creating almost 24,000 private sector jobs and producing about \$454 million in employment income. Recreational spending on refuges generated nearly \$151 million in tax revenue at the local, county, state and federal level. Some of these communities experience unusual pressures and problems brought about by their popularity as entry points for visitors onto federal lands. Additionally, some of these communities may also incur costs for additional services such as law enforcement, search and rescue, and public works. These additional costs, however, may be offset by the increased employment income and tax revenue.

Given this close relationship with gateway communities, the Department and the bureaus have made it a priority to ensure that we are actively working to engage gateway communities in our planning processes. We would like to share with you the collaborative practice of the Bureau of Land Management (BLM), the National Park Service (NPS) and the U.S. Fish and Wildlife Service (FWS) as well as some specific examples of successful projects undertaken in collaboration with gateway communities.

Under current practice, the BLM, the NPS, and the FWS and all of the Department bureaus already invite state, tribal, and local entities, in addition to federal agencies, to participate as cooperating agencies during development of an environmental impact statement under NEPA. Existing Department-wide guidance at 516 DM 2.5 (Departmental Manual) sets forth the requirement to invite the participation of these entities, along with more specific guidance on the establishment of the relationship, including the development of a memorandum of understanding concerning respective roles, assignment of issues, schedules, and staff commitments. The Department incorporated this requirement and guidance for application to all bureaus in June 2005, shortly after the BLM became the first federal agency to promulgate land use planning regulations requiring invitations to eligible gateway communities to participate as cooperating agencies on environmental impact statements for land use plans. The Council on Environmental Quality (CEQ) regulations and guidance are utilized by all federal agencies to engage the participation by state, tribal, and local entities as cooperating entities during the NEPA process.

Through collaboration and partnerships, the BLM determines how best to manage public lands to meet the needs of both local communities and the Nation as a whole through the planning process. This entails the BLM working with individuals, communities, and governments from the earliest stages and continuing through the land use planning process to address common needs and goals within the planning areas.

Some examples of how the BLM has successfully worked with gateway communities include the following:

- *The Sand Flats Agreement*—Under a 1994 agreement among the BLM, Grand County, and the state of Utah concerning a 7,000 acre recreational area outside Moab, Utah, fee collection was turned over to the county, and the receipts were made available to the county for use in managing, providing educational services, and policing the highly popular recreational area. The BLM and its visitors have a signature recreation area, and the county has been able to control tourism in a way compatible with the wishes of its local citizens. The agreement has also resulted in a more vigorous tourist trade to benefit the local economy.
- *Las Cienegas National Conservation Area*—In the gateway community of Sonoita, Arizona, local citizens formed the Sonoita Valley Planning Partnership (SVPP), which developed visions, goals and desired future conditions for the area. BLM then incorporated the SVPP objectives as the foundation for the Las Cienegas Resource Management Plan (2003), thus providing the community with the means to articulate and achieve its goals through the NCA's management.

The NPS also emphasizes participation of communities in the wide variety of planning efforts it undertakes. During development and updates of each park unit's General Management Plan, NPS typically initiates the process by engaging in extensive outreach with affected communities by such means as giving presentations at civic group meetings and holding open houses. The NPS has produced a video that is often used at the meetings to explain the planning process. When NPS undertakes studies that have been authorized by Congress, such as studies of potential new park units, national trails, wild and scenic rivers, and national heritage areas, NPS engages all interested entities, including local communities, in a highly collaborative public process in effort to identify the best alternatives for preserving, managing, and interpreting resources. These efforts are consistent with Director's Order 75A, Civic Engagement and Public Involvement (strengthened and reissued in

2003), which recognizes the strong interest of gateway communities in NPS actions and articulates our commitment to collaborating with interested parties.

Some examples of how the NPS has successfully worked with gateway communities include the following:

- *Zion National Park*—Zion National Park and the gateway community of Springdale, Utah have established a mutually beneficial partnership through the creation of the Zion/Springdale transportation system. The system has enabled the town to draw customers to local businesses by providing parking and shuttle stops outside the park and has provided the park the benefits of decreased traffic congestion and pollution.
- *Grand Teton National Park*—Grand Teton National Park and the gateway community of Jackson Hole and Teton County, Wyoming partner for search and rescue, major disaster and fire response. The park also collaborated with the chamber of commerce on a branding and marketing program called “Respecting the Power of Place,” which reinforces a commitment to foster both conservation and commerce in the Jackson Hole area.

Through a highly collaborative process, the FWS is currently working to complete Comprehensive Conservation Plans (CCP) for 517 National Wildlife Refuges and 37 Wetland Management Districts by 2012, as mandated under *The National Wildlife Refuge Improvement Act of 1997*.

A CCP provides a vision for the next 15 years and ensures that each unit is managed to fulfill its individual purpose and the National Wildlife Refuge System mission. CCPs examine opportunities for facilitating compatible wildlife-dependent recreation, such as hunting, fishing, wildlife observation and environmental education. CCPs use sound science to establish achievable goals, objectives, and outcomes. FWS had completed CCPs for 107 of 554 refuge and wetland management units as of September 30, 2005 and expected to complete CCPs for 92 units in FY 2006 and 49 units in FY 2007.

The FWS has integrated community and public participation into the CCP process. Prior to and during preparation of a CCP, FWS seeks and subsequently analyzes comments and concerns from federal, tribal, state, and local governments and private landowners concerning land management issues that may impact or relate to the refuge. A draft CCP is released to the public for comment, with copies provided to the interested entities. The FWS reviews and analyzes the comments, and a final CCP is released to the public. Following the adoption of a final CCP, FWS continues to improve and update the plans through annual reviews.

Some examples of how FWS has successfully worked with gateway communities and some of their over 200 Friends groups include:

- *J.N. “Ding” Darling National Wildlife Refuge*—The Refuge, the Ding Darling Wildlife Society (Society), the City of Sanibel, Lee County, and other interested entities work together on a variety of efforts that result in better services for the more than 850,000 visitors to the refuge. Such collaborative efforts range from addressing water quality issues on the island, Ding Darling Days, and developing and constructing the state-of-the-art education center on the refuge.
- *Bosque del Apache Refuge*—The Refuge and the Friends of Bosque Del Apache Refuge have worked closely with the City of Socorro, New Mexico for 18 years to produce the highly attended “The Festival of the Cranes.” This refuge based event celebrates the annual return of the sandhill cranes and numerous other species of birds that come to the refuge for the winter.

Through these and many other efforts, the Department is working to ensure that all of its management and policy decisions are made using a collaborative approach.

While the Department believes that H.R. 585 can positively promote this goal to more effectively communicate, coordinate, and cooperate with gateway communities, we do have a few concerns as well as technical issues with the bill. To address these issues, we plan to work with the U.S. Forest Service on a followup letter to the Subcommittee with specific suggested amendments that we believe will strengthen and clarify the bill. We would like to briefly highlight some of our concerns with H.R. 585.

First, we are concerned about the definition provided for gateway communities in section 2(c)(1) and believe it could be strengthened. As drafted, it is not clear what constitutes a gateway community, and it could vary greatly depending on the state in which the gateway community is located. The head of the tourism office for the state also may not be the appropriate individual to make the determination of whether a community is significantly affected—particularly if the management decisions involve land uses that do not involve recreation. For these reasons, we strongly recommend an amendment to provide that the Secretary, in consultation with the

state, determines whether a local government constitutes a gateway community for the purposes of this bill. The amendment would clarify that the relevant Secretary has the responsibility to ensure that similarly affected communities in different states are provided with similar opportunities. It also would ensure that the bill does not limit consultation to a state tourism office, but allows for consultation with the appropriate state contact, depending on the circumstances.

Second, we recommend revisions to section 2(d)(3), which mandates the Secretary to provide training sessions at the request of the gateway community. We believe it is important to improve communication and provide clear information about agency processes and opportunities to participate in planning. However, this section is too restrictive. We believe that the level of knowledge about an agency's planning process can vary greatly from community to community. We suggest language that would allow for the flexibility of providing a variety of training materials and tailoring the federal response to the gateway community's request depending on the level of familiarity particular officials have in federal planning processes. For example, in some situations, an official may prefer to be provided written summaries of the planning process and the opportunities to participate rather than receive formal training sessions.

Third, we are concerned about the provision in section 2(d)(4), which mandates that federal personnel take temporary work details to gateway communities to assist with planning efforts. We would like to work with the Subcommittee to find effective ways to provide assistance. The provision could entail not only federal planning efforts but state and local planning efforts. We believe this provision is not feasible, could result in competition among gateway communities for limited federal personnel, and could result in significant delays of federal projects as federal personnel are diverted from their planning duties. BLM estimates that approximately 4,000 communities are within, abut, or are adjacent to significant BLM-managed areas. The number of gateway communities that would be eligible to make the request for technical assistance is likely to far exceed the number of federal planning experts who would be available in the field offices to provide the assistance. In a time of austere budgets, federal agencies must focus limited resources on effectively managing our current responsibilities.

Fourth, we believe that the process for communicating an interest in participating as a cooperating agency and the guidelines for such participation in section 2(d)(7) is unclear, as drafted. We suggest an amendment that delineates the process by which the Secretary would notify potentially interested communities of a land use planning issue and by which a gateway community would communicate with the Secretary its interest in participating as a cooperating agency. During development of land management plans, Department bureaus already regularly offer affected states, tribes, and localities participation as cooperating agencies, and the CEQ regulations and guidance, the Department Manual and some agency regulations and guidance include procedures for such engagement. Thus, we suggest an amendment to ensure that these same authorities, in addition to NEPA, guide participation by gateway communities. We also would like to further discuss whether this section may be more appropriately incorporated into other sections that more generally address the engagement of gateway communities.

Looking back, one of the ideas behind the National Environmental Policy Act was that informed decision-making would result in the making of better decisions. The Department believes that H.R. 585, if amended as described in this testimony, can promote improved land management decisions accruing to the benefit of private and public lands and the people who live and work on them. Peaceful problem-solving and partnerships are keys to good land management. H.R. 585 promotes this through better communication, coordination, and cooperation between federal land and gateway communities and their citizens. We appreciate the opportunity to present these suggested amendments and look forward to working with the Subcommittee further on this important bill.

Mr. Chairman, this concludes my statement. I am happy to answer any questions you or other members of the Subcommittee may have.

Senator CRAIG. Chris, thank you.

Thank you both for your testimony. Let me begin the questioning.

Specific to H.R. 585, the gateway communities, I'm going to ask this question, or questions, of both of you, to get your reaction. Why do you think these communities have pushed for legislation to force agencies to establish neighborly relationships with them?

Chris?

Mr. KEARNEY. I guess I would answer that by saying, well, our approach to working with communities has been pretty comprehensive, in terms of gateways and other communities across the country, under the broad-banner approach we have had to cooperative conservation, and cooperative conservation efforts, most recently noted in the President's Executive Order on Cooperative Conservation, which was issued in 2004, which was also followed up by a very successful White House Conference on Cooperative Conservation in which folks from across the country came together and shared examples and success stories of work with Federal agencies in partnership and collaboration, but which also had challenges remaining, and that would—provided a great platform for it.

In recent years, in that spirit, we have undertaken a number of efforts to ensure that we are working in collaboration and partnership with communities, with States, with tribes, and an array of folks that are affected by our work.

A couple of examples I would highlight for you that folks may not be away of is that we offer training programs, particularly the BLM, that are provided for Federal managers and for local community representatives on how to do partnering, and how to engage in collaboration, and deal in tools associated with negotiating and coming to consensus and agreement, that allow them to draw out the issues associated with consensus, and how to get to a consensus. This has been met with a great deal of success by the BLM communities and others, and that program continues to be expanded.

A second recent example is something that came out of the White House Conference that each of the five agencies that sponsored it highlighted, which is essentially seeking to change, fundamentally, how we train, reward, and—train, reward, and hire individuals with respect to the area of collaboration and cooperation, a forestry partnership approach to partnership. For example, we are working to add behavioral characteristics of individuals in both—for purposes of promotion and in hiring that take into consideration their experience and ability to do—efforts in the area of partnership and collaboration that they've done, not simply—in addition to education. Typically, what happens is, you look at someone in terms of hiring with an eye toward their strict educational background or when they're being promoted, and how many years in that position. We're actively working now, the agencies are, to establish a process by which we'll take into consideration how they actually—what kind of activities they've engaged in or have the skills set to—in the area of collaboration and partnership.

Another important area of things that we've done is we've also expanded, dramatically, our cooperative conservation-oriented grants. There's been about a 50-percent increase in those grants in the past 5 years. Many of those grants, such as the Partners for Fish and Wildlife and others, focus on partnerships and matching dollars and collaboration with local communities and the like in carrying out conservation projects.

Probably one of the—another example that I'd highlight in some detail, if given the opportunity, has to do with some of the matters related to training.

So, I think those and other activities we engage in have really improved and expanded the relationship we have with communities and others. We certainly think there always could be more work to do. There certainly have been areas and challenges in the past where there have been times where the agencies have been somewhat inward-looking. And we realize that there are still challenges, but we think we're moving in the right direction administratively, and that this bill, if reflecting the changes we talked about, can be another tool in the toolkit, if you will, of advancing our efforts toward cooperative conservation approaches.

Senator CRAIG. OK. Joel, anything you'd wish to add to that? That was a fairly comprehensive answer, at least from the Department of the Interior.

Mr. HOLTROP. It is. And I'll just add, briefly, that—maybe just a couple of things from the Forest Service's perspective which add to the things that Mr. Kearney has already mentioned.

One is, we also feel like we have improved our ability to work with communities. And it's something that we have been stressing over time. As the Department of the Interior just stated, even as we go through the process of selecting who are going to be our district rangers, who are going to be our forest supervisors, one of the most important criteria that we use to make those are their abilities and their skills in community relations and their obvious inclination toward working with communities. And we think we're doing better at that.

We also have a new planning rule that was established in 2005 which stresses community outreach and community involvement in our planning process. And today, as we speak, two forest plans—one, the Kootenai National Forest in northwest Montana, and the other, the Idaho Panhandle National Forest, in northern Idaho—are both coming out with their proposed plan under the 2005 planning rule. And those plans represent over 200 public community workshops and working with community leaders such as county commissioners and others. I think those are reflective of the types of progress that we're making, and that type of progress, I think, again, should inform our discussions and our thoughts about this piece of legislation.

Senator CRAIG. Thank you both.

Let me turn to my colleague from Wyoming, Senator Thomas.

Craig?

Senator THOMAS. I guess I just would say, again, as I think I said before, I certainly promote and want to work for the coordination, but I don't want to pass bills that aren't necessary. Do you think we need this bill to finish this job?

Mr. KEARNEY. I think with the kinds of changes we have talked about, clarification of what the definition of a "gateway community" is, where an agency and the State would come to an agreement on what that is—because there are a lot of issues and factors that go into gateway community and what it is, and so forth, that, among other things, would add, sort of, to that toolkit, if you will. But I think we share, in spades, your view of not—ensuring that we don't pass unnecessary legislation or add processes that we don't need to. We're looking to streamline and consolidate and make our efforts to outreach with communities more effective, not less so.

Mr. HOLTROP. Again, I don't have much to add to that, other than to also acknowledge that the spirit of this legislation is one that we certainly agree with. And anytime that there is a tool that can be added, that would help us be more responsive to our—in our interrelationships with communities, that's an—it's an important thing for us. We do believe that we have a lot of authorities, a lot of tools, and a lot of will to do that. With our given authorities, if a piece of legislation would improve our opportunities to do that without getting in the way of us being able to—

Senator THOMAS. Well, that's what we're asking you.

Mr. HOLTROP [continuing]. Make the progress we want to make, that's what we want to watch for.

Senator THOMAS. We're asking you that. Is that the case?

Mr. HOLTROP. Again, we are going to be proposing some amendments to this legislation that we think would address the concerns that we have.

Senator THOMAS. OK, thank you.

Senator CRAIG. Senator Cantwell, questions of the panel?

Senator CANTWELL. Thank you, Mr. Chairman. And thank you for scheduling this hearing.

Mr. Holtrop, thank you for being here, and thank you for your testimony. I have had a chance to review most of it. I am so sorry for getting here late for the oral presentation of that. But in your testimony, you say that you're supportive of reporting requirements as it relates to S. 906, and that it's just a matter of—you might have different requirements in reporting provisions. What are you thinking about, as far as the reporting requirement?

Mr. HOLTROP. What we're proposing is reporting requirements that are comprehensive in nature, that talk about, "What are the outcomes?" and "What are the results of the work that we have done, in terms of improving our fire safety programs, in terms of improving the training related to fire management?", and that we would report on what progress has been made. For instance, we have information now available to us that we did not have in the past because of our response to some of the previous Inspector General reports, et cetera, that we have been responding to, that we now have the ability to provide information on the number of firefighter injuries that have occurred in a season, or close calls and things like that. And we believe that we can report, at the end of the season, to this committee, the types of progress that we have made, the types of trends that we're having, that we think would be effective in helping us manage our overall safety program in fire, and help you do the appropriate oversight.

Senator CANTWELL. So, outcomes, specifically. Is there anything else that you're—

Mr. HOLTROP. There are—I mean, there's a lot of detail associated with that, that I think that we could provide. And I think we can continue to look for additional things that ought to be provided to make sure that the objectives that we share, such as providing for a safer fire management program, that we're meeting that. So, I think, again, trends, what has happened, in terms of what has happened on the fireline, what has happened in terms of occurrences as the year progresses, that's the type of thing that we're talking about.



Senator CANTWELL. One of the things that the Inspector General report focused on was the wildland firefighters. I think it was  $\frac{1}{3}$  of the contract firefighters, they believe, did not meet the National Wildfire Coordinating Group standards. In fact, they found that the Forest Service really didn't have a good procedure to review those qualifications and records. Do you see this as a hole in the process? And do you think that the Forest Service is putting a plan in place, long term, to monitor the contract work and the success of that contract work?

Mr. HOLTROP. I do. In March 2006, the Office of the Inspector General completed their review of our crew contract firefighting programs, and they had five recommendations for us. And we agreed that if we were to respond positively to each of those recommendations, we would be responding, as appropriately, to making sure that our contract crews were meeting the types of safety requirements, the same requirements that we require of our hired firefighters, that we would be requiring the same things of our crews. We believe that we are responding positively to each of those recommendations and are confident that that will help us.

Senator CANTWELL. And this would be something that you would also monitor and report on, the efficiencies of those contracts and successes and—

Mr. HOLTROP. Yes.

Senator CANTWELL. I'm perplexed over the aspect of this legislation where we would like to track the amount of money that's actually being spent on training. And the reason that we're interested in this is, we want to make sure that we understand dollars to support the training effort, what we're spending, that it doesn't—that it's not a category that gets shortchanged. I think at one point in time we even got a number that was something like \$29 million over the last several years had been spent on this effort. But that's one aspect of the bill you don't support, and it's one aspect that I think I've gone around with Secretary Rey many, many times on, trying to get access to that information. And in your testimony, you say you don't consider training costs as an effective means of understanding this issue.

And so, when I think of the complexity of budgets that we have on so many fronts, when I think of the Hanford clean-up or nuclear waste, other things that our Energy Committee has to deal with, I think those are—that's complex. What's so complex about tracking both the contract work and the investment in training dollars for the noncontract firefighters? I still don't understand why this is such a hard thing for the agency to just say, "This is what we're spending on training and education."

Mr. HOLTROP. I'll try to respond to that helpfully. Before I do so, I want to express that, as somebody who has been intimately involved in the follow-up to some of these fire fatalities, including speaking at the dedication ceremony on the 1-year anniversary of the Thirty Mile Fire, and speaking to the families of the victims of that—

Senator CANTWELL. Thank you for doing that. We appreciate it.

Mr. HOLTROP. It was an honor to be able to do so, and it was—and in that event, I felt like I made a commitment to those families that we would learn from the experiences that their children and

their siblings and their spouses had experienced, that we would learn, and we would never forget the sacrifices that they made.

And so, I also want to say that I appreciate your persistence in this, and your dedication to also finding a way to make sure that the outcome of this is something—that we have a safer firefighting organization. I'm also a father of a firefighter. My daughter fights fires and will be leaving later this month to do the same thing. And so, from that perspective, I also appreciate that, and I want you to know that I appreciate it a great deal.

So, I think we have the same objectives in mind, and I think we both care about it deeply. I think it's just a question of what is the right means to take, in order to reach the objective that we share.

I think the concern that we have over the tracking of things such as training costs and safety training costs is safety is integral to everything that we do in firefighting. Every one of our training programs is replete with safety. There are questions that we would ask around—the reason we have a system that provides for—these are the requirements we have for what an engine is and what it takes—what are your requirements for operating that engine. The reason we do that is, there's safety associated with knowing what we get when we order an engine. When we get additional communication equipment, there's reasons that we get additional communication equipment. Those are safety related. It's hard for us to tease out safety from the overall basic work that we do in fire management. So, that's one of the concerns that we have.

There are also—and so, the difficulties there—

Senator CANTWELL. Mr. Holtrop, if we modified that word to make sure that we're adequately characterizing what we're looking for—because, yes, there's, I'm sure, communication and safety that goes on every day, but we're trying to look at the basic programs that are structured around getting the young men and women ready and prepared to do this task, which is, you know, often a very dangerous task. And we appreciate the efforts of people that are involved, but we also want them to be well trained and well supported. And so, I think what we're looking for is a ballpark number, not every aspect—I don't know that you'd ever come before this committee, or at least not from this Senator, and hear, "Well, wait a minute, you didn't include, you know, this aspect of day-to-day communications." What we're trying to—I think, because of Storm King, because of Thirty Mile, because of the IG's report, and saying that these are the habitual issues—that you might have commands, but are the commands really being followed, and are they really being implemented in a way that we have young men and women really being at the level of expertise that we need them to be?

And we've heard, again, many examples of the implementation and the improvement, but I think what we're trying to avoid is getting to another situation again where we find out the same aspects of those "watch out" rules are being missed or being violated. And if we have—and there's no guarantees in this. I think this committee has a great deal of knowledge and background about how challenging this business is, just from the very beginning. But what we're trying to say is, we know that we have—we're improving on that "watch out" list and exactly the—we have a program

in place for those situations, when extreme situations flare up and things go from just a day-to-day situation of fighting fires to a very high-level, very complex fire, and catch people who may not be as trained and educated on those challenges and those “watch out” rules.

Mr. HOLTROP. Right.

Senator CANTWELL. That’s what we’re really trying to do, make sure that we’ve got this down, and that we are making that investment.

Mr. HOLTROP. Well, I think you have correctly assessed our most dangerous situations, those transitional fires, when a fire goes from being something that doesn’t appear to be as dangerous to a dangerous situation very quickly.

Again, I think there are two additional reservations that I feel around this issue. One is the amount of time, the administrative time it would take to track those additional items around safety and training on a case-by-case basis. Our current financial systems—we’re actually geared toward trying to compress the number of line items in the—that we’re managing in order to improve our financial tracking abilities. This would move in the opposite direction of that. And so, our current financial systems, our record-keeping systems, are not equipped to deal with it. It’s something that we can get to the point of being equipped to deal with it, but it would take extensive effort to do so. And, again, the question that we have is, are we focusing on the most effective means to assure that we’re accomplishing our shared objective?

The other concern I would have with a line item is, the way we currently accomplish our safety and our fire training is, we’re able to do our safety training out of our fire preparedness account or out of our fire suppression account, et cetera. If we were to have a separate line item for fire safety and training, I have a fear that it might, in fact, become more of a cap on how much we can spend, rather than a floor, a base level of what we would spend on it, because, say, at the end of the year, if we had—if 30 million is the right number, and, come September, we have a set of fire situations in which we need to bring in military crews or something, and we want to do some additional fire training under appropriation integrity rules, we’d have to figure out a way to be able to fund the training; whereas, currently, we’d be able to do so from either preparedness or suppression.

Senator CANTWELL. Well, Mr. Holtrop, I know my time is up. I’m going to take you at your word and work with you to see if we can get this language in a way that you will be supportive of, because somehow I just think there has to be a way to do this. And I think just about every agency in the Government has to outline some of these issues. So, let’s work together and try to figure this out.

Mr. HOLTROP. Thank you.

Senator CRAIG. And I do hope you would work with the Senator. I think all of us are concerned when life is lost. I certainly know that the appropriate training, preparedness, alertness, all of those things in combination are well understood, because, with the best of training under the worst of environments, sometimes it doesn’t work the way we would want it to, but the greater chance of life-saving efforts is at hand, if they’re well trained.

Joel, I have some additional questions as it relates to land exchanges. I'm going to submit those to you for the record and ask for some more information. And that is in relation also to the Tahoe National Forest Land Exchange.

We've got another panelist who is time-sensitive to a plane, so we're going to ask you to stand down. We thank you both, Joel and Chris, for being with us today and we appreciate your testimony.

Now, let us invite Steve Duerr and Bob Warren to the table. Steve, I understand it's you who are time sensitive to an aircraft.

Mr. DUERR. Yes, Senator.

Senator CRAIG. All right. We're going to start with you, Steve Duerr, former executive director, Jackson Hole Chamber of Commerce, Jackson Hole, Wyoming.

Mr. DUERR. Thank you, Senator—

Senator CRAIG. But, first, does your Senator wish to make any additional comment?

Senator THOMAS. No, go right ahead. I've already recognized him.

Senator CRAIG. All right.

Senator THOMAS I'm delighted that he's here.

Senator CRAIG. Please proceed, Steve.

**STATEMENT OF STEVE DUERR, FORMER EXECUTIVE DIRECTOR, JACKSON HOLE CHAMBER OF COMMERCE, JACKSON, WY**

Mr. DUERR. Thank you, Senator. And thank you, Senator Thomas.

I want to make clear up front that, as you corrected for the record, I'm the former executive director of the Jackson Hole Ski Corporation—or, excuse me, the Jackson Hole Chamber of Commerce, having recently resigned to return to my private law practice. So, I'm here as a citizen lawyer who has worked on these issues for probably 20 years. And, by relevant background, let me just say that for about 7 years, I was general counsel to the vice president at the Jackson Hole Ski Corporation, working on Forest Service permit matters and development issues in Jackson Hole. For a long time, I was in private practice, working on development issues, and I'm presently in my 17th year as general counsel for the electric and gas cooperative in the southern Greater Yellowstone—part of Idaho, part of Wyoming—working on national park and forests and BLM easements and other land-use matters, and that, as I mentioned, for the last 7 years I've been the director of the Jackson Hole Chamber of Commerce.

Teton County, WY, has only 3 percent private land, so you can imagine the significance of the National Elk Refuge, the national parks, and the national forests to the economy of Teton County.

Our vision for the Chamber of Commerce is a community that works. And, in that context, a community that works is one that takes a multiple-use approach to the use of natural resources, and every day you go to work trying to strike the right balance between commerce and conservation.

But I'm not here representing any of those entities or clients or interests, other than to speak about this bill and my hope for its improvement, because it's so important to gateway communities. And I do want to make clear, as I did in my written testimony,

Senator, that the section 2(a) findings, the nine findings, are very well-written, they're succinct, and they provide a balanced perspective on the challenges that gateway communities face.

With respect to other written comments on the purposes clause, the improved communication, coordination, and cooperation—the three C's—it's like chasing the Holy Grail, but that's what we're all interested in pursuing in our gateway communities, and that purpose is praiseworthy and it's correctly stated. To this extent, though, I hope there can be amendment.

Requiring cooperation—as you require cooperation in a Federal statute, you create the false expectation that by having required it, you'll get it. That's my concern. Might it be better to say “assist Federal land managers and local communities, gateway communities, to improve the three C's,” and then by saying “assist,” rather than “require,” have realistic expectations about how to identify ways to do that, the means to the end of improved coordination, cooperation, and communication?

Alternative dispute resolution, adaptive management, best practices, anything that goes in the collaboration toolbox that works—what out there actually works?

Because we're all trying to define the public interest, long term, and, in the short term, the impacts on gateway communities can be devastating. So, as we get into the planning process early, which is a laudable goal, how can we actually identify the means to the end and provide assistance that works? And perhaps with money, perhaps there's philanthropic grants or community foundation grants or other private money that can be brought to the table to add to a Federal grant that will allow us to get into these toolbox adaptive management best practices.

And then, finally, I want to make clear that section 2(d)(7) on cooperative agency status, that's a very important right for gateway communities. It's articulated well here. I believe it's provided under NEPA. And, again, my frustration with this, and where we might need some improvement in the bill, is that, for example, with the 5- to 10-year debacle—or the ongoing battle over winter use in Yellowstone, communities in transition from one economy to another, there is cooperating agency status, but some communities may have found it's a bit like riding the tiger once you get it. And what practical things can we do to bring a long-term economy to gateway communities in the winter? Because we still don't have a final winter-use plan, in spite of many good intentions and of almost a decade of work on it.

So, to sum up, the practical issue of how to get results on the ground, identifying models that work in best practices. I can tell you about things that don't work, both an Interior and an Ag example. The Secretary of Interior pointed me to the Pinedale Anticline Working Group. The statute requires cooperation of the BLM official with a seven-member committee appointed by the Department of the Interior. It's failed. In fact, five members' terms have expired, and there is no real way to know when, if ever, five members will be replaced on that committee. Arguably, Pinedale and Sublette counties are gateways to the high desert—certainly, the Wind Rivers—but the impacts aren't being dealt with. What can we do about that, where cooperation is already required?

Another example with the Ag and the Forest Service, in the Wyoming range, many people believe that you've got to draw the line somewhere with respect to national forest use, and that, in some cases, there's a higher public interest in recreation tourism than drilling the heck out of the forest. And the Governor of Wyoming and some Federal officials in Wyoming have expressed concerns about leasing the Wyoming range, but the Forest Service continues to lease the Wyoming range. What can we do about that? What is in the public interest, long term? And how do we deal with the short-term impacts?

So, finally, to sum up, I agree with the findings and the purposes of the bill. I'm concerned that requiring cooperation creates the expectation that you'll get cooperation. Better to assist gateway communities and Federal land managers with training and other arrows in the quiver of the toolbox of best practices that can get practical results on the ground.

Thank you, Senator.

[The prepared statement of Mr. Duerr follows:]

PREPARED STATEMENT OF STEVE DUERR, FORMER EXECUTIVE DIRECTOR,  
JACKSON HOLE CHAMBER OF COMMERCE, JACKSON HOLE, WY

Good afternoon. My name is Steve Duerr, and after 7 years I am the outgoing Executive Director of the Jackson Hole Chamber of Commerce. I have practiced law in Jackson Hole for about 20 years including about 8 years as General Counsel for the Jackson Hole Ski Corporation. Thank you for inviting me to provide my perspective about H.R. 585, the Gateway Communities Cooperation Act, coming from the southern gateway community to Grand Teton and Yellowstone National Parks.

The livelihoods and prospects for running successful businesses in our community are intertwined with the power of the place in which we live—the southern gateway to Grand Teton and Yellowstone National Parks.

The Jackson Hole Chamber has received much praise for its brand “Respecting the Power of Place” and for the collective promise by the business community to acknowledge a duty of stewardship to preserve this special place on Earth. This spirit of place, the abundant wildlife, clean air and water, and vast public lands, are the foundation of our economy and the essence of our community.

The brand promise was created through a process involving the mindful work of a diverse cross section of our community, including local elected officials, national park, national forest and national refuge managers, conservationists and hard-nosed business owners. We described the functional benefits for our brand promise, to maintain our distinctive market niche, and the emotional benefits, including a sense of stewardship and awe and reverence for the abundance and beauty of the natural resources in Jackson Hole. This close collaboration in the Jackson Hole region among commerce and conservation interests, federal, state and local leaders, has become the norm rather than the exception. While sometimes not in agreement, we are proud of a track record of constructive dialogue and cooperation. The Greater Yellowstone Visitor Center is just one example of collaboration across management jurisdictions and interests groups, which receives national praise and interest as a model for other gateway communities. Other examples are the annual Elk Fest and Boy Scout elk antler sale, Old West Days events, the Miller House interpretative center, Fall Arts Festival featuring the Arts for the Parks top 100 exhibits, and participation and support by community members in the Yellowstone and Grand Teton National Park Foundations.

In this historic and present context of cooperation and constructive dialogue, I am concerned that H.R. 585, as drafted, is somewhat misnamed. It does not appear to be legislation that focuses on truly enhancing cooperation and partnerships with balanced or practical approaches, but rather a somewhat confusing, one-size-fits-all mandate with an emphasis on compelling specific actions by the secretaries of Agriculture and Interior. I was appointed by the Secretary of Interior to an at Large Seat on the Pinedale Anticline Working Group (PAWG). By statute the BLM is required to meet regularly with the 7 stakeholder representatives and to cooperate with PAWG to try to mitigate impacts of the gas development in Sublette County, Wyoming. This is an example where cooperation is mandated by law, and I believe the results of actual cooperation have been very disappointing.

I want to be clear. The goal of cooperation set forth in the bill is a good idea. The question is, if the end result produced by genuine cooperation is good, whether the means to achieve that cooperation are well articulated in the bill. Surely gateway communities have an important role to play, and helpful perspectives to contribute, in the decision-making processes related to federal lands. We must be heard on federal land use decisions, and we would like our voice to carry greater weight on many matters. Clearly, our gateway community reaps the benefits of proximity to two world-class national parks, but we also must deal with the impacts on local infrastructure of millions of visitor and spiraling complex growth affecting the New West.

That said, it is worth noting that different federal lands have different purposes. The purpose of multiple use lands like the Bridger-Teton National Forest in Wyoming or the Kaniksu National Forest in Idaho are different from the purpose for which Grand Teton, Fort Laramie, and Yellowstone were designated as national park units. We ought to acknowledge that, while federal land managers should seek out and work with gateway leaders, national parks are not county parks, but must be managed in the broader national interest rather than the local interest. At times the politics are hot and the purported national and claimed local interests lock in a battle over NEPA comments on potential federal action, or in litigation over decisions. The range of emotions, the turf at stake and the wisdom of stakeholders and decision makers vary from issue to issue and from one federal land matter to another. It simply gets complicated very fast.

To sum up, about all you can say for sure is that those of us who work in gateway communities have our job to do, and the National Park Service and other federal land managers have their jobs to do. All of us need to respect each other's needs and challenges when considering actions that may impact each other. Mutual respect breeds cooperation, but by what means can we help assure a process that lends itself to opportunities for nurturing mutual respect? The end goal of cooperation is good, but by what means shall we achieve that goal?

*H.R. 585:* I repeat that the purpose of the bill is laudable—improving relationships among federal land managers and gateway communities, enhancing facilities and services in gateway communities to serve visitors, and improving local land use planning and decision making. The problem is that the rest of the bill doesn't live up to its purpose. My hope is that, with changes, it might provide a means to the laudable end of cooperation.

I want to highlight four basic problems with the bill, which ought to be addressed: (1) imposing requirements across the board without acknowledging the diversity of land management agency missions, including the purpose of individual (especially park) units; (2) the basic idea that one can mandate cooperation; (3) the challenges park personnel face because of insufficient funding, and how that can impact gateway communities; and (4) identifying and funding action toward best practices in collaborative decision making or adaptive management.

*One Size Does Not Fit All:* First, I note that in H.R. 585, responsibilities on the part of gateway communities are not very well articulated. The findings section of the bill does a reasonably good job of describing the roles of gateway communities, but does a poor job of acknowledging the special roles and responsibilities of entities like the National Park Service. The bill seems to treat all federal lands, federal management considerations, and gateway community relationships the same, when diversity not sameness appears to be the rule. Federal land managed by the Forest Service, which is managed for multiple use, has different purposes from national park land that has been set aside for future generations and includes different permitted uses in different national parks. The experience with PAWG and the BLM is remarkable in that the politics of gas development may now be the sole "multiple use" for which these federal lands are managed. Yet, neither the findings nor the remainder of the bill seem to acknowledge the important distinctions among federal lands or the practical challenges to cooperation among federal land managers and gateway communities wrought by changing politics.

*Mandating Cooperation:* Second, it is difficult to see how you can mandate cooperation through federal legislation. The fact is, people from all perspectives on an issue need the ability to engage in respectful dialogues. Otherwise genuine cooperation is unlikely. Certainly, there have been plenty of times when federal land managers, including the National Park Service, have done things local communities didn't like. I've had those experiences like the gas development boom. But there have also been many examples of useful dialogue producing beneficial results, like the examples I provided of how our federal, state, local, commercial and conservation interests often work together.

It is easy to see why many of my colleagues in gateway communities feel frustrated enough with the brush-offs they have received from time to time from various federal officials, and too often too many federal managers consider local govern-

ments a nuisance. But, as tempting as it may be to mandate cooperation, this is impractical.

The solution is not a bureaucratic checklist of items that the feds must do. Such a list inevitably will lead to more frustration and could simply lead to litigation, rather than better results that build on the mutual interests of national parks and adjacent communities.

What we need is a mechanism or process that can lead to the sustainable strengthening of relationships and mutual respect at the local level. What we need is a careful articulation of the possible means to “assist” in building cooperation rather than a simple mandate of cooperation. Specific to the language of the bill, consider the ramifications if the word “assist” is inserted for “require” and if the bill then went on to explain the means of that assistance. There will not always be agreement, but there certainly can be much better procedures that provide more opportunities for constructive dialogue and reasoned compromise than often is the case today. The fact is, in the case of the Park Service, there are already plenty of requirements for engaging with local communities. At times those produce results we in gateway communities like, and at times they don’t. The solution is not more bureaucratic paperwork requirements, but a practical and fair process for engagement that works.

For example, federal managers ought to be better trained earlier in their careers about how to work with local communities. The bill could be amended, or personnel policies changed, to require specific training for early or mid-career BLM, Park Service or Forest Service personnel in how to work with gateway communities. Obviously certain decisions made by a national park or various federal land managers can have profound effects on a community—transportation decisions, reductions in visitor center hours, and others. Federal land managers need to be aware of that fact, and they need to know that it matters. Certainly they have their obligations based on the charge they are given, but they ought to have relevant training so we are reasonably assured they understand the ramifications of various decisions on their neighbors in the local communities—this training could lead to more sustainable and acceptable decision making. Regular, meaningful and mindful communication should be the rule based on training and a federal culture sensitive to the necessity for cooperation.

The same is true for gateway communities. Transportation decisions, zoning determinations and other policies we develop can have enormous impacts on national parks and other public lands. Just like the national parks, our local communities have the right to make their own decisions. But those decisions can be better for all concerned if we work to understand their impacts on federal lands held in public trust, and the potential alternatives that might help us reach the same ends.

The bill requires training sessions for elected officials in gateway communities. The Park Service’s management policies already require in section 2.3.1.6 that park managers “use the public involvement process to share information about legal and policy mandates, the planning process, issues, and proposed management directions; learn about the values placed by other people and groups on the same resources and visitor experiences; and build support for implementing the plan among local interests, visitors, Congress, and others at the regional and national level.” It further requires park managers to work with a broad range of the public, including, “existing and potential visitors, park neighbors, people with traditional cultural ties to lands within the park, concessionaires, cooperating associations, other partners, scientists and scholars, and other government agencies.” Who is to receive training, how and when, the purposes for the training and the desired outcomes of training are not well described in the bill.

Last spring, Grand Teton National Park invited county and town officials to a briefing on its plans and priorities. The park provided an overview of park issues, and explained some of its current and future plans, including an orientation to the new visitor center site. The more parks and other federal land managers make efforts like this to brief, communicate with, and hear from, local leaders, the better off we’ll be. While there are times when briefings like this one are necessary—and they are always beneficial—regular, frequent communication by both parties ought to be the rule. Training can help accomplish that, but mandating how that training should look in every case is not necessarily the way to go.

In addition, I understand that there are excellent training courses presently available that can be beneficial both to federal officials and gateway community leaders. For example, a course offered through the Fish and Wildlife Service’s National Conservation Training Center, entitled “Balancing Nature and Commerce in Gateway Communities,” is designed to help “prepare public land managers and gateway community leaders to develop and promote their own gateway community initiatives. The course explores significant issues facing gateway communities and adjacent



public lands and the tools that can be used to address those issues.” One mechanism for pursuing such an existing training opportunity would be to create a very modest grant program with resources for which gateway communities and federal land managers might jointly apply.

*Funding Challenges:* This brings me to my third reservation. I am concerned about layering specific requirements onto the responsibilities of all federal land managers, regardless of the degree to which they have the capacity to meet those requirements—particularly the Park Service. This not only stresses already strained budgets, but also may create unrealistic expectations among gateway communities. For example, many national parks do not have on staff the kinds of land use planners the bill requires to provide technical assistance to gateway communities. Again, not all parks are alike, so it makes little sense to treat Grand Teton, Fort Laramie, Gettysburg and Minuteman Missile park units the same.

In addition, the combination of unfunded mandates and fixed costs has forced Grand Teton to cut its interpretive staff by nearly  $\frac{1}{3}$ —from 17 to 12. This has meant a reduction in the number of public education programs and in the hours of operation of the Colter Bay Visitor Center. This kind of reduction in park services is not beneficial to Jackson Hole or to park visitors. It is not fair to blame the park, which is having to make extremely hard choices because of inadequate budgets.

These human resource and financial capacities are relevant considerations in assessing the ability of park managers and gateway communities to cooperate, but the bill does not address such matters. The means by which assistance can be provided toward the end goal of cooperation should be better articulated.

*Best Practices:* Fourth, the bill as drafted misses an opportunity to identify models that genuinely work. Very modest planning grants of \$50,000 to \$80,000, with an in-kind match from small gateway communities, could be enormously beneficial in fostering a process where local government, businesses, tribal governments, the Park Service and other key parties to engage in collaborative planning efforts that meet mutual goals and obligations. Something like this could be tried on a pilot basis at various land management units and units of the Park System—national forests, BLM sites, national parks, national battlefields, national historic sites, etc. However, the money should come from a separate source, not from already stretched park budgets. There are few incentives toward working together that work as well as putting money on the table, even a modest amount.

Regarding the BLM statutory PAWG requirement of dialogue and cooperation concerning gas development impacts, the BLM has money for the process and for mitigation. Concerning adaptive management best practices, one might consider why this required cooperation is not working—what assistance could be provided to the BLM and community leaders that builds mutual respect, cooperation and success on the ground? In my opinion, requiring cooperation in this instance is not working.

*Conclusion:* In summary, I want to leave the subcommittee with the following thoughts:

First, resist the temptation to mandate cooperation. There are examples where such mandates are failing. We ought to learn why and what assistance could be provided to aid cooperation. Consider inserting “assist” for “require” and then defining the means to the end of cooperation, perhaps, defining best practices and providing funding opportunities for their implementation.

Second, respect the differences between the missions of various federal land management agencies, including units within the jurisdiction of those agencies. There is no one-size-fits-all approach to dealing with the BLM, national parks and national forests, just as there is no single solution for every gateway community.

Senator CRAIG. Steve, thank you very much.

Let’s turn to Bob Warren, chairman, National Alliance of Gateway Communities, Redding, CA.

Bob, welcome to the committee.

**STATEMENT OF BOB WARREN, CHAIRMAN, NATIONAL ALLIANCE OF GATEWAY COMMUNITIES, REDDING, CA**

Mr. WARREN. Good afternoon, and thank you, Mr. Chairman and other subcommittee members, for the opportunity to testify today. And I certainly appreciate the bipartisan support that Senator Wyden was offering, as well as having Congressman George Radanovich show up and speak on behalf of the bill.

I'm really here today as the chairman of the National Alliance of Gateway Communities, but I also represent the city of Redding, CA, which I think is the perfect example of a gateway community. Within 10 miles are Forest Service lands, BLM lands, and a national park unit. The NAGC is the only national organization solely dedicated to representing the interests of gateway communities. In California and the West, many communities are transitioning to more diverse economies, as we've talked about in the past. We know that in the future, visitors to public lands will play an increasingly more important role in the economies of our gateway communities.

Those of us in the West know that public lands are often the magnets that really draw people to our communities, and that's both domestic and international visitors. Many of the supervisors and superintendents and managers of public lands are keenly aware of the importance of working with gateway communities. I know that, in my own area, many of them strive to work daily with our community leaders. Unfortunately, this is not always the case for some gateway communities, and not always the case always, all the time. There are too many examples of these relationships which are inconsistent and unreliable, and often too dependent on personalities.

While want to—what we want to do with the enacting of this legislation is to take a major step toward—I hate the word “institutionalize,” but kind of institutionalize those relationships, making them so that you, as Congress, have put out the word that it's an important factor that you want considered. Many of the management plans for significant public lands units devote hundreds of pages to natural resource preservation, while devoting just a paragraph or two to the people who live in the area adjacent to the unit. For example, although economic and social impacts are supposed to be considered in national forest management plans, the plan for one national forest in Arizona has one paragraph that addresses those issues, with more than 100 pages addressing various habitat scenarios. Of course, we don't object to that sort of overview of the environment, but would want more effort made toward communities.

In the mid-1990's, five communities that are gateways to Yellowstone National Park decided to form the Yellowstone Gateway Alliance to speak with one voice on issues of common concern for all. The superintendent of the park at that time flatly refused to talk with the gateways as a group. And I might add that the community of Cody and the executive director of the Cody Chamber of Commerce, Gene Bryan, said, “We believe the gateways bill gives us some level of assurance that gateways like Cody will be involved in the critical management issues, multiyear plans, plan revisions, and specific issues, such as winter use. We don't expect all our wants and desires to be listened to, but we are hoping that this will help out.”

And we'd also like you to understand that the current superintendent for Yellowstone, Suzanne Lewis, is getting—is giving great cooperation and dialog to the communities around Yellowstone. And Cody has said that they love her, and love working with her.

I'd like to mention, H.R. 585 does not compel any superintendent to talk to such coalitions, but it would clearly declare that the intent of Congress is to support much greater cooperation, coordination, and communication. While communities are making significant planning changes, they are required to comply with numerous Federal environmental mandates. This makes for a one-way street, as the capability of those small rural communities to comment meaningfully on the new plans and policies of adjacent Federal lands is often limited. All it really does it give H.R. 585—and gives the gateway communities a seat at the table. The bill does not give a gateway community a veto over agency programs, actions, or policies, nor does it give a gateway preferential treatment. The bill would give local public lands managers a greater understanding of the needs and prospects of their adjacent communities.

In closing, I don't want you to think that we, in gateway communities, are not appreciative of the effort that's being made to date. We just want a legal standing in the Federal decisionmaking process. Often, the Federal lands are the foundation of a community's culture, commerce, and heritage, and the gateway communities are essential to providing for local recreational use and visitors to those lands. Public-lands policies are too often politicized and charged with emotions. The policies and emotions are dramatically played out in our communities. The wrenching drama is for naught if our communities can't have a meaningful stake in that process. Often this process is affected by the sparse rural population representation in the West, pitted against well-meaning, urban political agendas driven by well-financed and well-staffed special-interest groups. This leads to many gateways communities feeling as we are being treated like children when we are told to eat our vegetables, it's what's best for us. Leaders in gateway communities are faced with the daily tension of attempting to balance commerce and conservation, of preserving enduring wildness while enhancing economic well-being. This tension is, of course, by choice, as those of us who live in gateway communities most often would choose to be nowhere else.

We feel that this important bill will help bridge the gap between today and tomorrow, while striving to preserve all that is natural in our communities.

And, finally, I'd like to say that the bill has the support of the National Association of County Organizations, NACO; the Travel Industry Association of America; the National Tour Association; the American Bus Association; and the American Association of RV Parks and Campgrounds.

Mr. Chairman, we hope that you can support this bill for our communities. Its enactment will open a new day for gateways.

Thank you.

[The prepared statement of Mr. Warren follows:]

PREPARED STATEMENT OF BOB WARREN, CHAIRMAN, NATIONAL ALLIANCE OF GATEWAY COMMUNITIES, AND TOURISM DEVELOPMENT MANAGER, CITY OF REDDING, CA

Thank you Chairman Craig, and other subcommittee members for the opportunity to testify on behalf of H.R. 585. I am here as Chairman of the National Alliance of Gateway Communities (NAGC) and I am also representing the City of Redding, California, as the Tourism Development Manager. Redding is the perfect example of a gateway community. Within a ten-mile radius, there are the boundaries of a

National Park Service Unit, Bureau of Land Management lands, and a National Forest. The City benefits from this close proximity to Federal lands, attracting significant tourism dollars, and, of course, the lifestyle blessings of actual proximity to beautiful natural attractions. Visitors to our Federal lands benefit also from the first class tourism services available in Redding, which has hundreds of private tourism service businesses. The NAGC represents the interests of those communities that serve as gateways for millions of visitors to our magnificent Federal public. The NAGC was actually formed with the encouragement of the major Federal land management agencies, which felt there was a need for an organization to help small gateway communities become more skilled at interacting with Federal agencies. This organization is the only national organization solely dedicated to representing the interests of gateway communities.

I am pleased to note that the NAGC is joined in its support of H.R. 585 by the National Association of Counties, the National Association of RV Parks & Campgrounds, the National Bus Association, the National Tour Association and the Travel Industry Association of America.

On behalf of the NAGC and gateway communities everywhere, we thank you, Mr. Chairman, for considering this historic bill in this hearing. To the best of our knowledge, it is the first bill ever to focus exclusively on the needs and concerns of gateway communities.

Gateway communities, by their very nature, are close to public lands. They have a symbiotic relationship that creates an arrangement where the public land units need the communities for their services, while the communities need the public lands as attractions. In California and in the West, and in many other parts of the nation, communities are transitioning to more diversified economies, less based on resource extraction. We know that, in the future, visitors to public lands will play an increasingly more important role in the economies of our gateway communities. In rural California, every \$68,000 spent by travelers creates one new job. Also, many of those visiting public lands are international visitors who often make their visit to America a visit to rural America. Germans alone account for hundreds of thousands of visits to public lands in California annually. One national park in Northern California surveyed visitors during a recent one-month period, and eleven percent of all visitors were German. Obviously, the dollars spent by these foreign visitors and others are important to both the economies of gateway communities as well as to the national balance of trade. Those of us in the West also know that public lands will continue to be the "magnets" that draw both domestic visitors and internationals back to our rural communities.

#### THE NEED: WHY H.R. 585 IS IMPORTANT

Many of the supervisors, superintendents, and managers of public land management units are keenly aware of the importance of working with their gateway communities. I know in my area, many of them make daily efforts to interact with community leaders. Unfortunately, this is not always the case. There are too many cases where relationships are inconsistent and unreliable and are often too dependent on the personalities involved. What we want to do by enacting this legislation is to take a major step towards institutionalizing those relationships by putting them on a firmer statutory base.

There are also examples of Federal land managers showing little concern for the economics of gateway communities and purposefully attempting to affect development outside their management units. In one instance in the Northwest, a new national park superintendent was interviewed for an article in a major newspaper in which he indicated opposition to a planned destination resort more than 11 miles from the park that he managed. Unfortunately, he had neglected to communicate with the developer who had, for the previous nine years, worked in concert with the park superintendent's predecessor and staff on the planning of this resort. H.R. 585 would certainly not have affected his ability to speak out on this issue, but he would have at least known that he also would need to develop a relationship with the adjacent communities, so when issues related to important park management decisions came up, the community would be part of his thought process.

Many of the management plans for significant public land devote hundreds of pages to natural resource preservation, while devoting just a paragraph or two to the people who live in or adjacent to that unit. Their frustration is exacerbated when their communities do not have a "seat at the table".

For example, although economic and social impacts are supposed to be considered in national forest management plans, the plan for the Kaibab National Forest in Arizona has about one paragraph that addresses gateway issues with more than 100 pages addressing various habitat scenarios. Careful consideration is given to the

goshawk, but little is given to the gateway communities and the people who live there. Now we want to be clear. We do not object to thorough consideration of environmental and wildlife issues; indeed we strongly support such examination. But surely the interests and concerns of gateways and the families and businesses that make their homes there should also get serious consideration.

In the mid-1990s, the five communities that are gateways to Yellowstone National Park decided to form the Yellowstone Gateway Alliance to speak with one voice on issues of common concern to all of them. The superintendent of the park at that time flatly refused to talk with the gateways as a group, although he was more than willing to meet with other interest group coalitions. Conversely, today the community of Cody, Wyoming, the east entrance to Yellowstone National Park, is enjoying an excellent rapport with the current park superintendent, Suzanne Lewis and her staff. Cody has had input in park road maintenance affecting the east entrance and their tourism economy. Working together they now describe road work as “road improvements” rather than “construction” and refer to “hours of operation” rather than “closures.”

For more than 50 years the small tourism community of Cody has realized the importance of a respectful and working relationship with the Yellowstone National Park administration and community leaders. The Cody National Park Committee meets at least three times a year with Yellowstone officials to make certain communication lines remain open and issues get identified and dealt with before they become problems. Although the community realizes it is extremely fortunate to have exemplary working relationships currently with its Federal partners, it also understands that has not always been the case, and that those relationships can and often do change with new administrations. For this reason, Gene Bryan, executive director of the Cody Country Chamber of Commerce, declares that, “We believe the Gateways bill gives us some level of assurance that gateways like Cody will be involved in critical management issues—multi-year plans, plan revisions, specific issues (winter use, for example). We don’t expect all our ‘wants’ and ‘desires’ to be met, but we do appreciate being listened to.”

Another community adjacent to Yellowstone experienced similar challenges. West Yellowstone, Montana, a small gateway community of about 1100 people literally situated at the west gate of Yellowstone National Park and bounded on all other sides by Forest Services lands, provides lodging and ancillary needs for over 2 million visitors a year, and of course is heavily impacted by decisions made at the Park and with Forest Service managers. West Yellowstone should indeed be a partner with the Park, providing infrastructure and facilities to handle their visitors and contributing significantly to the visitor experience. In the late 1990’s the community attempted to meet the challenge and heavily bonded for municipal services. But, as a result of changes precipitated by the 2000 Winter Use Plan, the total number of winter recreational visitors from the west gate has dropped from 70,371 visitors in 1970-71 to 28,242 in 2005-06. This has been devastating, and has caused 10 local businesses to close in the winter. The gateway communities around Yellowstone National Park count on winter access into Yellowstone as part of their economic viability. The 2000 winter use plan for Yellowstone called for a ban on snowmobile usage in the park. Despite repeated attempts by local gateway towns to obtain cooperating agency status during the development of that winter use plan, they were never given the opportunity to be “at the table” with the neighboring states and adjacent counties during this process.

Another example of “challenging relations” is Yosemite National Park. Attendance at Yosemite National Park was growing quite steadily prior to the flood of 1997. A General Management Plan had been put into place to address the anticipated future of resource protection in light of these trends. Implementation of the 1980 General Management Plan was on hold during the years leading up to 1997 due to lack of enough funds to support both day to day operations and plan implementation. The emergency funds awarded by Congress to Yosemite National Park officials, posed an opportunity too good to pass up. Several implementation plans were “tweaked” and the Yosemite Valley Plan emerged to support the 1980 General Management Plan principles. The foundational intent of the planning process has become well known to most Californians, i.e., to eliminate cars and limit access to bus transportation. This has left a significant portion of the public searching for a more convenient alternative for vacations and getaways. Visitors Bureaus from around Yosemite are questioned at nearly every travel show and conference they attend about the ability to drive into the park. Since 1997, visitation to Yosemite remains relatively flat, compared to the 1997 figures. A variety of park management decisions have led to the public voting on these decisions by choosing not to visit. The Park management’s concern with stagnant visitation seems to be low on the priority list and may give some hint to the need for better cooperation between Yosemite and the gateway

communities. Gateway community leaders around Yosemite often feel the Park's quarterly "Gateway Partners" meetings are in reality just "show and tell" sessions, with little input being taken from the gateways. Those in the communities who call them such, are characterized as "uncooperative" or "radical gatewayers" who will never be satisfied.

When communities are making significant planning changes, especially involving land use issues, they are required to comply with a host of Federal environmental mandates. Many agencies often comment on their proposed planning efforts. This makes for a one-way street, as the communities have far less opportunity to comment on proposed changes on adjacent Federal lands. Although H.R. 585 does provide gateway communities a "seat at the table," the bill does not give a gateway community a veto over agency programs, actions, or policies. The bill would promote cooperation and coordination and give local Federal land managers a greater understanding of the needs and perspectives of their adjacent communities. I might add that it will also give local leaders a greater understanding of the needs and perspectives of their local Federal land managers.

#### DEFINING GATEWAYS

It is difficult to use specific geographic, demographic, social or economic criteria to define and identify all gateway communities. Previous efforts to define gateways as those communities within so many miles of a particular Federal land site, or with a maximum population base, or as generating so much tax revenue from visitors to the Federal land site inevitably fall short of encompassing the full range of gateways. There are always notable exceptions to any such formula.

For these reasons, we support the approach taken in H.R. 585. After requiring that gateway communities be incorporated or recognized in a "county or regional land use plan or within tribal jurisdictional boundaries." The decision as to whether a community is a gateway is delegated to "the relevant Secretary (or the head of the tourism office for the State)" who are required to determine whether the community "is significantly affected economically, socially, or environmentally by planning and management decisions regarding Federal lands."

We believe the Secretaries of Interior and Agriculture and the State Tourism Offices are in the best position to determine the degree to which the community is affected by its Federal land neighbor.

#### WHAT THIS BILL WILL NOT DO

Now let me try and clarify some possible misimpression about this Gateways Bill.

First, we do not believe it is an invitation to "bash the agencies." Many local Federal land managers understand the importance of good relations with their gateway communities and make proactive attempts to cultivate those good relations. They are to be commended. At the national level, the Federal land agencies recently have increasingly recognized the importance of gateways.

Second, H.R. 585 does not give gateway communities any type of veto over policies, decisions, programs or activities of any Federal land agency. It does not give any gateways preference or priority over any other stakeholder. That has never been the intent of the bill.

Third, we do not believe that H.R. 585 will encourage litigation by gateways communities over agency plans or decisions. For several reasons, including a lack of financial resources, it is extremely rare for gateway communities to initiate litigation challenging the Federal agencies. To the contrary, we believe that the closer communication and dialogue and better partnerships that will be fostered by H.R. 585 will make future litigation much less likely.

Fourth, we do not think that H.R. 585 is, in any way, contrary to the environmental values and goals of our nation. No one loves the natural beauty and wildlife of our magnificent national parks, forests and other Federal public lands more than those who have chosen to spend their lives in the communities next door to them.

Fifth, we do not believe that H.R. 585 elevates local interests over the national interests. We recognize that we are talking about *national* parks and *national* forests, and they must always be responsive first and foremost to national values and priorities. Nothing in this bill would change that.

Sixth, H.R. 585 does not place any additional mandates on gateway communities. It will be the voluntary choice of the gateway as to whether it seeks to utilize any of the provisions of the bill.

#### WHAT THIS BILL WILL DO

H.R. 585 is a balanced, reasonable response to a widespread concern. As we have noted, in many instances, relationships between Federal land agencies and their

gateway communities are harmonious and productive. Many Federal land managers and local leaders do indeed “get it” and work harmoniously together.

They understand that the community and the Federal land are inevitably interconnected. They understand that it is not a “zero sum game,” but that the health and vitality of one has a direct impact on the other. They understand the imperative of being “good neighbors” with their gateways. They understand that the Federal lands are poorly served by gateway communities that are weak and resentful.

But this is not always the case. In the last decade, in 1998 and in 2002, there have been two major State-Federal Conferences devoted to gateway communities. At both conferences, two common refrains were that the agencies too often ignored the interests of gateways without reason and that many gateways have insufficient staff and expertise to participate in a truly meaningful way in agency policy-making processes. At present, it is up to each Federal land manager to decide what relationships he or she wants to have with gateway communities. There has never been a statutory declaration that gateway communities are critical to the mission of the agencies and that cooperation and coordination should be fostered.

The first and greatest value of H.R. 585, therefore, is to declare as a matter of national policy that Federal land managers are required

*to communicate, coordinate and cooperate with gateway communities in order to—*

- (1) improve the relationships among Federal land managers, elected officials and residents of gateway communities;*
- (2) enhance the facilities and services in gateway communities available to visitors to Federal lands when compatible with the management of these lands, including the availability of historical and cultural resources; and*
- (3) result in better local land use planning in gateway communities and decisions by the relevant Secretary.*

The bill thus provides historic recognition by Congress that gateway communities are integral to the mission of the public lands, the first points of contact for visitors and the providers of essential services to both visitors and the public lands.

In the closing days of the Clinton Administration, T. Destry Jarvis, then Senior Advisor to the Assistant Secretary of Interior for Fish and Wildlife and Parks, wrote: “. . . no land-use decision around a national park is exclusively local or national, but always has implications on both. The National Park Service should realize its affirmative responsibility to actively participate in local land-use decisions, and should similarly be aware of the effects of its decisions on its neighbors, allowing them to be involved in the process of arriving at those decisions.” H.R. 585 would be an historic step towards that goal.

Too many times, small gateway communities—towns and counties—are expected to interpret and comment on complex agency draft planning documents without staff and expertise to interpret and evaluate the potential ramifications of those plans for the communities.

In this regard, let me enter in a statement from an NAGC director. This statement is from Karen Alvey, former mayor of Kanab, Utah, who over the years, has tried hard to ensure that the Escalante National Monument is developed in accord with both national and local values and goals.

After much thought, I have decided that the whole process of planning on public lands must be done with the communities at the table, and early on. Most of the public officials have other jobs, cannot afford full time staff to attend and gather information, and lack the knowledge to make good decisions on management issues. If it is mandated to invite the community’s leaders in early so that they can become educated, then better decisions will be made. Currently, planning seems to go on forever, then decisions are made and announced *to* the communities.

H.R. 4622 would enable gateways to be much more meaningful participants in those agency planning processes by:

- (1) receiving early, non-technical summaries of such plans, their assumptions and objectives and the anticipated impact on gateway communities;
- (2) receiving the earliest practicable public notice of proposed decisions that may have a significant impact on gateway communities;
- (3) receiving training from the agencies about their planning processes and how they can best participate;
- (4) receiving technical assistance from the agency, including detailed agency staff to work with the gateway to understand and respond better to proposed agency plans;
- (5) receiving, on request, a review from the agency of its land use, management or transportation plans likely to affect the community;

(6) entering into cooperative agreements to coordinate local land use plans with those of the Federal land agency, other Federal agencies, State governments and tribal governments;

What these provisions would do is to institutionalize gateway community involvement with their Federal land neighbors. It would systematize and set parameters on planning processes that have until now been inconsistent and unclear from the perspective of local communities. Plans do matter. The Federal land agencies are guided (and limited) in future years by the assumptions and conclusions of their plans. They will be better plans—more effective and more accepted—with greater community involvement.

It is also worthy of special note that H.R. 585 will require interagency coordination and consolidation when the plans and planning processes of two or more Federal land agencies are anticipated to have an impact on a gateway community. This will go a long way towards reducing overlap, redundancy and confusion for gateways near multiple Federal lands with multiple plans.

#### SUMMARY AND CONCLUSION

In closing, I don't think we can any longer deny our gateway communities legal standing in the Federal decision-making process. Often, Federal lands are the foundation of a community's culture, commerce, and heritage. Decisions affected those lands are often politicized and charged with emotion, as shown by the proliferation of litigation by outside groups (although typically not by gateways). The politics and emotions are dramatically played out in *our* communities. This wrenching drama is for naught, if *our* communities cannot have a meaningful stake in the process. Often, this process is affected by the sparse rural population political representation in the West, pitted against well meaning, urban political agendas driven by well-financed and staffed special interest groups. This leads to many gateway communities feeling as if they are being treated like children, when told to "eat your vegetables, it's what's best for you". H.R. 585 will modify the process and level the playing field by directly and appropriately including gateway communities.

Leaders in gateway communities are faced with the daily tension of attempting to balance commerce and conservation, of preserving enduring wildness while enhancing economic well-being. Our communities will survive only if we are constantly ensuring that the needs of nature are met while people are allowed to make a living. This tension is of course by choice, as those of us who live in rural, gateway locations most often would choose to be nowhere else. We feel that this important bill will help bridge the gap between today and tomorrow, while striving to preserve all that is natural, as well as maintaining the character of *our* communities. A consistent Federal process of inclusion of the leaders of gateway communities would improve the process, the politics, and the outcome. All we ask is some say in our future.

If gateway communities are to continue to be healthy partners, it is imperative that there be greater collaboration in the planning process. Local input should be considered, so as not to make oversights in judgments and decisions that could be avoided with true partnership relationships. At times decisions are made by Federal land managers without much consideration of the impact on the communities, the process of fostering healthy relationships or the local economics. The communities are left to pick up the pieces and try and fix what becomes broken in the process. Such problems could have been averted with collaboration at the appropriate time.

We believe it was never the intent of Congress or the agencies to have the personalities of supervisors, superintendents, or other land managers determine the level of cooperation between gateway communities and the federal lands units. H.R. 585 would not compel any manager to talk to coalitions of gateway communities or dictate the terms of partnerships, but it would clearly declare that the intent of Congress is to support much greater cooperation, coordination and communication between gateway communities and Federal land managers.

H.R. 585 would result in closer, more productive cooperative relationships between gateways and Federal land managers, benefiting both the communities and the federal lands, responding to both national and local values. H.R. 585 would enhance the capability of gateways to participate more effectively and more meaningfully in agency planning processes for the betterment of all.

It should become law. Mr. Chairman, the passage of this bill, H.R. 585, is landmark legislation. Its enactment will open a new day for gateway communities throughout the nation.

Thank you for your consideration. We look forward to working with you to ensure enactment of this vital legislation.



Senator CRAIG. Bob, thank you very much.

I'm going to turn to my colleague Senator Thomas for any questions you may have of this panel.

Senator THOMAS. Well, thank you, Mr. Chairman.

I guess, Mr. Warren, you indicated that there's no relationship now. I'm from Cody, WY. I understand that the relationship is there and I don't quite understand what difference this is going to make.

Mr. WARREN. Well, that's what I'm saying. Right now, Cody is saying that they have a great relationship with Suzanne Lewis, but they're saying that that relationship, 5 years ago, wasn't quite as good. Also, West Yellowstone indicated that, 5 years ago, they had some fairly serious issues and now they think those issues are being resolved.

Senator THOMAS. But under NEPA and these things, we already have a law that you have to communicate with these communities.

Mr. WARREN. Well, it's not just on the NEPA requirements, it's just basic daily communication and working with communities.

Senator THOMAS. I just am concerned that it's something that we already have, and that we're just adding more communications to it. I understand the purpose. I couldn't agree with you more. I think we already have that, however, and we could do it better, but I don't think, frankly, that this is going to make a great deal of difference.

What would you do, Mr. Duerr, to change it?

Mr. DUERR. As I said, Senator, I support the findings—

Senator THOMAS. I'm talking about the bill.

Mr. DUERR [continuing]. And the purposes. But the means to the end of cooperation is elusive, and it has to do with putting some money on the table as an incentive to both the gateway communities and the Federal land managers to deal with short-term impacts in the long-term public interests. They vary from Federal management district to another community to another, and it's complicated. But money would help.

Senator THOMAS. Money? Oh, well.

Mr. WARREN. Senator Thomas, I would like to add that gateway communities all over the West and the country support this bill, so they obviously feel that there is a need for help in this area. And that's what we're asking for, is that help.

Senator THOMAS. Well, why wouldn't they support it? I mean, it sounds great. I'm just asking you for the details of what it does. I'm not persuaded that it changes things.

Senator CRAIG. Bob, I know you've listened closely to the testimony of others. Why should we expend the money this bill authorizes to further empower these communities at the cost of reducing on-the-ground management of some of our Federal units? We're strapped for dollars now. We're searching for dollars as it relates to on-the-ground activities. This bill—we've actually not seen a cost factor related to it, because not all of the communities have been defined, or at least enumerated as to who would qualify, specifically. I mean, how do we deal with that justification, in your mind?

Mr. WARREN. Well, as you heard from the several agencies that were here today, they had those concerns and, of course, that's something that's definitely worth talking about, and there may be

some way of compromising and satisfying their needs. There may be existing training that's ongoing right now that gateway communities can be involved in. And so, I think that there is room for some adjustment in the Senate version of what this bill would be.

So, I'm not sure that it absolutely has to be mandated in the way it's written in the House bill, but I think the intent of showing that there is a desire to help communities come up to speed on some of these issues is what the important issue is here.

Senator CRAIG. OK. Some believe that H.R. 585 could provide gateway communities some special legal status that would allow these communities to contest Federal management plans. If we are going to give the gateway communities a special status, why shouldn't the Federal land management—or managers get some additional input on how local zoning and development decisions are made?

Mr. WARREN. Well, already the Federal Government has a significant amount of say, because virtually everything that happens in communities and counties throughout our country goes through some sort of environmental review process. So, that is already occurring. And whether, you know, Congress feels compelled to transfer that down to the local level, that would certainly be up to Congress, but it's occurring already.

Senator CRAIG. How would the courts deal with multiple gateway communities who disagree on a National Park Service or a Forest Service plan? Should the preference go to the largest town? Aren't those the kind of disputes best worked out informally?

Mr. WARREN. I think that there are things that will always be worked out informally. And obviously there is a process; we certainly have our courts to review things like that. But if you look at the record of gateway communities suing Federal lands management agencies—and it's pretty insignificant, it almost never happens—and I can't see that this would change that in any way, because, obviously, you know, communities are strapped for dollars, and they're not going to be making the effort to be looking for ways to sue Federal lands management agencies.

Senator CRAIG. OK.

Steve, I tend to agree with you that you can't legislate good manners or neighborly behavior. You can prescribe it, and would hope that it would happen. How do we get our Federal managers to be more responsive to communities? You've obviously served in that capacity as it relates to a major gateway community to a major park.

Mr. DUERR. Well, Senator, I think it takes a long-term commitment by the community and the Federal manager and staff to cooperate and work together, do the little things first and see if we can't get the big things going in the right direction when it gets critical to work on those. But the issue of the long-term public interests and the short-term impacts on gateway communities at some level, like Yellowstone and snowmobiles, like Pinedale and drilling in the desert, I believe requires a commitment of resources, of money, to get on the ground with adaptive management strategies or alternative dispute resolution, so that in the short term you can actually deal with the impacts before it's too late. And I sup-

port this bill. I hope that we can find funding to deal with the short-term impacts outside of litigation.

Mr. WARREN. Senator, I might add that the original House bill actually had \$10 million in it for this very purpose. But, as we know in the current economy, that's not likely to happen.

Senator CRAIG. Well, coming from a large public-lands State that is obviously adjacent to—we can't lay claim, although we try, at times, to Yellowstone. We have to leave that to the——

Senator THOMAS. Please don't.

[Laughter.]

Senator CRAIG [continuing]. We have to leave that to the Senator from Wyoming. We have, by definition, a lot of gateway communities as it relates to large public-land tracts and resources, and they go through all kinds of economic ups and downs, depending on policy changes of those Federal agencies and, frankly, their attitudes, on occasion. I have obvious sensitivity toward the legislation. I'm trying to figure out a way that we get there, and get there in a way that causes these better relationships. So, I'm certainly not unwilling to force them, if it's possible. But, at the same time, I'm always frustrated by agencies who feel their mandate is supreme and overpowering to anything around them. And agency managers sometimes find themselves in those situations. And usually that's when Senator Thomas and I do flying tackles in efforts to try to change attitudes.

But, anyway, we thank you, gentlemen, very much for your testimony. We'll see how things move as it relates to these pieces of legislation, and we'll be working with you certainly, with the Alliance, as it relates to any refinement in this legislation before it moves forward.

Gentlemen, thank you.

The subcommittee will stand adjourned.

[Whereupon, at 3:40 p.m., the hearing was adjourned.]



APPENDIX  
RESPONSES TO ADDITIONAL QUESTIONS

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RESPONSES OF MIKE JOHANNIS TO QUESTIONS FROM SENATOR CRAIG

S. 906—CANTWELL'S FIRE FIGHTERS SAFETY

*Question 1.* If we passed this bill (S. 906), is it even possible to track the funds expended on each individual related to fire training? And so, can you tell me what that would cost?

Answer. If S. 906 were passed as written, it would not be possible with any assurance to tell you the cost of training expended on each individual unless there were extensive changes to the current financial system. The Forest Service's current financial system and database structure are not designed to track this detail of information and to do so would require significant modification.

A Firefighter Safety Budget Line Item would force the tracking of expenditures into the financial system, which would add administrative complexity. Dollars spent on an activity should not be considered a primary measure of success or effectiveness; instead oversight should focus on effective policy and integration of safety awareness and practices across all firefighter training and activities.

*Question 2.* On a percentage basis, how much funding do you believe S. 906 would divert from on the ground fire-fighting?

Answer. It is difficult to estimate the cost of this bill or how much funding would divert from on the ground fire-fighting. However, implementation would carry significant costs to adjust the financial system and database as well as to collect data.

*Question 3.* How does that amount of funding compare to the national assessments that the Washington ice charges fire preparedness and fire suppressions?

Answer. Implementing S. 906 as written would drive national assessments of the fire accounts higher. While it is difficult to estimate the specific costs associated with S. 906, the cost of implementation could add substantially to those assessments currently made.

H.R. 585—GATEWAY'S COMMUNITIES

*Question 1.* Some believe that H.R. 585 could provide gateway communities some special legal status that would allow these communities to contest federal management plans. Mr. Warren's oral testimony indicated that he didn't believe that this bill gave special legal status to the gateway communities, but then; in his conclusion, he said "all we are asking for is legal standing."

Could you get your Office of General Counsel to provide us an analysis of H.R. 585 and the cooperating agency rules and policies to help inform us whether or not providing such standing to a gateway community will afford these communities special standing in the courts?

Answer. H.R. 585 would impose a number of—mandatory procedural steps that Federal land managers must take specifically with respect to gateway communities, and therefore could create several new legal claims that could be asserted by communities dissatisfied with a management plan or project. Under existing law and regulations, gateway communities already have the opportunity to comment as part of the National Environmental Policy Act (NEPA) analysis for management plans and projects. The CEQ regulations define a cooperating agency to mean "any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal . . ." 40 CFR 1508.5. "A State or local agency of similar qualifications . . . may by agreement with the lead agency become a cooperating agency." *Id.* The CEQ regulations also describe the responsibilities of the lead agency and cooperating agencies. 40 CFR 1501.6.

Section 2(d)(7) would remove the agency's discretion by requiring a designation of any gateway community upon the request of that community. A gateway community that is dissatisfied with a management plan or project for which it has been designated as a cooperating agency might be encouraged to challenge the plan or project believing that its designation confers the standing necessary to do so. Cooperating agency status does not by itself confer standing to challenge a NEPA document. Similarly, designation as a cooperating agency pursuant section 2(d)(7) of the bill would not, by itself, confer standing.

A State or local entity with standing that is selected as a cooperating agency may be able to sue for procedural violations associated with its status as a cooperating agency if it is dissatisfied with the process. *See, e.g., Int'l Snowmobile Mfrs. Ass'n v. Norton*, 340 F. Supp. 2d 1249,1261-62 (D. Wyo. 2004) (finding NPS did not adequately consult with cooperating agency States before changing preferred alternative). Such a challenge could be brought under the Administrative Procedure Act (APA) when the agency makes its final decision as a result of that process, and the cooperating agency can establish that it is adversely affected by the final agency decision.

H.R. 585 could greatly increase the number of management actions for which gateway communities are designated as cooperating agencies and may also give gateway communities that can establish standing another claim to file if they believe they are improperly denied cooperator status. H.R. 585 also includes a number of other mandatory duties that could give rise to legal claims if a party is able to establish standing. Section 2(d) provides that “[a]t the earliest possible time, the relevant Secretary *shall* solicit the involvement of . . . gateway communities,” *shall* provide . . . at the earliest possible time but not later than the scoping process” a list of specific types of information, *shall* provide training sessions, *shall* make available personnel” upon request, and *shall* consolidate and coordinate” planning processes with those of other Federal agencies in order to make it easier for gateway communities to participate.

Each of these mandatory procedural requirements may provide an opportunity for a dissatisfied gateway community (or entity that believes it is a gateway community) to challenge a land management action as “contrary to law” under the MA. While the bill may not confer any special “standing” in an Article III sense, it does appear to greatly multiply the number of potential legal claims that might be asserted in any APA lawsuit by a dissatisfied gateway community with standing.

To address this issue, the Administration has proposed an amendment to H.R. 585 ensure that H.R. 585 does not result in the creation of enforceable claims by gateway communities. This amendment is being submitted under separate cover by the Department of the Interior.

*Question 2.* H.R. 585 currently calls for the Secretaries or a State Director of Tourism to designate the Gateway Communities.

Could you provide a legal analysis that examines the constitutionality of a State Direct of Tourism making such a decision for the Department of the Interior?

Answer. Section 2(c) of H.R. 585 defines “gateway community” to include only those that “the relevant Secretary (or the head of the tourism office for the State)” determines is significantly affected by decisions at issue. The parenthetical inclusion of the head of the State tourism office presents potential Constitutional problems under the principles of dual sovereignty, the separation of powers, the Appointments Clause, and the Supremacy Clause.

In *Printz v. United States*, 521 U.S. 898 (1997), the Supreme Court held unconstitutional a portion of the Brady Handgun Violence Prevention Act that required State law enforcement officers to execute its background check requirements. The Court relied on two Constitutional principles for this portion of its holding: dual sovereignty and the separation of powers.

First, the Court discussed the division of power between State and Federal governments, noting that they exercise concurrent authority, “each protected from incursion by the other.” *Id.* at 920. The Court found that the Brady Act violated this principle by “conscripting state officers” into Federal service—effectively a “Federal commandeering of state government[.]” that violated State sovereignty. *Id.* at 925.

Second, the Court also discussed the division of power between the branches of the Federal government, and the “separation and equilibration” of their powers. *Id.* at 922. The Constitution provides that the President, either himself or through his appointees, is the one who “shall take Care that the Laws be faithfully executed.” *Id.*, quoting U.S. Const. art. II, § 3. The Court found that the Brady Act violated this principle by delegating enforcement responsibility to State law enforcement officers who lacked any “meaningful Presidential control.” *Id.* The unity of the Executive Branch, and the vigor and accountability that go along with it, ‘would be shattered, and the power of the President would be subject to reduction, if Congress

could act as effectively without the President as with him, by simply requiring state officers to execute its laws.” *Id.* at 922-23.

The delegation of authority to the head of the State Tourism office in H.R. 585 appears to give rise to similar questions. Unlike the statute at issue in *Printz*, H.R. 585 does not compel the head of the State Tourism office to play any role in the designation of gateway communities. The infringement of State sovereignty appears less severe for this reason, and inaction by the head of the State Tourism office serves only to preserve the status quo. See *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of WI v. United States*, 259 F. Supp. 2d 783, 798-99 (W.D. Wis. 2003) (holding the Indian Gaming Regulatory Act’s requirement of gubernatorial concurrence in administrative decisions did not offend dual sovereignty). Because the head of the State Tourism office may choose to refuse to exercise his or her role under the bill with potentially little impact on its implementation, the current wording probably does not implicate dual sovereignty concerns.

Even so, the bill may implicate some of the governmental accountability concerns expressed by the Court in *Printz*: “even when the States are not forced to absorb the costs of implementing a Federal program, they are still put in the position of taking the blame for its burdensomeness and for its defects.” *Id.* at 530. H.R. 585 could perhaps raise some of the same concerns, because a State officer could face blame for improperly implementing the Federal definition of a “gateway community” if someone is dissatisfied at his or her designation (or failure to designate) a particular community.

The bill does appear to present a significant separation of powers problem. Congress appears to be delegating the implementation of its definition of “gateway community,” which is an Executive function, to a State official who is not subject to any Presidential control. There would be little problem if the head of the State Tourism office presented suggestions and the Secretary had ultimate determination authority. But as currently drafted, the bill appears to delegate unrestricted implementation authority to a State official, which appears to be an improper diminishment of the Federal executive power.

This may present a problem not only under the general Constitutional separation of powers framework discussed in *Printz*, but also under the Appointments Clause, which provides that the President shall appoint all “Officers of the United States.” U.S. Const. art. II, § 2. Persons not appointed by the President may not exercise executive power that is reserved for officers of the United States. See *Confederated Tribes of Siletz Indians v. United States*, 110 F.3d 668, 696 (9th Cir. 1997). One court has stated that granting such authority to a State officer impermissibly infringes Executive Branch power if the State officer exercises “significant authority” under the Act and is granted “primary responsibility” for designation. *Id.* at 697. In that case, the court ultimately found that the Indian Gaming Regulatory Act’s provision requiring that the governor of State concur with the Secretary of the Interior’s determination regarding Indian gaming within a State was Constitutionally permissible, because the governor had no authority to act on his own, and was merely making a determination on behalf of the state’s interest, and not with respect to the Federal interest. *Id.* at 698.

H.R. 585 presents a more problematic situation that appears to run afoul of both the separation of powers between the Executive and Legislative Branches and the Appointments Clause. Because the head of the State Tourism office possesses independent authority to act on his or her own, and shares primary and equal responsibility with the Department of the Interior in designating gateway communities, the bill appears to improperly grant Executive power to a State officer.<sup>1</sup>

A framework that permitted the head of the State office of tourism to present suggestions to the Secretary would appear to better withstand separation of powers concerns, so long as ultimate decision authority rested in the Secretary, an appointed official. As currently drafted however, the bill appears to delegate unrestricted implementation authority to a State official.

#### H.R. 3981—TAHOE NATIONAL FOREST LAND EXCHANGE

*Question 1.* I want to continue a discussion that we had the last time you testified before this committee. At that time, I requested staff gather data on the number

<sup>1</sup>As currently drafted, it is not clear what would happen under H.R. 585 if the Secretary and the head of the state tourism office disagreed as to whether a community was a “gateway community.” If a community can meet the definition based on the head of the state tourism office’s determination even when the Secretary disagrees, then the state official’s implementation of the law will essentially override the federal official’s. This may present another Constitutional question under the Supremacy Clause, U.S. Const. art. VI, § 2, which provides that federal law “shall be the supreme Law of the Land.”

of administrative and legislated exchanges each year since 1995. The data we have collected shows that, in 1995 to 1998, the Forest Service completed an average of about 100 administrative exchanges each year. The number has since tumbled to a low of only 14 administrative exchanges in 2005. I understand from staff that you are going to tell me the real number is 35 administrative exchanges in 2005. I don't think the actual number is as important as the trend line. The Land Acquisition and Management budget, which covers more than just administrative exchanges, has grown from about \$40 million in 1996 to as high as \$156 million in 2000 and is back to about \$63 million in 2005.

Can you give me one good reason we should expend \$63 million in 2005 to accomplish only 35 administrative exchanges?

Answer. As a point of clarification, The Forest Service Land Acquisition Program only provides for the acquisition of lands through the Land and Water Conservation Fund (LWCF) program. In FY 2005, the LWCF program was funded at \$61 million after rescission.

In FY 2005, the Landownership Management Program was funded at \$92.1 million (after rescission) for the following activity areas: Land Exchanges, Title Management, Boundary Management, and Non-Recreation Special Uses. Administrative benefits from this program are achieved by minimizing land survey and fire management costs, reducing NFS boundaries, protecting property rights, acquiring rights-of-way, authorizing special uses and simplifying road management.

Of the \$92.1 million appropriated for the Landownership Management Program, we projected that around \$18 million (roughly 20%) would be expended to complete land exchanges, with a portion covering some land sales expenses as well. This 20%, along with cost sharing by non-federal exchange parties allowed for the completion of 35 exchanges and over 35,708 acres acquired and 13,579 acres conveyed (plus an additional 293 million acres of subsurface mineral rights underlying two Florida state forests). This has been the level of funding for NFLM and the land exchange component for the last three years (\$91.6 FY04 and \$92.4 FY03).

While there have been fewer land exchanges completed in the last five years than prior to 2000, there has been an increase in the number of completed land sales, including administrative site conveyances, and land purchases over this same time frame. The land exchange, sale, and purchase programs all rely on the same realty and appraisal staff. In many locations, this same staff is also supporting the special uses programs. Resource specialists providing support for NEPA and CERCLA assessments are also responsible for increasing numbers of fuels management and energy related projects. Often, land exchange is not the highest priority work to be accomplished, and unless significant costs are borne by the non-federal exchange party, exchanges may have to be postponed or foregone entirely.

The Office of Inspector General and the General Accountability Office audited the FS and BLM land exchange programs beginning in 1996. These audits identified numerous deficiencies, and as a result, significant changes were made to the program. Improvements include: a more formal assessment of the feasibility of an exchange early in the process, oversight by the Washington Office of individual cases over \$500,000 in value, oversight of all cases by Regional Offices, a reorganization of appraisal staff to ensure independent valuation products, and updating of Forest Service directives. While these and other required controls may have lengthened the process, we believe that they ensure financial accountability and protect the public interest.

We have recently eliminated the requirement for Washington Office case oversight, to be replaced by periodic Regional program reviews. This is expected to streamline the overall review process while ensuring continued Regional oversight and control.

*Question 2.* I would like you to have your people provide us with the following data: the number of administrative and legislative exchanges; the number of acres of each of those types of exchanges; and the time taken for each administrative and legislated exchange undertaken between Fiscal Year 1995 through the 2nd quarter of Fiscal Year 2006 by forest and year.

Answer. We have enclosed a table that shows information from "management attainment reports" (MAR) for fiscal years 1992 through 2005 with the following information: number of exchanges, acres and value of federal land conveyed, and acres of non-federal land acquired. Included is information from budget justifications for planned (estimated) budget for land exchanges within the NFLM line item in the three fiscal years for which such estimates have been made. The total NFLM line item amount is available only for fiscal years 2000 through 2005. Prior to 2000, this line item is not comparable as it contained different work items.

The Forest Service does not normally collect information on whether exchanges are accomplished administratively or legislatively, or on the time required for ac-



completing exchanges. However, in response to a special request, information for all regions and forests (except for the Southern Region) was compiled for the years 1995-2004. The data indicates legislated land exchanges occurred in 27 of 468 cases, or 5.8% of all exchanges.

The data also showed that it takes an average of 2.5 years to complete an exchange. This time frame begins with the signing of the Agreement to Initiate (ATI) and ends with the final recordation of deeds. Months or even years of discussions sometimes lead up to formal initiation. The ATI specifies the sharing of costs, requirements of title, appraisal, survey, and general process, and the estimated schedule for completion of necessary processing steps. Depending on the complexity of the exchange, and considering unforeseen circumstances, the time schedule may be short or long. The primary drivers in completing a land exchange, large or small, are the level of commitment and cooperation exercised by the exchange parties, as well as the funding and skills available to complete all tasks. We would like to meet with the Subcommittee staff to discuss this information in further detail.

*Question 3.* I would also like on a regional basis and for the Washington ice to know the number of employees (FTE s) at all levels of the agency that work on land exchanges as a principle part of their duties for each year.

*Answer.* It is difficult to quantify precisely how many Forest Service FTEs work principally on land exchanges each year, for the same reason that it is difficult to extract land exchange funding from other activities funded within the Land Management Program area. At the Forest and District levels, employees funded in the lands program perform a variety of duties depending upon the Forest's priorities. These duties include land exchanges, land purchases, land sales, title management, boundary management, non-recreation special uses, trespass cases, and so forth. At Regional Offices (RO), we estimate an average of 1 FTE per region is assigned to land exchanges in a given year, depending on priorities. The Washington Office (WO) has 1 FTE assigned to land exchanges.

*Question 4.* Joel—I have to presume, given the number of years these two exchanges have languished, that the Forest Service either doesn't want these exchanges, or thinks them unwarranted. I want a straight yes or no answer: Does the Forest Service support these exchanges? I will take the answer "we do not oppose" as a no.

*Answer.* Yes, we are interested in acquiring the non-federal lands proposed in this exchange. However, all exchanges are now being processed by the R5 Regional Land Adjustment Team and require each exchange proposal to compete with every other exchange proposal in California. Exchanges that proceed are those with the greatest net public value. Consequently, small exchanges such as these may not be funded through the administrative prioritization process, considering their size and resources values.

## LAND EXCHANGES

[1992-2005]

Fiscal Year	Number of Land Exchanges	Acres of Federal Land Conveyed	Value of Federal Land Exchanged	Acres of Non-Federal Land Acquired	NFLM Planned for Exchange \$ in thousands	Total NFLM
2005	35	306,435	\$46,683,318	35,708 <sup>6</sup>	\$18,060	\$92,129
2004	29	8,074	\$32,687,554	12,874	\$76,799	\$91,550
2003	26	7,654	\$34,425,813	25,981	\$18,528	\$92,411
2002	31	7,514	\$14,177,066	10,915		\$88,434
2001	24	25,340	\$41,830,290	35,132		\$86,418
2000	63	34,522	\$94,962,307	79,295 <sup>5</sup>		\$82,565
1999	83 <sup>3</sup>	83,896	\$134,647,357	316,037 <sup>4</sup>		
1998	86	27,420	\$96,843,272	69,938		
1997	96	133,870	\$224,123,000	244,178		
1996	93	32,691	\$99,389,000	65,848		
1995	116	91,884 <sup>1</sup>	\$78,118,675	98,405 <sup>2</sup>		
1994	117	42,000	\$46,200,000	75,757		
1993	113	54,680	\$61,000,000	81,956		
1992	109	38,574	\$37,800,000	69,102		

<sup>1</sup>includes 15,420 acres of subsurface mineral interest, R-10

<sup>2</sup>includes 14,914 acres of subsurface mineral interest, R-10

<sup>3</sup>83 cases is equal to 77 fee cases and 6 mineral cases

<sup>4</sup>includes fee and partial acres acquired

<sup>5</sup>non-federal acres as reported in MARS

<sup>6</sup>includes the State of Florida, R-8 exchange of surface and subsurface figures shows for P105 are from digests from the Regions; figures should but may not match those reported in MARS

## RESPONSES OF LYNN SCARLETT TO QUESTIONS FROM SENATOR CRAIG

## H.R. 585—GATEWAY COMMUNITIES

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Could you get your solicitor to provide us an analysis of H.R. 585 and the cooperating agency rules and policies to help inform us whether or not providing such standing to a gateway community will afford these communities special standing in the courts?

Answer. H.R. 585 would impose a number of mandatory procedural steps that Federal land managers must take specifically with respect to gateway communities, and therefore could create several new legal claims that could be asserted by communities dissatisfied with a management plan or projects. Under existing law and regulations, gateway communities already have the opportunity to comment as part of the National Environmental Policy Act (NEPA) analysis for management plans and projects. The CEQ regulations define a cooperating agency to mean "any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal . . ." 40 CFR 1508.5. "A State or local agency of similar qualifications . . . may by agreement with the lead agency become a cooperating agency." *Id.* The CEQ regulations also describe the responsibilities of the lead agency and cooperating agencies. 40 CFR 1501.6.

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To address this issue, the Department has proposed an amendment to H.R. 585, provided in a separate letter, to ensure that the bill does not result in the creation of enforceable claims by gateway communities.

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Could you provide a legal analysis that examines the constitutionality of a State Direct of Tourism making such a decision for the Department of the Interior?

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Even so, the bill may implicate some of the governmental accountability concerns expressed by the Court in *Printz*: “even when the States are not forced to absorb the costs of implementing a Federal program, they are still put in the position of taking the blame for its burdensomeness and for its defects.” *Id.* at 530. H.R. 585 could perhaps raise some of the same concerns, because a State officer could face blame for improperly implementing the Federal definition of a “gateway community” if someone is dissatisfied at his or her designation (or failure to designate) a particular community.

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#### RESPONSES OF LYNN SCARLETT TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* The Department's testimony suggests that the definition of a "gateway community" needs further refinement. I would agree, but your testimony doesn't take account of the fact that in my State of Alaska many communities that border on public lands are unincorporated, which is to say that these communities are neither cities nor part of one of Alaska's organized boroughs. It would seem to me that the State of Alaska should be permitted to exercise powers that the gateway local governments ordinarily would in this instance. Would you consider recommending this change?

Answer. The inclusion of the states in the definition of gateway communities would be one means of addressing the challenge of a requirement that would include unincorporated communities. Mandates to include an unincorporated community are problematic and could result in legal challenges because the Federal land management agency would not have an elected or appointed official through which we could ensure the representative engagement of the entire community. For this reason, the Department has proposed an amendment to limit the definition of a gateway community only to those that are incorporated. Such an amendment would not interfere with our goal to engage all interested and affected communities, including those that are unincorporated, in our land use planning process.

With regard to the inclusion of states, as we mentioned in our testimony, existing Department-wide guidance at 516 DM 2.5 requires all agencies to invite states to participate as cooperating agencies during development of an environmental impact statement under National Environmental Policy Act. Through a state's participation as a cooperating agency, a state could certainly work to ensure that unincorporated communities are represented through this process.

*Question 2.* I'm troubled by the Department's comment on Section 2(d)(4) which would make federal personnel available to gateway communities to help them meaningfully participate in planning efforts. I understand that federal resources are limited, but I would also suggest that meaningfully involving stakeholders in the planning process is or should be a key federal responsibility. If the federal land management agencies are going to undertake planning processes shouldn't they devote what resources are necessary to do it right, with full engagement from the affected communities?

Answer. We agree that meaningful involvement involving stakeholders in the planning process is an important Federal responsibility. We believe that other provisions in the bill and in existing Federal and agency regulations and guidance provide the necessary processes to ensure such engagement. The provision in section 2(d)(4), however, differs in that it mandates that Federal personnel take temporary work details to gateway communities to assist with planning efforts. The number of gateway communities that would be eligible to make the request for technical assistance is likely to far exceed the number of Federal planning experts who would be available in the field offices to provide the assistance. We believe this provision is simply not feasible, could result in competition among gateway communities for limited Federal personnel, could adversely affect the ability of Federal agencies to work with many gateway and other communities on ongoing, priority planning

<sup>1</sup>As currently drafted, it is not clear what would happen under H.R. 585 if the Secretary and the head of the state tourism office disagreed as to whether a community was a "gateway community." If a community can meet the definition based on the head of the state tourism office's determination even when the Secretary disagrees, then the state official's implementation of the law will essentially override the federal official's. This may present another Constitutional question under the Supremacy Clause, U.S. Const. art. VI, § 2, which provides that federal law "shall be the supreme Law of the Land."

projects, and could result in significant delays of Federal projects as Federal personnel are diverted from their planning duties.

*Question 3.* I think your testimony notes that 62% of my State of Alaska is owned by the federal government. Sometimes that makes Alaskans happy, sometimes not. But one thing that deeply concerns many of my constituents is the prospect that the federal government will exert or influence the control of land use off of the federal lands.

Would anything in H.R. 585 give the federal government a lever to control land use in the gateway communities?

Answer. H.R. 585 does not appear to provide the Federal government with the authority to make decisions concerning lands that are under state, tribal, or local jurisdiction or under private ownership. Through provisions that permit greater coordination of land use and allow for technical assistance by Federal personnel, H.R. 585 could provide for greater Federal participation in State or local land use planning, but this participation would occur at the discretion of the gateway community.

#### RESPONSES OF STEVE DUERR TO QUESTIONS FROM SENATOR CRAIG

*Question 1.* I am hoping you can help me to develop more empathy for “national interests” when the national interest groups gang-up with the agency’s inside-the-beltway policy-makers to make decisions that devastate these small local communities. It seems to me the existing paradigm more than protects the “national interests”. So why do the groups representing “the national interests” so fear this legislation?

Answer. I cannot speak for such groups. I would counsel the subcommittee against painting all national organizations with a broad brush. Certainly, there are some that have little sensitivity to local issues and needs. Others, however, are very cognizant of local issues and work hard to balance those with issues of national importance—particularly those that employ people who are part of our communities and have a stake in our economic well-being. For example, the National Parks Conservation Association has worked closely with the local community around Jackson to develop a transportation system that works for Grand Teton National Park and the surrounding community. My impression is they do not fear legislation if that legislation makes sense. What concerns me is the potential for legislation that promises much more than it can possibly deliver, ultimately leading to frustration and added tension. In my experience, mandates to cooperate do not produce cooperation, nor do checklists that ultimately serve as a “gotcha”. They are not what we need when it comes to long-term solutions. The fact that an agency checks all the required boxes does not mean communities will be any better off, or that dialogue will improve or lead to sustainable results or compromises. What is needed are appropriate early- and mid-career training opportunities for federal managers and for gateway community officials on how to work together productively in their roles. Separate funding to hire facilitators or mediators would also be useful at times. The last thing that anyone who cares about what happens in and around national parks and other federal lands needs, whether they come from a national or a local perspective, is a product that produces a false promise of progress. That will only lead to frustration.

*Question 2.* Having read your testimony, I am not sure H.R. 585 is a “one size fits all” bill. As I see it, the bill directs the various federal agencies to give gateway communities improved access to their respective planning processes, which are all governed by NEPA. Each individual agency’s NEPA regulations and policies tell anyone that is interested how to comment and communicate with the agency. Nothing in the bill says the National Park Service has to utilize the Forests Service’s process or visa versa, so can you help me better understand this concern?

Answer. The missions of the Park Service, the Forest Service, the Bureau of Land Management and the Fish and Wildlife Service are all different. The lands they manage are subject to vastly different uses. Their relationship to each other and the issues affecting specific units and gateway communities also differ. The financial and staff resources available to each, also vary. For example, as I cited in my written testimony, the bill assumes that the federal land management units concerned will be able to provide a land use planner to gateway communities upon request. In fact, national parks are so understaffed, that they may not have that kind of person available. Also, the vast majority of national park units are historic in nature. Does anyone really think they are likely to employ land use planners? Something else that bothers me about this kind of requirement is that it’s not necessary. The authority already exists for national parks to provide such assistance where it makes sense, and many already do. Finally, I would hate to see federal agencies in-

terpret a bill like this as only requiring them to provide certain kinds of assistance, like a land use planner. By so narrowly defining what "cooperation" should look like, it's possible the bill would, indeed, produce a very narrow vision of how gateway communities and federal land managers should interact. That would be truly unfortunate.

*Question 3.* Some believe that H.R. 585 could provide gateway communities some special legal status that would allow these communities to contest federal management plans. Mr. Warren's oral testimony indicated that he didn't believe that this bill gave special legal status to the gateway communities, but then, in his conclusion, he said "all we are asking for is legal standing."

Could you get your legal counsel to provide us with an analysis of H.R. 585 and the cooperating agency rules and policies to help inform us whether or not providing such standing to a gateway community will afford these communities special standing in the courts?

Answer. I suggest that the subcommittee ask this question of the Council on Environmental Quality, which is probably in the best position to analyze the standing issues you raise. It is my impression, however, that CEQ already requires federal agencies to invite local communities to participate as cooperators. While cooperating agency status is important, gateway communities must be aware of the work that accompanies such status. Once granted, true cooperation is necessary by all participants.

*Question 4.* H.R. 585 currently calls for the Secretaries or a State Director of Tourism to designate the Gateway Communities.

Could you provide a legal analysis that examines the constitutionality of a State Director of Tourism making such a decision for either the Department of Agriculture or the Department of the Interior?

Answer. I am not in a position to provide the kind of constitutional analysis you request, but I'm not certain of the logic behind this provision.

#### RESPONSE OF STEVE DUERR TO QUESTION FROM SENATOR MURKOWSKI

*Question 1.* I appreciate your comment that "cooperation cannot be legislated." I would like to frame the question another way. In any large organization, whether it is General Motors or the Interior Department, managers tend to respond to the criteria on which their performance will be evaluated. Wouldn't you think that federal land managers were given a set of uniform expectations about how to work with gateway communities and were measured on achieving those objectives, there would be greater coordination and less confrontation on important land use decisions.

Answer. Your question makes the kind of point I attempted to make in my testimony. I think it is very important that federal managers be evaluated based on how well they interact with gateway communities and other stakeholders. They need to be provided the skills to engage in such interaction, and they ought to be held accountable for how well they communicate and deal with gateway communities and others in performance reviews. Federal land managers need to recognize the very real impact that some of their decisions can have on our communities. But as written, H.R. 585 will not accomplish that.

#### RESPONSES OF BOB WARREN TO QUESTIONS FROM SENATOR CRAIG

*Question 1.* As I understand cooperating agency status, the program requires the cooperating agency to invest more than just time into going to meetings. It requires they provide the agencies with specific research or community developed alternatives to ongoing planning efforts. I know that Carbon County, Wyoming, which has cooperating agency status on the Medicine Bow National Forest planning effort, invested at least a hundred thousand dollars to develop an alternative for the forest to consider in its planning process.

I wonder how many gateway communities are willing to make that kind of monetary investments when part of this legislation tells me these communities don't even have the money to spend to understand the various agency processes they need to understand to participate as a cooperating agency?

Answer. We realize that it may strain the budgets of some communities to participate in the NEPA process as cooperating agencies. Some of them may indeed decide not to participate as cooperating agencies for financial reasons.

We do not believe, however, that this is reason not to enact H.R. 585, for the following reasons: First, providing for gateway communities to be treated as cooperating agencies for NEPA purposes is only one part of H.R. 585. Section 2 (d) directs the relevant Secretary to solicit the involvement of elected and appointed gateway

officials in the development of a variety of agency plans, programs and regulations that do not necessarily involve NEPA. Furthermore, we think the requirements in this section for non-technical agency explanations of the purposes and anticipated impact of agency plans and policies, for gateway access to agency training programs, for technical assistance and for interagency cooperation and coordination will especially benefit gateway communities with limited budgets more than others with larger budgets.

We further believe that the fiscal capacity of gateway communities to participate as cooperating agencies should not be prejudged. Even if a gateway community budget is limited, it may be possible for that community to receive support from the State or from private sources that would enable it to participate as a cooperating agency. We would urge Congress not to presume any community's determination to overcome limited fiscal resources when vital questions affecting its future are perceived to be at stake.

Finally, we would respectfully note that the thrust of Section 2(d)(7) of H.R. 585 ("Treatment as Cooperating Agencies) is similar to S. 301 in the 107th Congress and S. 372 in the 108th Congress, identical bills entitled the "State and Local Participation Act," which you and Senator Thomas sponsored. That legislation would have amended NEPA simply "to require that Federal agencies consult with State agencies and county and local governments on environmental impact studies." We would be glad to consider substituting language similar to S. 301/372 for the current Section 2(d)(7) if that would clarify doubts or uncertainties concerning this section.

*Question 2.* Some believe that H.R. 585 could provide gateway communities some special legal status that would allow these communities to contest federal management plans. Your oral testimony indicated that you didn't believe that this bill gave special legal status to the gateway communities, but then, in your conclusion, you said "all we are asking for is legal standing."

Could you get your legal counsel to provide us with an analysis of H.R. 585 and the cooperating agency rules and policies to assure us that providing such standing to a gateway community will not afford these communities special standing in the courts?

Answer. The limited budget of the NAGC precludes us from using legal counsel at this time, so we hope the following explanation is sufficiently responsive to this question. It is, of course, very difficult to prove a negative, i.e. that H.R. 585 will *not* afford special legal standing to contest Federal management plans. We are not aware, however, that cooperating agencies under NEPA at present have any special legal standing and would request any information or precedents to the contrary. We suggest, in fact, that participation as cooperating agencies would make gateway communities less rather than more likely to litigate Federal management plans. Such participation will make these communities will make gateways more a meaningful part of the process as more informed participants. We respectfully suggest that by bringing gateways into the planning process earlier and giving them a significant opportunity to participate, they will be more understanding of what is being done and, therefore, less likely to contest final plans in court. We again refer to S. 301/372 as cited above and reiterate our willingness to consider substituting similar language for the cooperating agency language in H.R. 585 if that would clarify and resolve this concern.

(NOTE: Our request for "legal standing" in our earlier oral testimony was intended only for rhetorical purposes and should not be construed as a request for actual justiciable status. We regret any indication to the contrary.)

*Question 3.* H.R. 585 currently calls for the Secretaries or a State Director of Tourism to designate the Gateway Communities.

Could you provide a legal analysis that examines the constitutionality of a State Direct of Tourism making such a decision for either the Department of Agriculture or the Department of the Interior?

Answer. Again, we regret not being able to provide a legal analysis and ask your indulgence for this non-legal explanation. It appears to us this question has several parts. First, is the Director of Tourism the appropriate State official to designate a gateway community for purposes of this legislation. While State Tourism Offices are well qualified to judge the degree of interdependency between a community dependent on visitors coming for recreation and tourism and the Federal land facility that attracts those visitors, we recognize some gateways may be more dependent on grazing or mineral extraction from the Federal land facility. It may be more appropriate in those cases for another State agency to designate the community as a gateway. For this reason, we accept that it may be better to give the Governor of a State the authority to make that designation and decide which State agencies should be used. The next question is, then, whether it is appropriate for any State official to have that responsibility. Since this responsibility would not mean any direct super-



vision of Federal employees, any direct control or oversight of Federal programs, or any direct expenditure of Federal funds, we do not believe it would pose constitutional problems in our federal system.

To the extent this does raise constitutional issues, we suggest there are ways to mitigate, if not eliminate them. One would be to amend H.R. 585 to require only that the Secretary of the Interior and the Secretary of Agriculture “receive input” from the Governor of a State (or their designee) in deciding whether a community is a gateway. In that case, we suggest that, when a Secretary determines that a community is not a gateway, a written explanation should be provided by the Secretary to the respective Governor and to Congress. There is precedent for reporting back to Congress on decisions made by the Secretary’s of the Interior and Agriculture as outlined in the recently passed *Federal Lands Recreation Enhancement Act*. Under section 4, (d), paragraph (4), Notice of Rejection. If the Secretary rejects the recommendation of a Recreation Resource Advisory Committee, the Secretary shall issue a notice that identifies the reasons for rejecting the recommendation to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than 30 days before the Secretary implements a decision pertaining to that recommendation. Similar language could read for the Gateway Community Cooperation Act as follows: Notice of Rejection.—If the Secretary rejects the recommendation of the Governor of a State, in the designation of a gateway community, the Secretary shall issue a notice that identifies the reasons for rejecting the recommendation to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than 30 days after the rejection.

Another way to mitigate constitutional problems may be for Congress to reduce the discretionary authority of the State official involved by including criteria either in the legislative language or in the report language to define more precisely what constitutes a gateway community. Agreeing on such criteria would be challenging but we would be glad to work with you and the Subcommittee to develop them.

#### RESPONSES OF BOB WARREN TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* Does your organization, the National Association of Gateway Communities include representation from Alaska? Have any of these communities been involved in the development of this legislation?

Answer. At present, the NAGC does not have any members in Alaska. In late July, the president of the NAGC will visit Alaska to meet with gateway communities there and we will be happy to report back to Senator Murkowski and the Subcommittee on the results of that trip as they may pertain to this legislation.

*Question 2.* My constituents in Alaska often express concern that federal land managers approach local leaders with something of a heavy handed attitude. Do you see this situation as having improved and what would this bill do to bring about changes in attitude.

Answer. Although relations between gateway communities and Federal land managers have improved somewhat in Alaska and elsewhere in recent years, those relations continue to vary according to the personalities involved—on the part of both the Federal land managers and gateway officials and other local leaders. This bill alone will not change attitudes overnight. We understand that you cannot mandate cooperation and harmony by statutory decrees. But what can be mandated is that both Federal land managers and gateway representatives meet, discuss, share information and concerns and, in that way, by working and consulting together, hopefully, increase mutual understanding of each other’s perspectives, values, goals and needs. We believe H.R. 585 is a substantial, historic step towards that outcome and we look forward to working with the Subcommittee to enact it into law.