

**TESTIMONY of  
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UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES  
on  
H.R. 5780 THE UTAH PUBLIC LANDS INITIATIVE  
SEPTEMBER 14, 2016**

Chairman Bishop and Members of the Committee, thank you for the opportunity to present the views of the U.S. Forest Service regarding the Utah Public Lands Initiative, H.R. 5780. The Utah Public Lands Initiative bill would create, on National Forest System lands, 10 new wilderness areas (approximately 125,000 acres), two National Conservation Areas (approximately 624,000 acres), 5 Watershed Management Areas (approximately 66,000 acres), 2 Special Management Areas (27,422 acres), and the Ashley Karst National Geologic and Recreation Area (110,838 acres). It would also provide for land exchanges and other land conveyances and other provisions of relevance to the Forest Service. The bill provides a range of designations with objectives from protecting motorized recreation to designating wilderness. The bill recognizes that a varying mix of human uses and resource protection best serves the public and ensures long term conservation of resources.

As a general matter, the Forest Service welcomes legislation that incentivizes collaboration and expands the options available for accomplishing critical work on our nation's forests. Although the Department has significant concerns about H.R. 5780 and opposes this bill as written, we are encouraged by many of the goals outlined within, and we look forward to working further with the sponsor to address the provisions that cause concern.

The Forest Service has an overall responsibility to manage National Forest System resources in a sustainable manner that meets the needs of present and future generations. Demands for and supplies of renewable resources are expected to change over time in response to social values, new technology, and new information. Our land management planning process, regulated by the 2012 Planning Rule, is the responsive approach we use to balance those multiple demands, collaborate with our communities, and allow adaptive change over time.

By designating special management areas with very specific language, the proposed bill establishes direction that is normally the outcome of this land management planning process, which, as required by the 2012 Planning Rule, must include robust public engagement. As a result, land management could become static and unresponsive to changes in values, environmental conditions, technology and new science. We have already initiated the planning process on the Ashley and Manti-La Sal National Forests with engagements in more than sixteen communities, cooperation with local and county governments, and conversations with scores of Utah and Wyoming citizens regarding the unique contributions of these National Forests.

As written, the legislation does not allow for management of National Forest System lands at a local level or through the collaborative planning process. Instead, the legislation imposes specific and in some cases inflexible management direction with respect to livestock/range management, energy development, transportation system management, some watershed management and management of different areas of emphasis; in contrast the Forest Service takes its responsibility to flexibly manage National Forest System lands seriously and finds this prescriptive approach inflexible and limiting. Finally, to implement this bill, the agency administrative burden, such as land management plan amendments and associated NEPA analysis would be significant and likely delay our ongoing public process on the Ashley and the Manti La Sal National Forests by several years.

#### Wilderness (Title I)

To best serve the public and provide for uniform management of designated wilderness areas on National Forest System lands, we believe the bill should be fully consistent with the Wilderness Act of 1964, including special provisions. Also, where proposed special management areas overlap with wilderness designations, the legislation must clearly state which special provisions are tied to which designation in order to provide clarity to the public and the land manager.

Additionally, we recommend boundaries for wilderness areas and other special designations be mapped to recognizable features on the ground to assist the public and the land manager in knowing when they are in or out of the different designations. Further, boundaries could better conform to existing special designations (such as roadless areas and research natural areas) and wilderness boundaries could include additional roadless/unroaded lands with wilderness character. Such changes would make boundaries more definable and afford protection to water, cultural and other resources important to local communities. We also recommend that proposed boundaries be vetted at the field level to confirm practicality of the management of these special designations in accordance with the legislative intent.

There are Wilderness and Conservation areas which fall mainly on Bureau of Land Management lands, but include a small portion of National Forest Service lands. These Forest Service lands and acreages should be identified in the bill. Also, clarity is needed regarding jurisdiction - whether the area is to be jointly managed as a single unit or whether each agency is to manage their lands as a separate wilderness unit. If the lands are to be jointly managed, it would be helpful for the legislation to identify which agency is to be the lead.

Section 103(c) on Wildfire Management Operations would allow any Federal, State, or local agency to conduct wildfire management operations in wilderness, including the use of aircraft or mechanized equipment, without Forest Service approval. As the underlying land manager, the Secretary should determine which agency can or should conduct operations, and one agency should serve as the primary coordinator to ensure firefighter and public safety. Additionally, the Wilderness Act requires the use of motorized equipment and mechanical transport, including in

emergencies, to be allowed only as necessary to meet the minimum requirements for the administration of the area for the wilderness purposes. We recommend Section 103(c) be revised to clarify the coordination responsibilities of the Secretary and to ensure that the operations of all agencies conducting wildfire management in wilderness areas are consistent with current law, regulation and policy.

Section 103(e), addressing Outfitting and Guide Activities, should more closely mirror the Wilderness Act by authorizing commercial services only to the extent necessary for realizing recreational purposes and other wilderness purposes of the designated area. As written, the legislation places recreational purposes above other public purposes, including scenic, scientific, educational, conservation, and historical use and is therefore inconsistent with the Wilderness Act. This Outfitter and Guide Activities language is also included in the other non-Wilderness management areas. For those areas where recreation is more of a focus and goal outside of Wilderness, we recommend striking ‘to the extent necessary’.

Throughout the bill there is language requiring the Secretary to provide access. For clarity, we recommend the language be modified to limit that requirement to ‘upon request of owner’. For this provision to be fully consistent with Section 5(a) of the Wilderness Act, we recommend Section 103(f) say “adequate access” to the property, as was written in the June 2016 draft of this bill.

As drafted, language in the bill referencing Existing Water Infrastructure does not limit access to existing routes or roads, creating the potential for new road construction, if justified for maintenance of existing facilities. We recommend instead using management language on water infrastructure that is fully consistent with the Wilderness Act of 1964.

### Land Exchanges

We recommend that language be added to ensure selected Federal lands are mutually agreed upon by the State of Utah and the United States. In addition, language should be added to ensure that title meets Department of Justice Title Standards and is also free of hazardous substances and petroleum products, and that those requirements need to be met before the land exchange is executed.

We find that, as written, acquisition of land and interests in land do not clearly specify whether the State has two years from the date of enactment to request an exchange, which appears to preclude future opportunities, or if the United States is required to complete the exchanges within two years of date of enactment, regardless of the date of request by the State. We recommend more practical language, which would require completion of an exchange within two years from the date of any State request.

## National Conservation Areas (Title II)

Language in Title II should clarify that the special provisions listed in this section do not apply to the wilderness acres designated within the National Conservation Areas (NCAs). The section on Livestock is particularly problematic for the wilderness acres in the NCAs, and the provision is inconsistent with the livestock section under Wilderness Areas (Title I). Some language relevant to livestock management is inconsistent with the Wilderness Act of 1964.

Regarding the function of the proposed Public Lands Initiative Planning and Implementation Advisory Committee for the special management areas, national conservation areas, and recreational zones, the reporting requirements imposed by the bill could impede the meaningful function of the committee. The Forest Service has always encouraged input from States, local governments, tribes and the public, including through the use of advisory committees. The purpose of the committee could be fulfilled by authorities currently available to the agency.

## Watershed Management Areas (Title III)

National Forest System lands were originally set aside in part to help sustain the Nation's water supply. The Forest Service manages the largest single source of water in the U.S., with about 20 percent originating from its 193 million acres of land. Agency program managers and decision makers take the agency's stewardship responsibility for water resources seriously and apply available tools and authorities to help sustain those resources over the long term. For example, the Agency uses the Watershed Condition Framework to characterize the condition of the more than 15,000 watersheds located on NFS lands and help identify watersheds that need focused work to improve or maintain condition. The Agency also uses information about public water supply sources to help prioritize fuels treatments to improve fire resilience. In addition, the Agency has existing authorities to provide for the formal designation of municipal watersheds and the establishment of special management areas through land management planning. These authorities have been utilized to set up special management within source watersheds.

The provisions in this section of the bill on Vegetation Management requires the Secretary to conduct vegetation management projects if they improve water quality or restore ecosystems, regardless of cost, public support or effects on other resources. Such direction could have unforeseen consequences, possibly precluding a transparent public engagement process or forcing a wide-scale shifting of resources from other public lands with negative consequences.

## Special Management Areas (Title IV, VIII)

The language under Title IV and VIII does not provide a rationale for a congressional designation and doesn't specify any management activity that isn't already available under existing authorities, such as the land management planning process. The development of a specific management plan and engagement of an advisory committee with such a minimal foundation would be challenging and may have unanticipated consequences.

There is also potential for the Special Management Areas designation to be in conflict with forest-level over-the-snow travel management planning. The goals of a Special Management Area could be more effectively integrated into the applicable land management plan, in conjunction with travel management planning without having to require a separate management area and separate management plan. Permanent withdrawals from mineral entry for areas of 5,000 acres or more, such as those delineated in sections 404 and 407, cannot be addressed through administrative planning or decisions and would require an act of Congress.

The Forest Service recognizes State management of water rights. The water rights provisions in Sections 404, 407, and 804 differ from those in other sections in this bill. The Forest Service believes that the additional language in these three sections is unnecessary and would like to work with the sponsors and the Committee to revise the language to be consistent with the rest of the bill.

Finally, in several locations, the legislation identifies timeframes for mapping and establishing legal descriptions, development of management plans, and execution of land exchanges. This represents a workload to be accomplished within two years from the date of enactment. Two years is too short given the number and complexity of all the designations occurring through this bill. We recommend no less than three years and would prefer five years for completing the numerous maps, legal descriptions and management plans that the legislation would require.

Grazing (Sections 106(b), 204(d), 303(j)(1), 404(d)(1), 407(h), 804(h), Title XIII)

Throughout the proposed legislation, direction is given to maintain existing livestock grazing levels. It appears that the goal of the legislation intends to give permittees assurances that nothing in the legislation would be used as a justification for managers to direct reductions in livestock grazing simply because of the land management designation. The legislation recognizes that range conditions can improve and that increases in livestock numbers could be considered, but appears to limit reductions regardless of conditions. Section 1303 states that ‘areas of public land that have reduced or eliminated grazing shall be reviewed and managed to support grazing at an economically viable level’. This may result in grazing practices that exceed sustainable levels.

Our concerns focus on the challenges of sustaining both range conditions and livestock uses under these restrictions. In order to protect the resource, the legislation should direct managers to ensure livestock levels consistent with rangeland capabilities and conditions and, when making adjustments, to work closely with permittees and State and local governments, utilizing data from all sources, including the Utah State Department of Agriculture.

Specifically Title XIII, Section 1302 removes the viability requirements for bighorn sheep on National Forests in Summit, Duchesne, Uintah, Grand, Emery, Carbon, and San Juan Counties, where there are possible conflicts with domestic sheep grazing. This requirement conflicts with the National Forest Management Act (NFMA) and its implementing viability regulations. These viability regulations (36 CFR Sec. 219.9(b)(1)) address the Forest Service’s obligation to meet

NFMA's requirement "to provide for diversity of plant and animal communities" (16 USC 1604 (g)(3)(B)). We suggest the bill's language be changed to emphasize that any potential conflicts between bighorn sheep and domestic sheep will be resolved using the best available science, best management practices, and incorporating input from the Utah Division of Wildlife Resources, the Utah Department of Agriculture and grazing permittees.

#### Deer Lodge Land Exchange and other Land Conveyances (Division B Title IV, VI)

With regard to the realty-related actions in Title IV and VI, the Forest Service has long been a supporter of efforts to consolidate ownerships, be it private, State or Federal. This improves management efficiency, improves utilization of resources, both natural and financial, and eliminates many potential conflicts. Numerous examples exist where large-scale land exchanges have occurred between the Forest Service and with States.

We strongly support efforts to encourage the consolidation of non-Federal ownership of public lands outside of Congressionally-designated areas. As drafted, however, we strongly oppose this provision as the bill does not provide the ability for the United States to agree to the Federal lands proposed for acquisition by the State. Additionally, we are concerned that the proposed land exchange may create an inholding within the National Forest, resulting in additional resource and boundary management burdens.

#### Long-Term Energy Development Certainty in Utah (Title XI)

As drafted, Title XI is of great concern for the Forest Service. While we recognize the need for timely review of energy development proposals, the Forest Service does not agree that transferring permitting authority to the State will significantly improve that process. In addition, while it requires the State to comply with Federal statutes and regulations, it does not require compliance with applicable land management decisions, Forest Plan standards or other considerations, typically developed with public input, for management of multiple-use lands.

Sec. 1101 is unclear whether this Title XI is speaking only to energy development or to energy and minerals. The second sentence in Sec. 1101 should have the word "minerals" removed. The rest of the Title XI only speaks to "energy".

#### Long-Term Travel Management Certainty (Title XII)

Title XII would provide for immediate resolution of RS2477 claims. However, we have broad concerns with this title because most, if not all, of the claimed routes are currently subject to active litigation and many are located in sensitive resource areas, including priority sage-grouse habitat and specially designated areas. As a matter of policy, we do not believe that R.S. 2477 rights-of-way asserted by the State should be automatically recognized as valid and existing rights-of-way. We share the State's concerns over protracted litigation. However, we have

concerns over provisions which could significantly expand rights in protected areas (e.g. roadless areas).

#### Bear Ears National Conservation Area (Division D, Title I)

The Bears Ears National Conservation Area incorporates approximately 190,000 acres of the Manti – La Sal National Forest and includes all of Elk Ridge and all lands west of South/North Cottonwood drainage on the Monticello portion of the District. This broader region contains one of the highest densities of archeological resources, spanning a multitude of eras, of anywhere in the United States. It is therefore concerning that while there is consideration for enhanced protection and recognition of the cultural values associated with the heritage resources of the Bears Ears area, the legislation excludes important cultural resources found on the east side of Cottonwood Canyon, among other areas. In addition, portions of Hammond Canyon and Arch Canyon are designated as wilderness, but the boundaries are not clear.

Finally, regarding Sec. 104(a)(5): the term "Native American archaeological sites" is an unusual, limited, and possibly confusing subset of the sites protected by the statutes listed (NAGPRA, NHPA, Utah Antiquities Act). Those statutes also protect historic sites, including traditional cultural properties, and burial sites, even when they are not archaeological. It is also odd that ARPA (Archaeological Resources Protection Act) is not listed if the focus is indeed on archaeological sites.

The legislation directs the development of a management plan and establishes the Bears Ears Management Commission, to include two tribal representatives, a county representative and a state representative to review and approve the plan. The Department is not supportive of this provision and believes it is unnecessary as the Forest Service is required under the 2012 Planning Rule to develop land management plans in a broadly inclusive manner and will continue to work collaboratively with Tribes, communities of interest, local, county and state entities and elected officials in achieving mutually beneficial outcomes under its existing planning authorities.

Additionally, while the Department is supportive of the goal of increasing Tribal involvement in the management of this land the Bears Ears Tribal Commission at Sec. 107 will not fit within the intergovernmental exemption from FACA in the Unfunded Mandates Reform Act (UMRA), PL 104-4 Sec. 204(b). To qualify for the intergovernmental exemption from FACA, the Commission must consist exclusively of "Federal officials and elected officers of ... tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities." UMRA Sec. 204(b). By contrast, under the bill as revised, the tribal representatives would be "tribal members," not elected tribal government officials or designated tribal government employees.

The Department does not support the National Conservation Area proposal to lock the current Travel Plan in place, which does not allow for any new permanent road construction and does not allow for permanent closure of any designated routes.

We would like to work with the bill sponsors and committee to clarify the extent of the mineral withdrawals on the National Conservation Area.

#### Conclusion

The Forest Service welcomes the opportunity to work with the sponsors and the Committee to address the agency's concerns.

Thank you for the opportunity to testify here today. I would be pleased to answer any questions you may have.