

**STATEMENT OF
HARRIS SHERMAN
UNDERSECRETARY NATURAL RESOURCES AND ENVIRONMENT
UNITED STATES DEPARTMENT OF AGRICULTURE BEFORE THE
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON
PUBLIC LANDS AND FORESTS
MARCH 10, 2010
CONCERNING
S. 2895 OREGON'S EASTSIDE FOREST RESTORATION AND OLD GROWTH
PROTECTION ACT OF 2009**

Mr. Chairman, Members of the Committee, thank you for the opportunity to share the Administration's views on S. 2895, the Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act of 2009.

S. 2895 directs the Secretary of Agriculture to establish a science advisory panel, conduct an assessment of forests located in eastern Oregon and subsequently undertake ecological restoration projects. While the assessment is prepared, the legislation directs the Secretary to mechanically treat 80,000 acres of forest in the first fiscal year following enactment, 100,000 acres in the second fiscal year, and 120,000 acres in the subsequent year. During this "interim" period, the projects on the forests within eastern Oregon would not be subject to an administrative review process (appeals). The legislation also requires the Secretary to promote use of biomass and encourages the use of long-term stewardship contracts.

I would like to express my appreciation to Senator Wyden for the leadership, energy and effort that went into developing this legislation and his work to bring diverse interests together. There are numerous concepts in the bill that the administration fully supports including collaboration, achieving restoration results on the ground, conducting assessments at a broad landscape scale to focus our efforts, reducing our road system to what is needed, establishing a pre-decisional administrative review process, maintaining our much needed wood products industry and infrastructure, and promoting sustainable use of biomass as an energy source.

Current Efforts

On our national forests, we are currently engaged in numerous administrative efforts to encourage and expand many of the concepts included in this legislation.

When Secretary Vilsack articulated his vision for America's forests, he underscored the overriding importance of forest restoration by calling for complete commitment to restoration. He also highlighted the need for pursuing an "all-lands" approach to forest restoration and close coordination with other landowners to encourage collaborative solutions.

To that end, the Forest Service portion of the President's 2011 budget proposes to invest \$50 million to improve watershed conditions through a new initiative, Priority Watersheds and Job Stabilization, as a part of the Integrated Resources Restoration budget line item in the National Forest System appropriation. Under this initiative, priority watersheds will be identified through a rapid watershed assessment or State forest assessment. Large-scale (greater than 10,000 acres) watershed restoration projects within these priority watersheds will be selected through a national prioritization process which favors projects that demonstrate coordination with other federal and state land management agencies; improve watershed function and health; create jobs

or will contribute to job stability; create or maintain biomass or renewable energy development; and use youth programs. Restoration projects will clearly show restoration needs and goals, and will be developed in a collaborative manner with local communities.

Throughout the nation, the Forest Service is engaging with a variety of citizens' groups to develop collaborative solutions to help us provide the best possible stewardship of the national forests. Two notable efforts in eastern Oregon include the Glaze Forest Restoration Project and the Lakeview Stewardship Group.

The Glaze Forest Restoration Project on the Sisters Ranger District of the Deschutes National Forest was initiated in 2005 when Oregon Wild and the Warm Springs Biomass LLC approached the Forest Service with a proposal to restore 1200 acres of eastside Cascades old growth ponderosa pine forest so that it can function more naturally in a fire-prone environment.. A collaborative partnership of diverse interests agreed to cooperate and apply ecosystem, community and economic values on the land. After five years of active engagement and bringing these diverse groups together to plan and analyze this stewardship project, implementation began this January. No appeals were filed on the project, making it one of the few Deschutes National Forest projects involving commercial forest products interests to avoid appeal since 1996. The project work is ongoing, and aims to jumpstart the old growth characteristics in the Glaze area while protecting the aspen stands, scenery and wildlife habitat.

As important as the results achieved on the ground are the outcomes of the collaborative process that have resulted in strong relationships built on trust that will provide the basis for future

collaborative work and projects that restore our national forests on a larger scale and over the long-term.

The Forest Service also employs a variety of assessment methods to gather information at the landscape or watershed level to guide our restoration efforts and develop projects. For example, the Pacific Northwest Region has an Aquatic Restoration Strategy in place which identified priority basins and watersheds for restoration. The Region is conducting a region-wide assessment of terrestrial habitat restoration needs and is working with the Western Wildland Environmental Threat Assessment Center to conduct a regional assessment of wildfire risk. These assessments will help identify the highest priority landscapes for integrated forest and watershed restoration treatments. In addition, the Region is working closely with the states of Oregon and Washington as they complete their State-wide Forest Resource Assessments and Strategies as required by the 2008 Farm Bill. The State-wide assessment is an analysis of forest resource conditions and trends, threats, and opportunities for the purpose of identifying and treating priority forest landscapes. The Region is using this all lands approach to mutually identify priority landscapes and plan how to best leverage resources.

Another tool that has been helpful in building relationships and improving agency decision making is use of the objections process prior to a decision, rather than using an appeals process after a decision is made. Our experience with the objections process indicates that the process tends to increase direct dialogue between the agency and stakeholders and often results in resolution of concerns before a decision is made, and thus a better, more informed decision

results. One example is the Sportsman's Paradise Fuels Reduction Project on the Mt. Hood National Forest. This project was initiated by local homeowners, who along with the Oregon Department of Forestry and an environmental group worked collaboratively to develop recommendations for the District Ranger. The most positive aspect of this effort is that the Sportsman's Paradise homeowner's group, which previously had not engaged with the Forest Service became an active participant in the planning process resulting in new relationships. The Mt. Hood National Forest received an objection from a participating environmental group. After discussions with the group, the District Ranger made some minor revisions to the document which resulted in the group withdrawing their objection. Upon implementation, the authorized work will decrease potential catastrophic fire loss for approximately 900 acres surrounding the Sportsman's Paradise community of approximately 170 lots.

I am very interested in expanding these successes not only within the State of Oregon, but throughout the country. I am focusing on advancing several principles I believe are paramount to accomplishing restoration on the entire national forest system. These principles include collaboration with diverse stakeholders, efficient implementation of the National Environmental Policy Act, greater dialogue over areas of conflict prior to the decision, ensuring opportunities for local contractors, expansion of the use of stewardship contracting, and monitoring to track our results on the ground. S. 2895 includes many of these principles I believe lead to success.

Areas of Concern

While the Administration supports the key concepts in this bill, we do have some specific issues. I look forward to further dialogue with Senator Wyden and the committee to address the following areas of concern and offer other minor technical input into sections of the legislation.

Inclusion of existing management guidance and direction in statute: While we appreciate the intent to ensure adequate protection of riparian areas and the species dependent upon them, we are concerned about codifying any particular strategy that is intended to change over time. We want to work with the committee to ensure that as new information becomes available or there are changed circumstances in the forests that we can easily and quickly adapt our plans and strategies.

- Mandate to treat specific acreage levels. These specific levels of treatment may result in unrealistic expectations on the part of communities and forest product stakeholders that the agency would accomplish the quantity of treatment required. The levels called for in the first year would require the forests involved to more than double their current levels of treatment. We want to work with the committee to ensure these treatment levels do not affect other forests and programs in Oregon or the rest of the country.
- Establishment of a formal science advisory panel. I am concerned that the proposed advisory panel could be costly and process laden. It appears likely that the tasks assigned to the advisory panel would not be achievable within the timeframes provided. Reaching consensus among a broad array set of scientists on a wide variety of management recommendations for a landscape as diverse as eastern Oregon will be a challenging task. Often, there is conflicting peer-reviewed science regarding appropriate management actions and disagreement over the geographic applicability of scientific conclusions. The

selection of restoration projects could be affected if the scientific panel cannot achieve consensus, or if it makes a recommendation that the Forest Service found inappropriate to a specific management situation. Finally, we believe that establishment of an advisory science panel is unnecessary, because personnel on the eastern Oregon forests currently work very closely with scientists from the Pacific Northwest Research Station and other scientists, including those from Oregon State University and the University of Washington, to ensure that management practices reflect current science and that decision makers are aware of relevant disagreements within that science.

- Exemption from the appeals process for certain projects during the interim period. An administrative review process serves as an important and useful process for resolving issues and averting litigation. With no established administrative method to review decisions and areas of disagreement, we could see more litigation during the interim period as a result of having no administrative review process. Further, the bill provides for an objection process for decisions on ecological restoration projects that is only subtly different than the objection process in our current regulations. Our preference would be to have the authority to use our current regulations at 36 CFR 218 to manage an objections process for all interim and ecological restoration projects.
- Collaboration: The provisions in the bill that provide for recognition of collaborative groups are much more formal than necessary to ensure collaboration on restoration projects. Collaboration can and has been achieved without formal recognition; I am cautious about adding more process to our already rigorous public engagement process. Further, it is not clear whether these groups would be subject to the Federal Advisory Committee Act.

- The precedent setting nature of the legislation and the movement toward greater disaggregation of the national framework under which the national forests are managed continues to concern me. The Agency has a meaningful national approach to management of the forests that takes into account local conditions and circumstances through the development and implementation of Land and Resource Management Plans.

S. 2895 includes many of the concepts embodied in the president's proposed 2011 budget. We will use the full and comprehensive range of authorities available to the agency to restore and sustain forest landscapes in a collaborative open manner.

I want to again thank Senator Wyden for his leadership and strong commitment to Oregon's national forests, their surrounding communities and forest products infrastructure. I look forward to working with the Senator, his staff, and the committee, and all interested stakeholders on this bill and to help ensure sustainable communities and provide the best land stewardship for our national forests.

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

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MARCH 10, 2010
CONCERNING
S. 2907 THE FEDERAL LAND AVALANCHE PROTECTION ACT OF 2009**

Mr. Chairman, Members of the Committee, I am Harris Sherman, Under Secretary of Agriculture for Natural Resources and the Environment. Thank you for the opportunity to share the Department's views on S. 2907, the Federal Land Avalanche Protection Act of 2009.

S. 2907 directs the Secretary of Agriculture to establish a coordinated avalanche protection program to identify the potential for avalanches on Federal lands and inform the public about the hazard; to carry out research related to avalanches to improve forecasting; and to reduce the risk and mitigate the effects of avalanches on Federal lands. S. 2907 also requires the Secretary to establish an advisory committee to assist in the development and implementation of the avalanche protection program. The bill would require the establishment of a central repository for weapons for avalanche control purposes, and would authorize the Secretary to make grants to carry out projects and activities under the avalanche control program.

I would like to thank the sponsors of this legislation and the committee for recognizing the importance of the Forest Service avalanche program. The Forest Service supports the general concept of S. 2907, but asks the committee to consider revising Section 3 to clarify intent and to reflect changes to the Forest Service avalanche program that have occurred in the last several years. We would like to work with the committee and the sponsors in this regard.

The Forest Service was the first agency to initiate avalanche control and forecasting in the United States. When the first ski areas began operating on National Forest System lands in the 1930s, the Forest Service began using explosives for avalanche control work to protect visitors. In 1948, the agency worked with the U.S. Army and pioneered the use of artillery for avalanche control. In the years since, the Forest Service has gradually transferred day-to-day responsibilities for avalanche control work to ski areas, though it supervises and manages the artillery program at the resorts. This is the case because the Department of Defense prohibits acquisition of artillery by private entities and because the Bureau of Alcohol, Tobacco, and Firearms requires that artillery programs be under federal "dominion and control" at ski areas.

Departments of transportation in Alaska, California, Colorado, Utah, and Washington also use artillery to control the avalanche danger in a number of transportation corridors in those States. In these areas, artillery is fired into avalanche starting zones on National Forest System lands. This effort is usually authorized and monitored by the Forest Service under a special use permit issued to the respective transportation department.

As the Forest Service gradually moved into more of an oversight role for avalanche control work, the agency increasingly focused on providing forest visitors the education and information necessary to avoid or minimize avalanche hazards in the mountain backcountry. In the early 1970's, the Forest Service established the Colorado Avalanche Information Center. Through the 1980's the agency created a number of other backcountry avalanche centers around the country. Today, there are a total of 15 avalanche forecast centers operating in nine States, providing avalanche training and regular backcountry avalanche hazard forecasts throughout the winter.

Were it not for these avalanche centers and the information they provide, the number of avalanche-related fatalities would be much greater than the 28 that have occurred each year on average over the past 15 years. Nearly all of these avalanche-related fatalities were on National Forest System lands and involved backcountry recreationists, including snowmobilers, skiers, and others. As populations increase and technology supports easier access to avalanche-prone areas, public exposure to this hazard has been heightened.

We are convinced the avalanche forecast and education programs literally save lives. We are fortunate that others, including States and local community non-profit organizations, have joined with us to provide these services.

We are concerned that parts of subsections 3(a) and 3(b) may be interpreted to require the Forest Service to move beyond its traditional role of informing and educating backcountry users, into active avalanche control work. This concern is heightened if the intent is to have the Forest Service assume responsibilities on both National Forest System lands and federal lands managed by agencies in the Department of the Interior or others such as the Department of Defense. We would like to work with the Committee to clarify and limit the scope of Forest Service responsibilities under this legislation.

Presently, the Forest Service avalanche program has three main components. The first is avalanche backcountry forecasting, public education and information distribution, and research and technology transfer to avalanche forecast centers. The second is oversight of permitted ski areas and their avalanche control programs. The third component is oversight of the military weapons used for avalanche control.

Section 3(c) mandates that the Secretary establish a 15-member advisory committee to assist in the development and implementation of the avalanche protection program. As it concerns the avalanche forecast centers and their information and education programs, we do not believe an advisory committee is necessary. As it concerns civilian use of military weapons for avalanche control, the Avalanche Artillery Users of North America Committee (AAUNAC) was formed in 1987 and encompasses all of the users of avalanche artillery in Canada and the U.S., as well as the U.S. Army. AAUNAC is an ad hoc consensus-based working group established to address the need for an informal coordination body for civilian use of military weapons for avalanche control. AAUNAC has proven to be an effective organization to establish standard operating

procedures, conduct training, and provide a central point of contact for U.S. Army. We feel it would be helpful if AAUNAC could be formally recognized as the coordinating body for using military weapons for avalanche control purposes. We look forward to working with this Committee to determine the best approach for providing this designation.

Section 3(d) requires the establishment of a central Depository for weapons for avalanche control purposes. A central depository has already been established by AAUNAC, working with the Department of Defense. The facility is located at the Sierra Army Depot in Herlong, California and contains an estimated 20-year supply of artillery and parts. The Army has assured AAUNAC that the Army will reserve at least a twenty year supply of ordnance for AAUNAC users. Additionally, ski areas operating under a permit issued by the Forest Service can obtain ordnance for future use in their programs and store that ordnance at other Army Depots. Consequently, section 3(d) is not necessary.

We request removal of the grant program. This subsection also identifies two criteria for awarding grants. If a grant program is retained in S.2907, we ask the committee to consider recognizing the avalanche centers, and their forecasting and education work, as the first priority, and public safety the primary criteria for any grants.

This section amends Section 549(c) (3) of title 40, United States Code to provide that, when a state agency selects surplus artillery ordnance suitable for avalanche control for distribution through donation within the state, the Administrator of the General Services administration shall transfer the ordnance to the user of the ordnance. Currently, munitions are purchased by the various entities in the military weapons program. We defer to the Department of Defense and the General Services Administration on this proposed change.

In closing, I want to thank the Committee for the opportunity to be with you today to provide testimony on this legislation and we look forward to working with you on refinements to S.2970.

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CONCERNING
S. 2966 THE IDAHO WILDERNESS WATER FACILITIES ACT**

Mr. Chairman, Members of the Committee, thank you for the opportunity to share the Administration's views on S. 2966 the Idaho Wilderness Water Facilities Act.

The U.S. Forest Service supports S. 2966. The bill authorizes the issuance of a special use permit for the continued use of water storage, transport, or diversion facility located on National Forest System lands in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in Idaho. The permits will only be issued to the water system owners of the water systems identified on the two maps accompanying S. 2966, and if certain conditions are met.

Currently, there are over 20 water developments within the Frank Church River of No Return and Selway-Bitterroot Wilderness Areas that predate establishment of the wilderness, in some cases by decades.

These developments include hydropower developments, irrigation, and domestic water uses. The legislation establishing both wilderness areas did not address these pre-existing water developments. S. 2966 would direct the Forest Service to issue special use authorizations, if the Secretary makes the following determinations: the facility was in existence when the wilderness area on which the facility is located was designated as part of the National Wilderness Preservation System; the facility has been in substantially continuous use to deliver water for the beneficial use on the owner's non-Federal land since the date of designation; the owner of the facility has a valid water right for use of the water on the owner's non-Federal land under Idaho State law, with a priority date that pre-dates the date of designation; and it is not practicable or feasible to relocate the facility outside the wilderness and achieve the continued beneficial use of water on non-Federal land. We understand that the bill does not create any rights beyond what is provided in the special use permit and that both maintenance responsibilities and liabilities continue with the permit holder, and not the Federal government.

This concludes my prepared statement on S. 2966 and I would be pleased to answer any questions you may have.