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**Statement of Bruce Babbitt  
Secretary, U.S. Department of the Interior  
Before the  
Senate Committee on Energy and Natural Resources  
Subcommittee on Forests and Public Land Management  
on  
S. 1102 - Mining Law Reform Act of 1997  
S. 326 - Abandoned Hardrock Mines Reclamation Act of 1997  
S. 327 - Hardrock Mining Royalty Act of 1997**

April 28, 1998

Mr. Chairman and members of the Committee, thank you for the opportunity to discuss with you the need to reform the Mining Law of 1872. The Department of the Interior remains strongly in support of genuine reform of this antique law. We remain convinced that reform can be accomplished in a way that provides the taxpayer a fair return on publicly-owned resources, while maintaining a vibrant hardrock mining industry, with its economic contributions to Western communities and the national economy. We are ready to assist the Congress in accomplishing these goals.

However, as we have stated in the past, we cannot, and will not, support legislation that does little or nothing to fix the problems posed by the current law. Of the bills before this Committee, S. 326 and S. 327 together, sponsored by Senator Bumpers, would provide genuine reform on major issues of concern to the Department. The bills would correct the deficiencies in the patent system, make the annual holding fee permanent and index it for inflation, enact a reasonable royalty and a reclamation fee that would provide a fair return to

reclamation fund to reclaim and restore lands and waters adversely affected by past mineral activities. S. 326 and 327 are excellent starting points for needed reform. Indeed, the Administration submitted substantially similar proposals on the holding fee and the indexing of the holding fee in the FY 1999 budget. It would be a fitting tribute to Senator Bumpers' long and distinguished service to the country to cap his career with enactment of reform he has so vigorously supported.

S. 1102, on the other hand, has fundamental flaws, similar to those outlined in the Department's testimony on S. 506 in 1995. We testified against S. 506 in March 1995 and followed our testimony with a letter to the Committee Chair on May 22, 1995 indicating our recommendation that S. 506 be vetoed by the President. I would like to briefly outline some of our major objections to the provisions of S. 1102 as they appear in the bill before you today.

### Patenting

S. 1102 fails to put an end to the practice of privatizing valuable publicly-owned mineral resources for far less than fair market value. Unlike S. 327, S. 1102 would allow patenting to continue indefinitely. Subsection 204(a) of S. 1102 would require that mining claimants pay the fair market value for the lands to be patented, but "exclusive of and without regard to the mineral deposits in the land or the use of the land for mineral activities." In other words, the fair market value standard does not apply to the minerals themselves, which comprise nearly

all of the value of most claims. As has been pointed out on numerous occasions, the fair market value of the surface in most cases would amount to a pittance -- as little as a few dollars per acre in many parts of the rural West. In short, this bill would require the Secretary of the Interior to continue indefinitely to deed out of public ownership lands containing billions of dollars of gold, silver, or other hardrock minerals for next to nothing.

S. 1102 would require some claimants (even after patent) to pay a royalty on minerals produced and sold, but as explained below, the bill's royalty is inadequate, exemptions from it could be very broad, and opportunities to avoid payment abound.

#### Environmental Protection

Defenders of the 1872 Mining Law have long argued that the Law has been steadily modified in practice over the years, and thus has proven flexible enough to adapt to changing public values regarding environmental protection. It is ironic, then, that S. 1102 abolishes the flexibility current law provides to federal land managers in setting environmental performance standards. Most important, it eliminates the existing authority the Secretaries of Agriculture and the Interior have had for two decades to establish and adjust standards for surface management applicable to hardrock mining activities on federal lands.

Specifically, sections 301, 304 and 309 freeze and neutralize the "unnecessary or undue degradation" standard of subsection 302(b) of the Federal Land Policy and Management Act

(and comparable standards applicable to Forest Service lands). Sections 301 and 304 essentially say that compliance with Title III "shall constitute a compliance with" FLPMA's prevention of "unnecessary and undue degradation" standard and the comparable Forest Service provisions. Section 309 says that Title III "shall supersede any provisions of" FLPMA or the national forest acts, and any rules promulgated thereunder to the extent they conflict with this title.

It is unwise to so constrict the federal land managing agencies' authority to regulate mine reclamation, closure, detoxification, remediation and monitoring. It would tie the hands of the land managers, and prevent any upgrading of existing regulations even if, as experience shows sometimes happens, they came to be widely acknowledged as inadequate. FLPMA section 302(b)'s prohibition of "unnecessary or undue degradation" of the public lands applies to all activities conducted on the public lands. There is no justification for carving out a special exemption (by the "deemed sufficient" language of section 304) for hardrock mining.

It is worth noting that during the Bush Administration the BLM, after careful study, proposed several new regulatory upgrades to repair documented deficiencies in current regulations. These were in such important areas as bonding, permitting of small operations, and controlling water pollution from hardrock operations, particularly stemming from the use of cyanide in heap leach mining. While some of these bipartisan initiatives have been promulgated into regulation, many of these initiatives are part of our current comprehensive effort to complete

the reforms of BLM's so-called Part 3809 regulations started in the Bush Administration. As we read S. 1102, it would halt these salutary, bipartisan efforts, and permanently prevent any similar upgrading.

This approach of freezing and neutralizing standards would also prevent managers from responding to environmental hazards posed by new technology. Moreover, the bill could be interpreted as effectively tying federal performance standards to state law, and make state environmental standards the ceiling. (See, e.g., sections 301(c), 304, 309.) To the extent that is so, if state laws or standards are weakened in the future, the Department may have no recourse but to apply them to federal lands, no matter what the consequence for other uses or users of the federal lands, or for the federal taxpayer who may bear the brunt of cleanup costs that result from inadequate regulation.

The bill does not even demand full compliance with those vague standards it does contain. Instead, section 303(d) would direct the Department to approve a miner's proposed plan of operations so long as it "substantially complies" with the applicable legal requirements. This will likely produce litigation every time a Secretary makes a determination of compliance. Overall, section 301 sets the tone for this entire environmental title by establishing as its purpose not to "unduly hinder" mineral activities, no matter how much environmental harm they may cause.

Beyond reclamation and operating standards, S. 1102's inspection and enforcement provisions are weak. For example, under section 308(a), a mine operator must be given "reasonable" notice by the Secretary "before commencing any inspection." I know of no provision like it in the many environmental regulatory laws on the books. The Department's testimony concerning a similar provision three years ago pointed out this is like requiring the state highway police to post signs warning of an upcoming patrol. It seems just as absurd today. While the mining industry has many responsible operators, it has others who do not act responsibly, like every other industry. Yet this bill contains no criminal penalties, no citizen suit provision, and no mandatory enforcement requirements.

S. 1102 compounds its weak approach to environmental protection with very generous transition provisions. We read section 305 as essentially providing permanent, life-of-the-mine protection from upgrading environmental requirements not only to currently operating mines, but also to mines on the drawing boards. Big hardrock mines sometimes operate for many decades (Bingham Canyon in Utah has been producing for nearly a century). Yet existing and planned mines would be able to continue operating under existing standards regardless of how adversely they are affecting the environment. We support a reasonable grandfather provision to protect existing investments, but existing operations should not be given permanent, open-ended immunity. Moreover, in dealing with future mines that do not qualify for the grandfather clause, the Department would be very seriously constrained by subsection 303(e) from requiring modification in the life-of-the-mine mining plans once they are approved, even

if serious and preventable environmental harm is the result.

In sum, in environmental protection, S. 1102 falls far short of the mark. Without adequate surface management provisions, the American taxpayer may well be left holding the bag with respect to future liability. The Departments of Agriculture and the Interior are now defendants in several lawsuits seeking to hold the government liable for the cost of cleaning up toxic wastes from defunct mining operations carried out throughout the West under the Mining Law of 1872. The irony is that after over a century of making publicly owned minerals available for next to nothing, the taxpayers may face cleanup costs running into the billions of dollars.

Most members of the hardrock mining industry are responsible operators, so environmental disasters from hardrock mining do not occur all that frequently. But there is no denying that when they do occur, they can be very costly. The American taxpayers will reportedly pay upwards of \$100 million to clean up the Summitville mine site in Colorado, where inadequate regulation allowed an operator to walk away after producing a few million dollars in gold.

This underscores how essential it is to put a meaningful surface management regime in place so that we can avoid these problems in the future.

We believe existing law gives us much authority to correct deficiencies in the current regulatory regime, and the effort we have underway to overhaul our Part 3809 regulations is designed to do just that. We far prefer no legislation on environmental regulations to the

backward step S. 1102 would make in this vital area.

### Royalties

Based on our estimates to date, the Department expects that the royalty provision of S. 1102 would be a net revenue loser for the American taxpayer. Although all of the royalty proceeds are earmarked for abandoned mine reclamation, it would provide woefully inadequate funds for that salutary purpose. The bill would impose a 5 percent net proceeds royalty on locatable minerals. The thirteen categories of deductions allowed in subsection 401(c)(2) contain at least 61 different potential deductions from "gross yield" under the bill, and embrace nearly every "expense" known to accountants. Even with the bill's cautionary statement that all these deductions are simply intended to "allow a reasonable allowance for overhead" (section 401(d)(1)), the potential for manipulation is great, and the auditing necessary to combat it would likely overwhelm the capacity of the Department. The bill also contains unusually weak administrative authorities for royalty auditing and enforcement, compared to other federal mineral royalty provisions. It also contains a vague but potentially very expansive grandfather clause (section 204(c)) that could further exempt much federal lands mineral production from any obligation to pay a royalty.

### Claim Maintenance Fee

S. 1102's claim maintenance fee would actually result in an annual loss of revenue compared to the current law. Although the \$100 per claim figure remains the same, the small miner

exemption is 2 ½ times larger (25 claims versus 10 claims, see section 202), and it and the generous patent provision will result in many fewer claimants paying the fee.

#### Abandoned Mine Land (AML) Reclamation Program

Unlike S. 326, Title V of S. 1102 establishes only a skeletal AML program, which would be administered by the States without any Federal determinations as to which lands would be reclaimed. Moreover, monies would flow directly back to the States from which the royalties were collected, without regard to the extent or location of the problem sites. All in all, the result will be very little cleanup of abandoned mine lands.

#### Summary

The foregoing shows that many of the same concerns we expressed with S. 506 in 1995 have not been cured by S. 1102. In many respects, the bill would create more problems rather than correcting glaring inadequacies in the Mining Law of 1872.

An enormous amount of work and thought has been expended on Mining Law reform in the last decade. Many members of both Houses, and the general public, have been educated about this once obscure corner of federal natural resources policy. While progress has been made -- such as with repeated enactment of an annual moratorium on new patenting, and a holding fee, significant steps remain to be taken -- most prominently, a meaningful royalty, establishing an abandoned mine lands reclamation fund, and making the holding fee permanent. Senator

Bumpers' proposals would accomplish these goals. I believe that we should try to work together using those bills as a framework to achieve meaningful reform of this sadly outdated law.

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

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**Statement of Bruce Babbitt  
Secretary, U.S. Department of the Interior  
Before the  
House Committee on Resources  
Subcommittee on National Parks and Public Lands  
on  
H.R. 3830 - Utah Schools and Lands Exchange Act of 1998**

May 19, 1998

Good morning, Mr. Chairman, and thank you for this opportunity to appear before you today concerning H.R. 3830, the Utah Schools and Lands Exchange Act of 1998. It is my pleasure to join with Governor Mike Leavitt and the entire Utah delegation to testify on behalf of this recently negotiated, comprehensive land exchange agreement between the Interior Department and the State of Utah.

More than a decade ago, a great Utah governor had a vision of sweeping realignment of publicly owned land in Utah. Scott Matheson told anyone who would listen of the great benefits of this realignment for the State, its public schools, and for the United States as well. His vision, appropriately named Project BOLD, was ahead of its time. But it planted a seed that has today burst into flower.

Less than two years ago, Governor Matheson's widow looked on as the President of the United States proclaimed the Grand Staircase-Escalante National Monument. She heard the President acknowledge that within the borders of the Monument were 176,000 acres of State

land, and heard his promise to work with the State to trade out those lands, to ensure that the school children of Utah will benefit from, and not be burdened by, the Grand Staircase-Escalante National Monument. Less than two weeks ago, it was my pleasure to stand with Norma Matheson and Mike Leavitt to celebrate the fulfillment of President Clinton's promise and the realization of Scott Matheson's dream. Many have sought this elusive goal, Mr. Chairman, but it took this Governor to make it happen.

After long controversy and stalemate, Governor Leavitt and I agreed that the two of us should work together to break the deadlock and find solutions to Utah's inholdings problem. We agreed that both of us stood to gain by consolidating our lands for better management, and that both of us would be better off if we spent our time and money investing in the lands and the people instead of litigation and lawyers. We pledged to each other that in negotiating this deal, we would protect the environment, protect the taxpayers, and make the state school trust whole.

I am pleased to appear before you today, Mr. Chairman, to report that we have met those goals. The President's promise has been kept, and sooner than most would have expected. In fact, the Governor and I have gone well beyond that promise to negotiate the resolution of the difficult state trust land issues beyond the borders of the Grand Staircase-Escalante National Monument.

Many have noted the historic dimensions associated with reaching this agreement. As Governor of Arizona, I helped engineer some big, mutually beneficial state-federal land trades. But I've never done anything on this scale before. And as far as I know, no one else has either, at least in the lower 48 states. Passage and enactment of this legislation would mark the end of six decades of controversy over the issue of Utah's trust land inholdings within national parks, forests, monuments, and reservations.

If not historic, Mr. Chairman, I think it is at least notable that you and I, together with Governor Leavitt and the rest of the Utah Congressional delegation, joined by trust land administrators and environmentalists, are all in agreement on the resolution of a major public lands issue in your state. With this settlement, perhaps we have opened a positive new chapter in the federal-state relationship concerning public land management in Utah. The scope and complexity of the negotiations and the agreement itself were and are enormous. The fact that so many had tried for so long to no avail was a signal to both of us that the idea of going through the standard administrative channels, tract by tract, was going to be a prescription for further delay, litigation, and expense to both federal and state taxpayers.

As a result, Governor Leavitt and I agreed that all issues would be on the table, and that the two of us would commit to negotiating a single, comprehensive, non-segmentable agreement. We understood that while it would be possible to argue over the value of individual tracts, or whether one of us got a better deal on one small part of the exchange, it was critically

important that both of us be able to agree at the conclusion of the negotiations that both parties were treated fairly and that we had in fact, to the satisfaction of both, arrived at an equal value exchange. The negotiations were spirited, and both sides fought hard for their interests. In my judgment, we succeeded. This is a fair deal, for both sides.

I believe that the Governor will speak to the important benefits in this agreement for the state trust lands administration and the school children of Utah. I would like to take a few moments to address the other two components of our concern, the environment and the taxpayers.

I have three observations to make concerning the very important environmental considerations and understandings that are part of this agreement. First, the Utah State school trust lands in this deal include properties within the National Park System, the National Forest System, and the Grand Staircase-Escalante National Monument. Because these are some of the most renowned lands in the United States, and because a mission of the state trust lands administration is to produce revenues for Utah's public schools, we knew that an exchange of this kind would resolve many of the longstanding and inherent environmental conflicts occurring on these public lands.

Second, the federal assets we made available for exchange with the state were selected with a great sensitivity to environmental concerns and a belief and expectation by both parties that the federal assets conveyed to the state would be highly unlikely to trigger significant

environmental controversy. We both agreed at the outset of negotiations to avoid lands where we knew of any of the following existed or could be reasonably foreseen: significant wildlife resources, endangered species habitats, significant archeological resources, areas of critical environmental concern, coal requiring surface mining, wilderness study areas, significant recreational areas, scenic areas, or any other lands known to raise significant environmental concerns of any kind.

And third, we agreed that where the state obtains mineral interests as part of this agreement and the federal government retains the surface or other interest, any development that takes place will not conflict with established federal land and environmental management objectives. We further agreed that any such development will be fully subject to all of the environmental regulations applying to development of non-federal minerals on federal lands.

Mr. Chairman, Governor Leavitt and I also agreed that the interest of the American taxpayer must be protected, and I am pleased to report that we have done so. This agreement was negotiated with the goal of producing a budget-neutral document, so that we could assure all Members of Congress that the budgets we have all worked so hard to contain would not be affected.

I repeat, when all of the lands, interests, and money in the deal are taken into account, we have negotiated an approximately equal value exchange. Except for the \$50 million cash

payment, already authorized and scored under PL 103-93, the remainder of the properties comprise an asset exchange of speculative, commercial, and conservation lands. Both sides fought hard for the interests of their constituencies, and considerable energy went into guaranteeing that neither side was taking advantage of the other, that each felt they received a fair and equal deal when negotiations had concluded.

Governor Leavitt and I were not working in a vacuum. Through your personal leadership, and that of your predecessor, Mr. Vento, former Chairman Miller, and other members of this Committee working directly with the Utah delegation, the Governor and I already had the template to work from for dealing with the lands outside the Monument. This was Public Law 103-93, which had already identified many of the properties and the framework for carrying out such an exchange. Like Governor Matheson's Project BOLD, PL 103-93 helped chart the course that the two of us followed.

I would like to similarly salute the School and Institutional Trust Lands Administration for developing the concept of a like-for-like exchange with the federal government, which helped reframe the debate over the Monument lands. Members of this Committee encouraged SITLA in the formulation of its proposal, which was widely circulated around the Congress, the environmental community, and the State of Utah. The essential elements of this agreement are contained in proposals and legislation that has been drafted for years; there is little, if anything new in the agreement.

Building on these ideas, the Governor and I were able to establish a connection of mutual trust and commitment to see this process through and conclude the long, difficult years of conflict and controversy in a way that protected the interests of both sides and will in fact benefit both parties.

I want you to know, Mr. Chairman, that I will stand by this deal. However, I must also make it clear, as I have to the Governor already, that Administration support is contingent on the passage of a clean bill, with no amendments, riders, or other objectionable legislation attached. While I believe this is a good deal for the environment, the taxpayers, and the school trust of Utah, I will have no hesitation about recommending a veto if any objectionable provisions are attached in this Congress.

We negotiated to the limit of what we believe is acceptable, and any attempt to turn this vehicle into a Christmas tree for other legislation opposed by the Administration will result in killing this agreement. With that understanding, I stand ready to help however I can, Mr. Chairman. The President's promise to negotiate in good faith has been kept. It is now up to Congress to deliver the legislation without substantive change to the President's desk.

This concludes my prepared statement. I would be happy to answer any questions the Committee may have.

STATEMENT OF BRUCE BABBITT  
SECRETARY OF THE INTERIOR  
BEFORE THE SENATE ENERGY AND  
NATURAL RESOURCES COMMITTEE

MARCH 2, 1999

I am pleased to appear before the Senate Energy and Natural Resources Committee to present the fiscal year 2000 budget for the Department of the Interior.

The 2000 budget is a landmark budget because it will be the first budget of the new century, and because it is a bold and forward looking statement by the President of the importance of resource and Indian trust stewardship. Focused around the theme, "Guardians of the Past; Stewards for the Future," the 2000 budget will allow us to make important investments in land and resources, and to meet our responsibilities to Tribes.

As we approach the 150th anniversary of the creation of the Department of the Interior, this budget gives us cause for optimism and sets a new direction for the next 150 years. Since I became Secretary in 1993, this Department has aggressively streamlined operational programs and processes to improve efficiency and the delivery of services to the public. As a result, we are more unified, more clear in our purpose and mission, and are well-positioned to undertake the challenges of the next century.

The Department's activities are a part of the day-to-day lives of all Americans and touch on all aspects of the economic and cultural life of this Nation. Every year 379 million people, more than the population of the United States, visit our National Parks, National Wildlife Refuges and public lands. The 445 million acres of lands that this Department manages are a source of meaningful outdoor and educational experiences for these visitors. In addition, we supply water to approximately 31 million people throughout the west and provide services and support for self-determination to 1.2 million American Indians and Alaska Natives.

This broad mandate for the Department of the Interior had its genesis with the creation of the Home Department, which was established in March 1849 to house agencies concerned with the management of domestic issues. Since that time, the mission of the Department has been shaped by the changing needs of the American people, evolving from the Home Department of the 19th century, through the bygone eras of great westward expansion, the conservation age at the beginning of the 20th century, the Great Depression and Civilian Conservation Corps years, and the post World War II baby boom. Today the principal mission of the Department is the conservation

and management of natural and cultural resources, the protection and encouragement of Indian self-determination, and the fulfillment of Federal trust responsibilities to American Indians.

Driven by the strong, continuous growth of the economy and the public's appetite for outdoor recreation and outdoor experiences, the Department has evolved new approaches that consider the twin goals of growing the economy and protecting and restoring the Nation's natural and cultural resources. We have made great strides in recent years by embarking on the restoration of precious ecosystems in a way that enriches neighboring communities, resulting in the following success stories:

- in South Florida we are working in partnership with the State and others to restore the Everglades, recreating the 17,000 square mile sea of grass;
- we continue our work with States, Tribes, communities, and private landowners to implement new, innovative approaches to the Endangered Species Act. For the first time in 60 years we have healthy, reproductive populations of gray wolves in Yellowstone National Park;
- we are embarking on the fifth year of Forest Plan implementation, demonstrating how cooperative partnerships between Federal agencies and local interests can effectively promote wise land stewardship; and
- in partnership with the State of California, we are completing the purchase of the 7,400-acre Headwaters ancient redwood forest, the largest stand of privately-owned ancient redwoods in the country.

In addition, the Department has developed five-year plans for maintenance and construction to improve management and accountability for the Department's infrastructure and to focus funding on the highest priority health and safety and resource protection needs.

**Budget Overview.** The 2000 budget requests \$8.7 billion in funds subject to annual appropriation. This request is fully funded within the President's balanced budget and includes an increase of \$832 million, or 11-percent, over 1999 funding levels. An estimated \$2.2 billion will be provided in permanent appropriations.

Within this increase, \$139 million or 18 percent of the increase is requested for uncontrollable cost increases in order to continue Departmental programs at current operational levels in 2000. The budget:

- proposes funding for the President's Lands Legacy Initiative, to protect America's land resources and establish a new partnership with States, Tribes and local governments;

- provides resources for broad-based restoration efforts including public lands restoration and science tools to support these efforts, continuation of our successful ecosystem restoration efforts, restoration of species and cultural resources, and facilities repair and rehabilitation; and
- requests funding to continue to improve life in Indian Country through enhanced education programs, school construction, law enforcement, Tribal buffalo programs, and aggressive efforts to resolve trust management problems.

The level of staffing proposed for 2000 is comparable with employment levels in the Department in 1987. The 2000 budget proposes to increase staffing by only two percent, as compared to the increased funding request of 11 percent. The Department will continue to operate efficiently, having taken an aggressive approach to streamlining, reducing headquarters staffs and management layers, re-engineering processes, and improving the efficiency and effectiveness of our program delivery at the field level. Between the period 1993-1997, staffing was reduced by 15 percent. The new staff we are requesting for 2000 will focus on direct service to the public and on-the-ground restoration.

**Lands Legacy.** At the start of the century, President Theodore Roosevelt called on Americans to save the best of our natural endowment for all time. His legacy is seen across the country in parks, forests, and wildlife refuges. President Clinton's Lands Legacy Initiative renews America's commitment to its natural environment. This 2000 budget proposal provides significant new resources to protect local green spaces and increases protection for our oceans and coasts. It recognizes that carrying out this commitment must include not only resources for Federal land acquisition, but also resources directed to States, local communities, and Tribes to address their local needs in their own ways. The interagency Lands Legacy Initiative provides roughly equal amounts of funding for Federal land acquisition and funds to States, local communities, and Tribes for acquisition and other conservation purposes. The initiative includes \$900 million from the Land and Water Conservation Fund (LWCF), marking the first time any Administration has requested the full \$900 million authorized to be deposited in LWCF in its annual budget. The initiative includes \$579 million for Department of the Interior programs, which is an increase of \$84.5 million from the 1999 level.

The Lands Legacy Initiative includes \$295 million for Federal land acquisition by Interior, an increase of \$84.5 million over current year levels. With this infusion of funding, we have an opportunity to preserve aspects of our natural and cultural legacy for all time. Our efforts will focus particularly on five major areas, including the California Desert, Civil War Battlefields, the Lewis and Clark Trail, refuges in the Northern Forest, and the Everglades. Funding for these five areas totals \$163.7 million. An additional \$130.3 million is requested for land acquisition in other areas to protect priority natural and cultural resources, like the addition of 31 acres at Florida's Pelican Island National Wildlife Refuge, established as the first refuge by President Theodore Roosevelt in 1903.

A total of \$30 million, an increase of \$66 million, will allow States and localities to continue to grow while conserving and recovering imperiled species. Funding will be provided to States and local communities for habitat conservation planning and land acquisition, candidate conservation agreements, Safe Harbor Agreements, and other collaborative strategies. This proposal is a win-win approach to species protection, as it will provide incentives for landowners to protect plants and wildlife on their property and will accelerate the states' ability to restore declining species in time to keep them off the endangered species list.

The Lands Legacy Initiative includes \$150 million for a LWCF competitive grants program that will assist States, local communities, and Tribes to preserve green space. This is an opportunity for us to establish new partnerships with States, Tribes, and local governments to enrich our cities, towns, and suburbs. In America today there is a resurgent sense of the need to preserve open space and the quality of life in our communities, and this program can provide dramatic results by leveraging Federal funds with non-Federal sources. This proposal will allow us to work with the Congress on framing a viable program that will result in increased open spaces, greenways, and other areas for outdoor recreation, urban parks, wildlife habitat, and coastal wetlands.

Open space protection is gaining momentum at State, regional, and local levels as a means to protect farmland, maintain natural surroundings, and combat sprawl. Across the country in ballot measures, the American people are supporting the need for local planning and protection that guides development and the establishment and protection of open space. The 2000 budget includes \$50 million for matching grants to States and Indian Tribes to support open space planning. An additional \$4 million is proposed for matching grants and technical assistance for the restoration of parks in economically distressed urban communities.

We understand that the Congress is seriously considering various pieces of legislation that all share a common goal of addressing the nation's increasing need for open space. I have attached to my testimony a set of principles that the Administration believes should be embodied in any such legislation and I look forward to working with this Committee on this important issue.

**Restoration.** At the turn of the century the concept of preservation was firmly adopted by the American public. Deeply rooted in the ideals of President Theodore Roosevelt, John Muir, and Aldo Leopold, preservation was the clarion call that created a national imperative to preserve wilderness, wild and scenic rivers, national parks, and wildlife refuges. These national treasures are an admirable and important legacy and we are the guardians of that legacy. Moving beyond our responsibilities for stewardship of these national treasures we have come to understand the importance of the entire landscape that extends outside the boundaries of our public lands.

Migratory birds follow historic flyways in their routes from summer to wintering habitat that know no park, refuge, or other boundary. Salmon and trout move in rivers and streams in a natural rhythm that links to a world that existed before boundaries were established. To protect these wild stocks and heal the land, we have to understand that all the components of an ecosystem are

interconnected. Cut too many trees in the headwaters of a stream, and you send a pulse of sediment into the current impacting aquatic life. Our role as guardians of the past and stewards for the future compels us to approach issues and identify solutions on a landscape scale. This budget proposes significant resources to restore public lands and work outside these boundaries in the restoration of fish, wildlife, and natural communities.

**Restoring Ecosystems.** The President's Northwest Forest Summit in April, 1993 brought us a new vision for approaches that serve nature and the Nation's economic future. This vision recognizes that understanding landscapes as complex, living, and integrated systems can result in better ways of living on and prospering from the land, while protecting species and preserving nature's special places. Over the last six years the Administration has implemented three large scale restoration efforts that embrace this vision using new methods, partnerships, and renewed public participation. The 2000 budget includes \$68.1 million for the Department to press ahead with implementation of the Northwest Forest Plan. The Department will also continue to lead the Administration's efforts to restore two priority watersheds, the Florida Everglades and California's Bay-Delta.

Since 1993, when the South Florida Ecosystem Restoration Task Force was established, over \$955 million in Federal funds and \$1.5 billion in State funds have been directed to this project, which is the largest watershed restoration effort ever undertaken. We recently completed negotiations to acquire the 50,000 acre Talisman properties and have issued a draft multi-species recovery plan addressing the habitat and individual needs of 68 listed species. In 2000, the Department's request for Everglades restoration totals \$151.5 million, an increase of \$7.4 million over 1999, which will support park and refuge operations, hydrologic modeling, multi-species recovery, research, land acquisition, and construction of the Modified Water Delivery Project for Everglades National Park. The 2000 request contains \$75 million to continue implementation of the California Bay-Delta ecosystem restoration program and \$20 million to initiate high priority activities to address water use efficiency, water quality, and watershed management issues.

**Restoring Parks, Refuges and Public Lands.** In NPS, FWS, BLM, and OSM increased funding is requested for operational programs in order to conduct restoration activities.

- NPS is requesting an increase of \$25 million for management of natural resources which will accelerate efforts to acquire data on natural resources, completing all natural resource inventories in seven years. NPS will control 11,000 additional acres of exotic species annually (a 43 percent increase) and restore an additional 150 acres disturbed by mines, roads, and other facilities that are no longer in use.
- For FWS, an increase of \$18.1 million will fund habitat restoration projects on 200 refuges and eradication of invasive, nuisance species on 48 refuges. Planned projects will restore historic wetland habitat, endangered species habitat, and unique ecosystems.

- BLM will dedicate an increase of \$10.9 million to rangeland improvements and an aggressive weed control effort to sustain productive landscapes.
- OSM is requesting \$25.3 million to increase by 15 percent the reclamation of land damaged by past mining practices to productive use and to restore water resources contaminated by acid mine drainage.

The wildland fire program will promote ecosystem health, while lowering the risk of severe fires and long-term suppression costs. In 2000, the request of \$350.9 million will allow us to treat more than one million acres of land and reduce hazardous fuel loads, a tripling of effort since this program began.

**Science.** In 1996, the Department consolidated science and technology functions, and as a result the USGS is able to provide a full spectrum of scientific expertise to the Department, other agencies, and the public. This multi-disciplinary expertise is critical to the effectiveness of our land management and restoration programs supporting the development of advanced tools including modeling, decision support systems, and monitoring protocols. The 2000 budget includes \$18.5 million in new funding to aggressively respond to the science needs of land management bureaus and provide the tools that are needed for wise stewardship of the landscape.

**Restoring Species.** The near extinction of the buffalo and the extinction of the passenger pigeon at the end of the 19th century brought an end to the American myth of endless abundance. As President of the United States, Theodore Roosevelt created five national parks, four big game refuges, and 51 national bird reservations in order to preserve natural resources which were, in his view, an essential part of the American landscape and culture. As we approach the end of the 20th century, the importance of protecting and restoring ecosystems and individual species components of ecosystems is widely accepted. The Congress enacted landmark legislation including the Bald Eagle Protection Act, the Endangered Species Act, the Marine Mammal Protection Act, and the African Elephant Conservation Act in recognition of the importance of protecting and recovering individual species as components of healthy, viable ecosystems.

Through partnerships with States, local communities, and non-profit groups, and expanded involvement with private landowners, the Department has been able to more effectively protect threatened and endangered species, while allowing economic development to proceed. The efforts of the FWS, Forest Service, and State of Nevada in the Spring Mountains exemplify our new approach to endangered species conservation. In these snow capped mountain ranges, these three agencies have come together to craft a conservation agreement that will safeguard 57 rare and sensitive species while accommodating the growing numbers of recreational visitors.

The 2000 budget includes \$115 million for FWS endangered species operations, an increase of \$24.1 million to expand the use of innovative tools that protect species and permit sound economic development. In partnership with States, local communities, non-profit groups and private landowners, FWS will utilize candidate conservation agreements to keep species off the list of threatened and endangered species, expand habitat conservation planning to allow economic

development to proceed while protecting species on private lands, continue the no-surprises policy to assure private landowners that agreements jointly negotiated will be honored, conduct streamlined consultations, and increase Safe Harbor Agreements to ensure that community and species goals can be met. This operational funding level is supported by the request of \$80 million for the Cooperative Endangered Species Conservation Fund that I described earlier.

More than 160 parks provide important, protected habitat to restore endangered species. At least 168 Federally-listed species occur on NPS lands and are the subject of over 2,000 recovery tasks assigned to the National Park Service. Recovery tasks include wolf re-introduction in Yellowstone National Park, control of exotic species in Hawaiian parks, and public education and law enforcement patrols for endangered species collectors. The 2000 budget includes \$4 million for native and exotic species management which will, in part, address recovery of species including the Kemp's ridley turtle and the black-footed ferret which depend on the National Park System for their survival.

In 1986 Congress enacted revisions to the Federal Power Act of 1920 that changed the relicensing process for the nation's 2,600 privately-owned hydroelectric dams. These changes required the consideration of fish and wildlife, energy conservation, and recreational opportunities, and have led to modifications in dam operations to increase stream flows, installation of fish passage facilities, and protection of local riparian lands. We successfully demonstrated the success of modifying dam operations to restore habitat and recreational uses without negatively impacting power and water use with the flooding of Glen Canyon Dam in 1996. The 2000 budget requests \$7.6 million to restore native fisheries including acceleration of hydropower relicensing review activities. Through a collaborative process with dam operators and other stakeholders, FWS will use a balanced approach to address fisheries needs while meeting needs for power, agriculture, and recreation. A companion request of \$3.9 million will fund on-the-ground restoration projects to be matched by organizations such as Trout Unlimited and \$1 million for the National Fish and Wildlife Foundation's efforts in fisheries restoration.

**Focus on Emerging Biological Problems.** In 1915, the Sierra Nevada in California was filled with the sound of croaking frogs and toads. Biologists who surveyed the amphibians recorded one species, the western toad, as "exceedingly abundant." When researchers revisited the study sites in 1995, they recorded only one adult western toad and a small group of tadpoles. Amphibians are the "canary in the coal mine" for ecosystems, letting us know with their disappearance that something is wrong. The 2000 Interior budget proposes to increase funding by \$8.1 million in order to investigate the causes for amphibian population declines.

Called the "rain forests of the sea," coral reefs are one of the most biologically complex and diverse ecosystems on earth, providing habitat for one-third of all marine fish species. In addition, coral reefs provide a protective barrier for shorelines and are crucial to the tourism industries of many States and territories. President Clinton recently signed an Executive Order establishing the U.S.

Coral Reef Task Force to coordinate interagency efforts to protect and restore our coral reefs. The 2000 budget for Interior includes \$7.2 million for coral reef protection, management, and restoration.

The geographic and ecological areas that encompass Alaska and Hawaii are unique and rich in natural resources. These areas share other common qualities in that they are remote and are home to species and habitats that are found nowhere else. In a focused program to address the unique problems and restoration challenges in Alaska and Hawaii, the Department is requesting \$4.4 million to conduct natural resource protection and restoration activities, and expand public use and educational opportunities.

**Safe Visits to Public Lands.** The Department manages an extensive infrastructure to meet the needs of 379 million visitors to national parks, national wildlife refuges, and other public lands. Well-maintained facilities are critical to the safe enjoyment of these visitors and to the safety of 45,000 employees and 53,000 students attending BIA schools. In 1999 the Department proposed an aggressive Safe Visits to Public Lands Initiative to improve management and accountability for the Department's infrastructure and focus funding on highest priority health and safety and resource protection needs.

The Department has developed a five-year plan that provides a framework for improved planning and management of maintenance and construction programs. The plan provides an improved understanding of the scope of deferred maintenance and a baseline to monitor progress toward correcting health and safety and resource deficiencies at Departmental facilities. In order to implement the plan, the Department's 2000 budget includes \$910.1 million, including \$555.8 million in maintenance and \$354.3 million in construction, an increase of \$51.2 million, or six percent, over 1999.

One final component of the restoration theme is the Save America's Treasures program. The Subcommittee worked with us last year to initiate a program that provides matching grants to public-private partnerships to preserve America's cultural treasures and increase opportunities for learning. The 2000 budget includes \$30 million to continue this program. In addition, the 2000 budget includes \$15 million for badly needed repairs to preserve structures of great historic significance at historically black colleges and universities and \$5 million to develop a national digital library of records of American achievements in history and arts and sciences.

**Seven Generations Into the Future and Past.** When deliberating an issue, American Indians take into consideration lessons learned by past generations and the potential impact on future generations. This simple, yet sage approach provides an important framework for current policy decisions. The 2000 budget request for the Bureau of Indian Affairs is \$1.9 billion, an increase of \$155.6 million above the 1999 enacted level, providing increases for educational programs, school facility construction, law enforcement, natural resources management, and other priority funding needs.

Throughout Indian Country, children are learning in schools that present serious health and safety threats. Many schools have leaky roofs, peeling paint, overcrowded classrooms, and inadequate heating and cooling systems that impede students' ability to learn. In spite of improved efficiencies, BIA's education repair needs are growing and now exceed \$740 million. In 2000, the Administration is proposing a School Bonding Initiative that will provide \$400 million in bonding issuance authority over two years. Tribal governments will be able to use this authority to issue bonds to investors who will receive tax credits for the life of the bond in lieu of interest. To help Tribes participate in this Initiative, \$30 million is included in the BIA's 2000 budget request. The 2000 request also includes \$75.9 million to replace Seba Dalkai School in Arizona and Fond Du Lac Ojibway School in Minnesota and to complete repair work at existing facilities.

An Executive Order on American Indian and Alaska Native Education sets forth six goals to improve academic performance and reduce the dropout rate for Indian students, including improved reading and mathematics, increased school completion, improved science education, and expanded use of education technology. The 2000 budget for School Operations includes an investment of \$503.6 million in support of these goals, to cover increased costs for teachers, transportation of children to schools, and expanded operations to respond to a growing student population. The budget also provides a \$7.1 million increase for operating grants to 28 tribally controlled community colleges. These colleges are a critical component of efforts to help Native Americans secure professional employment and promote entrepreneurship on reservations.

American Indians are victims of violent crimes at more than twice the rate of all U.S. residents, while tribal law enforcement receives only one-fourth the resources of comparable rural law enforcement agencies. In order to combat rising crime rates in Indian Country, a multi-year program was initiated in 1999, implementing a plan developed by Interior and the Department of Justice, in collaboration with tribal governments. The 1999 appropriation provided \$20 million for BIA and \$89 million in Justice grant funding to begin to improve tribal law enforcement programs. The 2000 budget includes \$20 million increase for the second year of this initiative, which will allow BIA to increase the number of criminal investigators and uniformed police, upgrade radio systems, and strengthen detention center services. The Department of Justice is requesting \$124.2 million in 2000 to strengthen law enforcement programs and direct funding to drug testing and treatment, juvenile justice, assistance to tribal courts, and detention center construction.

A close spiritual and cultural connection exists among the buffalo, American Indians, and the ecosystem of the plains. For thousands of years the buffalo took care of Indian people, providing warmth, food, and a way of life. Tribes are reestablishing herds of buffalo, and over the last ten years have created hundreds of jobs by raising buffalo. To strengthen tribal efforts to bring back the buffalo, a \$1 million increase is requested in the 2000 budget to be used to support tribal buffalo programs, rangeland management, and related economic and development efforts.

**Tribal Trust Management Improvement.** One of the highest priorities of the Administration is to successfully resolve the Indian trust fund management problems that have accumulated over the last 70 years. I have committed to clean up this problem on my watch. Significant progress has already been achieved as the Office of the Special Trustee has initiated action to replace key systems for lease management, accounts receivable, land records, and trust resources management, and is installing an accounting system.

The 2000 budget requests \$100 million to continue the implementation of trust management improvements, which will provide an increase of \$50.5 million for trust reform activities. The budget includes \$10 million for continued implementation of the Indian Land Consolidation Project, which will commence on three reservations in 1999. The 2000 budget increase of \$5 million will allow the pilot program to be expanded to one more reservation in 2000. Beginning in 2000 we will make a significant change in the budgetary classification of tribal trust funds, approximately \$2.1 billion of tribal trust funds will be reclassified as non-budgetary, similar to the classification of individual Indian money accounts.

**Conclusion.** I believe that the 2000 budget for the Department of the Interior sets a bold, new direction for the new millennium and the next 150 years of operation of this Department. I look forward to working with you on this budget and resolving the challenges that come our way throughout the year.

This concludes my statement. I will be happy to answer any questions you may have.

STATEMENT OF

BRUCE BABBITT  
SECRETARY OF THE INTERIOR,

Accompanied by

KEVIN GOVER  
ASSISTANT SECRETARY - INDIAN AFFAIRS,

JOHN BERRY  
ASSISTANT SECRETARY - POLICY, MANAGEMENT AND BUDGET,

THOMAS M. THOMPSON  
ACTING SPECIAL TRUSTEE FOR AMERICAN INDIANS,

U.S. DEPARTMENT OF THE INTERIOR,

Before the

SENATE COMMITTEE ON INDIAN AFFAIRS AND  
THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

March 3, 1999

The purpose of today's hearing is to discuss my recent actions taken to reorganize and strengthen the Office of Special Trustee. I welcome the opportunity to explain why these actions were necessary. Before I do, however, let me briefly address the matter of the contempt citation.

**Contempt Citation**

Mr. Chairman, as you know, last week Federal District Court Judge Lamberth found Secretary of the Treasury Rubin, Assistant Secretary Gover and me in contempt for failing to comply in a full and timely manner with certain discovery orders. These matters and the claims of approximately 300,000 IIM account holders remain before Judge Lamberth. The basis for his decision is a matter of public record. We have apologized to the court for the government's failures in this litigation and intend to do all that we can to be fully responsive to the Court's orders. I do want to indicate that at the end of trial the government recommended the appointment of a Special Master, as a way of addressing many of the discovery issues that have proven to be difficult.

Last week Judge Lamberth appointed Alan L. Balaran to serve as Special Master. The Special Master will oversee the discovery process and administer the production of documents ordered by the court in its November, 1996 and May, 1998 document production orders. Additionally, the Special Master will report on the adequacy of the steps being taken by the Government to

come into compliance, and file monthly reports about the Government's progress. He also will recommend resolution to the court of any discovery dispute that arises which cannot be resolved by the parties. We think this process will be helpful, will assure that documents are produced, and ensure that the court is fully apprised of any difficulties that arise. We intend to cooperate fully with the Special Master and the plaintiffs in this effort.

### **Trust Funds Reforms**

Before turning to the specifics about the reorganization and the actions we are taking on a number of fronts, let me briefly outline what is occurring within the Department on the broader front of trust funds reform.

Our responsibilities for and the trust services we provide to individual Indian allottees and their heirs date back more than 100 years to the passage of the General Allotment Act of 1887, a widely acknowledged failure whose legacy continues to this present day -- complicated land ownership patterns and complex relationships with tribal governments. This 112 year old act divided Indian lands into 40, 80, and 160 acre parcels for individual tribal members and families. When the law was enacted, these individual parcels were slated to remain in trust for a period of no more than 25 years. Yet, these parcels continue to remain in trust today, now jointly owned in common by hundreds, and in many cases, thousands of individual Indians, each with an undivided interest in the whole parcel. For example, some of the parcels, after five generations, now have owners who hold a seventy seven one hundred millionths interest in the parcel. The income derived from the use of these lands through grazing, mineral, and other leases has to be divided to the forty-fifth decimal place.

I provide this background for contextual purpose, so that you have an understanding of the complexity of the problem we all, this Administration, this Congress, and now the courts, are trying desperately to solve. This is not a simple question of money management. Rather it is a problem rooted in historical land ownership and land management patterns and in the management of income derived from these lands for hundreds of thousands of beneficiaries.

### **Fixing the Future**

What are we doing about it? Over many decades, the Bureau of Indian Affairs (BIA) record keeping and trust management systems simply have become inadequate. Congress, the GAO, OMB, the Department, and Indian account owners have all agreed that reform is needed. However, this is the first administration in 100 years to have attempted a serious correction of that deplorable situation.

Improvement of the Department's trust fund management responsibilities is happening at an increasing pace beginning with acquiring and installing commercial trust and investment accounting systems for tribal trust funds, significantly better internal controls through yearly audits of financial operations, daily reconciliations of all trust related cash, and use of third party

services for safekeeping of nongovernment investment securities. We are continuing to move aggressively to make needed improvements.

In a little over a year, the Department has cleaned up over 200,000 IIM (Individual Indian Money) account files, two-thirds of the total. By the end of 1999, we will have completed the installation of a commercial bank trust fund accounting system for all IIM and tribal accounts. The Department has awarded a contract to replace BIA's key trust management system with modern commercial systems for lease management, fiduciary accounts receivable, land records and trust administration. Supporting these efforts is work on records management, training, policies and procedures, and additional internal controls.

Trust fund systems will be modernized and centralized so that the trust data the Department uses is accurate and current. More importantly, the systems and information will be available to tribal managers and Indian trust fund owners all across the United States.

The Department has been increasing the budgetary investment in trust reform. The FY 2000 budget seeks more than \$100 million for the Office of the Special Trustee to continue improvements. All told, the Department will devote more than \$150 million to trust reform. No Administration in history has asked Congress to invest these vast sums for trust assets and trust funds management. I am asking for your partnership in this effort.

### **Settling the Past**

This effort to fix these long neglected systems does not absolve us from settling the past. We have worked hard on this front too. With the direct guidance from the Congress and the investment of \$ 21 million in appropriated funds and 5 years of effort (1991 - 1995) the Federal Government attempted to resolve accounting issues surrounding the 1,500 accounts held by 338 tribal entities with combined assets in excess of \$2.5 billion.

The Tribal Reconciliation Project was undertaken by Arthur Andersen LLP, under the supervision of the Department. The basic reconciliation procedures of the project encompassed the reconstruction of \$17.7 billion in non-investment transactions, of which \$15.3 billion -- about 86 percent -- were reconciled. For the reconciled transactions, approximately \$1.87 million in transactions were in error -- an error rate of one-tenth of one percent. The remaining 14 percent of the transactions (\$2.4 billion) were deemed to be "unreconciled," meaning that the Department could not locate all source documents required under the project procedures to verify the accuracy of the general ledger entry for the transactions within the time frame allotted to the reconciliation process. The Department, with the assistance of another accounting firm, subsequently has been able to reconcile another \$.5 billion in transactions, leaving approximately \$1.9 billion in "unreconciled" transactions. Because this is a complicated matter, the news media erroneously reported that \$2.4 billion had been "lost". In reality, the \$2.4 billion had been recorded in the accounts, but the source documents to provide the origin of the transactions could not be located during the time frame of the project.

We need to come to closure and settle the past with regard to tribal accounts. I met with Chairman Campbell and he agreed to take on this issue legislatively, the only way in which it could be finally and fairly resolved. On July 22, 1998, Assistant Secretary Gover testified before a joint session of the Senate Committee on Indian Affairs and the House Committee on Resources on HR 3782, a bill to compensate certain Indian tribes for known errors in their tribal trust fund account uncovered by the reconciliation projects, and to establish an informal dispute resolution process to settle other disputes regarding tribal trust fund accounts. Regrettably, neither body acted on the legislation in the last Congress.

During that same tribal reconciliation effort, Arthur Andersen provided an estimate that it would cost between \$108 million to \$281 million to conduct a similar reconciliation of the 300,000 individual Indian accounts. The Congress and the GAO did not recommend following such a course of action due to the high costs involved and the likelihood of little resolution at the end of the day.

### IIM Litigation

In June of 1996, the Cobell litigation (Cobell v. Babbitt) began. This class action lawsuit stems from the government's alleged mismanagement of the Individual Indian Money trust accounting system. As mentioned earlier, the United States acts as trustee of money accounts on behalf of individual Indian beneficiaries with interests in land allotted to them. These land allotments held in trust by the Government, like tribal lands, earn income by the lease of their grazing, farming, timber and mineral rights. The income from these leases provides the majority of money flowing through these accounts. In the course of this IIM litigation, the U.S. District Court, as part of the discovery process ordered the production of records for the five-named plaintiffs and their predecessors in interest, including Eloise Cobell, who originated the lawsuit.

Document production for the five named plaintiffs has proven difficult. The locating of these documents is a complex and laborious task. Because of fractionated interests hundreds of owners in one parcel is common. Only one set of documents, the IIM jacket file, is filed by the name of the account holder. Land-related documents are kept where the land is located; i.e. at 12 BIA Area and 92 Agency Locations. Information is filed by tract number or by lease number and not owner name. To locate related documents various reports must be generated including chain of title and ownership interest and encumbrances reports. Older documents are located at Federal Records Centers and the Archives.

Locating financial transactional documents has been even more complicated because day-to-day transactional documents are filed by date and type of document. Also, account analysis must be undertaken so that all documents related to the account transactions can be located. The existence of fractionated interests means that hundreds of people may own a small portion of one lease, and receive the related payment, which makes analyzing the account even more complicated. Fractionated interests also mean that lease income may be deposited into a holding

account, or Special Deposit Account, while a determination is being made as to who are beneficial owners. This creates additional documents.

Automated transaction listings for IIM accounts became available in approximately 1985; however, prior to that time, a combination of accounting machines and manual systems were used to record transactions, which creates additional complexity to researching older IIM accounts.

### **OST Reorganization**

When my senior staff learned that U.S. Federal District Court Judge Lamberth was contemplating a contempt citation for our failure to produce the ordered records, I determined that it was time to address some longstanding issues.

As part of this examination, it became clear that the Office of Special Trustee (OST) had, for whatever reasons, encountered a series of obstacles and roadblocks that it has been unable to overcome in producing documents for the court in a timely and effective manner.

As I reviewed this situation, I became convinced that more direct oversight of the OST's field operations, particularly the records management function and litigation, was needed in the Office of the Special Trustee if we were ultimately going to succeed in these tasks. A number of operational problems came to the surface including: lack of day-to-day oversight of field operations; the lack of a coherent, affirmative plan from the Washington office to meet litigation demands; a failure to develop an adequate records management plan in compliance with Departmental and Congressional Committee directives; and an unusually high number of complaints of friction in resolving records issues between the OST field organization and other entities both inside and outside of the Department.

I believed it was imperative to strengthen day-to-day management of the OST field organizations, and I put two changes into effect to accomplish this. First, I directed that a new position of Principal Deputy Special Trustee be created with direct line authority over the OST's field organizations so that there could be direct accountability and oversight exercised by the OST's Washington Office. The Special Trustee's Deputy for Operations, a seasoned career manager previously selected by Mr. Homan, lacked line authority over the OST field operations. The organizational alignment of placing a principal deputy to manage day-to-day operations is an approach that is used in nearly every other bureau and office in the Department. Second, to improve the OST's responsiveness in meeting critical records deadlines and to improve the coordination of records management across the organizations that must share this information, we obtained the services of an expert records manager from the Department of State who has had an outstanding, exemplary career in the field of records management and placed him in charge of the entire records organization and the litigation support function. A records management and records retention function as complex as ours requires the expertise and experience of a manager who has made records his career.

Neither of these actions diminished or usurped the Special Trustee's authority. Section 3(b) of my Secretarial Order explicitly provides that the Deputy for Operations (now designated as the Principal Deputy) continues to report directly to the Special Trustee. I informed the Special Trustee on January 6 that he would retain all of his responsibilities and authorities enumerated in the Trust Funds Reform Act. The changes that I ordered do not conflict with the statutory responsibilities of the Special Trustee and his direct reporting relationship to me.

On January 7, the Special Trustee unexpectedly provided me with a one sentence resignation letter and he left immediately. We will work with the White House to identify highly qualified candidates for the President's consideration who meet the requirements of the Special Trustee position as set forth in the Reform Act. After a nomination is made, this body can consider and hopefully confirm the President's nominee for this critical position.

In the meantime, the Principal Deputy, Thomas M. Thompson, will run the Office of Special Trustee until the position is filled permanently. Mr. Thompson has had an exemplary career as a manager in this Department before being selected by Mr. Homan as his Deputy for Operations. He has been closely involved in trust issues over the years, and was the principal architect for the High Level Implementation Plan that is guiding our trust reforms.

#### **Authority for the Reorganization**

Committee staff has inquired about my authority to reorganize OST by Secretarial Order and how it comports with the intent of the 1994 American Indian Trust Fund Reform Act. Every Secretary of the Interior has had broad authority under Section 2 of the Reorganization Plan No. 3 of 1950 (5 U.S.C. Appendix) to organize the bureaus and offices which report to him. This authority has been used regularly and routinely over nearly half a century by Secretaries of the Interior under both Democratic and Republican Administrations. There is no conflict in the use of this authority with the authority and responsibilities enumerated in the 1994 Reform Act. The 1994 Act provides the Special Trustee with broad policy oversight of the reform effort and stipulates that the Special Trustee report to the Secretary of the Interior. —

The operational activities that are the focus of the January 5, 1999 Secretarial Order were originally assigned to the Special Trustee by me in 1996 under my general management authority. The secretarial Order does not alter the assignment of those responsibilities to the Office of the Special Trustee. Rather, it merely provides day-to-day oversight of these operational entities, within the Special Trustee's office.

#### **Other Changes**

The Bureau of Indian Affairs is strengthening its responsiveness to the court orders and the appointment of the Special Master by forming a special team to intensify the effort in BIA to locate and produce as many records as possible.

Likewise, the Justice Department has notified the court of a complete restructuring of the litigation team in the case, with four new senior counsel overseeing the case on a day-to-day basis and additional staff added to improve its performance.

### **Congressional Assistance is Needed**

Congress needs to be more deeply involved on a number of fronts. First, to enact the reforms set forth in the High Level Implementation Plan, the Department has requested in its FY 2000 Budget over \$100 million for the Office of Special Trustee. This \$60 million increase is the largest percentage increase for any bureau or office in the Department.

This critical increase is needed to bring about the commercially proven systems essential to raise our trust performance to standards set forth in the Reform Act. The Budget Committee of this body and the Senate Appropriations Committee will need to provide the required budget allocations and appropriations. In addition to the FY 2000 budget, there is supplemental funding needed in FY 1999 that has been transmitted to Congress, as well as additional needs stemming from the recent court rulings and appointment of the Special Master.

Second, Congressional action is needed to stem the rising tide of fractionated ownership of Indian lands. Twice the Congress has enacted legislation to consolidate Indian land holdings, only to fail constitutional challenges in the Supreme Court. The House and Senate Appropriations Committees provided \$5 million in FY 1999 to fund the cost of an Indian land consolidation pilot. The pilot effort is designed to purchase small, highly fractionated individual interests in trust lands and return those interests to the Tribes. This consolidation pilot is now underway. The President's budget provides \$10 million to expand this effort in FY 2000. These are important first steps to solving the longstanding, root cause of many of the problems we have discussed today. However, without action by this body to permanently curb the geometric growth of these interests by the passage of Indian land consolidation legislation, even the gains in the pilot effort will be reversed. More importantly, the economic viability of allotted Indian lands will be severely compromised and the costs of administering development of these lands and maintaining IIM accounts will skyrocket. We need definitive Congressional action, and we need it at the earliest possible time.

Finally, as I mentioned earlier, we must come to closure on the past if the reforms we are making for the future are to take hold. Let me be specific. We can build the world's greatest trust funds system, but if it cannot begin with an agreed upon account balance, what will such a system produce? While we expect the Cobell litigation to lead eventually to agreed upon balances for the 300,000 IIM accounts, we need action from this body to settle known errors and commence a mediation based process to come to resolution on disputed tribal balances.

## Conclusion

Mr. Chairman, we have an historic opportunity to fix - once and for all - the Federal Government's responsibilities for Indian trust assets and trust funds. I have made this my highest priority. I do not want to pass on to my successors what I inherited. To succeed, this effort must be a partnership with Congress. I urge you to work with me and to do all in your power to provide the assistance we need to get the job done.

**STATEMENT OF THE HONORABLE BRUCE BABBITT  
SECRETARY OF THE INTERIOR**

**JOINT OVERSIGHT HEARING  
BEFORE  
HOUSE COMMITTEE ON RESOURCES  
SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS  
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES**

**MARCH 23, 1999**

I appreciate the opportunity to testify here today on proposed withdrawals of federal land from location and entry under general land laws, including the mining laws. Your letter of invitation specifically directed attention to my recent actions to initiate withdrawals of 429,000 acres along the Rocky Mountain Front in the Lewis & Clark and Helena National Forests, and 605,000 acres in the Shivwits/Parashant region north of the Grand Canyon in northwestern Arizona. I welcome a public discussion of the usefulness of the withdrawals in contexts such as these, where other public values may be threatened by indiscriminate application of various public land laws, including the Mining Law. As I will discuss in more detail below, history clearly shows that withdrawals are often the best way to protect values of national interest that might be destroyed by inappropriate uses of public lands and national forests.

First, let me put my recent actions into historical and statutory context. Withdrawals have long been an important tool of public land management. They are a mechanism, exercised by the Executive and Legislative branches for nearly two centuries, to limit the application of certain broadly applicable public land laws -- especially those aimed at transferring interests in federal lands out of federal ownership.

By the early part of this century, hundreds of executive withdrawals had been made for such disparate purposes as to establish forest reserves, to conserve wildlife, to create Indian reservations, or to make federal lands available for military use. Many were made without express statutory authority from Congress, their legality was sometimes debated, but the Supreme Court settled the question in its landmark *United States v. Midwest Oil Co.* decision in 1915. It upheld executive power, noting that "when it appeared that the public interest would be served by withdrawing or reserving parts of the public domain, nothing was more natural than to retain what the Government already owned."

Starting around the same time as the *Midwest Oil* decision, Congress has several times acted to confirm broad executive power to make withdrawals. It did so in the Antiquities Act of 1906, authorizing the President to create national monuments, and it did it again in the Pickett Act of 1910. Most recently, it confirmed the power in the Federal Land Policy and Management Act (FLPMA), enacted in 1976. FLPMA broadly defines a withdrawal to include, in pertinent part:

withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program.

FLPMA also sets out specific procedures by which FLPMA withdrawals can be made. Generally speaking, the FLPMA withdrawal process is initiated when the Secretary of the Interior publishes a notice in the Federal Register in effect proposing a withdrawal of a tract of federal lands. Upon publication the land identified is segregated from the operation of public land laws to the extent specified in the notice, for a period of up to two years. During that time, for larger proposed withdrawals (over 5000 acres), the Department gathers information, engages in consultations, and evaluates the effects of the proposed withdrawal, as specified in FLPMA section 204(c). (The process for withdrawals under 5000 acres is simpler, see section 204(d); and FLPMA also makes provision for emergency withdrawals of up to three years in length, see section 204(e).)

Section 204 (c) provides that a FLPMA withdrawal of 5000 or more acres may be terminated by Congressional action. The constitutionality of this so-called "legislative veto" provision was undermined, if not fatally impaired, by the Supreme Court's 1983 decision in *INS v. Chadha*, which struck down legislative vetoes as a violation of separation of powers.

Completing this brief statutory overview, Section 204 (i) of FLPMA also provides that, for federal lands under the control of a non-Interior agency (such as the Forest Service in the Department of Agriculture), the Secretary of the Interior shall make, modify, or revoke withdrawals only with the consent of the head of the department or agency involved, except in emergency situations. This was the process used to segregate portions of the Lewis & Clark and Helena National Forests in Montana from the Mining Law. Finally, let me emphasize that any withdrawals made are subject to valid existing rights. If the holder of a mining claim, mineral lease or other interest in the area being withdrawn can establish such a right, it is not affected by the withdrawal.

Turning now to our recent actions, the reason we acted is very simply stated: These proposed withdrawals under section 204(c) are aimed at making sure, while more permanent protections for these lands are being considered, that nothing happens on the ground that could interfere with, or make more costly, those protections of the land. We acted completely within the law, and within the long tradition of executive branch withdrawals. Indeed, considering some unhappy previous episodes, we would have been foolish not to have acted.

Let me explain. There have been many incidents in western history of people using the antiquated 1872 Mining Law to file mining claims on Federal lands for purposes that have little or nothing to do with actual mining development. (The same opportunity for abuse existed with many other old public land laws intended to settle the West through federal land privatization, but almost all of these other laws - unlike the Mining Law - have been repealed.) The presence

of these claims can complicate sensible land management. The basic problem is that filing claims under the Mining Law is very easy. Getting rid of fraudulent or nuisance claims through contest proceedings is lengthy and difficult. This can lead the Federal Government to choose to buy out questionable or spurious claims rather than assuming the burden, expense, and delay involved in contesting them.

Let me mention one of the oldest and two of the most recent examples:

- Beginning around 1890, a man named Ralph Cameron staked numerous mining claims on what was then public domain land along the south rim of the Grand Canyon and on the trails leading from the rim to the Colorado River. Rather than looking for minerals, Cameron used his claims to mine the pockets of tourists instead, by controlling access and charging fees for use of the Bright Angel Trail. This was the most popular hiking trail for access to the Canyon, then as now. Numerous legal challenges were eventually filed to these claims, but it took nearly 20 years to remove Cameron's claims so the public could enjoy this world-class area of federal lands free from such extortion.
- In the modern era, a fast-acting person staked mining claims on public land at Yucca Mountain after Congress selected the area for the national high-level nuclear waste disposal site, but before the federal government cranked up the machinery for withdrawing the land from the Mining Law. Rather than going through expense and particularly the time to contest his claims, the Department of Energy elected to pay him a quarter of a million dollars of taxpayer money to relinquish them.
- In 1989 the Department of the Interior determined that it had to issue patents under the Mining Law for 780 acres of land within the Oregon Dunes National Recreation Area, an outstanding scenic and recreational treasure along the Pacific coast. (The mineral "discovery" on the mining claims to be patented was a so-called "uncommon" variety of sand.) Trying to avoid creating such an inholding in the National Recreation Area, the United States pursued a land exchange, intending to offer the patentee other public land of equal value in Oregon for the relinquishment of these claims. But when other public land was identified for such an exchange, and before it could be withdrawn, the holder of the claims in the Oregon Dunes filed mining claims on that other land, making it impossible to use them for the exchange.

Obviously, these situations could have been avoided -- with savings to the Nation's taxpayers -- by timely withdrawals of the affected land from the Mining Law. It was to avoid a repeat of these situations that we recently acted in the Rocky Mountain Front and north of the Grand Canyon. Let me now provide a little more detail on each.

## **The Lewis & Clark and Helena National Forests**

Last year, the Forest Service settled a controversy of several decades by deciding through its Forest planning process not to allow new mineral leasing in the Rocky Mountain Front of Montana's Lewis & Clark National Forest because of its spectacular environmental, wildlife, recreational, cultural and scenic values. The area nevertheless remained open to location of mining claims under the Mining Law. Although it had never been the scene of any significant hardrock mining activity, the increased attention in the Forest Service plan to the management of the area for conservation could attract the location of "nuisance" mining claims such as has happened elsewhere. Indeed, a number of new mining claims were located in the area in 1996, while the Forest Service was considering the land use plan amendment affecting oil and gas leasing decisions on the Forest.

Therefore, at the request of the Forest Service, on February 4, 1999, the BLM published in the Federal Register notice of the proposal to withdraw this area from location of new mining claims, in order to protect Native American traditional and cultural uses, wildlife (including big game and fish habitats), and scenic resource values while the Forest Service evaluates long-term hard rock mineral management in the area. Publication segregates the land temporarily for up to two years. During the two-year period while a final withdrawal recommendation is developed, Interior and the Forest Service will conduct an open, public process under the BLM withdrawal regulations and the National Environmental Policy Act to evaluate the long-term future use of the area.

## **The Proposed Arizona National Monument**

The Shivwits Plateau/Parashant Canyon area of Arizona includes many objects of historic and scientific interest, as well as magnificent cliffs, stunning vistas, and a mosaic of pinyon-juniper and ponderosa pine communities. Congress almost included much of it in Grand Canyon National Park when it enlarged the Park in 1975, but took it out in the final stages of the legislative process because of objections from hunting and livestock interests. As you know, late last fall I began to evaluate this area for possible protection under the Antiquities Act, which could be done in a way to allow grazing and hunting to continue. The area has never seen any significant mineral development, and there are only a handful of mining claims there now. Being exceedingly mindful of the unhappy experience with Ralph Cameron on the other side of the Grand Canyon, I determined that it would be foolish to invite a repeat of that experience. Therefore, on December 14, 1998, the BLM published a Federal Register notice of a proposed withdrawal of the area pursuant to section 204 (b) of FLPMA. Publication had the effect of segregating the area temporarily. This will prevent location and entry under the general land and mining laws for up to two years, while further protective actions are contemplated.

You also asked about any future plans for similar withdrawals. For much of its 150 year history, the Department of the Interior has been steadily making, modifying, and revoking withdrawals. The complex business of managing several hundred million acres of federal land to serve the

public interest demands no less. If we face situations elsewhere similar to those we faced in the Rocky Mountain Front and in the Shivwits/Parashant region -- where important conservation values were at stake and where the attractive nuisance of mining claim location could have unnecessarily complicated our consideration of protective actions -- I will not hesitate to act as I did there. I see nothing of value in allowing people to take advantage of easy entry onto public lands under antiquated relics like the Mining Law to mine the taxpayers' pockets and to thwart or hamper the protection of magnificent areas of federal lands for future generations.

Finally, you asked about what legislative remedies are available to ensure cooperation between the executive and legislative branches in fashioning public lands policy, in light of the *Chadha* decision. That decision, as I noted earlier, probably eliminated the legislative veto from FLPMA's withdrawal provisions. But its elimination does not meaningfully affect, in my judgment, the many opportunities for the executive and legislative branches to work together. In the specific examples I have discussed today, the temporary segregation of land we have put in place maintains the status quo while we are exploring administrative or legislative mechanisms for best managing these lands in the future.

Furthermore, the lack of a legislative veto leaves it open for Congress as a whole -- acting through the normal lawmaking process, involving action by both Houses and presentment to the President -- to address withdrawals put in place by the Executive. To take a well-known recent example, the Congress just a few months ago passed and the President signed a law modifying the boundaries of the Grand Staircase-Escalante National Monument, which the President two years earlier had created and withdrawn from entry, location, leasing or other disposition under the public land (including mining and mineral leasing) laws. As this shows, the ordinary give and take of the regular political process has much more influence on the management of federal lands than whether or not Congress has a formal opportunity to veto a proposed FLPMA withdrawal.

I appreciate the opportunity appear before these Subcommittees and discuss these important issues. I will be glad to answer any questions.

**FINAL COPY**

**TESTIMONY OF  
SECRETARY OF THE INTERIOR BRUCE BABBITT  
BEFORE THE HOUSE RESOURCES COMMITTEE  
SUBCOMMITTEE ON WATER AND POWER  
ON THE CALFED AND CVPIA PROGRAMS  
MAY 20, 1999**

**INTRODUCTION**

I am pleased to appear before this Subcommittee to testify in support of the CALFED Bay-Delta and CVPIA Programs. The CALFED Bay-Delta Program is a cooperative effort among public, state, and federal agencies to address the water management and environmental problems associated with the Bay-Delta system. The Central Valley Project Improvement Act (CVPIA) mandates specific management changes to the Central Valley Project (CVP) to place fish and wildlife on an equal footing with other project purposes, and requires Interior to implement an extensive program of environmental restoration. The CVPIA provided a foundation for Interior's support of the Bay-Delta Accord and the CVPIA's activities complement our participation in the CALFED Program.

**CALFED HISTORY AND BACKGROUND**

The CALFED Bay-Delta Program is a response to the urgent and significant problems being experienced within the Bay-Delta system, which is at the heart of all discussions of California present and future water supply. Located at the convergence of the discharge of the Sacramento and San Joaquin Rivers into the San Francisco Bay, the Bay-Delta is a maze of waterways and channels that carry over 40 percent of the State's total runoff into the Bay. This equates to drinking water for more than 22 million Californians, critical habitat for over 750 plant and animal species and irrigation water for a \$27 billion agricultural industry that feeds into the State's trillion dollar economy. In short, what affects the Delta affects the State. Today, the Delta is in trouble. Over the past decades, we have witnessed declines in water quality, in species habitat, and numbers, and in the reliability of water supplies.

In December 1994, the State and Federal governments signed the Bay-Delta Accord, which signaled a new approach to managing the Delta and initiated the CALFED Program to restore the Bay-Delta's ecological health and to improve water management for beneficial uses of the Bay-Delta. The CALFED Program is a cooperative planning and coordination effort among ten Federal agencies -- U.S. Environmental Protection Agency, National Marine Fisheries Services, U.S. Forest Service, Natural Resources Conservation Service, U.S. Army Corps of Engineers, Western Area Power Administration, and within the Department of the Interior, the Bureau of Land Management, the U.S. Fish and Wildlife Service, the U.S. Geological Survey, and U.S. Bureau of Reclamation -- and five State Agencies -- the Resources Agency of California, Department of Water Resources, the Department of Fish and Game, the State Water Resources Control Board, and the California Department of Food and Agriculture.

## ACCOMPLISHMENTS

The CALFED Program has been proceeding in a three-phase approach to accomplish its mission.

### Phase I

During Phase I, which was completed in 1996, the CALFED Program defined the problems confronting the Bay Delta, developed goals and objectives to address these problems, and selected three alternatives for further analysis in Phase II.

**CALFED Goals and Objectives.** CALFED identified ecosystem and water quality, water supply reliability and levee integrity as the four major problem areas in the Bay-Delta. The following objectives were developed to address each of the problem areas.

- Improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species.
- Provide good water quality for all beneficial uses.
- Reduce the mismatch between Bay-Delta water supplies and current and projected beneficial uses dependent on the Bay-Delta system.
- Reduce the risk to land use and associated economic activities, water supply, infrastructure, and the ecosystem from catastrophic breaching of Delta levees.

**Alternatives.** To meet the objectives for achieving long-term solutions to the problems of the Bay-Delta, three alternatives were selected for further analysis during Phase II. The alternatives can be summarized as follows.

- **Alternative 1 – Existing System Conveyance.** Under this alternative, the Delta system would be modified and would continue to be used to convey water. Modifications would include: enlargement of one channel; installation of flow control, fish control barriers, and fish screens; and development of up to 6.25 million acre-feet of water storage using both surface (5.5 million acre-feet) and ground water (750 thousand acre-feet).
- **Alternative 2 – Modified Through Delta Conveyance.** This alternative would also improve and continue the use of Delta channels to convey water. Modifications would include: enlargement and modification of channels; construction of set back levees; flooding of Delta islands (the McCormack-Williamson Tract); development of an isolated shallow channel; installation of flow control, fish control barriers, and fish screens; and development of up to 6.25 million acre-feet of water storage using both surface (5.5

million acre-feet) and ground water (750 thousand acre-feet).

- **Alternative 3 – Dual-Delta Conveyance Alternative.** This alternative would continue the use of Delta channels to convey some water, but would also include the addition of a new channel around the east side of the Delta to move water. Modifications would include: construction of an open-channel; isolated water conveyance facility; potential channel modifications; installation of flow control, fish control barriers, and fish screens; and development of up to 6.25 million acre-feet of water storage using both surface (5.5 million acre-feet) and ground water (750 thousand acre-feet).

**Category III Activities.** Along with the development of objectives and the selection of alternatives for further analysis, the CALFED Program established a process for selecting activities that could be initiated and funded as part of the Bay-Delta Accord's commitment to develop and fund related ecosystem restoration activities in advance of selection of the preferred alternative, but consistent with NEPA. The funding for these activities, generally referred to as Category III, is coordinated by the CALFED Program staff to ensure that activities funded under Category III are integrated with the overall long-term CALFED Program for ecosystem restoration.

## **Phase II**

Under Phase II, which is now underway, Category III ecosystem restoration activities are proceeding while programmatic environmental documents are being developed and finalized. In 1997, a process to guide allocation of Category III funds was developed by a CALFED committee with input from stakeholders. The administration of this process was delegated to the CALFED Restoration Coordination Program.

Ecosystem goals presented in the Strategic Plan for Ecosystem Restoration will guide the program during its implementation phase. Strategic goals include the following: (1) achieve recovery of at risk native species; (2) rehabilitate natural processes in the Bay-Delta system to support environmental communities; (3) maintain and enhance species for commercial and recreational harvest; (4) protect or restore functional habitat types throughout the watershed; (5) prevent establishment of invasive species; and (6) improve and maintain water and sediment quality. The Ecosystem Restoration Program (ERP) addresses these goals through restoration of ecological processes associated with streamflow, stream channels, watersheds and flood plains. To implement these goals, qualitative and/or quantitative targets were developed for each distinct ecosystem type and segment of river. Targets are categorized according to three levels of certainty: (1) targets that have certainty of success; (2) targets which will be implemented in stages; and (3) targets for which additional research and evaluation are needed. For example, a target for tidal perennial aquatic habitat is to restore 1,500 acres of shallow-water habitat in the Suisun Bay and Marsh Ecological Unit, and restore 1,000 acres of shallow-water habitat in the San Pablo Bay Unit. When selecting ERP projects, CALFED relies extensively on the goals and priorities in the ERP. As ERP projects are completed, monitoring will inform us of their

individual and collective contribution to achieve the overall goals.

To ensure that these objective standards and measurable goals are met, CALFED also developed a Comprehensive Monitoring Assessment and Research Program (CMARP).

In addition, the Program will identify a preferred alternative and is conducting the environmental review process which will culminate in a Record of Decision which is expected by June 2000.

Over the last 3 years, CALFED has funded all or portions of ecosystem restoration projects/programs totaling \$228 million, of which \$150 million was funded by the Federal Bay-Delta Account. Funded projects included fish screens and ladders, land acquisition, habitat restoration, research and monitoring. As of April, 1999, over \$76 million has been obligated from the Federal Bay-Delta Account and \$11.6 million expended on the of CALFED Ecosystem Restoration Program as follows:

**California Bay-Delta Ecosystem Restoration Account**  
(dollars in thousands)

| Project/Program Categories                                      | Total Allocated through April 30, 1999 | Total Obligated through April 30, 1999 | Total Expended through April 30, 1999 |
|---|--|--|---------------------------------------|
| Fish Screen Improvements  | \$2,539                                | \$2,539                                | \$80                                  |
| Fish Passage Improvements                                       | 42,353                                 | 3,909                                  | 428                                   |
| Habitat Restoration in Flood plains and Marshes                 | 41,652                                 | 32,842                                 | 8,127                                 |
| River Channel Changes   | 14,884                                 | 9,624                                  | 243                                   |
| Improved In-stream Flows  | 14,500                                 | 14,450                                 | 0                                     |
| Water Quality and Temperature Improvement                       | 8,803                                  | 5,003                                  | 811                                   |
| Introduced and Undesirable Species Control                      | 1,250                                  | 1,250                                  | 0                                     |
| Improved Fish Management and Hatchery Operations                | 625                                    | 625                                    | 0                                     |
| Watershed Management  | 4,198                                  | 2,253                                  | 69                                    |
| Monitoring, Permit Coordination, and Other Special Support      | 9,556                                  | 3,432                                  | 1,545                                 |
| Miscellaneous Expenses/Administration                           | 9,469                                  | 301                                    | 301                                   |
| Pending April 16, 1999 due date for Public Solicitation Process | 10,171                                 | 0                                      | 0                                     |
| <b>TOTAL</b>  | <b>\$160,000</b>                       | <b>\$76,228</b>                        | <b>\$11,604</b>                       |

Examples of accomplishments by Federal agencies during fiscal year 1998 include:

- Acquisition by the U.S. Fish and Wildlife Service of 2,300 acres of riparian and floodplain habitat along the San Joaquin River to allow for widening of the floodplain, facilitation of ground water recharge and development of habitat.
- U.S. Bureau of Reclamation funding of the acquisition of 63 acres of diked historic wetlands along the Napa River to restore the habitat.
- Acquisition by The Nature Conservancy of 1,969 acres along the Cosumnes River to protect and expand tidal and seasonally flooded wetlands, the riparian corridor, and farmland of high habitat value.
- Execution of an agreement by the U.S. Fish and Wildlife Service to acquire 4,760 acres of riparian and wetland habitat at Liberty Island to improve water conveyance and restore tidally influenced habitat.

In addition to these accomplishments, the following three examples illustrate the nature and scope of the CALFED Ecosystem Restoration Program:

- **Battle Creek Project.** Battle Creek is a cold, spring-fed stream with constant high flows during the dry season (250 cubic feet per second) making it the only Sacramento River tributary resistant to drought. Its remote, shaded canyons are similar to the once-productive salmon streams now blocked by Shasta Dam. Extensive historical records document Battle Creek's enormous potential for supporting all four races of salmon and steelhead. Historic construction of dams which are important for California's growth and economy, have been devastating to California's anadromous fish populations. The Battle Creek Project will improve fish passage to 42 miles of historical habitats by removal of some dams and modifying others. To date, CALFED agencies have provided \$28 million through the Federal Bay-Delta Account for this project. CVPIA has funded the acquisition of water for increase of streamflows and the installation of a water treatment facility at Coleman National Fish hatchery to protect the hatchery's water supply from disease borne by wild fish restored to the upper watershed.
- **Butte Creek Restoration.** The ecological health of the Bay-Delta depends on ecological processes and functions, habitats, and fish and wildlife species present within its tributary watersheds which includes Butte Creek. Fall and spring-run chinook salmon and steelhead trout live and spawn in Butte Creek, which is one of only three major spawning streams for spring-run chinook salmon in California. In recent years, the spring-run chinook populations had fallen to a range of from 200 to 1,000 adults. The decline of Butte Creek's anadromous fishery is attributed to many factors, such as unscreened diversions, agricultural drains, diversion dams and barriers, poor water quality, low flows and

poaching. CALFED agencies provided more than \$5.6 million for fish screens, fish passage and small dam removal, watershed support, and general restoration activities, to supplement \$8.5 million of CVPIA funds on Butte Creek. Many of the actions were implemented in partnership with CVPIA because Butte Creek restoration is a high priority for both programs. Through combined private and public efforts, cost-shared fish passage improvement projects have been completed on Butte Creek. In 1995, more than 8,000 spring-run salmon returned to Butte Creek, demonstrating its potential to attract a large number of spring-run salmon. In 1998, the spring-run returns were more than 20,000 adult fish. With this phenomenal turnaround, it seems clear that continuing support for this program can continue progress for this watershed.

- **Major and Small Screening Programs for Fish Protection.** Diverted water provides irrigation for more than 200 different crops, drinking water for two-thirds of Californians, and water for refuges and other wetland habitat areas. Fish and aquatic organisms are pumped into water diversions and, in most cases, entrained organisms do not survive. Some diversions have screens that exclude most juvenile and adult fish; however, eggs and larval fish, invertebrates, planktonic plants organic debris, and dissolved nutrients are lost to diversions. The conflict between the loss of important environmental components and the need to divert water for beneficial uses is an important issue for the CALFED Program. Because of the magnitude and significance of this conflict and its potential to adversely impact California's natural resources, economy, and livelihood, the CALFED Program is aggressively reducing the adverse effects of water diversions. CALFED agencies have provided more than \$34 million towards the reduction of the adverse effects of water diversions, supplementing \$59.1 million of CVPIA funding for the same purpose. When all the projects funded through the CALFED Program have been installed, nearly 75 percent of the diverted water from the upper Sacramento River will pass through screens.

**Project Accountability.** All of the ecosystem restoration projects funded by the CALFED Program require: (1) the identification of primary ecological/biological objectives; (2) identification of primary stressors, species, and/or habitats that are the focus of the project; and (3) quantification of the expected benefits. Seventy-five percent of the projects selected focus on actions which benefit the identified highest priority species, including delta smelt, splittail, chinook salmon, steelhead, and long-fin smelt. Additional priority is given to support recovery of other listed water, wetland, and riparian dependent species in Bay-Delta. In addition, project proponents must outline the nature and basis for durability of the benefits resulting from project implementation and indicate how the project meets those objectives.

The U.S. Geological Survey and other agencies have developed the Comprehensive Monitoring, Assessment, and Research Program (CMARP) that outlines standard procedures for long-term monitoring to measure the effectiveness of the CALFED Program over time. The purpose of the CMARP is to build on the work of the Interagency Ecological Program (IEP), the on-going Federal-State monitoring program for the Bay-Delta, and the Central Valley Project Improvement Act's Comprehensive Assessment and Monitoring Program (CAMP), which has been conducting

a substantial monitoring effort in the Bay-Delta for several years. The CMARP report will be an appendix to the revised draft EIR/EIS.

**Environmental Review Process.** CALFED is scheduled to release a draft preferred alternative program and a comprehensive programmatic environmental statement in June. The preferred alternative outlines strategies for improving ecosystem and water quality, water supply reliability, and levee system integrity.

**Draft Preferred Program Alternative.** The draft Preferred Program Alternative consists of eight program elements which, though described individually, must be coordinated and linked in an incremental implementation process to effectively resolve problems in the Bay-Delta system. These eight program elements are:

1. **Levee System Integrity Program.** This program will improve Delta levee stability to meet Public Law 84-99 levee standards, implement current best management practices to correct subsidence adjacent to levees, develop an Emergency Management Response Plan based on existing State, Federal and local programs, complete a Delta levee risk assessment, and rehabilitate Suisun Marsh levees. Water supply reliability will be protected by maintaining levee channel integrity while levee actions will be designed to provide simultaneous improvement in Delta habitats for fish, birds, plants, and other wildlife.
2. **Water Quality Program.** This program aims to reduce the loads and or impacts of pesticides, trace metals, salinity, organic carbon, pathogens, nutrients, and turbidity through a combination of measures that include education, source reduction, water source alternatives, water treatment, storage, and if necessary, conveyance improvements, such as a screened diversion structure up to 4,000 cubic feet per second on the Sacramento River at Hood.
3. **Ecosystem Restoration Program.** This program has worked to improve and increase aquatic and terrestrial habitats in the Delta while improving ecological functions in order to support sustainable populations of diverse and valuable plant and animal species. Restoring and managing habitat, restoring channel forming flows, improving Delta spring outflows, reestablishing Bay-Delta associated floodplain areas, developing flood control bypasses, and modifying or eliminating fish passage barriers, along with other actions, are designed to improve the health of the ecosystem and reduce the conflicts between environmental water and other beneficial uses while providing more flexibility for water management decision makers. Specific actions will include: an environmental water account to provide flows and habitat conditions for fish protection; and recovery and development of an assessment, prevention, and control program for invasive species.
4. **Water Use Efficiency Program.** This program's goal is to increase the efficient

use of water supplies to reduce the environmental impacts associated with water diversion. Education programs will focus on water suppliers and users informing these groups about the need for water use efficiency in the Bay-Delta and the methods available for establishing and assessing conservation plans. Additionally, the program will assist regional agencies in complying with water conservation and recycling requirements under the Urban Water Management Planning Act, identifying region-specific plans for agricultural areas, and defining measurable objectives to assure improvements in water management.

5. **Water Transfer Program.** This program will facilitate water transfers and further development of a state-wide water transfer market. The program aims to establish a State Water Transfer Clearinghouse while standardizing requirements for water transfer proposals and streamlining the water transfer approval process. Additionally, this program will assist in the establishment of new accounting, tracking, and monitoring methods to aid in-stream flow transfers under California law.
6. **Watershed Program.** This program seeks to provide financial and technical assistance to local watershed programs to benefit the Bay-Delta. These actions can improve system reliability by shifting the timing and quantity of flows, increasing base flows, and reducing peak flows. Additionally, the program will support conservation education at the local watershed level, providing organizational and administrative support to watershed programs.
7. **Storage.** Ground or surface water storage can be used to improve water supply reliability, provide flows to maintain water quality and downstream habitat, and protect levees through coordinated operation with existing flood control reservoirs. Decisions to construct groundwater and/or surface storage will be predicated on complying with all program linkages. New ground and/or surface water storage will be developed and constructed together with aggressive implementation of water conservation, recycling, and a protective water transfer market, as appropriate, to meet CALFED Program goals. During Stage 1 of the implementation process, CALFED agencies will evaluate and determine the appropriate mix of storage and initiate permitting and construction.
8. **Conveyance.** Modifications in Delta conveyance are designed to improve water supply reliability, protect and improve Delta water quality and ecosystem health, and reduce the risk of water supply disruption due to catastrophic breaching of Delta Levees. Through-Delta conveyance actions include new screened diversions, construction of new set back levees, construction of barriers, and changes to State Water Project operating rules to allow full capacity export of water. Specific actions will include: (1) construction of a new screened intake at Clifton Court Forebay and either a new screened diversion at Tracy or an

expansion of the new screened intake at Clifton Court to meet Tracy Pumping Plant export capacity; (2) implementation of the Joint Point of Diversion for the State Water and Central Valley Projects and construction of interties; (3) construction of an operable barrier at the head of Old River to improve conditions for salmon migrating up and down the San Joaquin River; (4) construction of operable barriers or their equivalent, taking into account fisheries, water quality, and water stage needs in the south Delta; and (5) determination of operating criteria for the Delta Cross Channel.

**Programmatic EIR/EIS Timeline.** Since the CALFED Bay-Delta Program consists of both State and Federal entities, the plan must meet the requirements for identifying potential impacts contained in both the State's California Environmental Quality Act (EIR) and the Federal National Environmental Policy Act (EIS). The analysis presented in the programmatic EIR/EIS provides information to decision makers and the public on the range of possible environmental consequences associated with each of the program alternatives. Public participation is an essential part of the CALFED Program, and public feedback has been solicited on all aspects of the Program, including goals, plan formulation objectives, priorities, and implementation of the preferred program alternative.

The schedule for completing the EIR/EIS is as follows:

|                   |  |
|-------------------|--|
| <b>June 1999</b>  | Release Draft EIR/EIS, followed by 90-day public comment |
| <b>April 2000</b> | Release Final EIR/EIS, followed by 30-day public comment |
| <b>June 2000</b>  | Record of Decision for final programmatic EIR/EIS        |

## **FUTURE IMPLEMENTATION**

Program implementation will begin in Phase III, following completion of the final programmatic EIR/EIS. The CALFED plan is expected to take 25 to 30 years to complete. Implementation is roughly divided into three stages, with Stage I lasting 7 years.

**Phase III.** Site specific, detailed environmental review will occur during Phase III prior to the implementation of each proposed action. Stage 1 actions will be grouped into a series of "bundles" to provide additional assurances for balancing benefits. For example, a bundle of actions could include levee work, habitat improvements, water quality work, and facilities and operations to improve water supply reliability. Linking the actions will help assure that progress is made in all areas. Actions may be linked within the same project EIR/EIS by contractual documents, funding or other means. The following key Program issues will be addressed during implementation:

**Land Use.** CALFED seeks to preserve as much agricultural land as possible during implementation, consistent with meeting all Program goals. The government already owns some of the land needed for Program implementation, and that land will be used when

appropriate. To date, CALFED Ecosystem Restoration projects have been implemented on 33,526 acres. Farming and grazing activities continue on 68% of those lands. Of those lands, 13% (4,211 acres) were previously farmed and have now been converted to fish and wildlife habitat (see table below). Partnerships with landowners, including easements with willing landowners, will be pursued when appropriate to obtain mutual benefits if the appropriate government land is not available. Acquisition of fee title to land will be from willing sellers only and will be used when neither available government land nor partnerships are appropriate or cost-effective for the specific need.

| LAND USE  | ACRES  | PERCENT |
|---|--------|---------|
| Lands where all or part are maintained in existing agricultural use - farmed or grazed            | 22,938 | 68      |
| Existing habitat or restoration of public lands or existing degraded habitat - no LAND USE change | 6,377  | 19      |
| Agricultural lands converted to wildlife habitat  | 4,211  | 13      |
| Total   | 33,526 | 100     |

When agricultural lands are considered for ecosystem restoration purposes, CALFED seeks to maintain the lands in private ownership, achieving habitat values through the use of conservation easements. In addition, agricultural lands which are lower in value because of soil type, hydrology, location, lack of economic viability, or susceptibility to damages are sought over high value or prime agricultural lands.

**Storage.** CALFED agencies are committed to developing a balanced, integrated water management strategy that ensures that all appropriate water resources management tools, including water use efficiency, water transfers, conveyance facilities, and ground water and surface storage opportunities are available to achieve CALFED's water supply reliability goals. The appropriate mix of surface and ground water storage will be determined during Stage 1 of program implementation. The target volume for ground water banking is 500,000 acre-feet of storage. The CALFED Program will focus on consideration of off-stream reservoir sites for new surface storage, but will consider expanding existing on-stream reservoirs. CALFED has reduced the number of potential surface storage sites from 52 to 14, and the list will be further narrowed to 3 to 5 by the time of Program certification. Should new surface storage be considered necessary to meet CALFED goals, site selection would take place in the fourth and fifth years of Program implementation.

**Water User Benefits.** Meeting the objectives of the CALFED Program will provide numerous benefits to water users. These benefits include:

- Ensuring a reliable water supply to farmers and environmental and urban users by reducing water diversion conflicts between environmental and consumptive uses, decreasing drought impacts, increasing water supply availability and operational flexibility, and creating an environmental water account to provide flexibility in fishery recovery.
- Providing good water quality for all beneficial uses, including safe and affordable drinking water that meets or exceeds applicable drinking standards.
- Ensuring the integrity of Delta levees which are essential to the continued success of agricultural activities in the Delta.

**Cross-Cut Budget.** The Department of the Interior has been submitting quarterly reports to the Congress on how funds provided through the Federal Bay-Delta Account are being used. Those quarterly reports have also included tables prepared by CALFED Program staff that track funding from all sources -- Federal, State and other --contributing to the CALFED Bay-Delta Program ecosystem restoration goals. A copy of the latest table has been provided to the Subcommittee. These tables represent a good start on tracking all State and Federal funding for environmental restoration efforts in the Central Valley and Bay-Delta. In addition, we intend to expand their scope as we move into implementing the other, non-ecosystem, elements of the CALFED Bay-Delta Program. For that reason, the Secretary of Resources and I will establish a workgroup under the CALFED Policy Group that will make a concerted effort to develop a more comprehensive listing of the State and Federal projects and programs that will be tracked in the future.

The Federal funding in the FY 2000 President's Budget that would contribute to the CALFED Bay-Delta Program ecosystem restoration goals may be summarized as follows:

|                             |                      |
|-----------------------------|----------------------|
| U.S. Bureau of Reclamation  | <u>\$117,192,000</u> |
| Federal Bay-Delta Account   | 75,000,000           |
| Water and Related Resources | 16,317,000           |
| CVP Restoration Fund        | 32,246,000           |

These numbers may increase with updated estimates of Restoration Fund revenues for FY 2000.

The CALFED Bay-Delta program builds on numerous Federal and State programs addressing water management, conservation, and water quality, as well as aquatic species and habitat conservation. Other Department of the Interior agencies supporting the CALFED effort are the U.S. Fish and Wildlife Service and the U.S. Geological Survey. In addition to their routine operation of refuges and habitat management, the U.S. Fish and Wildlife Service requested \$2.1 million in FY 2000 to provide technical assistance for activities supporting the conservation and

recovery of migratory birds, sensitive, threatened and endangered species, and other trust species in the Bay-Delta watershed. They also participate in the CALFED program for habitat restoration in areas such as planning, assistance, review, and permitting and implementation. The U.S. Geological Survey request includes an estimated \$3.5 million for a variety of studies covering water resources, wetlands, contaminants and salinity, and biological research that will contribute to solutions to the problems in the Bay-Delta.

Agencies outside of the Department of the Interior provide CALFED/Bay-Delta support as follows: the Environmental Protection Agency provides significant funding in Clean Water Act and Safe Drinking Water Act program grants to run its state water programs and to fund related activities. EPA anticipates that the State could use some of the funding to fund certain activities within the water quality portion of this program. EPA is currently involved in the development of wetlands and drainage management projects throughout the Delta and its tributaries. The Natural Resources Conservation Service plans to provide funds to Resource Conservation Districts for riparian, watershed, agriculture water run-off, and other ecosystem restoration activities in the Delta. The National Marine Fisheries Service requested \$1.4 million in their appropriation to support a number of relatively small ecosystem related studies in the Delta. And the U.S. Army Corps of Engineers anticipates funding approximately \$12.4 million in FY 2000 for ecosystem restoration projects along the Sacramento River that include levee rehabilitation, flood control projects, and restoration of seasonal and permanent wetlands.

## **THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT**

A cornerstone of the Bay-Delta Accord and a baseline for the long-term CALFED Program is the Central Valley Project Improvement Act (CVPIA). The CVPIA made significant changes in the policies and operation of the Central Valley Project (CVP). The CVPIA redefined the purposes of the CVP to include protecting, restoring, and enhancing fish, wildlife and associated habitats, to improve the operational flexibility of the CVP, increase water-related benefits provided by the CVP to the State of California through expanded use of voluntary water transfers and improved water conservation, and to protect the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

We have made significant progress in implementing the CVPIA since its passage in October 1992 and since the Interior Department last testified before this Subcommittee on March 20, 1997. Let me bring you up to date.

**Programmatic Environmental Impact Statement.** We are nearing completion on our programmatic environmental documentation undertaken pursuant to the National Environmental Policy Act. The CVPIA requires the Interior Department to examine the direct and indirect impacts and benefits of implementing the provisions of the new law. The draft Programmatic Environmental Impact Statement (PEIS) was released November 5, 1997. The draft PEIS analyzed the impacts and benefits of programs such as CVP operations, long-term contract renewal, land retirement, changes in instream and Delta flows, non-flow actions, fish protection

facilities, and waterfowl enhancement.

A final PEIS was originally scheduled to be released in June 1999. However, the computer model on which the PEIS is based required modifications, which shifted the completion of the final PEIS from June to September. We developed a Preferred Alternative that incorporates different aspects of all the alternatives contained in the draft PEIS. The final PEIS will lay the groundwork for impacts and benefits of fully implementing the CVPIA, such as the execution of long-term water service contracts and the implementation of the final Anadromous Fish Restoration Program plan.

**Long-term Contract Renewal.** The CVPIA provides for long-term renewal of water service contracts upon completion of the PEIS. To date, Reclamation has successfully negotiated and executed 68 initial interim renewal contracts which have provided for continued water supply delivery and incorporated CVPIA mandates associated with water measurement and water conservation. Many of the interim renewal contractors have executed successive interim renewal contracts. Fifty-four of the 68 interim renewal contracts are scheduled to expire on February 28, 2000.

Reclamation will soon commence negotiations to renew as many as 112 existing water service contracts providing CVP water. These negotiations will convert the 68 existing interim renewal CVP contracts into long-term contracts and renew 44 existing long-term CVP water service contracts. These contracts account for approximately 5.6 million acre-feet of CVP water, approximately 95 percent of the total quantity of CVP water under contract.

Sacramento River water settlement contracts will be renewed based on the above contracting program upon completion of separate environmental documentation. Interior also recently executed two long-term contracts<sup>1</sup> that were exempt from the prohibition of long-term contracting. These two contracts, however, require that the contracts be amended to include the terms and conditions of the long-term contracts executed pursuant to CVPIA.

Reclamation has developed a detailed basis of negotiation with proposed positions relative to the terms and conditions to be included in the long-term contract form. The approval memorandum authorizing and conditioning the negotiation and execution of the proposed contracts by Reclamation is almost complete. Reclamation has undertaken and anticipates completing by the end of June a water needs analysis for each of the affected contractors. Negotiations are expected to commence next month.

**Anadromous Fish Restoration Program.** Interior has been developing and will finalize upon completion of the PEIS an AFRP plan to make all reasonable efforts to double the natural production of anadromous fish in Central Valley rivers and streams by the year 2002. However, as the plan is being finalized, we have accomplished a great deal.

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<sup>1</sup>The contracts are with Sacramento County Water Agency and San Juan Water District.

- \* The Delta is one of Interior's highest priority focus areas. All species and races of anadromous fish migrate through the Delta -- moving as adults to upstream spawning areas, and as juveniles to the San Francisco Bay and the ocean. Important programs in the Delta have focused on efforts to assist anadromous fish passage through the Delta, such as improvements at the Tracy Pumping Plant, fish screen design at the Contra Costa Canal Pumping Plant, modification of operations at the Delta Cross Channel to reduce mortality of striped bass, installation of an acoustic barrier on Georgiana Slough to redirect fish movement and acquisition of pulse-flow water to assist migration of fish through the Delta.
- \* Each year following enactment, we have dedicated CVP water provided under Section 3406(b)(2) for fishery purposes as well as for water quality purposes.
- \* We have acquired over 314,562 acre-feet of water to meet instream flows, spring pulse flows, and improve salmon spawning and migration conditions.
- \* Interior has issued 15 grants for fish screening projects in the Central Valley under the Anadromous Fish Screen program. Of the over \$38 million expended for completed projects, the Federal share for these fish screens has been about \$17 million.
- \* We have completed important structural projects on the Sacramento River including improvements at the Red Bluff Diversion Dam to reduce fish entrainment and improve the fish ladder, and a major project to fully mitigate serious fishery impacts of the Glenn-Colusa Irrigation District's Hamilton City Pumping Plant.
- \* Interior has acquired over 239,000 acre-feet of water to meet Level 4 refuge needs. In early 1998, Interior acquired the first 6,300 acre-feet of permanent water supply to help meet Level 4 requirements.
- \* Reclamation has increased the reliability of existing supplies to managed wetlands that have conveyance systems by executing six water wheeling agreements to deliver up to 395,000 acre-feet of water to wetlands. Construction has been completed on three conveyance facilities and has started on two other conveyance facilities. In 1998, a cooperative agreement was reached with Glenn-Colusa Irrigation District to convey water supplies to west Sacramento Valley refuges.
- \* During the winter of 1997-98, 41 farmers participated in the Agricultural Waterfowl Incentive Program and created 22,314 acres of habitat for wintering migratory waterfowl. Monitoring showed that as many as 40,000 ducks or geese used these newly flooded fields, as well as herons, egrets, cranes, ibis, and several species of shorebirds. Program participation for winter 1998-99 increased substantially, with a total of 41,055 acres flooded.
- \* Interior has purchased or restored 7615 acres of riparian habitat adjacent to Central Valley rivers and streams.

**Implementation Achieves Improvement.** These are a few of the restoration programs under CVPIA. From all indications, the CVPIA has already had very positive results from its efforts for protection, restoration, and enhancement of fish and wildlife in the Central Valley, and salmon have returned to spawn in areas where they have not been seen for many years. Thousands of ducks and geese and other migrating birds and waterfowl have used new wetlands areas which the CVPIA programs have created, and avian diseases have declined.

Interior recognizes that there is some difficulty in separating the effects of CVPIA actions from other influences. California experienced an extended drought from 1987 to 1992, which has been followed by successive wet years. We are hopeful that the combination of successful implementation of the CVPIA and wet hydrology continue to benefit California's environment.

**Trinity River.** I am pleased to announce that the U.S. Fish and Wildlife Service and the Hoopa Valley Tribe will release next week the Final Report for the Trinity River Flow Evaluation. The Report represents the culmination of an extensive, 15-year scientific effort to determine recommendations for instream flows and other measures necessary to restore and maintain the Trinity River fishery. The Report also represents a major milestone under the CVPIA.

My predecessor, Secretary Andrus, initiated the study in response to significant declines in fish populations (60-80% decline) and associated habitats (80-90% decline) realized after the completion of the Trinity River Division in the early 1960s. A 1980 EIS concluded that insufficient streamflows represented the most critical limiting factor to fishery restoration. During the first ten years of operations, the Trinity River Division exported approximately 90% of the annual inflow above Lewiston into the Central Valley. The coho salmon that rely on the Trinity River have been listed as threatened under the Endangered Species Act, and two other salmonid species are being considered for listing.

The Department's authority for the study derives from the 1955 authorizing legislation for the Trinity River Division and the federal trust responsibility to the Hoopa Valley and Yurok Tribes. The 1955 Act, authorized the Trinity River Division as an integrated part of the CVP, and required that appropriate measures be taken to ensure the preservation of fish and wildlife affected by the Division, including minimum stream flows. The Hoopa Valley and Yurok Tribes have reserved fishing rights which the federal government must protect. In addition, Congress mandated the completion of the study in CVPIA section 3406(b)(23) and incorporated Secretary Andrus's decision and other Congressional acts which further identified the restoration goals for the Trinity River. Based on these statutory and trust responsibilities, the Department must act to restore the fishery resources of the Trinity River.

The study represents a multi-disciplinary effort conducted by the Service and the Tribe, in consultation with scientists and other technical representatives from the Bureau of Reclamation, U.S. Geological Survey, National Marine Fisheries Service, and California Department of Fish and Game. Individual studies and a draft Report underwent extensive review by scientific peers and other interested parties. The Final Report will present recommendations regarding instream

flows and other measures, based on the best available scientific information, believed necessary to restore and maintain the Trinity River fishery. The Report will also recommend the implementation of an adaptive management program in order to monitor activities and make adjustments to recommended measures as necessary.

The recommendations in the Report will be evaluated along with other alternatives in an Environmental Impact Statement/Environmental Impact Report pursuant to NEPA and CEQA. The joint lead agencies -- the Service, Reclamation, Hoopa Valley Tribe, and Trinity County -- anticipate releasing a draft EIS/EIR this fall for public comment and finalizing the EIS/EIR during the winter. Upon completion of the EIS/EIR and the development of a record of decision, I anticipate making a final decision next spring.

## **CONCLUSION**

We are on the cusp of a new era in California water policy. We are in the home stretch of implementing the CVPIA. I firmly believe that we can work through any remaining differences on CVPIA implementation and build on our achievements under that landmark legislation to smoothly transition into the long-term CALFED Program. The key to restoring the Bay-Delta's ecological health and to improving water management for beneficial uses of the Bay-Delta is successful implementation of the CALFED Program. We look forward to continuing to work closely with all stakeholders, the public, and members of Congress in these endeavors.

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

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STATEMENT OF BRUCE BABBITT, SECRETARY OF THE INTERIOR, BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM, SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY, JUNE 9, 1999.

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the importance of spatial data and geographic information systems technology for the efficient, effective and equitable management of government and business. I am pleased that the Congress and your Subcommittee have taken an interest in this subject.

Since the establishment of the National Spatial Data Infrastructure (NSDI) there has been bipartisan support for improved use of geographic information. A succession of reports over the last decade from the National Academy of Science and the National Academy of Public Administration (NAPA) have called for development and full implementation of the NSDI. These reports have also documented the evolution of Geographic Information System (GIS) technologies and the growing importance of geographic information to society and to our nation's economy.

Within the Federal government, agencies have been using GIS and geographic information for many years in program areas such as natural resources and the environment, agriculture, transportation, emergency management, land recordation and census. In recent years the use of this technology has continued to grow into areas such as housing, criminal justice, biodiversity planning, urban growth and development, and business management. In my role as the Chair of the Federal Geographic Data Committee (FGDC), I have been in a position to witness some remarkable changes in the way governments, academia and the private sector think about,

manage and use geographic information and related technologies. And, in my capacity as Secretary of the Interior, I have seen firsthand how high quality geographic data can positively influence the management of our nation's resources.

I believe that there is a movement taking place that is changing the way we do business and is beginning to bring people and organizations together in ways not seen for many years. This is the idea of place as an organizing principle for how we look at issues, how we make decisions and how we manage government and business activities. Place-based problem solving is something that communities have been attempting to do effectively. However, in the past, the information and technologies to support that decision making was not readily available to communities and citizens. Computer systems were not accessible to local neighborhood organizations and citizens, data were stored in file cabinets or in records systems that were very difficult to access and different departments within and between levels of government were each working on their own set of issues. Things have changed and data, technology and government approaches are converging to give communities the ability to work together across sectors to address issues and solve problems.

The work that the Federal Geographic Data Committee (FGDC) and its stakeholders across all sectors are doing to implement the National Spatial Data Infrastructure is crucial to place-based decision making. In simple terms, the NSDI is a collaborative effort to build a geographic or "spatial" infrastructure like the transportation network, or telephone service or electrical power lines. The infrastructure will serve citizens, communities and agencies as a geographic

information resource where common practices and standards will facilitate improved data sharing and use. This data infrastructure will help make data available to address social, economic and natural resource and environmental issues and to reduce a large amount of the duplicative data collection that now exists.

To demonstrate the potential of the NSDI to improve the lives of citizens, we have undertaken six NSDI projects in communities as varied as Baltimore County, Maryland, and Gallatin County, Montana. These community demonstration projects are focused on solving livability issues such as crime, suburban sprawl, and environmental degradation. Early results from two of these projects are noteworthy.

The citizens of Dane County, Wisconsin recently approved a \$30 million referendum to purchase and protect open space. The county's ability to use geographic information and computers to develop visualizations of how the landscape would change under various planning options allowed the citizens to see the potential effects of sprawl, and led to their support for protecting open space through this referendum.

In the Tijuana River Watershed on the U.S.-Mexico border, the development of a geographic information base for the area has served as a catalyst for the development of a network of partnerships focused on improving quality of life. These partners, from government and non-government institutions on both sides of the border, share the need for a common, accessible representation of geography, which the NSDI demonstration project helps accommodate. This

ability of a common geography and communal information system to help achieve a collective purpose speaks powerfully to the need for the NSDI. The NSDI serves as a catalyst for developing effective partnerships across jurisdictional boundaries.

Congress has been supportive of the idea of an NSDI, but more support is needed. As the NAPA report says "In order to help achieve the geography-related public purposes of federal, state, local and tribal governments, and public utilities more effectively and efficiently, the federal government should ensure full and rapid implementation of the NSDI in a cost-effective and cooperative manner." The time is right to speed up the rate of implementation of the NSDI. The Nation's communities are calling for greater assistance in dealing with issues that affect their economic, social, and environmental well being. Many of the problems transcend local jurisdictional boundaries and are best addressed by place-based approaches that require consensus among many stakeholder groups. Communities are looking for leadership, information, and support from the Federal Government. In many cases, ready access to coordinated geographic data from all levels of government and private industry is essential for communities to identify key issues and take necessary actions. Congress can help in several ways.

The first is by supporting the Community Federal Information Partnership:

The Community/Federal Information Partnership (C/FIP) is being developed by the 16 federal agencies that make up the FGDC in cooperation with organizations from State, local, and Tribal

governments, the academic community, and the private and non-profit sectors. The initiative will have two integrated components:

- ◆ A competitive matching grant program to help promote the widespread availability and use of geographic data for community problem solving. This component will increase the capacity of communities to create and use geographic data in decision making.
- ◆ Support for Federal agencies to make their geographic data more readily available to communities. This component will help ensure the full and rapid implementation of the NSDI in a cost-effective and cooperative manner.

The Community/Federal Information Partnership is included in the President's Fiscal year 2000 budget and requests approximately \$40 million for The Departments of the Interior, Agriculture, Housing and Urban Development, Commerce, and Transportation and for the Environmental Protection Agency.

This initiative is gaining support from Members of Congress and is strongly supported by organizations such as the National Association of Counties, the National States Geographic Information Council and the National Association of State Universities and Land-Grant Colleges.

A second way is to continue to urge partnerships and sharing of resources among the major governmental users of geographic data. The early results from six NSDI Demonstration Projects have shown that different levels of government can work together. The Community/Federal

Information Partnership should be more than a budget initiative. Community/Federal Information Partnerships should become common management practice and should play a key role in building the National Spatial Data Infrastructure.

In closing, I would especially like to commend Congressman Paul Kanjorski for his leadership in the recently completed GeoData Forum and for his strong interest in, and support for, Geographic Information Systems. I look forward to working with you and other members of the Subcommittee on multi-sector efforts to help our communities share and use geographic information to address and solve their problems.

**STATEMENT OF  
BRUCE BABBITT  
SECRETARY OF THE INTERIOR  
FOR THE SENATE COMMITTEE ON INDIAN AFFAIRS**

**SEPTEMBER 22, 1999**

Mr. Chairman, thank you for the opportunity to testify today on S.1587, a bill to amend the American Indian Trust Fund Management Reform Act of 1994 to establish within the Department of the Interior an Office of Special Trustee for Data Cleanup and Internal Control, and S.1589, a bill to amend the American Indian Trust Fund Management Reform Act of 1994.

**Status of Trust Reform**

As I have previously testified before this committee, I have serious reservations about further fragmenting trust obligations which have historically been handled by the Department of the Interior. Before turning to the Department's reaction to the two bills that are the subject of today's hearing, I am pleased to be able to give you and the members of the Committee a positive report on the status of trust reform within the Department of the Interior as implemented pursuant to the 1994 Trust Reform Act that you passed. The Act is working.

This morning, I want to address four areas: the Trust Asset and Accounting Management System (TAAMS); the Trust Funds Accounting System (TFAS); the Department's High Level Implementation Plan (HLIP); and the search for a new Special Trustee.

**TAAMS**

Since January of this year, an extensive team of BIA and tribal users have been working with our vendor, Applied Terravision Systems, to design and develop a trust asset management and accounting system which will enable the BIA to manage properly Indian lands in the 21<sup>st</sup> century. TAAMS will manage the BIA's land title records, all leasing activities, probate tracking, and a number of specialized activities, such as managing timber sales and range units.

On June 25<sup>th</sup>, I unveiled TAAMS at our pilot site in Billings, MT. Since that time, we have worked extensively with our vendor to run the system through an exhaustive series of tests in order to ensure that TAAMS meets our users' needs and performs as effectively and efficiently as possible. Also during this time, we developed data conversion programs to transfer the electronic information from the existing BIA systems to TAAMS. This was a very challenging task given the characteristics of the 25-year old systems, including widely divergent formats that had been developed by the field offices over the years.

On September 7<sup>th</sup> we initiated a second round of training for the BIA staff in the Billings Office, focusing on title functions. During the week of September 13<sup>th</sup>, we began two additional training sessions for realty staff from the Billings Area Office, as well as all of the seven agency offices in the Billings Area. I am pleased to announce that all of these Billings offices are now operating

TAAMS in a parallel environment with the existing systems. We will continue to test the system during this pilot period. We anticipate minor system adjustments as a result of this testing process.

Our current plan is to conduct a final system test in late September. A recognized Independent Verification and Validation contractor, Systems Research and Applications Corp. International, (SRA), along with the employees of the General Accounting Office, will observe this system test. The SRA final TAAMS validation and verification report will be issued on November 12<sup>th</sup>. While this date is a few weeks later than we originally anticipated, we believe the additional time will improve our development process. Concurrently, a user acceptance evaluation will be conducted in Billings that will determine the initial level of user satisfaction with TAAMS and the need for additional training or modifications.

In addition to TAAMS, we have engaged in an extensive set of related system activities, including developing configuration and data management plans, identifying future user requirements and developing detailed deployment, operation, and maintenance plans. We are also building an extensive set of data integrity tools which will form the foundation of our data administration activities.

My Trust Management Improvement Steering Committee, comprised of appropriate Assistant Secretaries, the Special Trustee, the Chief Information Officer and the Solicitor will make final deployment recommendations to me. Assuming no major problems, I anticipate making the final deployment decision by late November.

#### TFAS

Following a successful pilot in BIA's Phoenix, Sacramento, and Juneau Area Offices during the period from August through December, 1998, the Office of the Special Trustee (OST) is continuing implementation of a new commercial off-the-shelf Trust Funds Accounting System (TFAS) to administer all 300,000 Tribal and Individual Indian Money (IIM) accounts and investments. OST converted BIA's Albuquerque and Navajo Area Offices in January, 1999, and all Tribal accounts in February, 1999. The Eastern Area Office was converted in April, 1999; Billings in May, 1999; and Minneapolis in July, 1999. The four remaining Area Offices (Aberdeen, Anadarko, Muskogee, and Portland) are on schedule to be completed by March, 2000. The new system is an off-the-shelf, contractor-operated system provided by SEI Investments Company of Oaks, Pennsylvania. SEI is a leading provider of trust accounting services to commercial banks and trust operations nationwide.

#### AMENDING THE HLIP

When I approved the original HLIP last year, it was recognized that the plan would evolve as circumstances changed and as we learned from the efforts that had been undertaken. Earlier this year, the Department began the effort to revise the HLIP. For example, we have consolidated

related projects in the plan by combining the Land Records Information System and TAAMS projects. In addition, we have combined probate projects in the Bureau of Indian Affairs and Office of Hearings and Appeals into a single effort. These changes have strengthened our approach to interrelated tasks. More importantly, I have asked the involved organizations to carefully review their efforts over the last year, to reflect the progress being made, and to develop greater specificity and detail to guide our efforts in the years ahead. We anticipate publishing the amended HLIP in the near future. The HLIP may require further revision once the Court issues its opinion in the Cobell litigation.

### **SPECIAL TRUSTEE SEARCH**

We have been working since February to find a highly qualified candidate for Special Trustee who has the qualifications and skills required to be successful in that role. Mr. Chairman, the Special Trustee position requires a unique set of management skills, experience and demeanor to tackle the challenges we are facing. In June, the Department contracted with an Executive Search firm that specializes in identifying and placing highly qualified financial management executives.

To date they have contacted more than 500 individuals, companies, and organizations to identify candidates who have the superior qualifications required for the job. Later this week, senior management at the Department will be conducting interviews with referred candidates who we believe have the qualifications we need.

### **COMMENTS ON PROPOSED LEGISLATION**

Based upon our preliminary review of S.1587 and S.1589, I must strongly object to both bills. S.1587 proposes to establish within the Department the position of Special Trustee for Data Cleanup and Internal Control. While we agree with the objectives of timely and comprehensive data cleanup and internal control, we also feel very strongly that these objectives are being met by current, ongoing efforts in these very areas. That is why I have taken this opportunity to update the Committee as to the status of our ongoing trust reform efforts. The process is working. To pass this legislation at this time would only serve to duplicate processes that are currently underway at the Department. Furthermore, S. 1587 creates numerous problems by blurring responsibilities between the proposed Special Trustee, the existing Special Trustee for American Indians, and Bureau Directors by duplicating and even triplicating responsibilities such as TFAS, OST data cleanup, training, and internal controls. In addition, the Department of Justice advises that vesting the appointment of the Special Trustee in the Inspector General may violate the Appointments Clause of the Constitution. Moreover, vesting oversight authority in another Special Trustee for reforms that are underway and must of necessity be carried out by the line organizations which are now tackling these problems will only impede our progress and could result in conflicting positions. In summary, S.1587 would create administrative and managerial confusion, fails to improve accountability, and would delay the improvements that we are beginning to realize.

S.1589 would create a five member commission charged with preparing another reinvention strategy for all phases of the trust management business cycle and recommending a strategy to be implemented. The creation of a commission at this time would only serve to delay and impede the implementation of the reforms currently underway. The approach of reinventing trust funds and moving trust funds out of the Department of the Interior, as suggested by the American Indian Trust Fund Management Reform Act Amendments, is one I considered and actually advocated in 1993, at the beginning of this Administration as I searched for another organization to specialize in this task. I have come to realize over the last six and half years that my initial inclination was seriously mistaken. The management of the trust responsibility is intrinsically bound to the land held in trust by the Federal Government and managed by the Bureau of Indian Affairs.

Mr. Chairman, notwithstanding what we invest in new trust systems, staffing and internal controls, it will all be for naught if we do not address the perplexing problem of fractionation of ownership of allotted lands. Fractionation is the legacy of misguided policies of decades past. Our failure to address those policies today will overwhelm our ability to manage Indian trust lands. More importantly, it will severely undermine the economic viability of Indian land because potential lessees will not want or be able to do business with the hundreds of owners that may own each parcel of land. I commend the Chairman for taking the lead on fractionation reform and would urge expeditious consideration of S.1586, the Indian Land Consolidation Act Amendments.

Let me conclude by stating that we share your goals. However, we also feel strongly that our current efforts are yielding positive results as we have made considerable progress in achieving trust management reforms, the first real progress on trust reform in decades. We look forward to continuing to work together to achieve our mutual goal of providing American Indians and Tribal governments with accurate, comprehensive, and up-to-date financial information in accordance with our trust responsibilities.

I will be happy to answer any questions from the Committee at this time.

**STATEMENT OF BRUCE BABBITT  
SECRETARY OF THE INTERIOR  
BEFORE THE HOUSE RESOURCES SUBCOMMITTEE ON  
NATIONAL PARKS AND PUBLIC LANDS  
ON H.R. 3035,  
THE UTAH NATIONAL PARKS AND PUBLIC LANDS WILDERNESS ACT  
October 19, 1999**

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to testify on H.R. 3035, the Utah National Parks and Public Lands Wilderness Act. This bill would designate wilderness areas in the national parks of Utah and in a portion of BLM lands in the western section of the state. As you know, this administration strongly supports the protection of resources on BLM and NPS land as wilderness areas. I am encouraged by this opportunity to protect significant resources in Utah as wilderness for future generations. However, although the bill seeks a goal we support, we have major objections to H.R. 3035's approach to several issues which require us to oppose it.

Title I of the bill designates certain park lands as wilderness. We have concerns over what lands are proposed for designation in the bill and certain language contained in the administrative sections.

There are important differences between the boundaries and acreages of the areas the bill would designate as wilderness and the boundaries and acreages of the areas currently managed by the National Park Service as recommended and potential wilderness. The Park Service's recommendations were based on a public, participatory wilderness planning process. Moreover, since the original wilderness recommendations for these parks were sent to Congress, changes have occurred in park boundaries and in the number of acres recommended for wilderness and potential wilderness. We would be happy to provide the committee the current acres and the associated maps which reflect these wilderness areas. The bill should be amended to reflect these maps.

Apart from the boundary/acreage issues, we have very serious concerns about the administrative provisions of this title. The Wilderness Act sets out criteria for lands eligible for wilderness designation, and it also includes a number of provisions that specify what uses may be made of these lands. There is no need for a broad exemption from these standards for Utah park wilderness lands. Specifically, we oppose the potentially broad, ambiguous, and mischievous exemption in section 103(c) for "valid existing rights, privileges or traditional access." It is unclear what a valid existing "privilege" would be and what might be its source. We must strongly oppose any effort to create or expand a category of undefined legal rights on national park lands, especially through a wilderness designation.

We are also concerned about the language guaranteeing traditional access on existing routes where historically employed. This appears to promote the claiming of rights-of-way of dubious validity by redefining and expanding rights under a statute that Congress repealed (subject to

valid existing rights) nearly a quarter of a century ago, R.S. 2477. We strongly oppose this language and urge its deletion from the bill.

With regard to Title I's livestock grazing provisions, section 103(d), the Department does not object to allowing grazing of livestock in areas where the activity currently occurs, to the extent permitted in the Wilderness Act. However, we believe it is inappropriate to restrict the National Park Service's authority to regulate grazing in National Park wilderness by referencing a House Committee Report for an unrelated bill that addresses grazing in Bureau of Land Management or National Forest lands. That Committee Report, for example, has language that would bar federal land managers from denying ranchers an ability to take backhoes in wilderness areas and use them to maintain stock ponds. The guidelines in the Committee Report were first developed for grazing in wilderness in National Forest lands, and later extended to grazing in BLM wilderness areas. Congress has previously declined to extend these guidelines to grazing in National Park wilderness areas. In the California Desert Protection Act, for instance, which contains both BLM wilderness and National Park wilderness, the guidelines were applied to the BLM wilderness areas but not the National Park wilderness areas. There is every reason for Congress to have made this distinction, and every reason for Congress to continue to observe it. In National Forest and BLM wilderness areas, the guidelines allow the continuation of activities and uses that were permissible prior to the wilderness designations. In National Park wilderness areas, the guidelines could allow activities and uses that were previously prohibited under the laws applying to National Parks. This would create an unacceptable situation, in which National Park lands become less protected by virtue of having been designated as wilderness. We recommend that the committee place a period after the word "Act" on page 7, line 14 and strike the remainder of the sentence.

Section 104 addresses water rights for wilderness areas. We believe that designation of National Park wilderness should include a reservation of sufficient water to carry out the purpose of the designation; namely, to maintain the wilderness integrity of the area. The priority date for this right would be the date of designation. Valid existing water rights, including any water rights already reserved by the National Park, would not be affected by such a reservation.

Section 106 appears to restrict federal authority to regulate commercial air tourism over national parks. This would be a retreat from the recently enacted FAA Reauthorization Act. This language also conflicts with FAA advisories recommending minimum flight levels to 2000 feet over designated wilderness. There is no reason to override FAA and NPS authority over management of commercial air tourism, and we recommend that this section be deleted.

I now turn to Title II, which would designate certain BLM-managed public lands as wilderness. As you know, the Department has worked closely with the Utah Governor's Office to reach agreement on wilderness designations in the West Desert area of Utah. With a few omissions I will describe below, the areas Title II would designate as wilderness or otherwise protect reflect the proposal the Governor and I discussed. I wanted more acreage and the Governor wanted less, but I believe the proposal the Governor and I discussed is a promising compromise, providing a good basis on which Congress can start to work to resolve the long contentious debate over wilderness designation for BLM public lands.

While I strongly support public land wilderness designation in the West Desert area, I have several serious concerns with the bill as drafted. In order for me to support the bill, several substantive and technical corrections need to be made.

First, as I mentioned, the bill protects somewhat fewer acres of land than in the draft proposal the Governor and I worked on. We had agreed that two areas would be given special designation by this bill, and withdrawn from mining and leasing laws. The Newfoundlands area should be withdrawn and designated as a national natural landmark, and the Rockwell area should be expanded, withdrawn, and designated as an outstanding natural area. These areas are depicted on the map I am providing to this committee today.

Section 202 of H.R. 3035 addresses the administration of wilderness areas. In addition to some technical amendments, important substantive changes need to be made to make this bill satisfactory.

The provisions of 202(f) are very troublesome to the Department. We are continuing to work with the Department of Defense to resolve issues pertaining to land management and control in Utah, and we expect to resolve these soon.

In our view, the provisions of 202(f) undermine the very purposes and definitions of wilderness, and make it impossible for the Administration to support the bill as currently drafted. They permit unprecedented intrusion and destruction of the wilderness designated in this Act purportedly for Air Force purposes, and gives the Air Force more control over BLM public lands than they have currently.

One hundred and one wilderness laws have been enacted. None has included anything remotely similar to this language. A quick review shows that ninety nine of these have been silent on military use. Two, the Arizona Desert Wilderness Act of 1990 and California Desert Protection Act of 1994, had special military use language, but neither had any language such as that proposed here. Rather, they simply ensured that low level overflights and training routes were not precluded by wilderness designation. I would support similar language in this Act.

Section 202(f) goes much further. For example, under subsection 202(f)(3) neither the Wilderness Act nor any other public land management law would prevent the installation of new equipment in wilderness areas. Currently BLM determines where and whether facilities or equipment is placed on public land both within and outside of wilderness areas. Section 202(f)(3) therefore eliminates BLM's existing authority to manage the land under its jurisdiction. New installations in wilderness areas should be in accordance with wilderness management requirements in the Wilderness Act.

In another example, subsection 202(f)(5) allows the Secretary of the Air Force to unilaterally close or restrict public access to DOI administered public lands. We know of no similar provision in any other wilderness legislation. Nor is any rationale provided for allowing the military to limit or prohibit public access to public lands. The Department believes the Air Force does not currently have that authority, and wilderness designation of a small portion of the Air

Force overflight area provides no justification for granting it to the Air Force. We urge the committee to delete this subsection.

The Utah Test and Training Range and Dugway Proving Ground has for years performed its important mission while flying over public lands, including wilderness study areas managed by the BLM. This important mission should not be impeded by wilderness designation. But neither should wilderness designation be used as an excuse to expand Air Force control beyond the lands specifically withdrawn for military use. This would set a bad precedent not just for wilderness but for all military lands, suggesting that our natural irreplaceable wonders cannot co-exist with military training and readiness.

For these reasons, we strongly encourage this committee to completely rework Section 202(f).

Our second major substantive concern is with section 202(h), the water rights language. Wilderness legislation has adopted a number of different approaches to water rights. As with the Arizona BLM Wilderness Act of 1990, we prefer the approach that expressly reserves sufficient water to carry out the purpose of wilderness designation. We have, however, sometimes acquiesced in other approaches that provide sufficient protection for wilderness water, such as the Colorado Wilderness Act of 1993. That approach holds promise here. The water in headwaters areas that are designated wilderness can be effectively protected without an express reservation of a water right. Non-headwaters areas that are designated as wilderness do need some mechanism to ensure that the wilderness water values are protected. We would be happy to work with the committee to craft such a mechanism.

A number of technical corrections are also needed. These are listed in an appendix attached to this testimony.

Mr. Chairman, we strongly support designation of deserving tracts of BLM and NPS lands as wilderness areas. There is nothing greater we can do for future generations than to provide the American people "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain."

I encourage you and this committee to amend the bill to address the substantive concerns and correct the technical problems I've outlined in my testimony today. I look forward to working with the committee on the necessary changes.

## Appendix – Technical Changes needed

### Section 201:

(a)(5): "Central Wah Wah Mountains Wilderness" should be the "Cannon Mountain Wilderness."

(a)(8): The lands referred to are not totally in Washington County. The subsection should be changed to, "Certain Federal and non-Federal lands in Washington County, Utah and Lincoln County, Nevada."

(a)(11): The "Deep Creek Wilderness" should be the "Deep Creek Mountains Wilderness."

(a)(12): "Fish Spring Wilderness" should be the "Fish Springs Wilderness."

(a)(19): "Northern Wah Wah Mountains Wilderness" should be the "North Wah Wah Mountains Wilderness."

(a)(30): "Taylor Canyon Wilderness" should be "Taylor Creek Canyon Wilderness."

### Section 202:

(c): The cite to the Wilderness Act should be changed from section 4(d)(7) to section 4(d)(8).

(d): The subsection should be amended to require that the Secretary offer to acquire lands located "within areas" designated as wilderness, rather than "within or adjacent to" areas. Subsection 202(b) only provides that lands within designated areas be added to the National Wilderness Preservation System upon acquisition, not areas adjacent to designated areas.