

**Statement of
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U.S. Department of the Interior
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 3794, Owyhee Initiative Implementation Act of 2006
September 27, 2006**

Thank you for inviting me to testify on S. 3794 the Owyhee Initiative Implementation Act of 2006. This bill is the culmination of a multi-year effort to resolve many of the land use controversies in southwestern Idaho. The Department of Interior commends the hard work, diligence and cooperative spirit of the participants of this effort. Senator Crapo deserves special recognition for his ongoing commitment to the Owyhee Initiative. I also want to recognize the dedication and collaborative efforts of the Owyhee Initiative Work group. They have worked tirelessly for several years to resolve land management issues in southwestern Idaho. The Department of the Interior supports the resolution of local land use conflicts and we will work with the sponsors and the Committee to resolve or clarify issues raised related to land and grazing preferences acquisition and valuation to help advance this effort.

Background

Owyhee County encompasses over 7,600 square miles of the southwestern corner of Idaho. With a population of just over 11,000, it is a sparsely-peopled land where magnificent canyons, rushing rivers, and wide-open skies dominate the landscape. Ranching is the traditional and predominant economic force throughout Owyhee County.

In 2000, the Owyhee County Commissioners invited a number of interested parties to begin discussions with an eye toward resolving a wide range of natural resource issues in the county. Innumerable meetings, conversations, and dialogues ensued. Over time, the Owyhee initiative included representatives from many interests within the county, including: local government officials, tribal representatives, ranchers, conservationists, recreationists, and others. The BLM has provided technical assistance and information to this group but is not a member of the initiative group.

On May 10 of this year the Owyhee Initiative Agreement (Agreement) was signed by 12 representatives and in early August, Senator Crapo introduced S. 3794 aimed at implementing that initiative.

Title I—Owyhee Initiative Agreement

Title I describes the role of the Secretary of the Interior. We suggest clarifying several parts of the Secretary's role. Section 2(b) states that the purpose of S. 3794 is to provide for the implementation of the Agreement, but the language in the rest of the title is ambiguous as to what is expected of the Department. Section 102, for example, requires the Secretary to coordinate with the Board of Directors of the Owyhee Initiative Project in conducting the science review processes outlined in the Agreement, however, it does not make clear the Secretary's responsibilities (if any) in the conduct of the science review process or requirements on how the information from the science review process is to be used. Likewise section 103 references the Conservation and Research Center described in the Agreement. While \$20 million is authorized to the Secretary to carry out the provisions of Title I, it is not clear how these funds are to be expended or what the Secretary's responsibilities are in expending them. In particular, we would be concerned about the ongoing costs of establishing and operating a new Conservation and Research Center. These questions should be resolved before moving the legislation forward.

Title II—Wilderness and Wild and Scenic Rivers

The Department of the Interior supports the Wilderness and Wild and Scenic River designations in the bill, subject to adjustments in boundaries and management language as is routine in such proposed designations.

In general, the Department of the Interior supports the efforts of Congressional delegations to resolve wilderness issues in their states. Congress has the sole authority to designate lands to be managed as wilderness and we have repeatedly urged that these issues be addressed legislatively. It is our general policy to defer to the consensus of a state's delegation in the designation of wilderness and the release of wilderness study areas (WSAs) while at the same time making recommendations for boundary adjustments to ensure that designated areas can be managed as wilderness.

Section 201 of Title II of S. 3794 designates as wilderness over a half-million acres in six separate areas. This section also releases approximately 200,000 acres from WSA status and will return these lands to non-wilderness, multiple use status. We have been working with Senator Crapo's office to construct maps for this title and our comments are based on those maps dated September 14, 2006. The Department generally supports the designations and releases proposed by the legislation.

The areas identified to be designated as wilderness include: Big Jacks Creek Wilderness, Bruneau-Jarbidge Rivers Wilderness, Little Jacks Creek Wilderness, North Fork Owyhee Wilderness, Owyhee River Wilderness and Pole Creek Wilderness. These proposed wilderness areas contain some of the most beautiful and remote desert landscapes in the American West. The terrain within the proposed wilderness is diverse, ranging from deep river canyons to vast sagebrush and grassland plateaus that provide habitat for sage grouse, pronghorn antelope, bighorn sheep, songbirds, raptors, and numerous rare plant species. The river canyons are spectacular. Many are more than 1,000 feet deep - nearly twice as deep as the Washington Monument is tall. Rivers meander for hundreds of miles through southwestern Idaho and form what may be the largest, most unaltered, desert region remaining in the continental United States.

Section 202 would designate more than 380 miles of waterways as segments of the Wild and Scenic Rivers System. These 25 segments ranging from 6 tenths of a mile to 67 miles would be established on 20 different rivers including the Owyhee, Bruneau, and Jarbidge Rivers. As with wilderness, it is the prerogative of the Congress to make determinations for additions to the Wild and Scenic River System and we generally defer to the consensus of individual congressional delegations while providing input on manageability and potential conflicts. We would like the opportunity to clarify some of the management language to ensure consistency with the Wild & Scenic Rivers Act.

The proposed additions to the Wild and Scenic River System are rugged, isolated and unique. This region, the Owyhee Uplands, is unlike any other desert region in the United States because it is dissected by hundreds of miles of free-flowing rivers. The rivers begin in the mountains of northern Nevada and, flowing north, radiate like spokes across southwestern Idaho. Each river has cut a deep, magnificent canyon through alternating layers of black and red volcanic rock. Each river is also an oasis for wildlife, including bighorn sheep and large flocks of waterfowl. There are no paved roads along any of these rivers and only a few dirt roads provide limited access to these remote streams. The larger rivers, like the Owyhee and Bruneau, contain some of the most challenging whitewater in the United States. River enthusiasts come from around the country to float these rivers and experience one of the ultimate river adventures in the United States.

Section 204—Land Exchanges and Acquisitions and Grazing Preferences

The Department would like to work with the Committee, Senator Crapo, and the Owyhee Initiative to clarify Section 204 of S. 3794, which addresses land valuation issues and the Secretary's authorities and responsibilities under this section.

In December 2004, then Secretary of the Interior Gale Norton issued policy guidance (Secretary of the Interior Order No. 3258) to all Interior bureaus on legislative exchanges and land valuation issues. This policy was developed to ensure that land transactions are conducted with integrity and earn public confidence.

The policy requires that the Department subject all exchanges or sales of real property or interests in real property to appraisals that conform to nationally recognized appraisal standards (*i.e.*, the Uniform

Appraisal Standards for Federal Land Acquisitions (UASFLA) and the Uniform Standards of Professional Appraisal Practice (USPAP)). Accordingly, the policy specifically prohibits the use of alternative methods of valuation in appraisals. The policy recognizes, however, there may be times when Congress will direct the use of alternative methods of valuation other than or in addition to a standard appraisal. Under the policy guidance, if Congress directs the Department to use an alternative method of valuation in a specific transaction, the Department will expressly describe the alternative method of valuation applied; explain how the alternative method of valuation differs from appraisal methods applied under the Uniform Appraisal Standards or the Uniform Standards of Professional Appraisal Practice; and, if directed by Congress, provide this material to the appropriate Committees prior to or after completion of the transaction, as required by the direction.

Section 204 appears to require the Secretary of the Interior to enter into a number of exchanges and acquisitions of land and grazing preferences from private parties within Owyhee County. We note that the language as drafted is ambiguous. In the absence of explicit direction from Congress, the Department views this language in its entirety as providing discretion to carry out the acquisitions provided for under subsection (a), and would apply the Department's land transaction standards with regard to valuation and public interest that are contained in the Federal Land Policy Management Act (FLPMA).

Section 206 of the FLPMA provides the BLM with the authority to undertake land exchanges where the Secretary "determines that the public interest will be well served by making that exchange." Exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into private ownership for local needs and consolidating scattered tracts.

Section 204(a)(3) of the bill, however, specifically references a document entitled "Land Exchanges and Acquisitions" and dated September 1, 2006. This document includes a list of properties to be exchanged to the Federal government or acquired by the Federal government along with assigned monetary values as well as a description of Federal lands available to landowners for exchange. The discretion provided in the general authority to carry out section 204(a), means that the direction contained in the document entitled "Land Exchanges and Acquisition" will not control the terms of these transactions. In addition, this section of the bill references the September 2006 document for purposes of identifying the land or interest that may be acquired. It does not incorporate the terms of that document into the Act. The Department will therefore look to FLPMA with regard to these transactions.

The BLM has not had an opportunity to fully assess the values of the various parcels of land proposed for exchange to or acquisition by the Federal government under section 204(a). In addition, many of the lands identified for exchange to private parties from the Federal government have not been identified and would be subject to surveys for cultural resources and wildlife habitat values. Such detail is necessary to ensure the public interest is served in exchanging these lands. The Department would like to work with the Committee to modify the legislation to clearly state that the land exchanges and acquisitions authorized by the bill take place in accordance with uniform appraisal standards.

Finally, section 204(b) provides for the buyout by the Federal government of grazing interests according to values assigned them in the September 1, 2006, document entitled "Land Exchanges and Acquisitions." While we oppose the permanent retirement of grazing permits, we acknowledge that the goals of the Owyhee Initiative behind this proposal are consistent with the multiple use mission of the BLM. We are committed to working with the Committee, Senator Crapo, and the Owyhee Initiative to reconcile their specific objectives on this landscape with our longstanding position.

We also note that, because this section does not give the Secretary discretion, it would appear that Congress intends to determine the value of these interests in accordance with the referenced document. This diverges from the valuation process in section 402(g) of FLPMA which provides that, when grazing leases are canceled in whole or in part, a permittee or lessee shall receive reasonable compensation for the adjusted value, to be determined by the Secretary, of his or her interest in authorized permanent improvements made by the permittee or lessee, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest. Without conducting appraisals, the Department is unable to

determine whether the amounts provided for in the referenced document are consistent with the valuation method provided in FLPMA. The Department would like to work with the Committee to ensure that the grazing provisions of the bill provide a fair outcome for all parties.

The legislation would also permanently retire the AUMs associated with conveyed preference rights. This approach is consistent with a Solicitor's Opinion issued by Solicitor Bill Myers in 2002 which stated only Congress can permanently retire AUMs permitted in districts originally created pursuant to the Taylor Grazing Act, where these lands had been identified as "chiefly valuable for grazing."

Title III—Transportation and Recreation Management

This title calls on the BLM to establish travel plans for the areas covered by this legislation. The BLM in Idaho is currently working on travel management plans (TMPs) for a number of the areas covered by the legislation and supports the development and implementation of TMPs as part of an open and inclusive public process. We would like the opportunity to work with the sponsors and the Committee to make these provisions consistent with the land use planning process and to clarify the intent of certain sections of Title III.

Finally, section 303 calls on the BLM to establish a search and rescue program in cooperation with the county. Search and rescue operations are traditionally local functions and the BLM does not have the expertise to establish such a program. The language in the bill provides the Department considerable discretion in negotiating this agreement and we welcome more specificity to ensure the sponsors' expectations are clearly understood.

Title IV—Cultural Resources

Title IV provides for the implementation of a plan for the management of cultural resources on public lands by the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation. The BLM and the Shoshone-Paiute Tribe have an excellent cooperative relationship and work together effectively on a wide range of public land management issues in southwest Idaho. We look forward to continuing and expanding this cooperative relationship. We oppose this section as written, because it does not clearly reserve to BLM appropriate oversight and ultimate enforcement authority over the lands in question.

This language may change or alter the way in which cultural and historic resources are managed by the BLM on public lands. Under Federal law (including FLPMA, the Antiquities Act, the National Historic Preservation Act, the National Environmental Policy Act, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act of 1990) the BLM is mandated to protect cultural and historic resources and to consult with federally-recognized tribes regarding that protection. The BLM routinely consults with Tribes regarding the management of cultural resources of interest to them. The BLM and other Federal land-managing agencies have the authority to enter into cooperative agreements and partnerships with Tribes to enhance our government to government relationship. For example, the BLM has a cooperative agreement with the Pueblo de Cochiti to co-manage the Kasha Katuwe Tent Rocks National Monument in New Mexico. However, in the end, the BLM maintains responsibility for the enforcement of Federal law. We look forward to working with the Committee toward clarifying the roles and responsibilities of all stakeholders under this title.

Conclusion

We have great respect for the hard work and commitment shown by the participants in the Owyhee Initiative process, and offer to work with the sponsors and the Committee to clarify the bill and advance this effort. Mr. Chairman, this concludes my statement. I will be happy to answer any questions that you or other Members of the Committee may have.