From: Eric Solorio
To: Docket Optical System
Date: 5/21/2010 1:07 PM
Subject: Fwd: Ridgecrest Solar Millennium Project: Comments on Kern County RS 2477 Resolution in 2002 and subsequent Congressional Hearings
Attachments: KernCoReso. 2002-059 County Road Rights of way.pdf; KernCoResolutionRS2477 Q) Letterfrom Linda Hansen U.S. Department of the Interior Bureau of Land Management re Resolution 2002-059.pdf; RS 2477 CongressionalHearing88929.pdf

>>> "Robert L. Thompson" <rthompson777@sbcglobal.net> 5/20/2010 1:57 PM >>>
Dear Eric and Janet,

See the attachments re: Kern County's support for RS 2477 roads.

The RSPP SA/DEIS should include in the Laws, Ordinances, Regulations, and Statutes (LORS) portion a discussion of RS 2477 and 1976 FLPMA Section 701 and their relation to pre-existing Brown Road and the off-highway trails right of way within the proposed footprint for the RSPP.

The SA/DEIS should be deemed incomplete in this regard until the matter of established RS 2477 Rights of Way pre-existing the proposed Right of Way for the RSPP is properly addressed.

If you have any questions, please feel free to call me at Cell (559) 907-1411.

Thank you.

Sincerely,

Robert L. Thompson, P. E.

Civil Engineering and Land Surveying

328 W. Antonio Drive

Clovis, CA 93612

Cell (559) 907-1411

BEFORE THE BOARD OF SUPERVISORS
COUNTY OF KERN, STATE OF CALIFORNIA

In the matter of:

Resolution No. 2002-059
Reference No._____

Asserting County Road Rights-of-Way created under United States Revised Statute 2477 throughout Kern County

I, DENISE PENNELL, Clerk of the Board of Supervisors of the County of Kern, State of California, hereby certify that the following resolution, on motion of Supervisor McQuiston, seconded by Supervisor Peterson, was duly and regularly adopted by the Board of Supervisors of the County of Kern at an official meeting thereof on the 19th day of February _____, 2002, by the following vote and that a copy of the resolution has been delivered to the Chairman of the Board of Supervisors.

AYES: McQuiston, Patrick, Peterson, Parra

NOES: None

ABSENT: Perez

BOARD OF SUPERVISORS KERN COUNTY, CA

Judy A. Denny

DENISE PENNELL
Clerk of the Board of Supervisors
County of Kern, State of California

Deputy Clerk

RESOLUTION

Section 1. WHEREAS:

(a) The United States Congress, intending to promote the settlement of the Western United States by establishment of highways, granted the right-of-way for the construction of highways over public lands, not reserved for public uses in Section 8 of the Mining Act of 1866, re-enacted and recodified as revised Statutes 2477 (R.S. 2477) 43. U.S.C. Section 932; and

(b) Kern County, when established in 1866, included considerable areas for ranching, farming, and mining, with intensive prospecting and exploration for valuable minerals, forest and agricultural products; and

(c) Much of the mountains, desert and valley areas of the County became laced with networks of wagon roads, trails, horse and footpaths constructed, maintained and used to facilitate such activities; and

(d) Many of these roads, trails and paths have been in general use by the public since that time, and many have been further developed into mining roads, logging roads, and access roads, for the removal of minerals, forest products, agricultural products; and

(e) Other of these roads, trails and paths have continued in use by the general public for hunting, fishing, hiking, horseback riding and other recreational uses; and

(f) There now exists in Kern County, an extensive network of roads, mining roads, logging roads, horse trails, hiking trails and footpaths, all of which provide access to and throughout National Forest and Bureau of Land Management lands representing a substantial portion of the land within Kern County; and

(g) These rights-of-way are essential to the County's Transportation and Public Access Systems and the public has relied on and continues to rely on them since prior to October 21, 1976; and

(h) Search and Rescue, Resource Management, Fire Protection, Health and Law Enforcement Personnel rely on these access roads to carry out important functions; and

(i) Public access to routes of travel are essential to the economic, social and political well being of the communities within the County; and

(j) These rights-of-way are important to the free flow of commerce in the United States; and

(k) Other property owners may have succeeded the United States as owners of servient estates traversed by rights-of-way acquired by the County and the public pursuant to the grant in R.S. 2477 and the rights of those property owners in the servient estate is limited by the obligation to honor the rights-of-way accepted by the public pursuant to the grant offered under R.S.2477; and

(l) The elderly, physically handicapped and disabled persons require and have used routes of travel accessible by motor vehicle to gain access to the public lands, resources and private property within the County; and

(m) These rights-of-way also provide access to a variety of improvements made upon the public lands by the public, Federal permittees and citizens, including wells, springs, corrals and watering facilities for wildlife, and such maintenance has been historically performed, and such maintenance cannot be performed in the absence of these customary vehicle routes; and

(n) The County's right, title and interest in these rights-of-way include the right, but not the obligation, to perform construction and maintenance which is reasonable and necessary for safe passage for the uses established prior to the repeal of R.S. 2477 and as those uses may increase over time based upon currently applicable safety standards; and

(o) The rights-of way acquired pursuant to R.S 2477 have not been abandoned or waived except where formal procedures provided under State law have been followed; and

(p) It is the policy of the County to ensure that all rights-of-way acquired pursuant to R.S 2477 be retained

in perpetuity for the use and the benefit of the public unless abandoned in accordance with applicable law.

Section 2. NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Supervisors of the County of Kern, State of California, as follows:

(1) That all of the above facts are true and that this Board has jurisdiction over the subject matter of this Resolution.

(2) The County and the public have acquired rights-of-way pursuant to R.S. 2477 in those certain ways provided by California and Federal Law, including, but not limited to, the following:

a. Use by the County or public with the intention of creating a public highway over public lands; or
b. Construction or maintenance of a highway; or
c. Inclusion of the right-of-way in a State, County or Municipal road system, plat, description, or map of county roads; or
d. Expenditure of any public funds on the highway; or
e. Execution of a Memorandum of Understanding or other agreement with any other or private entity or agency of the Federal Government that recognizes he right or obligation of the County to construct or maintain a highway or a portion of a highway; or
f. Any other act by the County or the public consistent with State or Federal Law indicating acceptance of a right-of-way; or
g. Used by the public for a period required by the California Civil Code.

(3) The County hereby finds that any roads located in the County, which fall in the purview of the conditions above set forth, are R.S. 2477 rights-of-way and the County expects all Federal agency actions to be consistent with this assertion.

(4) The County shall not be deemed to consent or have consented to the exchange or abandonment of any R.S 2477 rights-of-way unless a formal written resolution specifically so stating has been passed at a duly called public meeting of the County Board of Supervisors. No employees or agents of the County have been given authority to abandon, waive or exchange any R.S 2477 right-of-way and any prior action by any employee or agent purporting to take such action was void when taken, unless in the case of exchange, later ratified by formal action of the Board of Supervisors.

(5) Where an R.S 2477 right-of way has been acquired through public use, the failure by the County to conduct mechanical maintenance of said right-of-way shall not affect in any Way the status of said right-of-way as a highway acquired by the public pursuant to R.S. 2477.

(6) The omission of any right-of-way from any plat, description, or map of County roads or highways, whether required by State law or otherwise, shall not be deemed to waive or be failure to acquire the grant offered under R.S 2477.

(7) Scope of Right-of-Way:

a. Scope of the R.S 2477 Right-of-Way is that which is reasonable;
b. The scope of R.S. 2477 Right-of-Way includes the right to widen the highway as necessary to accommodate the increased travel associated with all accepted uses, up to where applicable, improving a highway so travelers can safely pass each

other, and to modify or change horizontal alignment, and/or vertical profiles where the roads require for public safety and to meet current design standards.

(8) This resolution is not intended to include any street or highway into the County maintained road system, nor affect any roads previously included in such system, and the County does not accept any obligation or responsibility for maintenance of any roads not already in the County maintained system.

(9) Inclusion of roads in the County maintained road system shall be solely in accordance with Streets and Highways Code Section 941 et seq.

(10) The Clerk of the Board shall also cause copies of this Resolution to be sent to the following:

(a) County Administrative Office
(b) County Counsel
(c) Roads Commissioner
(d) Director Planning Department
(e) Sheriff
(f) Fire Chief
(g) Senator Barbara Boxer
U.S Senate
112 Hart Senate Office Building
Washington, D.C 20510-0505
(h) Senator Dianne Feinstein
U.S Senate
331 Hart Senate Office Building
Washington, D.C 20510-0504
(i) Congressman Calvin Dooley
U.S House of Representatives
1227 Longworth House Office Building
Washington, D.C 20515-0520
(j) Congressman William Thomas
U.S House of Representatives
2208 Rayburn House Office Building
Washington, D.C. 20515-0521
(k) Bureau of Land Management, California State Office
2800 Cottage Way, Room W-1834, Sacramento, California 95825-1886
(l) Bureau of Land Management, California District Office,
6221 Box Springs Blvd,.Riverside, California 92507
(m) Honorable Gale Norton, Secretary of the Interior, U.S Department of the Interior, 1849 C Street, NW, Washington, D.C 20240
(n) Honorable Ann Veneman, Secretary of Agriculture, 14th & Independence Ave, SW, Room 200A, Washington, D.C. 20250
(o) Arthur L. Gaffrey, Forest Supervisor, Sequoia National Forest, 900 West Grant Avenue, Porterville, Ca 93257

i:\adm\jvb\agree\rdright-of-way.res

COPIES FURNISHED:
See Above
3-21-02 JA

02 MAY 17 AM 10:25 Jon 66 Q

FILE KERN CO. CLERK OF THE BD. OF SUPERVISORS
BY _____ DEPUTY

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
California Desert District Office
6221 Box Springs Boulevard
Riverside, California 92507-0714
www.ca.blm.gov

May 14, 2002

IN REPLY REFER TO:
2800
(CA-610)

Code No. _____
BY ORDER OF THE BD/SUPV
Referred To _____

Copies Furnished Each Supervisor And CAO
Planning, County Counsel
Filed by BD Supv. 5-17-02
DENISE PENNELL
Clerk of the Board of Supervisors
By _____

Mr. Steve Perez
Chairman, Board of Supervisors
County of Kern
1115 Truxton Avenue
Bakersfield, California 93301

Dear Mr. Perez:

We received a copy of Kern County's Board of Supervisor's Resolution No. 2002-059 "Resolution Asserting County Road Rights-of-Way created under United States Revised Statute 2477 throughout Kern County" (February 19, 2002). We share your desire for an adequate transportation network in Kern County and to maintain the access needed to provide essential public services. In our efforts to implement the Bureau of Land Management's (BLM) multiple use mandate, we intend to strive to address this important objective on public lands in Kern County and in other counties in the California Desert.

We understand your concern over Revised Statute 2477 (R.S. 2477) and the rights it may have conveyed in Kern County. Unfortunately, we are unable to process the County's assertions at this time for the reasons described below. This will not affect the validity of any R.S. 2477 rights-of-way that may exist. While we will defer processing assertions under R.S. 2477, we assure you of our commitment to work with you to ensure that: (1) the needs for public access are considered in land management decisions; (2) valid existing rights are protected; and (3) we will cooperate with you to ensure that search and rescue, fire protection, and health and law enforcement personnel retain the access necessary to carry out their public responsibilities.

Over the years, the BLM has received assertions (claims) of rights-of-way under R.S. 2477 from local government, commercial interests, interest groups, and individuals. Most assertions sought either: (1) to keep certain routes open to public use; or (2) to re-open routes that were closed by law (as in designated wilderness) or to resolve resource management problems. To assist the public in understanding R.S. 2477, the BLM's California Desert District prepared a public information

brochure "Revised Statute 2477 (R.S. 2477) Routes Inside and Outside Wilderness" which provides background information and answers some of the most frequently asked questions (Enclosure 1).

In 1992, Congress directed the U.S. Department of the Interior to study the history, impacts, and status of R.S. 2477 rights-of-way and to make recommendations for processing R.S. 2477 claims. The May 28,1993, letter from the Secretary to Congress which transmitted the Report to Congress on R.S. 2477 - The History and Management of R.S. 2477 Rights-of-Way Claims on Federal and Other Lands concluded that: *"Until final rules are effective, I have instructed the Bureau of Land Management to defer any processing of R.S. 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations."* This continues to be Departmental policy.

There are two important factors that you should recognize relative to what this means for R.S. 2477 rights-of-way and for public access: (1) the validity of R.S. 2477 right-of-way that may have been established is not affected by deferring the processing of assertions; and (2) holders of other valid existing rights retain a right of access associated with those rights without an R.S. 2477 right-of-way.

Many routes that have been, or may be claimed as R.S. 2477 rights-of-way, came into existence with no documentation of public land records. Some paved roads, which serve as major public transportation routes, do not have a right-of-way shown on public lands records. National Parks, National Monuments, National Forests, National Wildlife Refuges, National Conservation Areas, other special areas (e.g., designated wilderness areas), and military bases were reserved after 1866. Generally, these areas were reserved subject to valid existing rights established before the reservation. Other formerly public lands were conveyed into private ownership after 1866, also subject to valid existing rights. Routes which came into existence after 1866, but before withdrawal, patent, mining claim, or reservation for a public purpose and before the passage of the Federal Land policy and Management Act of 1976 (FLPMA), may qualify as prior valid existing rights under R.S. 2477. While local government can assert an R.S. 2477 right-of-way, the Federal Government is responsible for determining whether a specific R.S. 2477 right-of-way had been established and, if so, for documenting that determination to land records and to Master Title Plats.

Revised Statute 2477 is viewed by some as a means to re-open historic access across areas where access is restricted or closed and as a means to keep existing routes open without multiple use planning (including public involvement) which considers natural, cultural, and historic resource issues and impacts. Routes that are opened as R.S. 2477 rights-of-way across reserved areas or across private lands may significantly interfere with current management, uses, or conservation priorities. In addition, R.S. 2477 rights-of-way may interfere with the rights of private landowners where they cross private land. For these reasons, it is imperative that BLM review each assertion carefully to determine whether a specific route qualifies as the right-of-way Congress intended. The consequences of BLM's determinations to other rights and interests (both public and private) are too far-reaching for this responsibility to be taken lightly.

The Federal Land Policy and Management Act (FLPMA) repealed R.S. 2477; however, it did not terminate any rights-of-way that may have been established under R.S. 2477. For a road to qualify

as an R.S. 2477 right-of-way, it must have existed before the passage of FLPMA (October 21, 1976), but that is not the only criterion which must be met. The road also must have existed prior to any applicable reservation for a public purpose. In addition, in order to process assertions and to determine which routes qualify as rights-of-way under R.S. 2477, BLM must also consider the application of two important terms in the law: (1) construction and (2) highways. The terms "construction" and "highways" are among the most controversial provisions of the 1866 law.

The Department of the Interior's approach to these terms was addressed in a November 18, 1992, letter to federal, state, and local government agencies, Congressional leaders, and other affected interests which notified them that we were beginning a study of R.S. 2477 and solicited their participation. It states: *"...assertions of a right-of-way under R.S. 2477 may be acknowledged by the Federal Government, and/or the right-of-way may have attached to the public land if all three of the following conditions were met prior to the repeal of R.S. 2477 on October 21, 1976: 1. The lands involved must have been public lands not reserved for public uses at the time of acceptance. 2. Some form of construction of the highway must have occurred. 3. The highway so constructed must be considered a public highway. Today, controversies still arise regarding whether a public highway was established pursuant to the Congressional grant under R.S. 2477 and, if so, the extent of the rights obtained under the grant."*

Clear definitions for terms in the law have not been established. Draft regulations, which defined the terms and addressed other factors needed to evaluate R.S. 2477 assertions, were published in 1994. A July 29, 1994 news release from the Office of the Secretary announcing the release of the draft regulations describes sharply contrasting definitions for "construction" and "highway" between a 1988 Interior policy and the 1994 draft regulations. (The 1988 Departmental Policy was revoked by a subsequent 1997 Departmental Policy.) The Supplemental Information for the 1994 draft regulations characterized the divergent views of the public on R.S. 2477: *"There are some proponents of unlimited and unregulated access to Federal lands who view R.S. 2477 as a mechanism on which they believe they can rely to circumvent the protective requirements of current environmental and land use law and to authorize the present expansion of footpaths and animal trails into highways. Some environmental groups view R.S. 2477 with alarm, believing it to defeat the designation of existing and potential wilderness areas (which are roadless by definition)."*

Due to a Congressional moratorium, final regulations on processing R.S. 2477 assertions were not promulgated. The Department's appropriation act for fiscal year 1997 permits the publication of final regulations, but states that they shall not take effect unless *"...expressly authorized by an Act of Congress subsequent to the date of enactment of this Act."* On August 20, 1997, the Comptroller General ruled that this provision of the 1997 Department of the Interior and Related Agencies Appropriations Act is permanent (section 108). The lack of clear definitions prevents BLM from making objective, consistent, and clearly defined determinations on R.S. 2477 assertions. The absence of clear definitions for the terms critical to making determinations is a primary reason for the policy to defer processing R.S. 2477 assertions.

The Secretary's January 22, 1997 "Interim Departmental Policy on Revised Statute 2477 Grant of Right-of-Way for Public Highways; Revocation of December 7, 1988 Policy" is the current policy

of the Department. This policy provides guidance for processing an assertion, should it become necessary to do so. It addresses the definitions for "construction" and "highway." In the policy, an entity asserting an R.S. 2477 right-of-way and requesting a determination by the Department must provide *"...an explanation of why there is a compelling and immediate need for such a determination."* Along with that explanation, *"...the request should be accompanied by documents and maps that the entity wishes the agency to consider in making its recommendation to the Secretary."* An assertion should also include evidence that the routes were constructed prior to October 21, 1976, and were public highways.

A clear description of the rights conveyed in all R.S. 2477 rights-of-way is of critical importance, especially for those R.S. 2477 rights-of-way that may conflict with reservations for public purposes, other valid existing rights on federal lands, or with the rights of private landowners. If BLM determines that an R.S. 2477 right-of-way may have been established, BLM must also determine the nature and extent of the rights conveyed. For example, how wide is the right-of-way? What rights, if any, are there to maintain or improve the right-of-way? Any maintenance or improvement of a right-of-way authorized under R.S. 2477 must be within the bounds of the original right-of-way or within the authority of how the right-of-way could be improved. This is very important in cases where a paved public highway which serves as a major transportation route does not have any authorization across public lands shown on public land records. State and local government do not have to assert rights-of-way under R.S. 2477 at this time for the existing alignments of such paved roads. These roads will continue to be open and available for use without determining whether an R.S. 2477 right-of-way exists. However, since R.S. 2477 was repealed by FLPMA, there is no provision to modify a right-of-way that may have been granted under R.S. 2477. Major improvements (e.g., re-alignments) to such roads, beyond that which may have been authorized under the R.S. 2477 right-of-way, must be authorized under existing laws and regulations (including the Endangered Species Act and the National Historic Preservation Act).

In the interim, to meet the multiple use mandate of FLPMA, BLM may close some routes across public land to protect important resources through route designation (using the multiple use planning process, including public participation) or on an emergency basis. "Multiple use" is a concept which, among other things, calls for public lands to be managed to provide (from Sec. 103 (c) of FLPMA) *"...a combination of balanced and diverse uses that considers long-term needs for renewable and nonrenewable resources, including recreation, rangeland, timber, minerals, watersheds, and wildlife, along with scenic, scientific, and cultural values."* Generally, route closures do not involve determinations on whether R.S. 2477 rights-of-way may have been established. Such determinations would not be based on the principle of multiple use. Closed routes in wilderness will remain closed, as the law requires, until R.S. 2477 assertions are processed. Closed routes outside wilderness will remain closed until R.S. 2477 assertions are processed or the routes are re-opened through the planning process, including public involvement. Holders of valid existing rights, retain the right of access without an R.S. 2477 right-of-way. However, BLM approval is required prior to driving on any closed route.

Some of the language contained in Kern County's Resolution No. 2002-059 refers to routes of travel that may not fit under the definitions ultimately established for "construction" and "highway." Such

routes may not be determined as R.S. 2477 rights-of-way when we resume processing assertions. You should understand that if a route is not an R.S. 2477 right-of-way, or if BLM has not determined whether an R.S. 2477 right-of-way may have been established, the route is not automatically closed. The route may continue to be open and available for use, including use by motorized vehicles, subject to existing laws and regulations, land use plans, and resource management considerations.

The route networks identified BLM land use plans are developed through a route designation process which considers resource management issues and regulatory and statutory closures (such as designated wilderness). As a result of route designation, existing routes are designated "open," closed" or "limited." This process does not make determinations under R.S. 2477. If a route is designated as closed, that is not a determination that an R.S. 2477 right-of-way does not exist. Such a route closure does not extinguish any R.S. 2477 right-of-way that may exist. Conversely, a route designated open does not mean that the route was determined to be an R.S. 2477 right-of-way.

We remain committed to working with you to assure that search and rescue, fire protection, resource management, and health and law enforcement personnel retain the access necessary to carry out their public responsibilities. Adequate access to carry out these functions is the paramount concern. We believe these needs are high priority needs which must be met cooperatively by BLM and Kern County regardless of whether determinations on assertions under R.S. 2477 are made.

We value collaboration with Kern County in the stewardship of public lands and resources and encourage the County to continue to participate in BLM's land use planning and route designation processes to ensure that we have the benefit of your concerns. If you have any questions, please feel free to contact me.

Sincerely,

Alan Stein ACTING

Linda Hansen
Acting District Manager

Enclosure:
Brochure - Revised Statute 2477 (R.S. 2477) Routes Inside and Outside Wilderness (1999)

cc: CA-610, CA-650, CA-660, CA-670, CA-680, CA-690, CA-910, CA-930

What is an R.S. 2477 right-of-way? In 1866, Congress passed a law which authorized the construction of highways across federal lands that were not reserved for other purposes. R.S. 2477 rights-of-way are the "rights" that resulted from that law. There was no requirement to document R.S. 2477 rights.

Why is R.S. 2477 so controversial? Routes that may be R.S. 2477 rights-of-way cross National Parks, military bases, wilderness areas, and other sensitive areas. Some people believe that R.S. 2477 rights-of-way will reopen historic access, where motorized vehicle travel is now restricted or closed.

What routes are R.S. 2477 rights-of-way? The language in R.S. 2477 is very broad, leaving a lot of room for interpretation. So it is often not clear which routes are R.S. 2477 rights-of-way. Since R.S. 2477 rights-of-way were not granted to specific individuals or entities for specified periods of time, there is no easy way to know where R.S. 2477 applies.

How do I know if a route is an R.S. 2477 right-of-way? Ask your local BLM field office. R.S. 2477 rights-of-way that are recognized by the Department are noted on public land records. One simple factor that is not in dispute is that the route must have existed before October 21, 1976, when R.S. 2477 was repealed. However, not all routes that existed before that date are R.S. 2477 rights-of-way.

Can I drive on a closed route if I believe it to be an R.S. 2477 right-of-way? No. Closed routes, inside and outside of wilderness, will remain closed (motorized vehicle use will be prohibited) until the Department determines if they are valid R.S. 2477 rights-of-way.

Who decides if a route is an R.S. 2477 right-of-way? BLM makes that determination on public lands.

How can I get an R.S. 2477 right-of-way claim reviewed? Contact your local BLM field office and request a copy of the procedures for making an R.S. 2477 claim. You must be able to demonstrate that the route should be accepted as an R.S. 2477 right-of-way immediately and that the route existed before October 21, 1976.

Will BLM process an R.S. 2477 claim immediately and make a decision? Departmental policy is to process claims only when there is an immediate and compelling need. Assuming a claim is submitted with all the necessary information, the time needed to reach a decision will depend on the urgency and complexity of the claim.

Can I file a claim if I want to use a route for recreation? Yes, you must provide all the information required for making a claim. If your claim is made to use a route for casual recreation, BLM will defer processing it until there are consistent, objective criteria for deciding if the route meets the qualifications of an R.S. 2477 right-of-way.

Do I need an R.S. 2477 right-of-way to access my private property in wilderness using a closed route? Holders of valid existing rights, including private property, retain the right of access without an R.S. 2477 right-of-way. BLM approval is required prior to driving on any closed route.

California Desert District	(909) 697-5200
Barstow Field Office	(760) 252-6000
El Centro Field Office	(760) 337-4400
Needles Field Office	(760) 326-7000
Palm Springs Field Office	(760) 251-4800
Ridgecrest Field Office	(760) 384-5400

BLM

R.S. 2477

Revised Statute 2477 (R.S. 2477)

Routes Inside and Outside Wilderness

Bureau of Land Management
California Desert District
6221 Box Springs Boulevard
Riverside, CA 92507
October 1999

HISTORY

Beginning in 1866, Revised Statue 2477 (R.S. 2477) provided the right-of-way for the construction of highways over public lands not set aside by Congress for other purposes. The Federal Land Policy and Management Act (FLPMA) repealed R.S. 2477 on October 21, 1976. However, FLPMA did not terminate any rights-of-way that previously may have been granted under R.S. 2477.

Often it is difficult to determine which roads are R.S. 2477 rights-of-way. Many R.S. 2477 rights-of-way do not appear on public land records. National Parks, National Forests, National Wildlife Refuges, other special areas (e.g., wilderness areas), and military bases, which were designated after 1866, contain roads which may be R.S. 2477 rights-of-way.

In 1992, Congress directed the Department of the Interior to study the history, impacts, and status of R.S. 2477 rights-of-way and to make recommendations for processing claims. As a result of a report which was submitted to Congress in May 1993, the Department *"...deferred processing pending claims unless there is an immediate and compelling need to recognize or deny any claims."*

In 1994, The California Desert Protection Act provided clear Congressional policy to preserve and protect wilderness areas in their natural state. Section 4(c) of the Wilderness Act of 1964 (Limitation of Use and Activities) is the main reason for closing routes: *"...there shall be ...no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act... there shall be no temporary road, no use of motor vehicles... no other form of mechanical transport, and no structure or installation within any such area."*

ROUTES INSIDE AND OUTSIDE WILDERNESS

R.S. 2477 rights-of-way are valid existing rights both inside and outside wilderness areas, but only after BLM determines that they qualify.

Closed routes in wilderness will remain closed as the law requires until pending R.S. 2477 claims are processed.

Closed routes outside wilderness will remain closed until R.S. 2477 claims are processed or the routes are re-opened through the planning process.

REVIEWING R.S. 2477 CLAIMS

A lack of clarification regarding the definition of construction and highways, terms found in R.S. 2477, has delayed the processing of R.S. 2477 claims.

Thus, the BLM is reviewing R.S. 2477 claims only when there is an immediate and compelling need to determine whether a route is an R.S. 2477 right-of-way.

BLM will defer processing R.S. 2477 claims when there is no demonstrated immediate and compelling need to review it. This deferral does not mean that BLM denies that any claim is not valid and it does not affect the validity of any R.S. 2477 right-of-way.

ROUTE CLOSURES

The BLM may close routes through its planning process or on an emergency basis to protect important resources. Generally, route closures do not involve decisions on whether a route is an R.S. 2477 right-of-way.

When the BLM determines that a route is not an R.S. 2477 right-of-way, the route is not automatically closed.

REHABILITATION OF ROUTES

Routes within or outside of wilderness areas may be rehabilitated without determining whether the route is a valid R.S. 2477 right-of-way. Rehabilitation of a route does not remove or modify any R.S. 2477 right-of-way that may be associated with the route.

OTHER VALID EXISTING RIGHTS

Holders of other valid existing rights retain the right of access associated with those rights without an R.S. 2477 right-of-way. However, it is important to understand clearly that even an individual with valid existing rights needs permission from BLM before traveling on a closed route.

ACCESS TO THE CALIFORNIA DESERT CONSERVATION DISTRICT

==========

OVERSIGHT FIELD HEARING

before the

SUBCOMMITTEE ON NATIONAL PARKS, RECREATION, AND PUBLIC LANDS

of the

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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Monday, August 18, 2003, in San Diego, California

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C O N T E N T S

Statement of Witnesses:

OVERSIGHT HEARING ON ACCESS TO THE CALIFORNIA DESERT CONSERVATION DISTRICT

Monday, August 18, 2003

U.S. House of Representatives

Subcommittee on National Parks, Recreation, and Public Lands

Committee on Resources

San Diego, California

The Subcommittee met, pursuant to call, at 2 p.m., in the Shedd Auditorium, Hubbs Sea World Research Institute, San Diego, California, Hon. George P. Radanovich [Chairman of the Subcommittee] presiding.

Present: Representatives Radanovich and Pombo (ex officio).

Also Present: Representative Filner.

Mr. Radanovich. Good afternoon. If I could have everybody's attention. The Subcommittee on National Parks, Recreation, and Public Lands will come to order. This is a hearing held at the Shedd Auditorium at the Hubbs Sea World Research Institute here in San Diego. My name is George Radanovich, and I am from Mariposa County, Mariposa, California, and I am Chairman of the House Subcommittee on National Parks, Recreation, and Public Lands.

Joining me today is the Chairman of the House Resources Committee, Congressman Richard Pombo, from Tracy, California. Today the Subcommittee will hear testimony regarding access to the California Desert Conservation Area, with emphasis on the Imperial Sand Dunes Recreation Area.

I would like to remind everybody today that this is not a town hall meeting, but rather a formal Congressional hearing where issues discussed are placed on the record. Therefore, I would ask for the public's cooperation in maintaining decorum in the room.

I would also remind everybody that this is indeed a public hearing, and therefore anyone here today may submit written statements for the record. Please see our clerk, Mike Correia. Mike. Please see Mike at the end of the hearing and he will make sure that your comments are placed in the record, the hearing record, and your ability to do that will remain open for about a 2 week period after this hearing today.

I do want to mention, too, and kind of reiterate what I just said. This is not a town hall meeting. There is not--the House rules for hearings do not allow for public comment or public reaction to the things that are said by people that are up front here to testify as to today.

Nor is there any provision for the allowance of written material or posters, or things like that in the back. Audience, I will sort of have to ask you to please remove that, too, and remove that from the room according to the rules of the House.

The purpose of the hearing is to get all the facts into the record, and by the selection of the three panels that we have here today enable us to do that. If you feel that your information was not covered by the testimony of the witnesses, you are free and able to submit the written text.

So by in this manner in order to fashion, we can make sure that everybody's input is in the record and every viewpoint is covered. So with that, we will begin, and I think at this point that I would like to ask everybody to stand and face our Nation's flag, as Pastor Bob Winterton, of San Diego, leads us in the Pledge of Allegiance. Bob, thank you for joining us here today.

[Invocation by Rev. Bob Winterton.]

STATEMENT OF THE HON. GEORGE RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Radanovich. Thank you, Pastor Bob Winterton of locally here in San Diego. Today we will hear from 13 invited witnesses who represent county government; two Federal agencies responsible for managing many of the resources throughout the California Desert Conservation Area; and members from the recreational community and industry.

Since Congress first established the California Desert Conservation Area in 1976, in a comprehensive long-range management plan for the public lands was developed by the Department of Interior, it appears that all of the Federal agencies who have management responsibility for these lands have been locked in a continuous battle between some in the environmental community who wish to see as much Federal land as possible reserved only for uses that they think are appropriate, and the recreation and business communities, who believe that these public lands should remain available for a variety of public uses.

In 1994, Congress took action in what it thought would be an improvement to the management of the California desert, only to see the management situation become worse when it passed the California Desert Protection Act.

I am sure that the Chairman has a few things to say about that, and I look forward to the testimony of our witnesses on these two issues, as well as the other conflicts within the CDCA, and any suggestions for resolving some of the access issues.

Finally, I would be remiss if I did not thank Dr. Kent, who is president of the Hubbs Research Institute, and his associates, Jennifer LeBlanc and Matt Cruz, for their assistance and hospitality in hosting this Subcommittee and Chairman Pombo. I now yield to Chairman Pombo for his opening statement. Richard.

[The prepared statement of Mr. Radanovich follows:]

Statement of The Honorable George Radanovich, Chairman, Subcommittee on National Parks, Recreation, and Public Lands

Good afternoon. The Subcommittee on National Parks, Recreation and Public lands will come to order.

My name is George Radanovich. I am from Mariposa, California, and Chairman of the House Subcommittee on National Parks, Recreation and Public Lands. Joining me today is the Chairman of the House Resources Committee, Congressman Richard Pombo of Tracy, California. Today, the Subcommittee will hear testimony regarding access to the California Desert Conservation Area with emphasis on the Imperial Sand Dunes Recreation Area.

I would like to remind everyone here today that this is not a town hall meeting, but rather a formal congressional hearing where issues discussed are placed on the record. Therefore, I would ask for everyone's cooperation in maintaining decorum in the room. I would also remind everyone that this is indeed a public hearing and therefore anyone here today may submit a written statement for the record. Please see our clerk, Mike Correia (Mike, please raise your hand) at the end of the hearing and he will make sure your comments are placed in the record. The hearing record will remain open for two weeks.

Today, we will hear from thirteen invited witnesses who represent county government, two Federal agencies responsible for managing many of the resources throughout the California Desert Conservation Area,

members from the recreational community, and industry.

Since Congress established the California Desert Conservation Area in 1976 and a comprehensive long-range management plan for the public lands was developed by the Department of the Interior, it appears that all of the Federal agencies with management responsibility for these lands have been locked in a continuous battle between some in the environmental community--who wish to see as much Federal land as possible reserved for only uses they think are appropriate--and the recreation and business communities who believe that these public lands should remain available for a variety of public uses. In 1994, Congress took action in what it thought would be an improvement to the management of the California Desert, only to see the management situation become worse when it passed the California Desert Protection Act. I am sure the Chairman has a few things to say about that. I look forward to the testimony of our witnesses on these two issues as well as the other conflicts within the CDCA, and any suggestions for resolving some of the access issues.

At this point I want to take a moment to address some local criticism about this hearing. Chairman Pombo and I decided to hold this hearing today following a number of meetings and conversations with some of today's witnesses, who expressed frustration with not being able to access a number of areas within the California Desert Conservation Area. During this same time, we heard nothing from the local environmental community about any access issues. Once we confirmed our witnesses, we asked our Democratic counterparts if they wanted any witnesses and they declined. I would caution some of those in the audience who believe this Committee is obligated to invite certain local organizations or individuals to testify when we conduct a hearing on access issues to Federal lands in the California Desert. We are not, especially when those groups don't seem to have a problem with the current management practices. I would also like to point out that local Members of Congress were notified of the hearing and were welcome to participate.

Finally, I would be remiss if I did not thank Don Kent, President of Hubbs Research Institute, and his associates Jennifer LeBlanc and Matt Cruz for their assistance and hospitality in hosting the Subcommittee and Chairman Pombo.

I now yield to Chairman Pombo for his opening Statement.

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STATEMENT OF THE HON. RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Pombo. Thank you. I would like to thank the staff of Hubbs for their hospitality and to Pastor Bob Winterton for delivering our invocation and leading us in the Pledge of Allegiance today.

Mr. Chairman, I commend you for your attention today to the conflicts recently expressed by user groups to the California desert, many of whom are represented here this afternoon. As a sophomore Member of Congress in 1994, I recall the heated debates prior to the passage of the California Desert Protection Act, and the divisive issues then, the restriction on users, creation of wilderness and de facto wilderness, and the impact of the Endangered Species Act.

Those same issues continue to be divisive issues that fuel the debate today. I am privileged to now be serving in my sixth term in the U.S. Congress, and over the years I have seen varying approaches employed to deal with these ongoing conflicts.

And although I don't profess to hold all of the answers, I

can tell you from my experience what does not work. Pretending that mankind is not part of the environment does not work.

Restricting access to humankind does not work either. I believe anything that we do as humans has an impact on our environment and our laws should accept that. The reality here is that we have a fixed amount of desert land, and a fleet6ing ability to access the California desert is a real tragedy.

Using our environmental laws to lock away our national environment is equally tragic. It is not only tragic for visitors and recreational users, but it is also tragic for the mining community, the ranching community, the film industry, and the local California economies that ultimately suffer when users are denied access.

That is not to say that the preservation of sensitive species is not important, nor is it to say that preserving a glimpse of our wild natural environment for future generations is not also important.

However, I don't think that the way we best accomplish that is by pitting user groups against each other, or by perpetuating the belief that use and the environmental stewardship are mutually exclusive.

In truth, we in Congress are as much as fault as anyone for the significant social consequences that have resulted from application of our current environmental laws. However, for 30 years we have chosen to polarize that debate, and today we find that very little progress has been made, and in short it just has not worked.

This afternoon a variety of testimony will be presented. We will be hearing from user groups, local government, the Federal agencies that are bound by the laws that we in Congress have given them to work under.

However, across the spectrum, I am confident that we are going to hear some commonalities. We are going to hear common problems that keep coming up over and over, and that is where I believe or best chance for progress lies.

That is where we have got to try and find common ground and promote a balanced common-sense solution that we can all live with. As many of you in this room already know, these are the types of conflicts that brought me to the U.S. Congress a decade ago, and I am committed to being part of the solution.

So, Mr. Chairman, I applaud your efforts today to begin this process and I look forward to hearing the forthcoming testimony, and identifying if and where there may be opportunities to finally make progress on these issues. Thank you.

[The prepared statement of Mr. Pombo follows:]

Statement of The Honorable Richard Pombo, Chairman,
Committee on Resources

Thank you, Mr. Chairman.

I would also like to extend my gratitude to the Hubbs staff for their assistance and hospitality this afternoon, and I commend you Mr. Chairman for your attention to the longstanding conflicts expressed by user groups to the California Desert, many of whom are represented here this afternoon. You know, as a sophomore member of Congress in 1994, I remember those heated debates prior to passage of the California Protection Act, and the divisive issues then--restrictions on users, creation of wilderness and de facto wilderness, and the impact of the Endangered Species Act--continue to be the divisive issues that fuel the debate today. I'm privileged to now be serving in my sixth term in the United States Congress, and over the years I've seen varying

approaches employed to deal with these ongoing conflicts. And although I don't profess to hold all the answers, I can tell you from experience what doesn't work. Pretending that mankind is not part of the environment doesn't work. Restricting access to humankind doesn't work either. I believe anything we do as humans has an impact on our environment, and our laws should accept that. The reality here is that we have a fixed amount of desert land, and the fleeing ability to access the California Desert is a real tragedy. Using our environmental laws to lock away our natural environment is equally tragic. It's not only tragic for visitors and recreational users, but it's also tragic for the mining community, the ranching community, the film industry, and the local California economies that ultimately suffer when users are denied access.

That's not to say that the preservation of sensitive species is not important, nor is it to say that preserving a glimpse of our wild, natural environment for future generations is not important. However, I don't think the way we best accomplish that is by pitting user groups against each other, or by perpetuating the belief that use, and environmental stewardship, are mutually exclusive. In truth, we in Congress are as much at fault as anyone for the significant social consequences that have resulted from application of our current environmental laws. However, for thirty years we've chosen to polarize the debate, and today we find that very little progress has been made; in short, it hasn't worked.

This afternoon, a variety of testimony will be presented. We'll be hearing from user groups, local governments, and the federal agencies that are bound by the laws that we in Congress have given them to work under. However, across this spectrum, I'm confident that we're going to hear some commonalities; we're going to hear common problems that keep coming up over and over, and that's where I believe our best chances for progress lie. That's where we've got to try and find common ground and promote balanced, common sense solutions we can all live with.

As many of you in this room already know, these are the types of conflicts that brought me to the United States Congress a decade ago, and I am committed to being part of their solution.

So, Mr. Chairman, I applaud your efforts today to begin this process, and I look forward to hearing the forthcoming testimony, and identifying if, and where, there may be opportunities to finally make progress on these issues.

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Mr. Radanovich. Thank you, Mr. Chairman. I just want to make sure if everybody can hear in this room. If you can't in the back of the room, please raise your hand. Sometimes we talk far away from the mike and it does not come out very well. So when you are closer, it works. So I just want to make sure that everybody can hear. If you do have a problem, please raise your hand.

Today, we have three panels. We have a lot of people to testify. The first panel consists of the Honorable Jon McQuiston, who is a supervisor from District 1, in Kern County, Bakersfield, California; and the second is the Honorable Wally Leimgruber, who is a supervisor from District 5, in Imperial County, from El Centro; the Honorable Michael Dorame, a supervisor from District 5, in Inyo County, at Lone Pine; and the Honorable Bill Postmus, a supervisor from District 1, in San Bernardino County, San Bernardino, California.

Gentlemen, welcome to the Committee. I would ask, which is typical to the Subcommittee, that we do swear you in. So if you would please stand and raise your right hand, I would appreciate it.

[Witnesses sworn.]

Mr. Radanovich. Thank you very much, and you may be seated, and for the benefit of the audience, the way that these testimonies work is that generally each person submits an entire written testimony, but will have 5 minutes each to be able to discuss their written testimony. It is better to give a synopsis of it that we can cover it in 5 minutes.

And what we will do is take statements starting with you, Jon, and all the way down, and then we will open the panel up for questions from members up here. And the light system here works, if you would, it is set to a 5 minute timer. It works just like a traffic light; green means go, yellow means speed up, and red means stop. So please follow the rules.

We would like to contain it within 5 minutes because of all of the people that are testifying today, and there is going to be a lot of talking in here, and so I think people are going to be a little bit sore by the end of this thing, and so we want to make sure it moves as efficiently as possible.

So, Mr. McQuiston, welcome to the Committee, and you may begin your testimony.

STATEMENT OF THE HON. JON MCQUISTON, SUPERVISOR, DISTRICT 1, KEN COUNTY, BAKERSFIELD, CALIFORNIA

Mr. McQuiston. Thank you, Mr. Chairman, for the opportunity to appear today. I am coming as you know in representing Kern County, and approximately one-third of Kern County lies in the California Conservation Area.

In case there is questions at the end of all of our testimony, there are three people that I would like to introduce behind me. One is Harold Carter, the Sheriff of Imperial County. Harold, you may want to stick your hand up.

Gerald Hillier, Executive Director of the Quad States County Government Coalition; and Lorelei Oviatt, Senior Supervising Planner for Kern County, who has been working on these issues for over 8 years.

Now, Mr. Chairman, no substantive discussion of management plans or practices within the California Desert Conservation Area can occur without an understanding and acknowledgment of the role of the desert tortoise in the formulation of these plans.

The desert tortoise is the keystone species up on which the major regional plans are based, and the tortoise recovery plan defines six environmental significant units which serve as the basis for the 14 proposed desert wildlife management areas or DWMAs, and has been used as a basis of areas of critical environmental concern, and comprising millions of acres within the conservation area, and with that as a background, I will proceed to my main points.

The BLM regional planning process during the last 8 years has resulted in a substantial reduction and loss of access to public lands. The millions of acres comprising the conservation area are divided into subregions, each with its own management plans.

I will be speaking today about the West Mojave, the Northern and Eastern Mojave Desert Management Plan, and the Northern and Eastern Colorado Desert Coordinated Management Plans.

Each of these plans have, as a critical component, critical habitat for the desert tortoise and reliance on the tortoise recovery plan. The main issue is that under the Endangered Species Act, a recovery plan requires monitoring, and this monitoring has not been done.

Further, the desert tortoise recovery plan by its own direction includes a requirement for a 3 or 5 year review for the inclusion of new science. Yet, no review has occurred, despite repeated appeals by local government, the Quad State Coalition, and most recently even the Desert Advisory Council.

Further, the General Accounting Office concluded in its December 2002 report that the Mojave Desert Tortoise plan needed to be reviewed. Quite simply, the recovery plan fails to address appropriate measures to deal with predation and disease, which has been the major cause for tortoise populations to crash throughout the region.

Even in areas with no motorized access, tortoise populations in fully protected areas have seen declines in excess of 80 percent due to predation and disease. And with full knowledge of causes of mortality, and with much better science today, along with the statutory mandate for monitoring, and a promise to review the plan within 3 to 5 years, the U.S. Fish and Wildlife Agency's position is that it needs 2 or 3 years to study the need for a recovery plan.

Now, armed with this same knowledge and awareness of these shortcomings, and that the tortoise recovery plan is advisory in its discretionary decisionmaking process, the Bureau of Land Management, in consultation with the U.S. Fish and Wildlife, nevertheless continues to use the recovery plan as the principal foundation of new management plans within the conservation area.

And by relying on the outdated plan, we are still not implementing the measures that are most needed for the survival and recovery of the Mojave Tortoise population. Instead, we are focusing on removing access and eliminating multiple uses, all in the name of species recovery.

My second issue focuses on motorized access. To manage the motorized access process is a term called route designation, which is a euphemism for road closure, for in practice the route designation process does not create new routes, or open previously closed routes. It is used to close or restrict existing routes.

Multiple use, such as grazing, mining, the interests that you noted today, are critical to counties' economies and important to people who live there. The loss of motorized access is the loss of multiple use.

The loss of motorized access is also a loss of sustained yield to both renewable and non-renewable resources necessary to sustain the product needs of a growing population from everything that we wear, to shoes, to cars, everything, and we either grow it, mine it, or extract it.

And for all practical purposes these losses are irrevocable. I could walk you through another paragraph. I see the amber light, and I want to stay on time. We have spent countless hundreds of hours working on management plans. Our staff, we have traveled to Washington, D.C., and we have assisted user groups, and we have been members of steering committees, public workshops.

Yet at the end of the day, our comments and concerns about route designation has not made a difference. Management, by closure, based on flawed science and antidotal evidence, is the outcome of these long complicated processes.

Mr. Chairman, no parent likes to admit that they have ugly children, but the route designation process is broken. Flawed processes and flawed recovery plans drive flawed management plans. Each plan and each office develops its own criteria and processes for route evaluation.

Mapping is often not verified. In one region, five criteria are used to determine route closure and only 30 percent has been evaluated. In another region, there is 23 criteria. I see my red light, and so I am going to conclude my comments by just saying that route designation needs to have better processes.

The things that we would ask that this Committee consider. The U.S. Fish and Wildlife should proceed with all deliberate speed to commence and review for the tortoise recovery plan. The Endangered Species Act specifically requires monitoring to determine the efficiency and recovery measures, monitoring should be completed.

And last, the BLM should develop with full public input a consist process and standard for route designation, including a requirement that the loss of a resource in recreational opportunities would be balanced and mitigated by the inclusion of opportunities in other areas. Thank you.

[The prepared statement of Mr. McQuiston follows:]

Statement of Jon McQuiston, First District Supervisor,
Kern County Board of Supervisors

Mr. Chairman, thank you for the opportunity to appear before your Committee today. I am speaking today as Kern County First District Supervisor. My district includes a portion of the California Desert Conservation Area (CDCA). I am a current member of the Bureau of Land Management Desert District Advisory Council representing local government.

With me today speaking on the local government panel are Wally Leimgruber, Imperial County Supervisor; Michael Dorame, Inyo County Supervisor, and Bill Postmus, San Bernardino County Supervisor. In preparation for any questions Committee members may have, I also have behind me:

<bullet> Dr. William Jefferds, Major General (Ret.-U.S. Army), Senior Military Advisor to the Governor of the State of California, and the Director, Office of Military Support (OMS). Dr. Jefferd's state role is advocate for operational readiness and sustainability of bases and ranges in the CDCA which comprise 2.3 million acres of military land. These bases and ranges include China Lake Naval Air Weapons Stations, Edwards Air Force Base, Fort Irwin, Marine Corps Air Ground Combat Center at Twenty-nine Palms, Marine Corps Logistics Base, Chocolate Mountains Aerial Gunnery Range, and the Naval Air Facility at El Centro.

<bullet> Gerald Hillier, Executive Director of the QuadState County Government Coalition of which Kern, Imperial, and San Bernardino counties are members. QuadState County Government Coalition is a California Joint Exercise of Powers Act agency whose members include six counties within four states in the Mojave Desert region (Mojave County, Arizona; Imperial, Kern and San Bernardino counties, California; Lincoln County, Nevada; and Washington County, Utah).

<bullet> Lorelei Oviatt A.I.C.P., Supervising Planner with the Kern County Planning Department is responsible for the Kern County Home Rule program and has represented Kern County on BLM regional planning issues during the last eight years.

I appreciate the opportunity you have provided today to hear the concerns of local elected officials and users of the public lands in the California Desert Conservation Area District (CDCA).

No substantive discussion of management plans or practices within the California Desert Conservation Area can occur without an understanding and acknowledgment of the role of the Desert Tortoise in the formulation of those plans and practices. The Desert Tortoise is the ``keystone'' species upon which the major regional plans are based. The Tortoise Recovery Plan defines six Environmental Significant Units

(ESU's), which serve as the basis for the fourteen proposed Desert Wildlife Management Areas (DWMAs), and has been used as a basis for Areas of Critical Environmental Concern (ACECs) comprising millions of acres within the CDCA. In the Tortoise Recover Plan the six ESU's are renamed as the following recovery units: Northern Colorado Recovery Unit, Eastern Colorado Recovery Unit, Upper Virgin River Recovery Unit, Eastern Mojave Recovery Unit, Northeastern Mojave Recovery Unit, and the Western Mojave Recovery Unit. With that as background, I will proceed to my main points.

BLM Regional planning processes during the last eight years has resulted in a significant reduction and loss of access to public lands. The millions of acres comprising the California Desert Conservation Area are divided into subregions, each with its separate management plans. The list is long. The plans I will be speaking about today are the West Mojave Plan, Northern and Eastern Mojave Desert Management Plan, and the Northern and Eastern Colorado Desert Coordinated Management Plan. These management plans all have as a key component critical habitat for the Desert Tortoise and reliance on the Desert Tortoise Recovery Plan. Under the Endangered Species Act, a recovery plan requires monitoring, yet no monitoring has been done. Additionally, the Desert Tortoise Recovery Plan by its own direction includes a requirement for a three or five year review and inclusion of new science; yet, no review has occurred despite repeated appeals by local government, the Quad State Coalition, and most recently a request by the Desert District Advisory Council. Further, the General Accounting Office (GAO) concluded in its Dec 2002 report on the Mojave Desert Tortoise that the review needed to be completed.

The Tortoise Recovery Plan fails to address appropriate measures to deal with predation and disease which has caused tortoise populations to crash in locations through the desert. Even in areas with no motorized access, tortoise populations in fully protected areas have seen population declines in excess of 80 percent due to predation and disease. With full knowledge of the main causes of mortality, much better science, a statutory mandate for monitoring, and a promise to review the plan within three or five years, the U.S. Fish and Wildlife Agency's position is it needs two or three years to study the need for a Recovery Plan update.

With knowledge and awareness of these shortcomings and that the Tortoise Recovery Plan is advisory in its discretionary decision-making process, the Bureau of Land Management, in consultation with U.S. Fish and Wildlife, nevertheless continues to use the Tortoise Recovery Plan as the principle foundation of these new management plans within the CDCA. By relying on the outdated Tortoise Recovery Plan in developing these land use management plans, BLM and USFW are still not implementing the measures most needed for the survival and recovery of the Mojave tortoise population. Instead they are removing access and eliminating multiple uses in the CDCA all in the name of species recovery.

My second issue focuses on motorized access. To manage motorized access is the process called ``Route Designation''. Route designation is a euphemism for ``road closure'', for in practice the route designation process does not create new routes or open previously closed routes, it is used to close and restrict existing routes. Multiple use such as grazing, mining, filming, recreational vehicle use, and hunting on the public lands is critical to the county economy and important to the people who live there. Loss of motorized access is loss of multiple use. Loss of motorized access is also loss of the sustained yield of renewable and non-renewable resources necessary to sustain the product needs of a growing population, ranging from the shoes we wear to the products in our reading glasses and even to electric or hybrid vehicles, bicycles or the paint to mark pedestrian walkways. For all practical purposes, these losses are irrevocable.

I would like to provide you with a view into the world of route designation planning in the Desert District Conservation Area. Kern County's Planning Department's commitment to develop and review these plans has taken literally thousands of hours of staff time. Staff has attended hundreds of meetings and reviewed encyclopedia size documents. The Desert District Advisory Council has spent numerous meetings on the subject, listening to citizens, reviewing documents, and developing recommendations and specific requests to the Desert District Manager. We have traveled to Washington D.C. and Sacramento to meet with Department of Interior leadership to present our thoughts and ideas on improving the process. We have assisted user groups and citizens in understanding the process and in providing comments on the plans. We have been members of steering committees, workgroups, public meetings and technical review teams.

Yet, at the end of the day, our comments and concerns regarding route designation and management of multiple use have not made a difference. Management by closure, based on flawed science and anecdotal evidence is the result of these long, complicated, often tedious planning programs. We have had some small successes involving collaborative processes on smaller areas such as the El Paso region south of Ridgecrest, California, along with involvement of special groups and advisory committees to manage areas such as Jawbone Canyon. The City of Ridgecrest has also been involved in these efforts and I am submitting supplemental information that expresses the city's point of view. In the end, these small successes are the exception not the rule and mostly the result of local government intervention to the state or federal level.

Mr. Chairman, no parent likes to admit they have ugly children, but the route designation process is broken. Flawed process and flawed recovery plans drive flawed management plans. Each plan and each BLM field office develops its own criteria and process for conducting route designation and route evaluation. Mapping is often based on older maps that are not field verified. In the Northern and Eastern Colorado Desert Coordinated Management plan, there were five criteria and only 30 percent of the roads were evaluated. In the West Mojave Plan there were originally 23 criteria and then a decision tree was developed. Field verification was started, but never completed. Existing use is brushed aside and questionable claims of impacts to a biological resource are sufficient to close a route. Citizens fight to prove the route should stay open, while the mere anecdotal sighting of a migratory bird is in fact enough to have the agency close it.

It is no longer the Congressional mandate of multiple use and sustained yield that guides the route designation process. It is, for the most part, the staff biologists. With no consistent scientific methodology and clear criteria throughout the resource areas, route designation becomes a function of individual management discretion. The CDCA is one ecological region. We continue to ask the question: Shouldn't the multiple use and sustained yield goals of the CDCA Plan enacted by Congress, and not the management style and philosophy of each field office be the determinate factor in forming public policy decisions and actions?

Flawed process and flawed recovery plans combined with settlement agreements have created a CDCA area that barely meets the definition of multiple use. Our neighbor, San Bernardino County, one of the richest mineral areas in the United States, no longer has any viable potential for mining on public lands. Cattle and sheep grazing, once a vital, profitable industry, merely survives on the acreage left. We mitigate for the loss of other resources, but not for the loss of vital resources that fuel the economies of our desert communities.

Mr. Chairman to conclude, route designation must be based on good science and sound public policy. I am not opposed to route closures, only to a process that has no consistent criteria or standards. The

public should be able to understand the decision-making process and how conclusions are reached. It should be clear, consistent, fair, and promote multiple use on public lands while conserving important cultural and biological resources for the future generations. It should be what Congress enacted.

In summary, I would suggest the following actions for the Committee to consider.

1. U.S. Fish and Wildlife should proceed, with all deliberate speed, to commence the review of the Desert Tortoise Recovery Plan.

2. The Endangered Species Act requires monitoring to determine the effectiveness of the recovery measures. Monitoring should be completed.

3. The Bureau of Land Management should develop, with full public input, a consistent process and standard for the route designation including a requirement that the loss of resource and recreational opportunities would be balanced and mitigated by the inclusion of opportunities in other areas.

I would be pleased to answer any questions you or the other members of the Subcommittee may have.

NOTE: Additional information included with Mr. McQuiston's statement has been retained in the Committee's official files.

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Mr. Radanovich. Thank you, Mr. McQuiston. Are those your notes beside you?

Mr. McQuiston. The comment that I didn't have time to make, but thank you, this is the California Desert Conservation Area Plan in 1980. This is not all-inclusive. These are the plan amendments that it takes to implement this particular 1980 plan. It is still growing and it still is not right.

Mr. Radanovich. Thank you, Mr. McQuiston. Mr. Leimgruber, welcome to the Committee. If you want to begin your testimony, please.

STATEMENT OF THE HON. WALLY LEIMGRUBER, SUPERVISOR, DISTRICT 5, IMPERIAL COUNTY, EL CENTRO, CALIFORNIA

Mr. Leimgruber. Thank you, Chairman, and Members of the Committee, for inviting me to provide testimony at this hearing. I am speaking today as the Imperial County Supervisor. My district, the Fifth District, includes the entire east side of Imperial County, and includes the entire 160,000 acres of the BLM Imperial Sand Dunes recreational area.

I am a current member of the Bureau of Land Management Desert District Advisory Council representing local government. I also serve as Chairman of the Quad State County Government Coalition.

I would like to speak today about the Imperial Sand Dunes and the work of the Desert District Advisory Council. The Sand Dunes are very special to Imperial County. The Imperial Sand Dunes Recreational Area provides over $44 million per year benefit to our county, a county with limited economic opportunity.

This is an area where we want to have families come and enjoy. We want these families to come back out to Imperial County and feel safe. This county time and time again, with over 750,000 visitors a year that we receive at the Dunes, are a guest, and we want them to be able to pursue activities that make the Dunes world-famous safely in a family environment.

We work closely with the local BLM El Centro office on law enforcement issues to ensure that that atmosphere exists. Sine 2001 the Imperial County Board of Supervisors, the Imperial County Sheriff, the BLM, and the California Highway Patrol have

worked together to increase law enforcement presence and enforcement in the Dunes, and it has been highly successful.

We are involved in the process of developing the plan for the management of the Dunes, and want to see the area reopened based on new information and science now available. Protection of the resource of the Dunes, and the recreational opportunity in the Dunes are important to Imperial County.

I am currently a member of the Bureau of Land Management District Desert Advisory Committee representing local government. As you know the Committee was established by Congress through the Federal Land Policy and Government Act as a citizens advisory group to BLM.

But more specifically the Desert District Advisory Council is to provide counsel and advice to the California Desert Conservation Area District Manager regarding management of the public land resource implementation and resolution of land use conflicts, and assurance of public input in land use and management decisions.

My experience on the District Desert Advisory Council has come at a time when land use conflicts are always on the agenda. We have discussed the regional plans, including Imperial Sand Dunes, at more than one meeting.

At a meeting in Barstow, we had over 200 people attending to testify on the Dunes as a world-class family recreational area. This kind of participation and forum, combined with the quality of the DAC members, makes this truly an assert to the public land management process.

Yet, it is my experience that the recommendations of the Committee are not given real consideration. At our December 8th, 2001 District Advisory Council meeting, after listening to all of the public input and decision, eight specific resolutions were passed for consideration by BLM.

One of the resolutions recommended that the use within the Imperial Sand Dunes planning area are affected by decisions in the final recreational area management plan be mitigated. We mitigate for the loss of other resources, but not for the loss of recreational opportunities, and my question is why not.

None of our recommendations were accepted and the response letter that we received in May of 2002 was to discouraging, and I have attached a copy of the BLM response in my written statement for your review.

The District Advisory Council commits time and resources to review issues and conduct meetings. The public takes time to come and provide comment. The BLM spends time and money, and staff resources, to conduct the meeting. There should be some administrative review of the DAC recommendations at a higher level than a district manager.

Mr. Chairman, to conclude, the Imperial Sand Dune Recreational Area is unique as both a natural resource and recreational opportunity. We need to formulate the best plan that will expand the opportunities and ensure the economic benefits to the community of Imperial County. I would be pleased to answer any questions that yourself or other members of the Subcommittee may have.

[The prepared statement of Mr. Leimgruber follows:]

Statement of Wally Leimgruber, Fifth District Supervisor,
Imperial County Board of Supervisors

Thank you, Chairman and members of the Committee for inviting me to provide testimony at this hearing. I am speaking today as the Imperial County Supervisor. My district, the Fifth District includes the entire

east side of Imperial County and includes the entire 160,000 acres of the BLM Imperial Sand Dunes Recreation area. I am a current member of the Bureau of Land Management Desert District Advisory Council representing local government. I also serve as Chairman of the Quad State County Government Coalition.

I would like to speak today about the Imperial Sand Dunes and the work of the Desert District Advisory Council. The sand dunes are very special to this county. The Imperial Sand Dunes recreation area provides over $44 million benefit to our county, a county with limited economic opportunism. This is an area that we want to have families come and enjoy. We want you to come out here and feel safe. We want you to come back to the county time and time and time again. The over 750,000 visitors a year we receive at the dunes are our guests; we want them to be able to pursue the activities that make the dunes world famous, safely, in a family environment. We work closely with the local BLM El Centro Office on law enforcement issues to ensure that atmosphere. Since 2001, the Imperial County Board of Supervisors, the Imperial County Sheriff, the BLM, and the California Highway Patrol have worked together to increase law enforcement presence and enforcement in the dunes, and it has been highly successful.

We are involved in the process of developing the plan for the management of the dunes and want to see areas reopened based on the new information and science now available. Protection of the resources of the dunes and the recreational opportunities in the dunes are important in Imperial County.

I am currently a member of the Bureau of Land Management, Desert District Advisory Committee representing local government. As you know, this Committee was established by Congress, through the Federal Land Policy and Government Act, as a citizens' advisory group to the BLM. But, more specifically, the DDAC is to provide counsel and advice to the CDCA District Manager regarding management of the public land resources, implementation, resolution of land use conflicts and assurance of public input in land use and management decisions.

My experience on the Desert District Advisory Council has come at a time when land use conflicts are always on the agenda. We have discussed the regional plans, including the Imperial Sand Dunes, at more then one meeting. A meeting in Barstow had over 200 people attending to testify on the dunes as a world-class family recreation area. This kind of participation and forum, combined with the quality of the DAC members, makes this truly an asset to the public land management process.

Yet, it is my experience that the recommendations of the Committee are not given real consideration. At the December 8, 2001, DAC meeting, after listening to all the public input and decision, eight specific resolutions were passed for consideration by BLM. One of the resolutions recommended that all uses within the Imperial Dunes planning area affected by decisions in the Final Recreation Area Management Plan be mitigated. We mitigate for the loss of other resources, but not for the loss of recreational opportunities. Why not? None of our recommendations were accepted and the response letter we received in May 2002 was discouraging.

The DAC commits time and resources to review issues and conduct meetings. The public takes time to come and provide comments. The BLM spends money and staff resources to conduct the meetings. There should be some administrative review of the DAC recommendations at a higher level then the District Manager.

Mr. Chairman to conclude, the Imperial Sand Dunes Recreation Area is unique as both a natural resource and a recreational opportunity. We need to formulate the best plan that will expand the opportunities and ensure the economic benefits to the communities of Imperial County. I would be pleased to answer any questions you or the other members of the Subcommittee may have.

Attachments to Mr. Leimgruber's statement have been retained in the Committee's official files.

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Mr. Radanovich. Thank you very much, Mr. Leimgruber. I appreciate your testimony. Mr. Michael Dorame, welcome to the Subcommittee. If you want to begin your testimony that would be much appreciated.

STATEMENT OF THE HON. MICHAEL DORAME, SUPERVISOR, DISTRICT 5, INYO COUNTY, LONE PINE, CALIFORNIA

Mr. Dorame. Thank you, Mr. Chairman, and Committee members, I thank you for providing the opportunity to address this body regarding specific impacts to Imperial County government, its residents and other public land users, and recreationalists, brought on by actions taken by Federal land management agencies.

It has been my experience as a county supervisor the past 6-1/2 years to witness how much public land management practices are driven by reaction to lawsuits brought on by environment extremists and other interest groups, without regard for consequences suffered by people in general.

As a result of the California Desert Protection Act, some roads were closed denying access to public lands in my supervisorial district. Some of those roads had historic access to mines, grazing, hunting locations, back country camping, and other recreational activities.

Interestingly, most of the roads designated for closure led to natural springs. Also, many closures resulted by administrative fiat. The additional land management responsibilities came without additional human resource funding. So internally the park rangers decided what they could and could not effectively patrol. No money, no manpower, no access.

One very important county maintained road is Saline Valley Road, originally designated as the westerly boundary of the expanded parklands and agreed to as such by opposing interest groups. After reaching agreement over this issue the boundary maps were submitted to Congress, but had been altered, and did not reflect what was agreed to.

Indeed, the westerly boundary had been moved west of Saline Valley Road to the Inyo Mountains, insidiously performed without public input. I asked a member of the Sierra Club Congressional Boundary Committee if they would consider changing the boundary back to Saline Valley Road, and the response was that was a congressionally designated boundary, and it will take an Act of Congress to change it.

As I address you today, Inyo County finds itself in a precarious financial dilemma. Very recently, we have experienced tremendous monsoonal downpours that have washed out many of our county-maintained roads in the desert, to the extent that we have declared a local emergency, and have applied for emergency funding from the State to enable us to expedite repairs that will cost in excess of a million dollars.

Saline Valley Road is one of those damaged, and here is the hook. Historically the Inyo County Road Department has used materials from borrow pits located west of Saline Valley Road for repair and reconstruction.

With the movement of the westerly boundary to the Inyo Mountains, those material borrow pits are now in designated wilderness, thus driving up the cost of road repairs, because

without Park Service cooperation and permission, we have to haul material over 50 miles in some cases, depending on where the road damage has occurred.

Today, I am asking for your help. Please consider taking action that will eventually result in the redesignation of Saline Valley Road as the westerly boundary of Death Valley National Park. The result will be mutually beneficial to Inyo County, the Park Service, and the public in general; a county road that is more cost-effectively maintained and a safe, more enjoyable, visitor experience, and less land responsibility for the park rangers.

Additionally, under the same Act, I have constituents who reside in Homewood Canyon, whose historical water rights are in potential jeopardy because their springs were either carelessly or carefully drawn into the BLM wilderness boundary.

Some of those folks have resided in the canyon since before the BLM was established, and possess certified, valid existing State water rights. Please make them whole by taking action to cherry stem their spring water source out of the BLM wilderness.

Another example of infringement on private property rights is the BLM closure of Surprise Canyon Road. It is a congressionally designated cherry-stemmed road through BLM and Park Service wilderness, terminating at Panamint City. Private owned property.

In designating the Surprise Canyon cherry-stemmed boundaries, Congress clearly recognized and by its action acknowledged that private property owners had a right to ingress and egress to their private end holdings.

In closing off access to Surprise Canyon Road, BLM's action is inconsistent and administratively at odds with the Congressional order which established the boundaries that identified Surprise Canyon Road, P71, as a cherry-stemmed access to Panamint City under the California Desert Protection Act.

BLM's action is a de facto change of a Congressionally established boundary without the required and necessary action by Congress to change a wilderness boundary. If it takes an Act of Congress to change a Congressionally designated boundary, then that is just what it takes.

And I say to my friends at the Sierra Club that you can't have it both ways. These private property owners have valid and existing RS2477 access rights that are being violated. I ask you to take action as a Congressional body that sends a clear message to the people of the United States that their Congress is in charge and will not allow further violations of the people's private property rights. Thank you for listening to a fellow representative of the people, and I will answer any questions that you may have.

[The prepared statement of Mr. Dorame follows:]

Statement of Michael A. Dorame, Fifth District Supervisor and Chairperson, Board of Supervisors, Inyo County, California

Mr. Chairman and Committee Members, thank you for giving me the opportunity to address this body regarding access to the California Desert Conservation District. I am proud to represent Inyo County, which is located on the eastern side of the Sierra Nevada Mountains, consisting of 10,140 square miles with a population of approximately 18,000. We are a year-round vacation destination point with vast scenic and recreational areas offering a wide variety of outdoor recreational activities including fishing, camping, off roading, water skiing,

picnicking, sightseeing, photography, hiking, hunting and winter sports. We are noted for having the lowest and highest land elevations in the continental United States and we are home to the Death Valley National Park. Our primary source of revenue is recreational tourism. Less than 2% of the land is privately owned. With over 98% of our land being owned by the City of Los Angeles, the Federal Government and other governmental agencies, protecting personal property and access rights is vital to the health and well being of our County.

For the past several years we have been inundated with changes to the governmental rules, regulations, guidelines and management plans for our public lands. We have seen a historic ``packing'' industry reduced to virtually nothing due to new restrictions in the Inyo National Forest Plan, which restricts access and party numbers. We have had subjective closures of roads, which were addressed by our Board in Inyo County Resolution No. 2002-36, which reaffirmed and established standards for the recognition of rights-of-way in accordance with United States Revised Statute 2477. We added a ``Resource Management'' Coordinator to our staff just to keep abreast of the voluminous numbers of requests for comment on proposed changes affecting public lands in our County. We are in the process of yet another attempt by Senator Boxer to claim more of our public lands for wilderness designation and what will most probably result in further access restrictions. We continue to vehemently argue for local control and consideration when efforts are instigated to change designations, close roads and/or deny access to those lands located in Inyo County. We lost a hard fought battle to gain local input on the boundary designations for the Death Valley National Park when it was established, which ultimately resulted in access being denied to a multitude of personal and mining properties.

On May 7, 2002, the Inyo County Board of Supervisors adopted Resolution No. 2002-34 addressing our concerns with a proposed legislative action to expand the wilderness designation for a large part of the Inyo National Forest. In that Resolution we acknowledged that our citizenry has identified the protection of recreational and agricultural lands and access to public lands as priorities; we acknowledged our 2001 Inyo County General Plan Update Goals and Policies Report, which identifies policies to preserve and protect: (a) a variety of recreational opportunities; (b) appropriate access to resource managed lands; (c) current and future extraction of mineral resources; and (d) use of public lands for agricultural operations; as well as goals to provide for a balanced approach of resource protection and recreation and resource use of lands. (See Attachment A.)

In Resolution No. 2002-34, the County of Inyo also identified that the following be considered when expanding the Wilderness Systems in the County of Inyo:

<bullet> Provide opportunities to obtain local consensus and support for any changes to public land designations in Inyo County and address the concerns of residents and public land users;

<bullet> Ensure, through prior economic analysis, that Inyo County's communities and businesses will not be adversely impacted by changes to public land designations;

<bullet> Protect existing recreation, grazing, packing, mining, research, archeological and cultural uses on federal lands, including access;

<bullet> Protect private property rights, including vested water rights, and access to private land inholdings and other lands that may be affected by adjoining federal land acquisitions;

<bullet> Ensure there are no net loss of privately owned property in Inyo County as a result of expanded Wilderness designations; and, finally

<bullet> Ensure there is no net loss in revenues to local governments necessary to provide and maintain essential public

facilities and services.

The Inyo County Board of Supervisors remains committed to continuing to protect our inherent rights whenever and wherever our lands and our access to these lands are jeopardized. More specifically, the California Desert Conservation District is located in the southern portion of Inyo County. Just a few examples of how denied access impacts our County follow.

Some road closures and the denial of access to public lands resulted from the California Desert Protection Act which is encompassed by the District. These roads, which were closed, had historic access and were R.S. 2477 right-of-way roads. When the Park boundaries were drawn the following roads were eliminated and are no longer reflected on the Park maps. It should be noted here that no local input was taken prior to the elimination of these roads. Some of the roads closed or eliminated are: Waucoba Wash and Waucoba Mine Road, Lower Saline Road, Rainbow Canyon Road, Jackass Flats, 4 Spurs off the main road. (A more detailed list of the roads can be found on Attachment B.)

Private property rights are severely infringed upon when wilderness boundaries are established without regard to local input relative to private inholdings, such as the case with the residents of Inyo County who live in Homewood Canyon. The water source for some of the residents in Homewood Canyon are natural springs and when the boundaries for the California Desert Protection Act were drawn these springs were absorbed into the BLM wilderness boundaries. As a result the water source for a domestic water supply for certain individuals was put in jeopardy. Those water conveyances must be ``cherry stemmed'' and the boundaries redrawn so that ingress and egress to the springs is removed from the BLM jurisdiction in order to protect a fragile domestic water source and the property rights for those effected residents.

Another example of infringement on private property rights is the BLM closure of Surprise Canyon Road. Surprise Canyon road was a Congressionally drawn ``cherry stem'' boundary of the California Desert Protection Act. Panamint City is at the end of Surprise Canyon Road and part of the ``cherry stem'' designation. There are approximately 28 private property owners who are currently denied access to their property in Panamint City because of the BLM action to gate the road.

Originally when the boundaries for the California Desert Protection Act were drawn Surprise Canyon Road, was designated as Route P71. This is the road to Panamint City, and it was clearly ``cherry stemmed'' to allow access to the private property. In 2000 the Center for Biological Diversity (CBD) filed a lawsuit against the BLM. In May 2001, BLM, as a settlement to the lawsuit, agreed to perform an emergency closure of Surprise Canyon Road up to Panamint City and to perform an Environmental Impact Statement (EIS). This closure was the result of an agreement between the BLM and CBD, and did not involve any local or public input. The EIS is to include a decision regarding human access into the Surprise Canyon as well as a determination about the suitability of designating Surprise Canyon Creek as an addition to the system of Wild and Scenic Rivers of the United States under the provision of the Wild and Scenic Rivers Act. BLM in reaching a settlement with the Center, agreed to mechanically close Surprise Canyon Road, in direct opposition to the California Desert Protection Act boundaries, and thus deny access to those individuals who have private property in Panamint City, even though in the lawsuit the Court ordered that the private property owners in Panamint City were not to be denied access to their property. BLM's action is inconsistent with the Congressional Order, which established the boundaries and identified Surprise Canyon Road, Route P71, as a ``cherry stemmed'' access to Panamint City in the California Desert Protection Act.

Here is another example of the effects of indiscriminate boundary designation. When discussions began regarding the western boundary for the Death Valley National Park, various environmental and special

interest groups became involved in the negotiations for the boundary line. After years of negotiations and deliberations, the group agreed that the western boundary for the Park would parallel the eastern side of Saline Valley Road. This was done because Saline Valley Road could be easily defined as a boundary line because there was a County Road already being maintained. What transpired next, was that one party left the table believing that an agreement had been reached on the western boundary, which identified the eastern side of Saline Valley Road as a boundary line. The group remaining at the table then changed the boundary line and extended it beyond Saline Valley Road west to the Inyo Mountains thereby encompassing Inyo County's Saline Valley Road into the National Park.

While the County continued to have responsibility for Saline Valley Road because it was listed on the County's Maintained Mileage System as well as it being an R.S. 2477 right-of-way, with the change in boundary, the County lost access to its ``road materials'' borrow pit and in order to maintain Saline Valley Road now must transport road materials over 50 miles increasing the cost to the County of maintaining the road. Had local concerns been heard by those responsible for the indiscriminate changing of the western boundary line and acted accordingly, this unfortunate situation would not exist.

As a real-time example of what I am referring to, from July 29, 2003, through August 2, 2003, torrential rainfall in Inyo County resulted in massive and dangerous mud and rock slides to the roads in the southern portion of the County. On August 8, 2003, our Director of Emergency Services declared a Local Emergency because the damage to our roads resulted in over $1,060,000 and, in a small county like Inyo, this unexpected cost will virtually wipe out our road reserves. One of the roads affected by these slides was Saline Valley Road.

In order for the County to expeditiously and cost effectively complete the emergency repair of that road, we need access to the closest road materials pit, our Waucoba Borrow Pit, which is closed to us because of the Death Valley National Park boundary. We have just received authorization from the National Park Service to allow us to use the borrow pit temporarily for our repairs to the Saline Valley Road. In the Park Service's authorization to utilize the borrow pit, they have restricted our use in such a manner as we will probably not be able to sufficiently repair the road without supplemental materials being transported. While we are grateful that access in this instance was given, the fact remains that any on-going or future repairs will still be costly to the County because we have been denied continued access to our original borrow pits.

Additionally, what is most frustrating about this situation is that it would be mutually beneficial to both the County and the Park Service if the original boundary line of Saline Valley Road had been left as originally agreed upon or was to be restored. The Park would have enhanced visitation because of access via a well-maintained County road and the County would regain access to their materials borrow pit to promote the cost effective on-going repair and maintenance of the road.

In closing, I would like to encourage this Committee to take the message back to their peers in Congress that when Congressional action is taken on wilderness designations and boundaries, that those Agencies tasked with the responsibility to regulate and enforce these actions be provided with sufficient resources and an understanding of the Act to ensure that the enforcement is consistent with the intention of the Act. It is also vital that there is a clear and concise understanding that enforcement must encompass local input to ensure the protection of local priorities, i.e., economy, environment, personal property rights, access, etc. Additionally, I would like to request that boundary adjustments be made to rectify the denial of access to private property in Inyo County, and to bring the western Boundary of the Death Valley National Park back to the originally agreed upon designation of being

parallel to the east side of Saline Valley Road.

Attachments to Mr. Dorame's statement have been retained in the Committee's official files.

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Mr. Radanovich. Thank you very much, Mr. Dorame. I appreciate your testimony. Mr. Postmus, welcome to the Committee. If you want to begin your testimony, that would be terrific.

STATEMENT OF THE HON. BILL POSTMUS, SUPERVISOR, DISTRICT 1, SAN BERNARDINO COUNTY, SAN BERNARDINO, CALIFORNIA

Mr. Postmus. Thank you very much, Mr. Chairman, and welcome to the both of you, and thanks for coming down to San Diego. We are glad to be here today because of the weather, and the fact that it is 75 degrees out today. My name is Bill Postmus--

Mr. Radanovich. You would agree that this is a better choice than Death Valley would you not?

Mr. Postmus. Much. Absolutely. My name is Bill Postmus, and I am the county supervisor for the First District of San Bernardino County, California. San Bernardino County is the largest local governmental jurisdiction in the lower 48 States, and contains over 8 million acres of public lands under a variety of Federal jurisdiction.

San Bernardino County has experienced significant impacts from the desert management and so-called protection over the past 27 years, and my word to the Committee is simple; enough is enough.

My request to this Committee, to Congress, and to the Department of Interior, is four-fold. Number 1, we did a moratorium on implementation of land use planning until the monitoring of recommendations of the General Accounting Office audit are implemented on reserves, parks, and wilderness.

The imposition of further planning decisions and elimination of land uses is definitely inappropriate. Neither the Bureau of Land Management, the Park Service, nor the Fish and Wildlife Service have taken positive actions to deal with the main causes of the tortoise decline. Instead, they continue with land closures.

Number 2, we request a thorough review of the National Park Service's units and programs. They have eliminated most historic land uses within their jurisdictions, and we are not aware of any monitoring to determine the effect on resources or economics in our area.

Number 3, the Congress should cease all private land acquisitions by the Federal Land Management Agencies within the California Desert Conservation Area. San Bernardino County now has lost over 600,000 acres in the last 4 years. That is 600,000 acres. Plus, many ranches and mines.

And currently there is the passage of H.R. 380, which contains a retroactive provision, such that at least the county's tax base losses would be made up by a interest-bearing endowment, and before we recommend amendments to the California Desert Protection Act to remove sunset provisions of Park Service advisory commissions, provide for the inclusion of access for wildlife habitat management, including maintenance of water facilities within the Park Service wilderness units, and the review of wilderness boundaries, and review current actions of the National Park Service regarding limitations on hunting under the guise of the Endangered Species Act.

The California Desert Conservation Area was created in a

special section of the Federal Land Policy and Management Act of 1976, emphasizing a multiple use management of public lands. This particular concept had become lost in subsequent legislation and regulatory implementation.

The California Desert Plan was completed in 1980, and approved by the U.S. Secretary of the Interior. It affirmed a balance multiple use management of public lands, together with wilderness preservation for special interest areas. That plan was recommended favorably by a unanimous vote of the Desert Advisory Council.

After adoption of the plan, it was challenged by the off-road vehicle interests and one local government in a now-forgotten lawsuit. Ultimately decided in the Ninth Circuit Court of Appeals, it was found that while the plan made everybody a little unhappy, it had completely followed its congressional mandate to balance land use, and provide for new uses, and protect wilderness values.

Unsatisfied with the outcome of this particular litigation, environmental groups immediately launched a plan to impose their vision, and I specify their vision, of desert management. Using Congress rather than the courts, their efforts resulted in the passage of the California Desert Protection Act in October 1994, designating almost 9 million acres of wilderness on the Bureau of Land Management and Park Service administered lands. It eliminated by a designation of thousands of miles of existing access road. Concurrent with the passage of the Desert Protection Act, actions took place relative to implementation of the Endangered Species Act within this region.

Specifically, land management protection proposals regarding the Desert Tortoise, and in 1994 Critical Habitat was designated a recovery plan which was adopted. The Protection and Land Management goals of the Desert Tortoise Recovery Plan, and the California Desert Protection Act, have never been actually integrated. They moved forward on parallel tracks.

This caused extended land use restrictions, non-consideration of resources management options, and a doubling up of closures without consideration of the effects of one another against the other.

The Desert Protection Act has already closed and subjected to wilderness management millions, and I mean millions of acres of public land. The recovery plan drives further closures, and the removal of multiple-use from remaining public lands within the desert and San Bernardino County.

Over the last decade, livestock grazing has largely disappeared. Mining has been very much restricted, and no new mining in the foreseeable future. Recreational uses for hunting, rock hunting, and further enjoyment has been completely diminished.

In December of 2002 the General Accounting Office found that for all the actions implemented either from the wilderness parks or from the desert tortoise recovery plan, neither the Fish and Wildlife Service, nor the Bureau of Land Management, were evaluating the effectiveness of their actions.

Yet, they continue to issue and implement plans that propose the establishment of even more reserves. The total cost to date exceed over $100 million, and there is some estimates that are even higher than that, with little to show for that particular dollar amount.

We do not oppose conservation and property management of the public lands and their many resources. We do believe, however, that the remaining BLM administered public lands must remain open for multi-use land management in which the public

is afforded an opportunity for access.

In closing, I would just again like to thank the Committee, the Subcommittee, for the meeting down here in San Diego today, and I would be happy to answer any questions. Thank you, Mr. Chairman.

[The prepared statement of Mr. Postmus follows:]

Statement of Bill Postmus, First District Supervisor,
San Bernardino County Board of Supervisors

I am Bill Postmus, Supervisor, First District of San Bernardino County, California. As such I represent perhaps one of the largest geographic areas of public lands in the United States. San Bernardino County is the largest local government jurisdiction in the lower 48 and contains over 8 million acres of public lands under a variety of Federal administration including Bureau of Land Management (BLM), National Park Service (NPS) and U.S. Forest Service (USFS). The subject of my testimony today is directed to those areas under BLM and Park Service administration.

I feel well qualified to make this statement since San Bernardino County, besides having a huge area of public land within its boundary, has also experienced the greatest impacts from desert management and, so called protection, over the past 27 years. My word to the Committee is simply ``enough is enough!'' I and the members of my panel, during our testimony, will present specifics as to why we feel that way and will present recommendations to you and to the Congress for future action. We also will touch on matters as related to why task measures have failed to meet the overall public interest, particularly the loss of public access to public lands and the loss f the concept and principles of multiple use management.

My request to this Committee and to the Congress is four-fold:

1. First, we would like to have the Department of the Interior (DOI) impose a moratorium of the implementation of further land use planning within San Bernardino County. We have the Northern and Eastern Mojave (NEMO), Northern and Eastern Colorado (NECO), and the draft of a Western Mojave Plan currently before us. We feel strongly there must be a halt until the elements of the General Accounting Office (GAO) audit completed last December that reported on issues associated with management of the desert tortoise are implemented. Specifically until there is efficacy monitoring, the imposition of further planning decisions such as land acquisitions and elimination of land uses is absolutely inappropriate. Neither BLM nor FWS has taken any positive actions to deal with the main causes of tortoise decline--disease and predation. Instead they continue to promote further land closure.

2. We request a thorough review of National Park Service Programs and whether they accomplished the goals that they were set out to accomplish. They have eliminated most historic land uses within the region, and we are not aware of any monitoring that has taken place to determine the effect on resources. We also feel strongly that the Park Service has inadequately portrayed the heritage aspects of those programs and has not provided any evaluation of any economic losses, including to county revenues.

3. The Congress should cease all land acquisitions by the land management agencies within the California Desert Conservation Area. San Bernardino County has lost over 600,000 acres in the last five years, plus ranches and mines. This has had a significant impact on our tax base. We urge the passage of H.R. 380, which contains retroactive provision such that at least the counties loss of tax base would be made up by interest bearing endowment.

4. We recommend amendment of the California Desert Protection Act specifically to provide for removal of sunset clauses associated with the advisory commissions that were established to recommend on Park Service plans. In removing the sunset clauses, we further recommend that the charters be expanded to include oversight on all planning and actions taking place within the boundaries of the three national park units within the county. We also believe that the California Protection Act should be amended to include access for wildlife habitat management including maintenance of water facilities within Park Service wilderness areas. Through oversight, either accidental or otherwise, the access provisions contained in Title I of the Act providing for such access within BLM wilderness was not extended to the Park Service wilderness established in Titles III, IV, and V of the Act. We also understand that NPS is attempting to limit the hunting protections contained in the CDPA. In so doing they are seeking regulatory direction from the State of California. Congress must direct The Department of the Interior to cease this action. The regulatory direction being sought ties the need to The Endangered Species Act and the desert tortoise recovery plan. This is ludicrous given the lack of any definitive foundation in studies or research for a causation of tortoise decline in the Eastern Mojave from legal hunting activity.

I want to review for the Committee and for the record a brief history of the California Desert Conservation Area. The California Desert Conservation Area (CDCA) was created in 1976 as a special section of the Federal Land Policy and Management Act (FLPMA) of 1976, emphasizing multiple-use management of public lands. The discussion of desert management had been a continuous subject of conversation among resource managers, the public and Congress in the early 1970s, and the creation of Conservation Area was folded into the passage of FLPMA in 1976 sponsored by Congresswoman Shirley Pettis who then represented the area prior to Congressman Jerry Lewis.

The California Desert Plan was directed to be completed by 1980 under the provisions that created the Desert Conservation Area, and during that four-year time frame, that task was accomplished. The Plan was approved by Secretary of the Interior, Cecil Andrus, during the last days of the Carter administration. It reflected a balancing that affirmed multiple use management of public lands together with wilderness preservation for special areas. The plan was recommended favorably by a unanimous vote of the Desert Advisory Council at a meeting convened in the center of the Desert Conservation Area at Zyzzx, California.

Interestingly enough after adoption of the plan, it was challenged by a group of off-road vehicle organizations and one local government within the Desert Conservation Area in a now-forgotten lawsuit. It was argued in District Court and the 9th Circuit Court of Appeals. The courts found that the whole plan made everybody a little unhappy, but that it had completely followed its mandate to balance land use, new uses and protection including wilderness management, and the courts affirmed that BLM could proceed further with implementation.

Unsatisfied with the outcome of that litigation the environmental groups immediately launched a plan to impose their vision of desert management on the public. They used Congress rather than the Courts. This included overriding BLM's recommendations for some two million acres of wilderness by their proposal of creating six million acres of wilderness in the area, establishing a new national park and expanding both Death Valley and Joshua Tree National Parks.

The environmental organizations gained their with the assistance of the two Democratic senators from California which were elected in 1992, with passage of the California Desert Protection Act (CDPA) in October 1994, which essentially carried out their agenda. It established close to 9-million acres of wilderness designation both on BLM and National

Park Service administered lands and eliminated, by these designations, thousands of miles of existing access roads.

It is important to note that the efforts of the environment organizations and the senators to impose the California Desert Protection Act on the citizens of San Bernardino County and the rest of the Desert was opposed by the House delegation in place at the time, most of whose members are still present in the House: Congressmen Lewis, Hunter, and Thomas, who took specific actions for amendments, few of which were passed by the, then Democratic controlled, Congress. I also point out that the Chairman here today, Richard Pombo, was also a participant and carried amendments relative to access right up until the passage in the House, though those efforts, sad to say, were rebuffed at the time.

Concurrent with the passage of the protection act, actions were also taking place relative to implementation of the Endangered Species Act within the region and specifically land management protection proposals regarding desert tortoise. The Desert Tortoise (Gopherus agassizii), is a species native to the Mojave Desert and whose range extends from the Mojave-Ridgecrest area, east to St. George, Utah. Critical habitat was designated in 1994 and the Recovery Plan for the species was also adopted the same year.

What has never happened and the question that I believe is appropriate for inquiry is that the protection and land management goals of the Desert Tortoise Recovery Plan and the California Desert Protection Act have never been integrated. They move forward on parallel tracks. The Desert Protection Act has already closed and subjected to wilderness management millions of acres of public lands, the Recovery Plan is moving forward in its land use plans to provide further closures and remove from multiple use remaining public lands within the Desert.

What have been the effects of the legislative and regulatory actions by the Federal government over the last decade?

First, livestock grazing within the region has been severely impacted. For all practical purposes sheep grazing in the West ended after Fish and Wildlife Service issued a jeopardy opinion in 1990. While sheep have continued to come in small numbers, in the big picture they no longer provide any economic usage in public lands.

WEMO, if adopted, will permanently close these allotments. Likewise, cattle grazing has also all but disappeared from the desert with the exception of two or three allotments. The National Park Service acquired most of the higher elevation grazing with the establishment of the Mojave National Preserve. While grazing was protected by legislation, the Service aggressively sought funding to buy out as many ranches as possible, and with the exception of the Blair operation, have succeeded in eliminating all of the livestock operations in that region. And now, even after hunting protection was guaranteed in the CDPA, the NPS management is seeking further restriction. Meanwhile, outside of National Park Service areas remaining grazing has been impacted by tortoise biological opinions, and litigation by environmental groups such that much of the spring use traditionally has taken place has been severely restricted. This despite showing over 100 years of co-existence, and some of the best remaining tortoise populations are within the grazing allotments.

Perhaps the greatest impact on the desert from an economic standpoint has been the effect of the California Desert Protection Act on mining. The California Desert Conservation Area, and specifically San Bernardino County, has been touted for the last century as a ``world class minerals area.'' BLM had a conference in the late 1980s in which a variety of scientific papers on known mineral values and current technology documented and confirmed these values. Those values were basically locked up because of the Desert Protection Act since most of the highly mineralized areas were withdrawn by designated

Wilderness Areas and the National Park Service units. Though the legislation did protect valid existing rights, those are very difficult to exercise within areas of wilderness and the National Park Service.

A case study in point is the Rainbow Talc Mine in the southeast corner of Death Valley National Park.

The mine had been located in the during the 1980s by two mining explorers and they discovered and filed claims upon what was considered some of the most highly valuable talc certainly in the United States. They had international interest in development. The area had been surveyed for wilderness characteristics by BLM in the 1970s when they did the wilderness inventory and was specifically recommended excluded in the 1980 California Desert Plan for inclusion in the wilderness preservation system. Past mining activity had closed down at the Ibex area adjacent when it was incorporated into Death Valley National park at an earlier stage. Though this is clear evidence of mineral values in the area. Instead of accepting BLM recommendation, in 1994 the California Desert Protection Act expanded Death Valley to incorporate the area of the Park ignoring the agency recommendation, and additionally placing it in the National Wilderness Preservation System. The access road from Highway 127 was in such a condition that a normal touring car could pass over much of its distance. This was totally ignored in the CDPA and while it originally served as a boundary between two wilderness study areas, it ceased to exist. The outcome of several years of negotiations in which no mining plan could ever be approved on NPS staff, the owners of the claims sold the property to the National Park Service. Sadly, it was a mine that could have generated income, property taxes and employment. Instead, the agency spent public money to prevent its development. Located some 4.5 miles from a paved road, it is now far removed from even public view and few will ever see the frame that the original owners build over the mine even though it is a lovely historic structure.

From the information that we have been able to glean from the mining industry in general, all mine exploration in the CDPA has ceased. Few anticipate that if economic deposits are located that the regulatory framework is such that development could be accomplished. San Bernardino County has historically had major mines open and close in the desert, and while some have cried ``boom and bust,'' the fact of the matter is that there has been a rather even flow in recent decades of mineral development. As one mine begins to slow it has always seemed that another mine came into play. The most recent example is the Coliseum Mine that was actively worked prior to the passage of the CDPA. It has now been closed. Viceroy Mine along the Nevada line reached its peak production about concurrently with the passage of the CDPA and was so active that in fact the boundaries of the Mojave Preserve were shrunk to accommodate it. It is now undergoing closure. There are no new mines to replace these economic properties or to replace lost tax revenues.

Molycorp in the past has produced rare earths for a number of years but has run into regulatory issues associated with National Park Service. They are still milling but have not returned to production.

The sad fact is that as Coliseum and Viceroy close, and Molycorp continues to struggle to come back, there is no new mine in the wings in the County to replace the tax revenue that has been lost by the closures of these properties. The mineral values, particularly with Molycorp are significant for revenue as well as strategic ore and technology applications. The only ongoing example is, of course, the mine in Imperial County in Indian Pass that Supervisor Leimgruber can speak to in far more detail. While a valuable property, that too illustrates the difficulty in getting any mining property permitted.

Fundamentally, with no access mining and other economic use simply cannot exist.

Concurrent with the closure of public access within the desert

associated with national park and wilderness designation we have been faced with the new round of land use planning undertaken by BLM in the region. These were the NECO, NEMO and West Mojave planning efforts that have affected San Bernardino County. NECO and NEMO are completed. One aspect of the Recovery Plan is the designation of Desert Wildlife Management Areas (DWMAs) covering a recommended 1,000 square miles (640,000 acres). In NECO, Chemeheuvi Valley is a designated DWMA with over 800,000 acres. NEMO has also been completed and designated smaller DWMAs adjacent to the area of the Mojave National Preserve (MNP) in Ivanpah Valley and Shadow Valley. The MNP was advocated to add to tortoise protection, however, its presence is not now counted toward DWMAs and protection is expected to come from BLM multiple-use lands.

In review of the Desert Tortoise Recovery Plan, in December 2002, the General Accounting Office (GAO) issued a report that showed that of all the actions either from wilderness or from the Desert Tortoise Recovery Plan that neither Fish and Wildlife Service or BLM were doing anything to evaluate the effectiveness of their actions, yet they continue to issue draft plans such as the recently published Western Mojave Habitat Conservation Plan which proposes the establishment of up to four additional DWMAs in the western part of the desert, embracing not only San Bernardino County but parts of Inyo and Kern Counties. To date the GAO estimated $100,000,000 of Federal funds had been expended with little to show for it.

Our opinion and recommendations do not oppose conservation and proper management of the public lands and their many resources. We do believe, however, that the BLM administered public lands need to be left open for professional multiple-use land management in which the public is afforded an opportunity for access to perform economic activities such as mining and grazing and a variety of recreational pursuits such as hunting and rock hounding. What we see instead is a concerted effort in the 1990s and continuing by the land management agencies to further limit access and to further limit economic uses of these public lands and we see the loss of additional millions of acres and miles of access after the closure of almost 10% of California by the CDPA in 1994.

As I stated at the outset, we propose five items:

1. We believe that the agencies, with Congressional support, declare a moratorium on implementing further land use plans. We believe the findings of the GAO audit must cause efforts to be focused upon monitoring the effectiveness of action already taken including broad areas of national park and wilderness within the county within the California Desert Conservation area. Equally essential is refocusing agency efforts on disease and predation in tortoise populations.

2. We believe that there should be a complete review of National Park Service programs. Has ranching removal resulted in any positive change? What values have been lost, including tax revenue and income? Is NPS assuming interpretation of the ranching and mining heritage or obliterating it? While I touched on the conservation aspects and the purchase of ranches, there has also been a removal of the livestock watering facilities, which we believe has had a profound impact on the area, particularly in relation to bighorn sheep populations. The Mojave National Preserve was established as a Preserve and not a Park, in which hunting, grazing and a variety of uses would continue under the Park Service Administration rather than BLM. The Park Service Administration has done everything in its power to make this a ``park'' and not a ``preserve.'' Their move to get State Fish and Game restrictions on hunting exemplifies this. As such, we question both its management programs as well as the effectiveness of them. County comments in the General Management Plan were essentially rejected. For example, have tortoise populations increased in the habitat areas since

the Park Service has purchased the ranches and removed the livestock? Until this is known should the agencies be purchasing and retiring further grazing privileges outside areas that traditionally were left to multiple-use. In essence, the programs of the agencies seem to be turning the entire desert into a park-like management and not making any clear distinction between Park Service and BLM areas. Recently, as NPS began to dismantle the ranches, it has also begun removing the water developments. This impact must be addressed. Further, under the guise of the Endangered Species Act, it is seeking to impose new restrictions on hunting. What we are funding is that even when Congress writes in protections for uses and access, the agencies seek to overturn them when the use-oriented focus does not fit what they see as their ``mission.''

3. The agencies need to stop further land acquisition until there has been efficacy monitoring.

4. We believe Congress should move quickly to enact H.R. 380. H.R. 380 has been authored by Congressman Radanovich working closely with this County's public lands consultant. It contains a retroactive provision. Data shows that in the last four years no county has suffered Federal land acquisitions to the extent of San Bernardino County, though many counties throughout the West have been losers. The proposal in H.R. 380 also would provide for payment in lieu of taxes for the capital assets involved in ranches and mining operations that may also be purchased. Current formulas under the Payment in Lieu of Taxes (PILT) programs do not do this. We urge speedy hearings on H.R. 380 and hope that it can pass the House during the current 108th Congress.

5. Last, we do recommend oversight of the California Desert Protection Act. With the exception of a couple of access issues, it has not been visited by the Congress since 1994. This hearing is a step in the proper direction. Clearly we would like to work with the Congress in adjusting several of the boundaries. There are probably several areas in which we might agree that wilderness designation should be dropped or shrunk. We are still concerned relative to much of the access issues contained in amendments that you, Congressman Pombo, carried in 1994 are still needed. We felt that the recent BLM regulatory decisions relative to recordable disclaimers will provide an avenue of approach in dealing with these on a land title basis. We were disturbed that the House recently restricted these and hope that the restriction is only for a period of FY 2004 appropriations. We urge instead that Congress wholeheartedly support the BLM program to provide legal access and also that the Congress either revisit the area of many of these cherrystems in the wilderness or urge that the agencies deal with the access issues as they exist on the ground. Remember that the recordable disclaimer provision does require that a road exist. It does not provide for new access. It does not provide for improvement of the access. It simply provides for passage of title for the access. Our concern rests upon the fact that we never had a chance to prove up on these access routes before the California Desert Protection Act and its wilderness designations, and now DWMAs, slammed the door shut and before BLM had a procedure. The public has been frozen out of the new National Park Service units except on the main roads. There is not even access to maintain valid existing rights that are supposedly protected under the CDPA. We urge that the Congress endorse BLM's procedure and allow it to apply to all public lands. Congress must assure that ``valid existing rights,'' whether they be mines or access roads, really has meaning in practice.

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Mr. Radanovich. Thank you very much, Mr. Postmus. I appreciate your testimony. Now is the time for the members up here to be able to ask questions of each of the folks that testified.

I want to begin a little bit with Supervisor Dorame. Your testimony is very good, but the Saline Valley Road and the circumstances by which it was included in the plan, can you go into that a little bit more? And you also noticed something about the Surprise Canyon Road.

And just for my benefit and maybe somebody else's, too, could you give me an idea of how it was--

Mr. Dorame. If I can beg your assistance here. I worked with one of my able-bodied constituents for 8 weeks after the California Desert Protection Act was implemented, and basically what we have right here is we have a 75 mile long road that comes down to here.

This is the Saline Valley Road here. It is 75 miles long, and it is a very, very cross-country type road.

Mr. Radanovich. A county road.

Mr. Dorame. Yes, a dirt road, and it is a county road. It was agreed that this was going to be the westerly boundary of the new park lands coming down to here, and then down to Highway 190 down here.

But we have a borrow pit here on the southern end of the road, and we have a borrow pit here that was west of the road going toward the Inyo Mountains. What has occurred here was that this was drawn in after one group left the table, and then this was arbitrarily drawn in west of the road to the Inyo Mountains, and so we find ourselves in a predicament with having to gain permission and cooperation to be able to maintain the road.

The former park superintendent, I had a discussion with him on this, and I said if we are unable to continue maintaining the road, what happens if we relinquish it to the park. And he said I am going to be brutally honest with you. It is not what you want to hear.

That road, we don't have the money to maintain it. So he said they would probably end up closing off access. So if this gives you an indication, Mr. Chairman, this is what we were talking about.

And there is mining, and there are canyons, and there is grazing that used to take place going up in here, and people right now don't have access to those mine sites. And all that deer hunting up there.

And while I have this map, what we did was we got the new park boundary here, and that is 54 percent of Inyo County is the new park land that is going in here. And these green lines are the open roads, and the red is all the routes that were all closed off, and that constitutes approximately 204 miles of roads that were closed off in the California desert in the national park.

The black bold line here is all the new park boundary going into San Bernardino County, but most of it is in my district. I have a district that encompasses 6,500 square miles, and that is what we are asking for, is for some relief there.

Mr. Radanovich. Thank you, Mr. Dorame.

Mr. Dorame. Thank you, sir.

Mr. Radanovich. Mr. Leimgruber, I would like to have--you mentioned in your testimony that as a member of the DAC that sometimes your recommendations may not go ignored, but don't bear any fruit and don't go anywhere.

What is it that--I see in my notes here that it usually

ends up in a 10-to-2 vote. Is that the problem with the DAC, is that it is usually--is it lopsided and not balanced, or what is your--

Mr. Leimgruber. When we have our District Advisory Council meetings, and we begin to discuss some of the impacts that are imposed in our county, again, if we use recreational area, usually we have the opportunity to mitigate that.

We have brought recommendations back, and we have said that some of these closures that are forced upon our area, we would like to have those areas mitigated. I do have a map of Imperial County that shows all of our closed desert area, and the result of that is that there is only smaller and smaller areas that are open now for public access.

And we have multiple use in our county, and we would like to have these areas actually reopened. We have aggregate sources there that are available for our road construction, our off highway vehicle use, and actually we would like to see that a reopened area.

We have areas of camping that have been closed, and we would like to see those areas opened. But the impacts are more and more closures, and we don't have the opportunity to mitigate those impacts.

Mr. Radanovich. Thank you very much, Mr. Leimgruber. I recognize the Chairman, Mr. Pombo, for any questions.

Mr. Pombo. Well, thank you. I guess the one question that I have got is that when we went through he California Desert Protection Act, and when that bill was moving its way through Congress, one of the big issues of debate at the time was that it was recognized that parts of the desert were going to be shut off, and that some mines that they were not going to have access to, and there were some areas they were not going to have access to.

And the argument was made at the time that the loss in economic activity for the counties would be made up by recreation, and that more people coming into the area would make up the economic loss that all of you have talked about. Has that happened?

I mean, have you seen a huge increase in recreation, and has the management of the desert changed in a way that has made it more attractive and more friendly for families and for people to come down and spend time in the desert? Let me start with you, Mr. Leimgruber.

Mr. Leimgruber. Again, I would like to address that question. Obviously the recreational opportunities in Southern California, we could actually include form Las Vegas, from Phoenix, and on a major holiday weekend, and we have six of those a year, we have visitors from the State of Washington drive all the way down.

The impacts on our area because of closures actually force the visitors to ride in a smaller area, and with the population and the smaller area, that's why the sheriff of Imperial County is here today listening to the testimony, because he is tasked with the enforcement of the laws that we are going to provide a safe family environment to our guests.

And this past year of 2002, on Thanksgiving, was the first year that we have not have had a fatality. And I want to express my appreciation again to the law enforcement agencies that as we enjoyed the Thanksgiving holiday with our family, this law enforcement agency was out in the desert enforcing the laws.

We have been able to control an element that was actually--and I look at a lot of the areas that they have had an

opportunity to go to in the past that is opened and closed, but we have had an element come to our county that should have been dealt with at the onset.

You get a football game, a stadium event, and you have a multitude of law enforcement agencies there, they are going to deal with that element, and they are going to be locked up and taken out of there.

And the question, the same question, arises here that we want these families to feel safe. This past year, we have had a decline in visitors. Now, the economy and so forth, I am not going to address all the intricacies of those issues, but I want to stress the importance of a long enforcement presence there in the dunes to make sure that the families that go there for recreation are safe.

Mr. Pombo. Would any of the other members like to comment on that?

Mr. Dorame. Thank you, Mr. Chairman. We realize approximately 1-1/2 million visitors to Death Valley National Park. We have a transition and use tax that applies to visitation and residents alike of Inyo County.

We have not really realized much in terms of increased revenue. Economic stimulus is always there because of the creative thinking of our chambers of commerce and other business people, volunteers.

But as far as recreation in those lands that have been closed off, I get more complaints than I do thank you, and I want to tell you that most of those are because of activities that folks are unable to participate in as I had stated earlier; back country camping in the Inyos and White Mountains, and four-wheeling.

That used to be my big thing, going up in the solitude of the mountains, and that was my recreation, and spending the night looking at the stars at an 11,000 foot elevation. I used to do a lot of that. You can't do it anymore. It is closed off.

And a lot of folks--my son is a hunter, and has been hunting for 8 years now in his adult life, and he can't--he is about ready to give it up because everybody is compressed into a small area now, whereas you used to be able to really use those mountains and flush out some game.

It is not there anymore. The game is probably still there, but you can't go into some of these. One of the biggest complaints we have is that we have different--and we understand this. We have different management charges by our Federal agencies.

The Park Service, to their credit, they have to manage their wilderness, and in a conservation management type style. BLM is multiple use, but the problem is that the people don't know when they are in BLM, or when they are in the Park Service. So there have been citations issued and things such as that for practices that could not be permitted within the Park Service boundary.

My suggestion to the Park Service and working with them over these years was to increase a level of confidence in the users and have them come up, and let's try to find, and give them direction where your park land boundary is, and even they did not know.

So it is a process that we are working through, but folks just don't know when they are in the park, unless they are really in the park, or when they are in BLM. It is an issue that we will try and work our way through, and hopefully when we do, people will be more receptive of this, and it will increase some more usage, but it has not. It has been

detrimental. Thank you, sir.

Mr. Radanovich. Mr. Postmus, did you have--

Mr. Postmus. Yes, Mr. Chairman. San Bernardino County has definitely been hit hard by the Desert Protection Act. In the 2003 fiscal year budget, the County of San Bernardino received about $1.69 million in actual payment from the Federal Government in terms of help.

That is about 20.6 cents an acre, and when the national average is something around 35 cents an acre. There is too few visitors coming into the national Mojave preserve right now. We are not seeing any real impacts in terms of dollars coming into the local economy.

And due to the fact that we have had now more and more of our ranches being closed, that has been a major hit to our local economy, and the fact that we are not going to be seeing any new mines in the near future. This is definitely another hit to our county.

In fact, if you look at the largest tax producers in San Bernardino County, believe it or not, even though the county is heavily weighted in the southern part, and we have a population of 1.9 million people in the county, our three largest single tax producers are in my district, and they are mining operations.

But due to the fact that we are not seeing any new mining coming into the area, it is going to eventually have a major economic impact to the district and to the county.

Mr. Pombo. Mr. McQuiston.

Mr. McQuiston. Just one statement, Congressman Pombo. I think the core of your question went to that there was discussion that with the California Desert Protection Act, and the loss of these huge amounts of land and some of the mining and multiple use, there would be an offset by increased recreation.

We certainly have nothing that would indicate that that assumption proved true, and I would say that in the last few years with the management plans and practices, and more and more constraints on these activities, that we have not realized anything.

And in having been on the peripheral of that in another life, I would just say that we heard some of those same discussions, too, and oppose them for public policy reasons, because even if there were an offset, it is a bad offset for public policy, because you are having an economy of recreational use to offset the economy of other uses of the desert, which is contrary to multiple use and sustained yield. So even if it were true, as a matter of public policy it would be a bad public policy.

Mr. Pombo. Well, thank you, and thank you as a panel.

Mr. Radanovich. Gentlemen, thank you very much for your testimony. That concludes the testimony of this panel, and we will go ahead and move on to our second one. Again, thank you.

The second panel consists of the following: Mr. Roy Denner, who is President and CEO of the Off-Road Business Association, from Santee, California; Mr. Jim Bramham, a Board Member of the American Sand Association, in Sacramento, California; Mr. David Hubbard, Counsel of the Off-Highway Recreation Community, from Escondido, California; Mr. Ron Kemper, a Grazing Leaseholder in the California Desert Conservation Area, East Highlands, California; Mr. Howard Brown, a Mining Geologist, from OMYA California, Incorporated, Lucerne Valley, California; Ms. Sheri Davis, Director, Inland Empire Film Commission, from Riverside, California; and Mr. Mike Hardiman, who is an Inholder within

the CDCA, Imperial County, California.

Ladies and Gentlemen, welcome to the Committee. And again now that you are all comfortably seated, I would ask you to stand up, because as is the custom, we would like to have our witnesses sworn in.

[The witnesses were sworn.]

Mr. Radanovich. Thank you. You may sit down. Again, we are going to adhere to the 5 minute rule. I am going to make an exception with Mr. Denner, because I understand that you represent quite a few off-road vehicle groups, and you do have a powerpoint presentation. So I will let you go over that a little bit, Mr. Denner.

If you would like to begin, and again we will go through the panel, everybody speaking for 5 minutes, and then we will open up the panel for questions by Richard and I. Mr. Denner, welcome.

STATEMENT OF ROY DENNER, PRESIDENT AND CEO, OFF-ROAD BUSINESS ASSOCIATION, SANTEE, CALIFORNIA

Mr. Denner. Congressman Radanovich and Congressman Pombo, I certainly thank you for having this hearing. It is long overdue and sorely needed. I have projected up on the wall a slide that shows the boundaries of the California desert district.

It is something over 10 million acres, and runs all the way from the Mexican border, up to Bishop, and then runs past Edwards Air Force Base. In 1980, a plan was developed to manage this area, and it looks like this, and Supervisor McQuiston already mentioned it.

And for 20 years this is what we have been using as a management document. The next slide I am going to throw up here real quickly shows that the same territory overlaid by national parks, and national preserves, military reservations, and wilderness areas.

All of these, of course, can be subtracted from public lands available for public use and vehicle access. And then we take the next one, an overlay. The desert tortoise in DWMAs, desert wildlife managements, what you see left there in the tan color is what is left in the California desert district for vehicle access and off-road recreation, and significantly reduced from what we had not too many years ago.

On March 16, 2000, the BLM was sued by the Center for Biological Diversity, the Sierra Club, and the Public Employees for Environmental Responsibility, for its failure to implement this plan.

The problem was that they said that the BLM did not consult with Fish and Wildlife regarding endangered species, two primary species, one the Desert Tortoise across the entire CDCA; and the other is the Peirson's Milk Vetch Plant within the Imperial Sand Dunes Recreation Area.

Emergency closures resulted from a settlement agreement between the BLM and the CBD, adding over 800,000 acres to the public land unavailable for OHV recreation. These closures were identified as interim emergency closures necessary until BLM could complete its consultation with Fish and Wildlife.

On August 7, 2000 several pro-access groups were accepted as intervenors on behalf of the BLM for the CBD lawsuit. On March 20, 2001, a settlement agreement with a multitude of stipulations was signed by the BLM CDCA at that time, and also the intervenors and the plaintiffs.

Very little effort, on the part of the BLM, was exerted to negotiate the extensive demands of the plaintiffs. The primary

focus on the part of the intervenors was the Imperial Sand Dunes Recreation Area, very likely the most popular OHV recreation area in the universe.

And since the settlement the plaintiffs have been actively spreading the word to the OHV community through the intervenors, approved of the settlement, and this is a true statement. What they don't describe is the fact that the BLM CDCA manager at the time made it clear that if the intervenors did not sign the agreement that he would be forced to close the entire ISDRA until consultation with Fish and Wildlife was completed.

And the intervenors concluded that half-a-loaf, of course, is better than none, and so they signed the agreement. Some might call this good negotiating on the part of the plaintiffs. I call it blackmail.

As a result of Park and Preserve areas, military reservations, wilderness designations, restrictions within Desert Tortoise habitat, and the emergency closures resulting from the lawsuit, millions of acres of BLM lands within the CDCA that were once to OHV enthusiasts are now closed to this form of recreation.

A document published by the California State Parks in 2002, titled, ``Taking the High Road,'' points out that while the number of vehicles licensed in California for off-highway use increased by 108 percent in the last 20 years, the number of acres available for OHV recreation in California decreased by 48 percent.

This same report refers to an economic impact study that was completed in 1993 that showed that the annual economic impact of OHV recreation in the State of California was over $3 billion and that is with a B, at that time.

Since then the level of activity and the price of equipment have escalated the point where current estimates of the economic impact are between $8 and $9 billion. Access concerns and economic impacts in my opinion are directly related.

BLM's solution for meeting the requirements imposed by the settlement agreement, its far-reaching stipulations, and the agreed to implementation schedule, was to divide the CDCA into five separate major planning areas, and develop a separate new plan for each planning area.

Planning efforts were hastily initiated in order to meet the compressed time schedule. The new planning areas are shown on the map on the wall. The species that are threatened under the ESA, that is the driving factor behind the new management plan for the Imperial Sand Dunes Recreation Area is the Peirson's Milk-Vetch Plant.

Since the ISDRA is considered to be one of the most popular recreation areas in the world, since the closures there have attracted attention nationwide, the hearing Committee will be receiving separate testimony on this planning area. So the balance of my testimony will focus on the remaining CDCA planning areas.

Four major new planning areas within the CDCA focus on the need to protect the Mojave Desert Tortoise, listed as threatened under the ESA. These plants, which are really--these are real environmental impact statements. They are not management plans supported by EISs.

They are known as the NECO, Northern and Eastern Colorado planning area; NEMO, Norther and Eastern Mojave planning area; the Coachella Valley planning area; the WEMO, the Western Mojave planning area. The costs that went into preparing these plans probably could have cured cancer.

Approximately a decade ago, a team of biologists developed the Mojave Desert Tortoise Recovery Plan. Supervisor McQuiston went into this plan and the problems with it at great length, and I would ditto everything that he said about the problems with the Desert Tortoise Recovery Plan, and so I won't repeat my testimony relative to the Desert Tortoise Recovery Plan.

But the bottom line of it though is that when you take the fact that these plans are being driven by the CDCA lawsuits, and not by good scientific efforts to provide science on the Desert Tortoise Recovery, it is clear that the plans are driven by litigation and not by good planning science.

Otherwise, the planning effort would have been delayed until good science on the Desert Tortoise is available to support the planning decisions. Members of the Desert Advisory Council, Supervisor Wally Leimgruber discussed that, and I won't go into detail about the advisory council and its charter.

However, I do want to point out that someone asked about--I think it was Congressman Pombo asked about these 10-to-2 votes. I would like to go into a little more detail on that. At the meeting that Supervisor Leimgruber talked bout in El Centro, we had three votes of a 10-to-2 ratio, and the 10-to-2--I guess it was Congressman Radanovich who asked about that.

The 10-to-2 ratio supported three motions that were made, three specific motions. One was the mitigation concept that Supervisor Leimgruber talked about, and if there is an impact to desert users as a result of implementing the ESA, that that impact should be mitigated, just like we mitigate impacts on species.

In other words, if an area has to be closed because of good proven science, that the use of the public access to that area is endangering a truly listed endangered species, and we would be the first to agree that that areas needs to be closed to that vehicle access.

However, another area should be expanded or a new area should be opened so that there is no net loss of mitigation, and perhaps we should even consider expanded factors of 3-to-1, or 5-to-1, like we do in mitigation for endangered species.

Two other significant votes of that 10-to-2 were made. One was--let me catch up here. The second vote was that the BLM not close off OHV recreation areas that are included in the NECO plan; Ford Dry Lake and Rice Valley Dunes. These are OHV areas that are within the NECO planning area.

The planner for NECO openly admitted at a DAC meeting that the only reason that these areas are being closed was due to, quote, under-utilization. DAC members suggested that possibly some time in the future that these areas might see more utilization as a result of all of the other closures throughout the California Desert District.

The final NECO plan, for which a record of decision has been issued, is in the process of being implemented and it closes both of these OHV recreation areas. And the third 10-to-2 vote was that these plans be held up until the Desert Tortoise recovery plan could be revisited, and someone has already addressed the fact that that has not been done, and moved ahead with finalizing the plans, and even going to the point of getting records of decision.

At this point in time, records of decision have been issued for the NECO, the NEMO, and the Coachella Valley Plans. In spite of concern from several DAC members and the public, the 1.2 million acre Coachella Valley plan, which runs from the Palm Springs area to the Salton Sea, does not today include a

single open OHV recreation area.

One can only wonder what the kids who live in that area who once rod their dirt bikes after school, are doing after school today to burn on their excess energies. The NEMO plan sets the stage for eliminating forever the point-to-point competitive events.

A world-class desert motorcycle race that was held in the Mojave Desert for many years was the Barstow to Vegas Hare and Hound Race. The Desert Vipers Motorcycle Club, which I am representing, has submitted applications for permits for the last 8 years and have been denied every year.

The denials are in spite of the fact that the club as met with desert managers and laid out a course that has no impact on tortoise habitat. Most of it is on dirt roads. This action is in direct conflict with the original California Desert Conservation Plan that allowed competitive events.

A particularly good example of how the CDCA BLM management discriminates the OHV community is evident in a recent news release that describes a contest for inventors of robotic devices.

The Department of Defense is conducting a grand challenge, which is scheduled for March 13, 2004. They are working with BLM managers to lay out three different race courses--you guessed it, from Barstow to Las Vegas.

The actual race route will not be announced until 2 hours prior to the start of the race, and not one, but three courses. Contestants from across the globe will race their robotic vehicles over one of these courses for a grand prize of $1 million.

These vehicles are large enough to transport, quote, to transport supplies and ammunition to troops in the field. It seems appropriate to assume that the DoD considered environmental impacts when choosing this race route, and picked a route where impacts would be minimal or non-existent.

Why then are desert motorcycle racing enthusiasts shut out year-after-year? Are government agencies that hold race events that much more important than motorcycle racing enthusiasts? A copy of the DoD announcement about this race event is included with my testimony.

The WEMO plan, the largest and the last of the CDCA plans, is currently in development. Somebody talked about the route designation effort and so I will not go into that. It has been pulled out as an EA, which presumes no significant impact, even though thousands of miles of trails are being closed.

And the other area of the WEMO plan that I wanted to point out was the Surprise Canyon situation, and which someone has already pointed out. It is cherry-stemmed out of a wilderness area.

And in addition to the WEMO area point-to-point events, specifically the Barstow-to-Vegas motorcycle race, has been eliminated from the WEMO plan to be compatible with its elimination of the same race in the NEMO plan.

If this Committee is not yet convinced that there is trouble ahead for the BLM and its management of the CDCA in the future, consider this. No funds are available in the BLM's budget to implement the new CDCA plans.

In my recent trip to Washington, D.C., our group was told that this year's Federal budget does not appropriate any money for implementing these plans. No private enterprise would even consider developing extensive long-range business plans without ever considering where the money to implement the plans will come from, or how much is allotted in the budget.

Since this country was founded, travelers have always recognized that roads, trails, and paths were available for passage unless they were posed closed. The BLM, CDCA-wide is implementing a closed unless posted open policy.

They are attempting to identify acceptable routes to travel within each planning area. In order to do this, they must first identify all the routes and trails within the total 10 million acre CDCA, an impossible task even if they had sufficient staff. Once a manageable number of routes have been identified as approved routes of travel, any trails that were not included in the BLM's inventory will be gone forever, even if they were once utilized as popular routes of travel.

Signing these approved routes of travel is another problem. This will be an extensive, time consuming, expensive process. With no budget for implementing the CDCA management plans, where will the funding come from?

Once records of decision have been issued approving the management plans, the ``closed, unless posted open'' policy immediately goes into effect. So, for all practical purposes, all desert routes will be closed until the BLM acquires resources to implement the signing program.

The average trail or route user cannot be expected to obtain maps from the BLM and learn how to identify approved routes of travel on those maps before they recreate on public lands. Furthermore, route signs can disappear for many reasons. How will the trail user know if that trail has been closed?

Summary. First of all, management by closure. Attached to my testimony is a letter, dated June 20, 2002, to the BLM manager for the CDCA. This letter addressed some of the concerns that I have listed in my testimony, as well as other examples of the BLM's, quote, management by closure policy within the CDCA.

This policy has had a tremendous negative impact on public access to public lands within the California Desert District. An example is in the Rands Mountain area, OHV enthusiasts--and someone talked about being a 4-wheel drive enthusiast.

There used to be over a thousand miles of 4-wheel drive trails in the Rands Mountain area. Those trails have been systematically closed by the BLM until only 129 miles were left about 2 years ago.

Unfortunately, this and many other closures in the areas have led to an increase in illegal OHV use in closed areas. The BLM's solution to the law enforcement problem that resulted from illegal riding was to close 29 more miles of trails. Extending this concept, the BLM must believe that if all OHV areas are closed, the illegal riding problem will go away.

In the area of dwindling access, I am not going to reiterate this. It has to do with the mitigation concept, and if there is no policy for protecting or mitigating impacts on OHV recreation, the ultimate event is going to be foreclosure.

The funding problem I have identified. The end result as a I see it is here is what is going to take place. The EIS management plans will never be implemented without funds and resources.

The anti-access organizations will file a plethora of new lawsuits against the BLM for not implementing the new plans; and the only action the BLM will be able to take without sufficient standing or sufficient funding will be emergency closures. I predict that the lack of access to public lands in the CDCA coming with these attempts to implement these plans will escalate to a level never thought possible.

Thank you for allowing me to present my position on public

access, and thank you for giving me a few more minutes. As you can see, there are many issues across the CDCA.

[The prepared statement of Mr. Denner follows:]

Statement of Roy Denner, Off-Highway Vehicle Recreation Representative, San Diego, California

I. THE 10 MILLION ACRE CDCA MANAGED BY THE BUREAU OF LAND MANAGEMENT (BLM)

The map displayed depicts the area known as the California Desert Conservation Area (CDCA). It is approximately 10 million acres in size and runs from the Mexican border north almost to Bishop and is bounded on the east by the Colorado River. The western boundary extends beyond Edwards Air Force Base. This area has been managed by the BLM under a management plan originally developed in 1980 (The CDCA Management Plan).

National Parks, National Preserves, Military Reservations, and Wilderness Areas can all be subtracted from public lands within the CDCA when considering lands available for Off-Highway Vehicle (OHV) recreation. When Desert Tortoise Habitat or Desert Wildlife Management Areas are added to the restricted areas, it is obvious that the opportunities for OHV recreation in the California Desert on BLM managed lands have diminished significantly.

On March 16, 2000, the BLM was sued by the Center for Biological Diversity (CBD), the Sierra Club, and the Public Employees for Environmental Responsibility (PEER) for its failure to implement the CDCA Plan. The BLM was accused of not consulting with U.S. Fish & Wildlife (USF&W) regarding Endangered Species primarily the Desert Tortoise, across the entire CDCA; and the Peirson's Milk Vetch Plant, within the Imperial Sand Dunes Recreation Area (ISDRA). Emergency closures resulting from a settlement agreement between the BLM and the CBD, et al., added over 800,000 acres to the public land unavailable for OHV recreation. These closures were identified as ``Interim Emergency Closures'' necessary until the BLM could complete its consultation process with USF&W.

On August 7, 2000, several pro-access groups were accepted as interveners on behalf of the BLM for the CBD lawsuit. On March 20, 2001, a settlement agreement with a multitude of stipulations was signed by the BLM CDCA Manager (at the time), the Interveners, and the plaintiffs. Very little effort, on the part of the BLM, was exerted to negotiate the extensive demands of the plaintiffs. The primary focus, on the part of the interveners, was the Imperial Sand Dunes Recreation Area (ISDRA)--very likely the most popular OHV recreation area in the universe! Since the settlement, the plaintiffs have been actively spreading the word that the OHV community through the interveners approved of the settlement which is a true statement! What they don't describe is the fact that the BLM CDCA Manager made it clear that if the interveners didn't sign the agreement he would be forced to close the entire ISDRA until consultation with Fish & Wildlife was completed. The interveners concluded that a half a loaf is better than none so they signed the agreement. Some might call this good negotiating on the part of the plaintiffs. I call it ``blackmail''!

As a result of Park and Preserve areas, Military Reservations, Wilderness designations, restrictions within Desert Tortoise habitat, and the Emergency Closures resulting from the lawsuit, millions of acres of BLM lands within the CDCA that were once open to OHV enthusiasts are now closed to this form of recreation. A document published by California State Parks in 2002 titled ``Taking The High Road'' points out that while the number of vehicles licensed in California for off-highway use increased by 108% in the last 20 years, the number of acres available for OHV recreation in California decreased by 48%.

The same report refers to an economic impact study that was completed in 1993 that showed the ``Annual Economic Impact of OHV Recreation in California'' to be over $3 billion at that time. Since then, the level of activity and the price of equipment have escalated to the point where current estimates of $8 to $9 billion are being targeted. Access concerns and economic impact are directly related.

II. REVISIONS TO THE CDCA NEW MANAGEMENT PLANS (Actually EIS's)

BLM's solution for meeting the requirements imposed by the settlement agreement, its far-reaching stipulations, and the agreed-to implementation schedule, was to divide the CDCA into five separate major planning areas and develop a separate new plan (EIS) for each planning area. Planning efforts were hastily initiated in order to meet the compressed time schedule.

The five new planning areas are shown on the map. The species listed as ``threatened'' under the ESA (Endangered Species Act) that is the driving factor behind the new Management Plan for the Imperial Sand Dunes Recreation Area is the Peirson's milk-vetch Plant. Since the ISDRA is considered to be one of the most popular OHV recreation areas in the world, and, since the closures there have attracted attention nationwide, the Hearing Committee will be receiving separate testimony on this planning area. The balance of my testimony will focus on the remaining CDCA Planning areas.

Four major new planning areas within the CDCA focus on the need to protect the Mojave Desert Tortoise listed as ``Threatened'' under the ESA. These plans, which are actually Environmental Impact Statements, not land management plans supported by EIS's are known as:

<bullet> NECO Northern and Eastern Colorado planning area.

<bullet> NEMO Northern and Eastern Mojave planning area.

<bullet> The Coachella Valley planning area.

<bullet> WEMO The Western Mojave planning area.

I am holding up copies of the EIS's for these planning areas to give the Hearing Committee a feel for the magnitude of these planning efforts.

III. THE MOJAVE DESERT TORTOISE RECOVERY PLAN (DTRP)

Approximately a decade ago, a team of biologists developed the ``Mojave Desert Tortoise Recovery Plan''. The purpose of this plan was to provide for protection and recovery of the Mojave Desert Tortoise (MDT), listed as ``Threatened'' under the ESA. The biologists who developed the plan recognized that information on the MDT was sketchy and anecdotal. Scientific support for biological theories was not available at the time the DTRP was developed. The drafters of the Plan included a provision in the DTRP to review the Plan in three to five years so that any science developed in the interim could be included at that time. As of this Hearing, the DTRP has never been revisited. Without regard for the lack of good science to support the DTRP, the BLM has proceeded with the completion of major new land plans within the CDCA acknowledging that the driving forces behind these plans are the DTRP and the stipulations agreed to in the settlement agreement resulting from the lawsuit filed by CBD, et al. It is clear which of these factors is most important to the BLM. The BLM planning efforts in the CDCA are being driven by litigation not good planning science. Otherwise, the planning effort would be delayed until good science on the desert tortoise was available to support the planning decisions!

IV. CDCA ADVISORY COUNCIL AND THE BLM

Members of the California Desert District Advisory Council (DAC) are appointed by the United States Secretary of the Interior. The DAC is composed of representatives from various stakeholder interest groups within the CDCA. The DAC's charter is to advise the BLM's CDCA manager regarding management of that area. At a meeting in El Centro during

December 2001, members of the DAC voted 10 to 2 to recommend that the BLM hold up the new CDCA Management Plans (EIS's) until the DTRP could be re-assessed. Most members agreed that it was not responsible planning to develop major new plans based on a recognized unsupported DTRP. The BLM CDCA Manager indicated that the implementation schedule committed to in the CBD, et al. settlement and stipulations did not allow time for review of the DTRP prior to finalizing and implementing the new plans (EIS's). If, and when, the re-assessment of the DTRP shows that the original Recovery Plan is significantly in error, all of the BLM Management Plans that are based on the DTRP will need to be redone! What a drastic waste of taxpayers' money!

The Desert Advisory Council made two other significant recommendations on a vote of 10 to 2 at the December 2001 meeting. The first recommendation was that the new Desert Management Plans whenever they would be completed include a provision for mitigating impacts to recreation and other desert interests, just as impacts to threatened or endangered species are mitigated. For example, if an area needs to be closed to human use due to a scientifically proven impact on a species, another area should be opened or expanded to mitigate the impact on desert access providing a ``no-net-loss'' situation. This concept was not implemented in any of the new plans.

The second recommendation made with a 10 to 2 vote was that the BLM not close two Off-Highway Vehicle Recreation Areas Ford Dry Lake and Rice Valley Dunes. These OHV areas are within the NECO planning area. The planner for NECO openly admitted at a DAC meeting that the only reason that these areas are being closed is due to ``underutilization''! DAC members suggested that, at some time in the future, these areas might see more utilization as a result of all of the other closures throughout the CDCA. The final NECO Plan, for which a Record of Decision has been issued, closes both of these areas!

V. STATUS OF CDCA PLANS

At this point in time, Records of Decision have been issued for the NECO, NEMO and the Coachella Valley Plans. In spite of concern from several DAC members and the public, the 1.2 million acre Coachella Valley Plan, which runs from the Palm Springs area to the Salton Sea, does not include a single legal open OHV recreation area. One can only wonder what the kids who live in that area, who once rode their dirt bikes after school, are doing after school today to burn off their excess energy!

The NEMO Plan sets the stage for eliminating point-to-point competitive events forever! A world classic desert motorcycle race that was held in the Mojave Desert for many years was the Barstow to Vegas Hare & Hound Race. The Desert Vipers Motorcycle Club has submitted applications for permits for the last 8 years and have been denied each year. The denials are in spite of the fact that the club has met with desert managers and laid out a course that has no impact on tortoise habitat most of it is on dirt roads. This action is in direct conflict with the original California Desert Conservation Plan that allowed ``competitive events''.

A particularly good example of how the CDCA BLM management discriminates against the OHV community is evident in a recent news release that describes a contest for inventors of robotic devices. The Department of Defense is conducting this ``Grand Challenge'' which is scheduled for March 13, 2004. They are working with the BLM managers to lay out three different racecourses from Barstow to Las Vegas. The actual race route will not be announced until two hours prior to the race start. Not one, but three! Contestants from ``across the globe'' will race their robotic vehicles over one of these courses for a grand prize of $1 million. These vehicles are large enough to ``transport supplies and ammunition to troops in the field''. It seems appropriate to assume that the DOD considered environmental impacts when choosing

this race route and picked a route where impacts would be minimal or non-existent. Why, then, are desert motorcycle racing enthusiasts shut out year-after-year? Are government agencies that hold race events that much more important than motorcycle racing enthusiasts? A copy of the DOD announcement is included with this testimony.

The WEMO Plan, the last and largest of the CDCA Plans is currently in development. The Route Designation effort has been pulled out of the planning process and has been released under an EA (Environmental Assessment) rather than being part of the EIS planning process. An EA presupposes ``no significant impact'' will result from the action. Thousands of miles of back roads and trails will be closed under this EA to, allegedly, protect the Desert Tortoise. It is difficult to understand how this can be considered ``no significant impact''!

Also part of the WEMO area, is a popular place known as Surprise Canyon. Surprise Canyon is located in the Panamint Mountains near Ridgecrest and runs right through the middle of a large Wilderness Area. It was ``cherry-stemmed'' out of the Wilderness Area by Congress when the Wilderness Area was created. Surprise Canyon has historically provided the only access to the mining town of Panamint high in the mountains. It has also been long-recognized as a popular extreme four-wheel drive recreation trail. It was closed to vehicle access, as an ``emergency closure'', to satisfy one of the stipulations in the CBD, et al. lawsuit. The Canyon has a seasonal stream running through it. As part of the WEMO planning effort, the BLM is proposing that Surprise Canyon be made a ``Wild and Scenic Waterway''! No consideration is being given concerning why the U.S. Congress cherry-stemmed the passage out of the Wilderness when the Wilderness area was created!

Of course, point-to-point competitive events specifically the Barstow to Vegas motorcycle race has been eliminated from the WEMO Plan to be compatible with its elimination in the NEMO Plan.

If this Committee is not yet convinced that there is trouble ahead for the BLM and its management of the CDCA in the future, consider this: No funds are available in the BLM's budget to implement the new CDCA plans! During a recent trip to Washington, D.C., our group was told that this year's federal budget does not appropriate any money for implementing these plans. No private enterprise would even consider developing extensive long-range business plans without ever considering where the money to implement the plans will come from or how much is allotted in the budget!

VI. CLOSED UNLESS POSTED OPEN POLICY

Since this country was founded, travelers have always recognized that roads, trails, and paths were available for passage unless they were posted ``closed.'' The BLM, CDCA-wide, is implementing a ``Closed Unless Posted Open'' policy. They are attempting to identify acceptable routes of travel within each planning area. In order to do this, they must first identify all routes and trails within the total 10 million acre CDCA an impossible task, even with sufficient staff. Once a manageable number of routes have been identified as approved routes of travel, any trails that were not included in the BLM's inventory will be gone forever even if they were once utilized as popular routes of travel.

Signing the approved routes of travel is another problem. This will be an extensive, time consuming, expensive process. With no budget for implementing the CDCA Management Plans, where will the funding come from? Once Records of Decision have been issued approving the Management Plans, the ``closed, unless posted open'', policy immediately goes into effect. So, for all practical purposes, all desert routes will be closed until the BLM acquires resources to implement the signing program. Individual trail and route users cannot be expected to obtain maps from the BLM and learn how to identify approved routes of travel on those maps before they travel on public

lands within the CDCA! Furthermore, route signs can disappear for many reasons. How will the trail user know if that trail has been closed?

VII. SUMMARY

A. Management by Closure

Attached is my letter dated June 20, 2002, to the BLM Manager for the CDCA. This letter addresses some of the concerns listed above as well as other examples of the BLM's ``Management by Closure'' policy within the CDCA. This policy has had a tremendous negative impact on public access to public lands within the California Desert District.

Another example of Management by Closure: In the Rands Mountain area, OHV enthusiasts have always had over 1,000 miles of trails to explore. Those trails have been systematically closed by the BLM until only 129 miles were left about two years ago. Unfortunately, this and many other closures in the area have led to an increase in illegal OHV use in closed areas. The BLM's solution to the law enforcement problem that resulted from illegal riding was to close 29 more miles of trails. Extending this concept, the BLM must believe that if all OHV areas are closed, the illegal riding problem will obviously go away.

B. Dwindling Access

No protection or mitigation for impacts to public access to public lands within the CDCA is considered in any of the new plans. If plans continue to provide for reduction in access to public lands and never provide for protecting public access eventually, all public access to public lands will be gone!

C. Funding Problem

The new CDCA Management Plans (EIS's) have been developed without any concern for the cost to implement them. Planners have been given the go-ahead to develop plans that address every environmental concern no matter what resources are necessary for implementation. Unlike rational business management plans, no compromises have been considered to make sure that the plan can be implemented within the budget that has been allocated. All of this is taking place during a time when the Federal Government is cutting back on funds allocated to agencies like the BLM. It doesn't take a CPA to figure out that this ain't gonna work!

VIII. End Result:

<bullet> The Plans (EIS's) will never be implemented! (No funds! Serious staffing shortage!)

<bullet> The anti-access organizations will file a plethora of new lawsuits against the BLM for not implementing the new plans.

<bullet> The only action the BLM can take without sufficient staffing or sufficient funding will be ``Emergency Closures''.

<bullet> Lack of access to public lands in the CDCA will escalate to a level never thought possible.

Thank you for allowing me to present my position on public access to public lands within the California Desert Conservation Area.

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[Attachments to Mr. Denner's statement follow:]

[GRAPHIC] [TIFF OMITTED] T8929.007

[GRAPHIC] [TIFF OMITTED] T8929.008

[GRAPHIC] [TIFF OMITTED] T8929.009

[GRAPHIC] [TIFF OMITTED] T8929.010

[GRAPHIC] [TIFF OMITTED] T8929.011

[GRAPHIC] [TIFF OMITTED] T8929.012

[GRAPHIC] [TIFF OMITTED] T8929.013

Mr. Radanovich. Thanks, Mr. Denner, and again we want to make sure that all viewpoints are represented here, and time allowed to be able to do that. Mr. Jim Bramham, who is with the American Sand Association from Sacramento. Welcome to the Subcommittee, and please begin your testimony.

STATEMENT OF JIM BRAMHAM, BOARD MEMBER, AMERICAN SAND ASSOCIATION, SACRAMENTO, CALIFORNIA

Mr. Bramham. Thank you very much, and thank you for allowing me to speak today on behalf of the 14,000 sand sport enthusiasts who are members of the American Sand Association, and the millions of Americans who recreate in sand dune areas throughout the United States.

In the spirit of the west, and in pursuit of relaxation, exploration, rejuvenation, education, and family unification, more than 1.4 million Americans visit the ISDRA each year, making it among the most visited places on public lands, and it is a vital outlet to the pressures of urban living.

For us, the closing of the west started with the 1980 desert plan. This plan broke the desert up into several use categories. It closed the very large Eureka and Kelso dune complexes, and a portion of the Imperial Dunes, leaving less than one half of the traditional sand recreation areas open.

With the entire California desert on the planning table, the discussion scale at that time was 1-to-10, with middle ground being five. With the adoption of this plan, Americans lost more than one-half of their 130 years of opportunities.

The 1994 California Desert Protection Act granted wilderness protection to more than twice the acreage found suitable by the Carter administration. At plus or minus 7.5 million, or any other estimate that you would use, the designation incorporated many areas that have extensive road networks, mineral and recreation values.

During this period of discussion, it is no longer 1-to-10, but 1-to-5, and middle ground is 2.5. With the passage of this act, Americans lost significantly more historic access. Their desire for access was not diminished, just their preferred designations.

The anti-access advocates, bent on recreational genocide, continue to use every avenue available to them to further their agenda to close the west. Their weapon of choice the last several years of the ISDRA has been the Endangered Species Act. Using incomplete and poorly designed studies, they bludgeoned the U.S. Fish and Wildlife Service into granting threatened status to the Peirson's Milk Vetch, even though their own staff questioned the scientific validity of the available data.

In March of 2002, armed with this designation, several anti-access groups sued the bureau, demanding that nearly half of the remaining acreage be closed until a new plan could be completed. The BLM accepted these restrictions to public access without a fight.

Dr. Art Phillips, a highly regarded plant biologist, has now done an in-depth analysis of the Peirson's Milk Vetch.

These studies of both living germinating plants and the sustaining seed bank have proven that the plant is thriving throughout its range.

It is prolific in its seed production, and clearly does not fit the description of a threatened species. Dr. Phillip's work is both peer reviewed, repeatable, and verifiable. The BLM has just completed a recreation area management plan for this area. The plan seeks to protect species which clearly do not need the level of protection afforded under the ESA. To achieve this goal the plan severely restricts access to a significant portion of the dunes.

This, coupled with a 4-year revisit clause, stops long term business decisions that would spur economic growth and bring jobs to the area. Now compounding the issue, the BLM is moving forward with a business management plan to implement this ramp, and the U.S. Fish and Wildlife Service continues down the unwarranted path toward critical habitat designation.

The whole planning process has its foundation in the unstable sands of poor science and friendly litigation. These access or anti-access groups sued for a process, and what has been produced is a NEPA document with full public participation that they now disagree with.

So they have returned to court litigating over the result. It is said that this process has wasted so many taxpayer dollars that could have been better used to truly protect the resource and provide enhanced recreation experiences.

This type of use of well-intentioned public policy is rampant, put on display for all to clearly see at the ISDRA. One to ten? No, 1 to 2.5 or less. Middle ground? Why? Is 75 percent not enough protection?

Please do not let the anti-access advocates continue to close the west to our family and our future generations. Thank you.

[The prepared statement of Mr. Bramham follows:]

Statement of Jim Bramham, Board Member, American Sand Association, Sacramento, California

A Foundation of Unstable Sand

I am here today representing the more than 12,000 sand sports enthusiasts who are members of the American Sand Association (ASA) and the millions of Americans who recreate in sand dune areas throughout the United States. I am currently on ASA's Board of Directors, member Technical Review Team (TRT) for the ISDRA, past President of the California Association of 4-Wheel Drive Clubs (CA4WDC), and a former Vice Chair of the California Off Highway Motorized Vehicle Recreation (OHMVR) Commission. Thank you again for an opportunity to be part of this important hearing.

For nearly 200 years, Americans had the right to travel where and by what conveyance they deemed appropriate throughout nearly all of America. The West was opened by imaginative pioneers using ever more sophisticated forms of transportation and recreation. As the West was settled, routes of travel were established and as leisure time increased adventures like a Sunday drive became increasingly popular. The pursuit of relaxation, exploration, rejuvenation, education, and family unification continue each and every weekend as thousands of sand sport recreationists travel to the various areas available for this activity. From October through Easter, the Imperial Sand Dune Recreation Area is among the most visited piece of public lands in the United States with weekend visitorships exceeding 100,000. It is a vital outlet from the pressures of urban living.

The closing of the West started with the passage of Federal Land

Policy and Management Act (FLPMA) in 1976. Previous to the passage of FLPMA Americans were allowed to travel the California desert restricted only by a few military installations and private property. To the access community, this is 100%. The outgrowth of FLPMA was the 1980 California Desert Plan. This Plan broke the desert up into several user categories, severely limiting access to many popular areas. The California desert contains several dune systems, the most prominent being Eureka, Kelso, Dumont, Rice and Imperial also known as the Algodones Dunes. The Desert Plan placed the very large Eureka and Kelso Dune complexes and a portion of the Imperial Dunes off limits to motorized recreation leaving less than half of the available sand dune recreation areas available. At this point the discussion scale is 1 to 10 with middle ground being 5, with the adoption of the plan the access community loses more than half its opportunities.

Under the Carter Administration, a Wilderness suitability inventory was conducted. It determined that slightly less than 3 million acres of the desert is suitable for Wilderness designation. Senator Cranston and later Senator Dianne Feinstein crafted the California Desert Protection Act that granted Wilderness protection to more than twice the suitable acreage. At +/- 7.5 million acres this designation incorporated many areas that have extensive road networks and mineral and recreation values. This Act designated the Eureka, Kelso and North Algodones Dunes as Wilderness. During this period the discussion is no longer one to ten but one to five and middle ground is 2.5. With the passage of the Act the access community dropped below 25% of historic access.

According to the Desert Plan and Desert Protection Act the areas in the Imperial Sand Dunes outside of Wilderness are to be managed as intensive use areas with a portion to also be managed for motorized access with less development. This was codified in the first Dunes Management Plan and later in the 1987 Recreation Area Management Plan.

Recent California surveys have shown that more than 14% of California households engage in Off Highway Vehicle (OHV) activities and nationally, less than 2% of Americans use the Wilderness system. The anti-access advocates either emboldened by their desert land heist for just 2% of the population or just bent on recreational genocide continue to use every avenue available to them to further their agenda to close the West. Their weapon of choice in the last several years at the ISDRA has been the Endangered Species Act (ESA).

Using incomplete and poorly designed studies, they bludgeoned the U.S. Fish and Wildlife Service into granting threatened status to the Peirson's Milk Vetch even though the USFWS staff questioned the completeness, accuracy and scientific protocol of the data presented to justify this action. In March of 2000 armed with this designation, the Center for Biological Diversity and other anti-access groups sued the Bureau of Land Management (BLM) demanding that nearly half the remaining acreage be closed until a new plan could be completed. In the waning years of the previous Administration, the sue and surrender or friendly lawsuit was in vogue and without a fight the BLM accepted these restrictions to public access.

Several studies commissioned by concerned citizens brought Dr. Art Phillips, a highly regarded plant biologist, to do in-depth analysis of the Peirson's Milk Vetch. These studies of both living germinating plants and the sustaining seed bank have proven that this plant is thriving throughout its range, is prolific in its seed production, and clearly does not fit the description of a threatened species. Dr. Phillips' work has been peer reviewed and is repeatable and verifiable.

The BLM was required by this same litigation to complete a Recreation Area Management Plan (RAMP) for this area. The plan, as written, seeks to protect a plant which clearly does not need the level of protection afforded under the Endangered Species Act (ESA). Although the RAMP calls for a return to the original Desert Plan land use designations it severely restricts access to a significant portion of

the dunes. This coupled with a 4-year revisit clause that precludes the local economy and recreationists from making long-term business decisions. Eliminating these draconian provisions would increase confidence in the plan, spur economic growth and bring jobs to the area's economy. Now a business plan to implement this RAMP is being finalized by the BLM.

Although the USFWS is currently evaluating a petition to de-list the Peirson's Milk Vetch, which is based on sound science, the whole planning process has its foundation in the unstable sands of poor science and friendly litigation. These anti-access groups sued for a process. What has been produced is a NEPA document with full public participation that they disagree with. Now they have returned to court litigating over the result. It is sad that this process has wasted so many taxpayer dollars and placed work demands on several federal agencies that could have been better used to truly protect the resource and provide enhanced recreation experiences. This type of abuse of well-intentioned public policy is rampant, put on display for all to clearly see at the ISDRA.

One to ten? No, 1 to 2.5 or less. Middle ground? Why? Is 75% not enough protection?

The ESA must be reformed. If it remains public policy, it must be used to grant protection only to truly needy candidates. It must include peer review requirements, test plot analysis, recovery plan analysis, thresholds of recovery, and cost benefit analysis.

Please do not let the anti-access advocates continue to close the west to my family and our future generations. Thank you.

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Mr. Radanovich. Thank you very much, Mr. Bramham. I appreciate your testimony. Mr. David Hubbard, who is with the Off-Highway Recreation Community, Escondido. Welcome to the Subcommittee, and you may begin your testimony.

STATEMENT OF DAVID HUBBARD, COUNSEL, OFF-HIGHWAY RECREATION COMMUNITY, ESCONDIDO, CALIFORNIA

Mr. Hubbard. Thank you. My role this afternoon is to describe the kind of litigation-driven land planning that now controls the CDCA and the Imperial Sand Dunes. The CDCA, as I described in my written materials, is ground zero for litigation between the pro-access and anti-access camps.

Currently, there are 10 lawsuits pending before Federal Courts that relate to the CDCA and there are three in the cube, and by in the cube, I mean that they are simply waiting for their 60 day time period to lapse so that they can file a complaint in Federal Court.

In addition, my other role is to give you some examples to demonstrate why litigation in land planning is ineffective and counterproductive from both a public access perspective, and ironically from a natural resource perspective.

The two examples that I would like to discuss are the Desert Tortoise and the Peirson's Milk Vetch. Just as important my other role here is to ask for the help of Congress in changing the situation. As has been discussed the Endangered Species Act is used as a weapon to restrict public access to public land.

As one gets into the science and the motivations of those who produce it and interpret it, what you learn is that this litigation is not about protecting plants and animals. It is about people. Specifically, it is about one group of people imposing its will on the activities of another group of people.

That needs to stop, and the only way it will stop is if

Congress regains control of this situation through legislation, and amend the Endangered Species Act, and also provide in terms of additional legislation protective status to public recreation.

It needs to move up on the priority list of activities that are protected under Federal statutes. Only in this way will there be a balance struck between natural resource protection and public access to public lands. In March of 2000, as you have heard, the Center for Biological Diversity filed a lawsuit in Federal Court, the result of which was the massive closure of more than 1 million acres of public lands in the California desert.

The stipulations that created this closure were not the product of a public process. The closures were subjected to environmental review. They were not subjected to an economic analysis. They simply were entered into by the defendant, BLM management, and the plaintiff group.

Other groups attempted to get into the lawsuit, and a gun was put to their head, and they signed on the dotted line, but the effect in essence was a back door deal that ended up closing a million acres in the California desert.

Not surprisingly, the pro-access group, the folks that I represent, the folks that are behind me wearing the orange shirts, have started to fight back. But unfortunately we are having to fight back by filing yet more lawsuits.

What this means is that the courts, and not Congress, and not the administrative agencies who are charged with keeping the public lands open to the public, and making sure that the laws are followed. It is the courts that are really planning and directing the management of these lands.

This is not the way it is supposed to go, and it is not the best way of managing this large expansive territory. Part of the reason that it is a lousy way of doing it is that the courts only adjudicates the issues that are presented to it by those parties who are before it, which means that a lot of stakeholders, a lot of the people who are going to be affected, aren't even before the court, and their interests are never considered.

And just to give you some idea, right now as I indicated, there are 10 lawsuits currently pending in Federal Court, and there are 3 others that will likely be filed in the next few weeks. And as a result of these things, a lot of money is spent, and a lot of money is wasted, and there is very little benefit to the actual species under consideration.

Perhaps the best example is the desert tortoise, where more than a hundred-million dollars has been spent, most of it to remove people from the desert. As a result of that effort, there are more desert tortoises dying now than there were before.

There has been no advance in tortoise recovery, and the primary reason for that is that the entire recovery effort has been focused on removing people from the desert and not on the true cause of the Desert Tortoise mortality, which frankly are things that are not related to human activity, such as off-road use or camping, but are related to disease, upper respiratory tract disease, which is sort of the tortoise version of SARS.

Unfortunately, neither the BLM nor the Fish and Wildlife Service, or any other group, has done what most people would think would be required when you have that kind of epidemic, which is to quarantine and control.

I see that my time is up, and I would be very happy to answer any questions that you might have with respect to the

litigation that now really controls land management in the CDCA.

[The prepared statement of Mr. Hubbard follows:]

Statement of David P. Hubbard, Esq., Lounsbery, Ferguson, Altona & Peak LLP, Escondido, California, Counsel for the Off-Road Business Association; American Sand Association; American Motorcycle Association, District 37; San Diego Off-Road Coalition; and California Off-Road Vehicle Association

Federal Court Litigation Over Public Lands In the California Desert

I. The Center for Biological Diversity Lawsuit

In March of 2000, the Center for Biological Diversity and two other plaintiff groups (collectively, ``CBD'') filed suit against the Bureau of Land Management (``BLM'') for its alleged failure to comply with the federal Endangered Species Act (``ESA'') as it applies to the California Desert Conservation Area (the ``CDCA''), an immense expanse of public lands located in the desert region of southern California. Specifically, CBD alleged that BLM had violated Section 7 of the ESA by failing to consult with the United States Fish & Wildlife Service (``USFWS'') regarding the impacts of permitted activities within the CDCA on various threatened and endangered species. With virtually no input from the affected public, BLM entered into a series of settlement stipulations with CBD which shut down more than 1 million acres of formerly-open public recreation areas in the desert. These closures were to remain in effect until the Section 7 consultation process could be completed. However, in most cases the ``interim'' closures have been incorporated into permanent management plans, resulting in a huge loss of public recreational space and opportunity.

II. Legal Actions Filed by Public Access Groups In Response to CBD Settlement

Not surprisingly, the recreational community has started to fight back, initiating its own litigation campaign to reopen the recently-closed areas of the CDCA. These suits have challenged the new management plans (and their closure strategies) on grounds they violate the Federal Lands Policy and Management Act (``FLPMA'') and the National Environmental Policy Act (``NEPA''). In addition, certain recreation groups have filed actions against BLM and USFWS under the ESA itself. For example, in October 2001, the American Sand Association (``ASA''), the Off-Road Business Association (``ORBA''), and the San Diego Off-Road Coalition (``SDORC'') filed a petition with USFWS to remove the Peirson's Milkvetch (``PMV'') from the federal list of threatened and endangered species, as permitted under Section 4 of the ESA. The PMV is a plant species endemic to the Imperial Sand Dunes Recreation Area (``ISDRA''). As a ``threatened'' species, it drives most of the regulatory activity in that region. When USFWS failed to respond timely to the delisting petition, ASA and its co-parties filed suit in federal court. This case was settled in August 2003, with USFWS paying the plaintiffs' attorneys fees.

In another action, the American Motorcycle Association District 37--along with ORBA, CORVA, SDORC, and the Utah All-Access Alliance--filed suit against BLM and USFWS for their gross mismanagement of the Desert Tortoise Recovery Plan. The complaint demonstrates that the Desert Tortoise recovery effort has cost taxpayers more than $100 million but has been a complete failure. Tortoise populations continue to decline rapidly, primarily due to Upper Respiratory Tract Disease (``URTD''). However, instead of aggressively tackling the disease, BLM and USFWS have continued in their misguided policy of attempting recovery by removing people from the desert. So while the public loses access to these public lands, tortoise populations continue to be ravaged by URTD and nothing is being done about it. The lawsuit seeks

to reverse this situation.

III. The Costs and Pitfalls of Litigating Over the CDCA

The number of legal proceedings relating to the CDCA is staggering. And for both plaintiffs and defendants, this constant string of litigation consumes tremendous amounts of financial resources. A partial list of the various lawsuits and administrative challenges includes the following:

<bullet> American Motorcycle Association, et al. v. Department of Interior, et al., U.S.D.C. Southern Dist. Calif., Case No. 02 CV 1998B (NEPA and FLPMA suit challenging interim closures throughout CDCA on grounds that closure decisions were made without public input and without environmental review)

<bullet> Off-Road Business Association, et al. v. Department of Interior, et al., U.S.D.C. Southern Dist. Calif., Case No. 03 CV 1079 JM (NEPA suit challenging recently-adopted management plan for the Western Colorado Desert region of the CDCA on grounds that Environmental Assessment for the plan does not adequately disclose, analyze, or mitigate the plan's impacts on recreation)

<bullet> San Diego Off-Road Coalition, et al. v. Department of Interior, et al., U.S.D.C. Southern Dist. Calif., Case No. 03 CV 1199 BTM (NEPA suit challenging recently-adopted management plans for (1) the Northern and Eastern Colorado region of the CDCA and (2) the Northern and Eastern Mojave Desert region of the CDCA on grounds that the Environmental Impact Statements for the plans do not adequately disclose, analyze, or mitigate the plans' impacts on recreation and on the spread of URTD among desert tortoise populations)

<bullet> California Off-Road Vehicle Association, et al. v. Department of Interior, et al., U.S.D.C. Southern Dist. Calif., Case No. 03 CV 1444 BTM (NEPA suit challenging recently-adopted off-highway vehicle route designation plan for the Western Mojave Desert region of the CDCA on grounds that the Environmental Assessment for the plan does not adequately disclose, analyze, or mitigate the plan's impacts on recreation and on the spread of URTD among desert tortoise populations)

<bullet> American Sand Association, et al. v. USFWS, et al. U.S.D.C. Southern Dist. Calif., Case No. 03-315L-LAB, (ESA suit demanding that USFWS respond to petition to delist the Peirson's Milkvetch (see above))

<bullet> American Motorcycle Association, et al. v. USFWS, et al., U.S.D.C. Northern Dist. Calif., Case No.--------(ESA suit over failed Desert Tortoise Recovery Plan (see above))

<bullet> Center for Biological Diversity, et al. v. USFWS, et al., U.S.D.C. Northern Dist. Calif., Case No. C 03 2509 SI (ESA suit challenging the Biological Opinions for the Desert Tortoise and Peirson's Milkvetch)

<bullet> Center for Biological Diversity, et al. v. Department of Interior, et al., U.S.D.C. Southern Dist. Calif., Case No. 01 CV 2101 (ESA suit demanding that DOI designate critical habitat for various threatened and endangered plant species in the CDCA, including the Peirson's milkvetch)

<bullet> Center for Biological Diversity 60-Day Notice of Intent to Sue over USFWS's decision not to place the Flat-tailed horned lizard (FTHL) on the list of threatened species. (The FTHL resides in various regions of the CDCA.)

<bullet> Center for Biological Diversity 60-Day Notice of Intent to Sue over BLM's Approval of the Recreation Area Management Plan (RAMP) for the Imperial Sand Dunes Recreation Area, on grounds it fails to provide adequate protection for the Peirson's Milkvetch.

<bullet> Center for Biological Diversity's Petition to List the Andrews Dune Scarab Beetle as a Threatened Species. (The Andrews dune scarab beetle is endemic to the Imperial Sand Dunes.)

What this partial list demonstrates is that the CDCA is ``ground-

zero'' for public access and environmental litigation. No place in the nation fosters so many lawsuits between public user groups and the anti-access wing of the environmental movement.

The results of this phenomenon have been disastrous. In the shadow of litigation, very little proactive land management planning actually takes place, as BLM and USFWS must instead spend most of their resources responding to court orders. Worse, the legal decisions issued by the courts tend to be made in a vacuum and address only those interests advanced by the litigating parties. The needs and desires of other stakeholders are not taken into account, since they are not before the court. In this way, special interest groups have been able to use the judicial system to impose their will on the land. The traditional policy-making bodies--Congress, BLM, USFWS--have largely lost control of the process and now merely respond to directives issued by the courts.

Ultimately, the public users of public lands pay the price for this--usually in the form of lost access. Simply put, the federal government is not doing enough to protect public use of the land. Rather than face a highly organized, well-trained, and well-funded anti-access group in court--or worse, risk a contempt charge by failing to comply with a court order--the federal agencies choose to capitulate and close trails and camping areas throughout the CDCA. Experience has shown that the federal agencies would rather deal with vocal but unorganized desert visitors than fight the likes of CBD and the Sierra Club. This has got to change; and only Congress can change it.

IV. Using the Endangered Species Act to Frustrate Public Access

A quick review of the lawsuits described above will reveal the source of the problem. Anti-access groups have learned that the best way to remove people from the CDCA is to claim that their presence in the desert jeopardizes the viability of threatened or endangered species. They know that the ESA places species protection above all human-centered considerations. When push comes to shove, the people are shoved out. Furthermore, the anti-access groups know they need not present much in the way of solid scientific evidence to establish that the alleged ``jeopardy'' exists. Even weak evidence of a human-related threat to a protected species is often sufficient to support an injunction closing down huge areas of public land.

Ironically, the plants and animals that are used as ``standard bearers'' for this kind of litigation rarely benefit from all of the legal maneuvering. So much emphasis is placed on removing people, that little energy is left to really address the true needs of the species. Three examples of this phenomenon are the Desert Tortoise, the Peirson's Milkvetch, and the Andrews Dune Scarab Beetle.

A. The Desert Tortoise

The Desert Tortoise was ``emergency'' listed in 1989 due to an extreme outbreak of URTD in the Western Mojave Desert. In some regions, more than 80% of adult, reproductive tortoises succumbed to the disease. However, USFWS and BLM did not institute immediate measures to control and stop URTD from spreading. With the aid of the anti-access lobby, they instead implemented land management policies that removed human activities from large swaths of tortoise habitat, believing this would somehow improve tortoise survival. It did not.

Throughout the 1990s, URTD spread to tortoise populations throughout the entire range of the species. Tortoises with the disease were detected in the Mojave and Colorado deserts of California, as well as in the deserts of Arizona, Nevada, and Utah. Not surprisingly, the overall reproductive rate of tortoises began to decline. Still, nothing was done to combat the disease or stop the epidemic from spreading. Instead, USFWS and BLM imposed more controls on human use of desert tortoise habitat.

As of 2003, the disease is still rampant and killing tortoises at rates far higher than that assumed in the 1994 Desert Tortoise Recovery Plan. Indeed, recovery will be impossible if URTD is not brought under control However, no plan for stopping URTD in the field has been devised. There is no concerted effort to identify sick tortoises and quarantine (or euthanize) them. On the contrary, BLM has continued to placate the anti-access lobby by closing down more vehicle trails and recreation areas as a means to ``recover'' the tortoise. Not only has this failed, it actually serves to increase disease transmission, as trails often form a barrier between sick and healthy tortoise populations.

Then, to add insult to injury, this whole backward process is blessed by the federal court and deemed necessary for compliance with the ESA. This is tragic and stupid. And if it continues, the CDCA will be closed to most forms of public recreation, and the tortoise will be extinct.

B. The Peirson's Milkvetch

In the Imperial Sand Dunes, a slightly different but equally troubling process is taking place. Under pressure from the anti-access lobby, USFWS began in 1996 to consider the Peirson's milkvetch (``PMV'') for potential listing as a threatened species. The plant is endemic to the Imperial Sand Dunes and has a limited range, so the agency felt it was a suitable candidate for protection. However, neither USFWS nor any other agency knew how many plants actually lived in the dunes. They also had no idea as to the size and health of the PMV's seed bank, which is a key factor in determining the reproductive viability of a plant species.

While deliberating on the listing question, USFWS sent a memorandum to BLM asking for abundance data on the PMV. The memo indicated that without such data no listing decision could be made. BLM never provided the information requested, primarily because no one had ever performed a plant census for the PMV or a seed bank study. Nevertheless, the plant was listed as ``threatened'' in October 1998, with off-highway vehicle (OHV) recreation identified as the biggest threat.

Since that time, the need to ``protect'' the PMV has driven land management decisions in the Imperial Sand Dunes Recreation Area. In fact, approximately 50,000 acres of the ISDRA were recently closed to vehicle use for the express purpose of safeguarding the PMV.

Ironically, however, BLM monitoring data from 1998, 1999, and 2000 establish that PMV abundance in the open riding areas has ``increased substantially'' since 1977, when BLM commissioned the last programmatic survey of the plant. The monitoring reports also determined that OHVs rarely come in contact with PMV colonies, which largely explains why the plant continues to thrive in the open areas.

The public access community looked upon these monitoring data with great hope. The numbers confirmed what dune riders and campers had suspected along--namely that the plant is abundant and not threatened by recreational activities, including OHV use. Still, BLM would not rescind the closures. Instead, BLM left them in place, claiming that a court order from the original CBD lawsuit prevented it from reopening these 50,000 acres to recreation.

In response, the American Sand Association retained a highly qualified biologist, Arthur Phillips, III, Ph.D., to conduct a plant-by-plant count of the PMV in the ISDRA. The purpose of this effort was to prove to BLM and USFWS that the PMV was abundant enough to be removed from the list of threatened species, thereby eliminating the need for the dune closures. Dr. Phillips performed his plant census in the Spring of 2001 and what he found was startling. In the ``open'' areas alone, he and his staff counted approximately 72,000 plants, most of which had already flowered and set seed. Helicopter overflights of the ``closed'' areas revealed PMV colonies of similar size and number.

Dr. Phillips also determined that less than 1% of the PMV plants showed evidence of contact with vehicles, and most of these suffered only minor damage.

In July 2001, Dr. Phillips presented his data to BLM in written form. These data, along with that developed by BLM during its 1998-2000 monitoring surveys, provided the technical basis for the delisting petition ASA and others filed with the Department of Interior on October 24, 2001. Later, Dr. Phillips augmented his plant census information with a seed bank study for the PMV. Through this work, Dr. Phillips determined that the PMV seed bank contains between 3.5 million and 5.6 million seeds. These lie dormant just under the surface of the sand and will bloom when climate conditions (i.e., heavy rainfall) become ideal. According to Dr. Phillips, the size of the seed bank and the long-term resilience of the seeds themselves indicate that the PMV is well-poised for continued reproductive success. These data also have been presented to USFWS and BLM.

In 2003, BLM issued a Recreation Area Management Plan (RAMP) for the ISDRA. Users of the dunes had hoped the RAMP would be built around the technical data that had been developed by, or presented to, BLM over the past four years. That is, they hoped the RAMP would recognize that OHV users and PMV plants peacefully coexist in the Imperial Sand Dunes, and that there is no reason for continued or expanded closures. Unfortunately, the RAMP was designed with different interests in mind. Instead of fully reopening the 50,000 acres that had been closed in the aftermath of the CBD lawsuit, the RAMP imposes a tight cap on the number of vehicles that may travel into these areas, which means that very few people will be permitted to enjoy this region of the dunes.

One would think the anti-access groups would be content with this result; but they are not. They have already filed suit challenging the Biological Opinion (``BO'') on which the RAMP is based, claiming the BO wrongfully determined that the RAMP would not ``jeopardize'' the PMV. Of course, they have no data to support this assertion. The anti-access groups have also filed a 60-day Notice of Intent to Sue on the RAMP itself, positioning themselves to bring yet another lawsuit to keep those 50,000 acres completely free of campers and OHV riders.

C. The Andrews Dune Scarab Beetle

Currently, the biggest threat to the anti-access agenda in the Imperial Sand Dunes is the petition to delist the PMV, which is still pending before USFWS. If USFWS finds that delisting is warranted, many of the most draconian restrictions on public access in the dunes will have no legal or biological justification. The closures, at least in part, will have to come down. To ward against this possibility, CBD has now filed with USFWS a petition to list the Andrews Dune Scarab Beetle as a threatened or endangered species. The beetle, if listed, would then function as a surrogate ``shield'' species in the ISDRA should the PMV be delisted.

However, the Scarab Beetle listing petition is little more than a shrill attack on OHV users and has little to do with the actual population dynamics of the species in question. Not only does the petition fail to include basic information regarding the number of beetles residing in the dunes, it does not discuss population trends at all. In short, the petition does not indicate how many beetles exist or whether their numbers are growing or declining. Further, the petition provides no evidence that OHV's affect population trends one way or the other. Most of the technical evidence cited in the petition is old, much of it generated in the late 1970s by a biologist (Andrews) whose work has been sharply criticized by BLM and USFWS.

The public access community has responded by issuing comments identifying defects in the Scarab Beetle listing petition; but there is great concern that the beetle will be listed even in the absence of credible data warranting such protection. One way or the other, it is

clear that this controversy--as with all others involving the ISDRA--will end up being litigated in federal court. And once again, the government and the public it is supposed to serve may find its hands tied by a judicial order that is inconsistent with the long-term planning needs of the ISDRA.

V. The Need for Legislative Reform: Protecting Public Access to Public Lands

Ultimately, the trend towards court-based land management in the CDCA will continue unless Congress changes the laws that judges are required to interpret and enforce. Public access to key recreational venues must become a legislative priority. Public access must be given protective status so that a proper balance is struck between resource conservation and public use. This likely will require amendments to the Endangered Species Act. But more important, it will require that Congress pass new legislation explicitly protecting public recreational access. Only in this way will the public's ability to access and enjoy the land be preserved. Put simply, it is time for Congress to take control of this situation and craft a better statutory scheme for land management in the California Desert.

Thank you for allowing me to present my position on public access to public lands within the CDCA.

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Mr. Radanovich. Thank you, Mr. Hubbard, for your testimony, and we will be able to ask questions when you get done. The Committee is pleased to be joined by Congressman Bob Filner from this neck of the woods, and I am sure that part of his district is in this habitat area. Mr. Filner, welcome.

And we will move on then to Mr. Ron Kemper, who is a Grazing Leaseholder in the California Desert Conservation Area from East Highlands, California. And I do ask for unanimous consent to allow Mr. Filner to sit on the panel. There being no objection, so ordered. Mr. Kemper, welcome to the Committee. Please begin your testimony.

STATEMENT OF RON KEMPER, GRAZING LEASEHOLDER IN THE CALIFORNIA DESERT CONSERVATION AREA, EAST HIGHLANDS, CALIFORNIA

Mr. Kemper. Thank you, and thank you for inviting me. As you mentioned, I am a rancher, and hold personal property, as well as a Federal grazing permit on Federal lands within the California Desert Conservation Area.

I will be addressing my testimony to the subjects of access and grazing issues having to do with the 10 million acres managed by the Bureau of Land Management, as prescribed by the CDCA.

For some time those of us in the grazing industry have been concerned by the revisions to the CDCA known as NEMO, NECO, and WEMO, because these revisions are based upon an outdated document known, a discretionary document, as the Mojave Desert Tortoise Recovery Plan.

In addition to being a rancher, I also represent grazing interests and have been the Chair of the Desert Advisory Council for the last 2 years. All of us on the advisory council have known that the plan has been outdated for some time and have given strong recommendations to the BLM to not implement NEMO, NECO or WEMO until such time as the Desert Tortoise Recovery Plan can be updated as required by the plan itself.

When we received copies of the draft documents of NEMO and NECO, we were extremely disappointed that the preferred alternative would make it very difficult for some of the

ranchers to stay in business.

We were further disappointed when we learned that the BLM had not relied upon the Five C's process required under the Taylor Grazing Act, whereby they must carefully consider, consult, coordinate, and cooperate with the holder of a Federal grazing permit on Federal lands.

Their response was that they did not feel that they were required to do so and that they were otherwise complying with the Mojave Desert Tortoise Recovery Plan. Grazing interests informed the BLM's area managers and the district manager that they believed that they could come up with an alternative which would be based on good science to fully protect the Desert Tortoise, while assuring that the rancher would remain economically viable.

The BLM indicated that they would allow the grazing interests to formulate this alternative, and that such alternative would be included in the plan. Moreover, the BLM agreed seriously to consider a grazing interests plan as a preferred alternative.

The grazing interests retained nationally renowned range expert Professor Wayne Burkhart. In addition, grazing interests participated in the work of a technical review team that spent over 1,000 man-hours of study, which led it to formulate a set of recommendations.

That technical review team included the following members of the Desert Advisory Council; myself, representing the Renewable Resources; Ilene Anderson, also representing Renewable Resources and a botanist with the Native Plant Society; Bill Bederly, representing the public at large; Bob Ellis, representing the Sierra Club and Desert Survivors; Paul Smith, representing business interests and tourism.

The other members of the technical review team were Dr. Avery, known tortoise expert from Drexel University. Dr. Avery is the only tortoise expert who has ever done a study on the competition between cattle and tortoises.

Ray Bransfield, a wildlife biologist with the U.S. Fish and Wildlife out of Ventura; Phil Metica, a wildlife biologist, U.S. Fish and Wildlife Service, Las Vegas; Bud Schaefer, the NEMO team leader for BLM; Ed LaRue, wildlife biologist and participant in the WEMO planning project.

And Larry Foreman, head biologist for the California Desert District and the Bureau of Land Management; Dick Grow, also with the Bureau of Land Management and NEMO team leader; Molly Brady, Needles Field Officer Manager for the Bureau of Land Management; Larry Morgan, lead range land management specialist from the Bureau of Land Management.

And Teresa McBride, BLM range land management specialist; Milton Blair, a holder of a Federal grazing permit known as Lazey Dazey Allotment; Richard Blancol, a holder of a Federal grazing permit for Valley Wells Allotment; Tim Overson, an operator for the Valley View Allotment; and John Stone, a holder of a forest grazing permit; and John T. Stone, a range specialist representing grazing interests. And Dave Thornton was also present, who is a current operator at Valley Wells.

I see that I am about out of time and so I will come to a conclusion. Even though over a thousand man-hours were spent, and even though the TRT gave recommendations to the district manager of the BLM on the planning process, and even though there was a vote of 10-to-2 or 11-to-2 on a recommendation to move forward with the plan as presented by grazing interests, it was not accepted as a preferred alternative.

What was horribly discouraging to grazing interests was it

was not even included as an alternative in the document. It was as if the work that we had done did not exist. If you have any questions, I would be happy to answer them.

[The prepared statement of Mr. Kemper follows:]

Statement of Ron Kemper, Renewable Resources Representative and Chair of the Desert Advisory Council

The Desert Advisory Council is mandated by Congress and representatives are appointed by the Secretary of the Interior for the purpose of giving the Bureau of Land Management direction and advice in their land use plans.

I, Ron Kemper, am a rancher and hold personal property as well as a federal grazing permit on federal lands within the California Desert Conservation Area (CDCA).

I will be addressing my testimony to the subjects of access and grazing issues having to do with the 10 million acres managed by the Bureau of Land Management, as prescribed by the CDCA.

For sometime those of us in the grazing industry have been concerned by the revisions to the CDCA known as NEMO, NECO & WEMO, because these revisions are based upon an outdated document known as the Mojave Desert Tortoise Recovery Plan.

All of us on the Advisory Council have known that the plan has been outdated for some time and have given strong recommendations to the BLM not to implement NEMO, NECO or WEMO until such time as the Desert Tortoise Recovery Plan can be updated as required by the plan itself.

In receiving copies of the draft document, NEMO & NECO, we were extremely disappointed that the preferred alternative would make it very difficult for some of the ranchers to stay in business. We were further disappointed when we learned that the BLM had not relied upon the Five C's process required under the Taylor Grazing Act, whereby they must carefully consider, consult, coordinate and cooperate with the holder of a federal grazing permit on federal lands. Their response was that they did not feel that they were required to do so and that they were otherwise complying with the Mojave Desert Tortoise Recovery Plan.

Grazing interests informed the BLM's Area Managers and the District Manager that they believed they could come up with an alternative which would be based on good science, would fully protect the desert tortoise while assuring that the rancher would remain economically viable. BLM indicated it would allow the grazing interests to formulate this alternative and that such alternative would be included in the plan. Moreover, the BLM agreed seriously to consider our plan as the preferred alternative.

The grazing interests retained nationally renowned range expert Professor Wayne Burkhart. In addition, grazing interests participated in the work of a technical review team that spent over one thousand man-hours of study which led it to formulate a set of recommendations. That technical review team included the following members of the Desert Advisory Council: myself, representing Renewable Resources; Ilene Anderson, also representing Renewable Resources and a Botanist with the Native Plant Society; Bill Bedderly, representing the public at large; Bob Ellis, representing the Sierra Club and Desert Survivors; and Paul Smith, representing business interests and tourism. The other members of the Technical Review team were: Dr. Avery, known tortoise expert from Drexel University.--Dr. Avery is the only tortoise expert who has ever done a study on the competition between cattle and tortoises; Ray Bransfield, a Wildlife Biologist with U.S. Fish & Wildlife out of Ventura; Phil Metica, Wildlife Biologist, U.S. Fish & Wildlife Services, Las Vegas; Bud Seehafer, the NEMO team leader for BLM; Ed LaRue, Wildlife Biologist and participant in the WEMO Planning Project; Larry Foreman, head Biologist BLM; Dick Crow with BLM and NEMO team

leader; Molly Brady, Needles Field Office Manager BLM; Larry Morgan, lead Range Land Management Specialist BLM; Teresa McBride, BLM Range Land Management Specialist; Milton Blair, holder of a Federal Grazing Permit known as Lazey Dazey Allotment; Richard Blanco, holder of a Federal Grazing Permit for Valley Wells Allotment; Tim Overson, operator for the Valley View Allotment; John Stone, the holder of a Forest Grazing Permit; John T. Stone, a range specialist representing grazing interests; and Dave Thornton, current operator at Valley Wells.

This diverse technical review team, as noted, spent over one thousand man-hours of investigation before coming up with their recommendations designed to achieve: (1) desert tortoise recovery; (2) public land health; and (3) survival of economically viable ranching. (A copy of the TRT minutes and recommendations are attached as Exhibit A.) 1 - 8

On or about December 8, 2001, as Chair of the Technical Review Team, I made a report to the Desert Advisory Council as a whole. Several of the TRT participants, including Dr. Avery, were present and provided clarifying testimony to the DAC. After the assurances by TRT participant and Needles Area Manager Molly Brady, that monies would be available for funding study projects, DAC's recommendation was for remaining allotments to be kept active in their present form and that a study be initiated to quantify their relationship between grazing and desert tortoise survival for which the BLM would arrange funding. As of that time, within DWIMA boundaries it would be required to remove cattle when the monitor concluded there was competition between tortoises and cattle for feed. This was done in the form of a motion and 2nd and was passed by an 11 to 2 vote. (Copy of vote is attached as Exhibit B.) 1

It is disappointing to report, even though in excess of a thousand man-hours had been spent and wildlife biologists from BLM, Fish & Wildlife and the private sector had agreed that this plan could work, the DAC recommendations were not supported as the preferred alternative. In fact, in a show of total disrespect and bad faith, those recommendations were not even included as an alternative in the finished document.

BLM managers will tell you that they support experimental management plans and adaptive management. However, I am not aware of a single case in which this has proved to be true. However, I can cite many cases in which, in fact, just the opposite was true. The ones, of course, with which I am most familiar involve opportunities missed on my own allotment.

First of all, allow me to state that the most recent attempt at adaptive management was the result of a negotiated settlement between the BLM and the Center for Biodiversity. With all their presumed wisdom, these two parties believed that it was more important for all the ranchers to share the pain and economic hardship than it was to protect the tortoise. My allotment does not have even a single acre of desert tortoise critical habitat; however, I was required to exclude cattle from approximately 1/3 of my allotment, two times a year, at the only time I had trapped waters and the cattle could benefit from those waters and the forage created near them.

In order to mitigate the exclosures noted, the bureau agreed to conduct an environmental review and issue a decision for a new pipeline in California Valley and to do so in enough time to enable its installation prior to November 2002. This would allow use of this portion of the ranch at a time when water was not seasonally trapped in cofferdams. To date, the BLM still has not completed the environmental review. (See attached Exhibit C.)

I wish to place it on the record that at all times we have complied with the decisions and never trespassed cattle. We upheld our end of the bargain, costing our family in excess of $35,000 in additional hay. Undue delays have caused us to sell almost half of the native cattle.

We were not allowed to use our forage or water in the excluded areas; we voluntarily reduced the number of cattle to preserve range health on the balance of the ranch. I have enclosed copies of the written communications regarding this project. (See attached Exhibit C.)

In order to keep from having to sell cattle, I also applied for several vacant allotments. To date none of these allotments have been given to applicants and I now understand they are being considered for retirement from availability for application.

With regard to access and wilderness please allow me to say that we have many miles of fence line, roads, cofferdams, pipelines and water tanks within supposed wilderness, wilderness that is supposedly a road free area untrammeled by man. This is absolutely ludicrous. This has been a cattle ranch for over one hundred years; it is not a wilderness.

May I answer any questions for the Congressmen?

NOTE: Attachments to Mr. Kemper's statement have been retained in the Committee's official files.

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Mr. Radanovich. Thank you very much, Mr. Kemper. We are now joined by Mr. Howard Brown, who is a mining geologist from the OMYA California, Incorporated, Lucerne Valley. Mr. Brown, welcome to the Subcommittee, and you may begin your testimony.

STATEMENT OF HOWARD BROWN, MINING GEOLOGIST, OMYA CALIFORNIA, INC., LUCERNE VALLEY, CALIFORNIA

Mr. Brown. OK. Thank you for the opportunity to speak here. I am Howard Brown, a geologist, and I have been working the Mojave since the 1970's, and I am also on the Desert Advisory Council representing non-renewable resources.

Mining dates back to the dawn of civilization, and civilization cannot exist without the consumer products made from minerals, and as has been pointed out by other speakers, mining in the California desert is a major industry, which produces over $2 billion worth of minerals per year.

The mining industry in Southern California directly employs about 20,000 people and accounts for $35 million in local taxes, and $60 million in State taxes per year. Mining is a non-renewable resource, and as mineral deposits are depleted, new mineral deposits must be found, permitted, and mined, to provide raw materials our society demand.

If you can't grow it, you have to mine it. Mining is more than trucks and motors. It is about thousands of consumer products made from mined materials. Issues facing industry include a regulatory environment which is progressively excluding access to public lands to search for new mineral deposits in a regulatory environment which makes permitting a mine needlessly time consuming, excessively expensive, and at best very difficult.

This is largely due to the Endangered Species Act, which has been misused without adequate science in litigation to force the creation of inadequate land use plans, land closures, mineral withdrawals, and regulatory designations which eliminate access to public lands to search for minerals, or make permitting a new mine very difficult.

As an example, the BLM Northeast Colorado River desert area, or NECO, contains many areas of known mineral potential. However, the Endangered Species Act and the regulatory environment will make access for mineral exploration or permitting a new mine very difficult.

Every inch of land in the 5.5 million acre planning area is habitat for the endangered tortoise, or an obscure species of

rats and bats, or lizards, which are managed as endangered or de facto endangered even though they are not.

And I would refer to a series of overlay maps in my written testimony which showed a progressive elimination of areas of mineral potential as all these different species' habitat is overlaid.

Recent mining industry surveys, which compare California and other western States to Canada and the rest of the world, demonstrate that although California has good infrastructure and is well-endowed with minerals, the existing regulatory environment discourages mineral investment.

Many exploration companies have left the desert for other places in which mineral exploration and mining investment are more welcomed. And again I would refer in the written testimony to figures 6, 14, and 15.

A resolution of the issues include revisions to the Endangered Species Act, a more permissive and streamline regulatory permitting environment, and access to public lands for mineral exploration. Thanks for the opportunity to state my views.

[The prepared statement of Mr. Brown follows:]

Statement of Howard Brown, Geologist, OMYA (California) Inc., Lucerne Valley, California, Representing the Mining Industry in the California Desert

MINING IN THE CALIFORNIA DESERT
economic importance, the regulatory environment and issues facing the industry

Howard Brown, OMYA California Inc., P.O. Box 825,
Lucerne Valley, CA 92356

SUMMARY

Mining dates back to the dawn of civilization. Civilization could not exist without the thousands of consumer products made from minerals. Mining in the California desert is a major industry, and produces over $2 billion worth of minerals per year. The mining industry in southern California directly employs about 20,000, and accounts for $35 million in local taxes and $60 million in state taxes per year. Mining is a non renewable resource, and as mineral deposits are depleted, new mineral deposits must be found, permitted and mined, to provide raw materials our society demands.

Issues facing the mining industry include a regulatory environment which is progressively excluding access to public lands to search for new mineral deposits, and a regulatory environment which makes permitting a mine needlessly time consuming, excessively expensive, and at best very difficult. This is largely due to abuse of the Endangered Species Act, which has been misused without adequate science, and litigation, to force the creation of inadequate land use plans, land closures, mineral withdrawals, and regulatory designations which eliminate access to public lands to search for minerals, or make permitting a new mine very difficult.

The BLM Northeast Colorado River Desert Area (NECO), contains many areas of known mineral potential, however abuse of the Endangered Species Act and the regulatory environment will make access for mineral exploration, or permitting a new mine very difficult. Every inch of land in the 5.5 million acre planning area is habitat for endangered tortoise or obscure species of rats bats or lizards which are managed as endangered (de-facto endangered) even though they are not.

An example from the west Mojave is the Elementis Inc. Hectorite Mine near Newberry Springs. Continuously mined for 75 years, the BLM

has proposed an ACEC (Area of Critical Environmental Concern) over active private mining land and mining claims, to protect tortoise and lizard habitat. The poorly planned Pisgah Crater ACEC lacks adequate scientific data, and will dramatically limit future expansion of the mine, despite the fact that other ACEC alternatives are available.

Recent mining industry surveys which compare California and other western states, Canada, and the rest of the world, demonstrate that, although California is politically stable, has good infrastructure, and is well-endowed with minerals, the existing regulatory environment discourages mineral investment. Many exploration companies have left the desert area for other places in which mineral exploration and mining investment are more welcomed.

Resolution of the issues include needed revisions to the Endangered Species Act, a more permissive and streamlined regulatory environment, and access to public lands for mineral exploration.

RESOLUTION OF THE ISSUES WILL INCLUDE:

1) ACCESS TO PUBLIC LANDS FOR MINERAL EXPLORATION,

2) STREAMLINED REGULATORY ENVIRONMENT,

3) PROACTIVE COLLABORATIVE NEGOTIATED DESIGNATION OF CONSERVATION AREAS

4) REVISIONS TO THE ENDANGERED SPECIES ACT,

1) ACCESS TO PUBLIC LANDS FOR MINERAL EXPLORATION

During the last decade we have seen increased systematic and progressive closures of vehicular access to public lands. Since the land in the desert area is often remote, and desolate, vehicular access may be the only realistic access to areas for mineral exploration. Roads which have been in existence for decades have been closed to protect species habitat. In some cases roads have been closed that provide access to prospects and mining claims, which are known to contain valuable mineral deposits, and other areas which are thought to have high potential for mineral discoveries.

The rationale for closing existing roads is that the habitat value of endangered and sensitive species is greater than all past, existing, and future human needs and values combined. The process of road closure is sometimes arbitrary, may be based on lack of user group input, poor maps, little ground based surveys, and does not always result in a resolution which is beneficial to the species or public lands users.

We believe the proposed vehicle network plans must be modified, so that existing vehicle access to known mineral deposits, occurrences, mines and prospects, and areas of significant mineral potential be left open, until those mineral deposits can be evaluated, and found to be either of present or future economic interest, or determined to be of no present or future value, at which time those individual roads may be closed. But in no case should existing roads to known mineral deposits or areas of potential mineral deposits be closed.

We are strongly opposed to the proposed road closures within the OHV road network plan until known and potential mineral resources can be fully and confidently evaluated within the framework of long term societal needs for mineral resources. The short sighted approach to eliminate access to known and yet to be discovered mineral resources to protect obscure biotic species, will ultimately have long-term negative impacts to the availability of consumer products upon which we all depend.

We suggest a more proactive collaborative approach in which regulatory agencies consult more with user groups to work out acceptable resolutions which recognize long-term future growth and multiple use human societal needs BEFORE designating road closures.

2) STREAMLINED PERMITTING PROCESS

In 1999 Congress requested a study by the National Research Council (NRC) to assess the regulatory framework for hardrock mining on federal lands. Among the NRC report conclusions were that permitting procedures

for mineral exploration and mining projects commonly take significantly longer than is necessary. They commented that the NEPA process should not be viewed as an opportunity to slow the process. The NRC report recommended that the BLM and the Forest Service should implement a more timely permitting process.

We commend the BLM for its efforts to streamline the process in the most recent land use plans such as WEMO, NECO and NEMO, and adoption of the proposed ``Las Vegas'' model for dealing with endangered species. Basically, a mitigation ratio of acres or $ cost per acre is established. The proponent provides the mitigation land in the designated ratio, and or pays the established mitigation fee and moves thru the process, rather than more and more studies, or endless litigation. This pragmatic and practical procedure although not without flaws, such as significantly increased mitigation ratios and fees, will hopefully streamline the process of dealing with endangered species relative to mine permitting.

3) PROACTIVE COLLABORATIVE NEGOTIATED DESIGNATION OF CONSERVATION AREAS

Various land use categories such as ACEC, Research Natural Areas (RNA), habitat connectivity corridors (HCC), biological transition areas (BTA), special review areas (SRA) and other such designations are created for research and education, to protect endangered, sensitive and other non-listed species, but also typical representation of common plants, and typical representation of common geologic, soil or water features.

Management policy for many of the ACEC, RNA and other conservation designations include exclusion or severe limitations on vehicular access, or other disturbances of habitat for non-listed species.

An example from the west Mojave is the Elementis Inc. Hectorite Mine near Newberry Springs. Continuously mined for 75 years, the BLM has proposed an ACEC (Area of Critical Environmental Concern) over active private mining land and mining claims, to protect low density tortoise habitat, non-listed species habitat, and typical representation of common geologic features.

Management measures within the ACEC include prohibition of vehicle traffic, and protection of habitat for non-listed species. The poorly planned Pisgah Crater ACEC will dramatically limit future expansion of the mine, and close existing mine related roads despite the fact that other ACEC alternatives are available.

Greater communication with the mining company before the plan was distributed to the public would have allowed a mutually acceptable boundary to be drawn which is beneficial to the mining company as well as the species.

4) REVISIONS TO THE ENDANGERED SPECIES ACT

It is commonly believed that the Endangered Species Act needs revisions. Several proposed revisions follow:

A) Require peer reviewed science before listing is proposed.

So many cases of listing packages based on incomplete and or non peer reviewed ``science,'' which have later been shown to be inadequate or simply incorrect. Example: The carbonate endangered plant species in the San Bernardino Mountains, became listed, and only in the 6 years after listing was adequate legitimate field work done, and which now shows only 5% of the habitat was ever threatened.

B) Unbiased economic analysis to be required as part of the listing package.

Numerous cases of economic analysis being initiated long after listing completed and only when critical habitat is proposed. Example: San Bernardino Mountains endangered carbonate endemic plants critical habitat economic analysis was only done 6 years after the listing was completed, and after critical habitat was formally proposed. Analysis

presented by mining companies indicated an impact in excess of $10 billion, whereas the FWS analysis indicated an impact of less than $200 million. The huge discrepancy alone would suggest additional work is necessary, but the mining company analysis was completely dismissed.

C) Distinct populations and subspecies which are not genetically different should not get special protection.

Example: Several of the ``endemic'' Carbonate species in the San Bernardino Mountains, are known to be subspecies of a much wider ranging species which extend from Canada to Mexico.

D) Delisting of a species when adequate science shows there is no threat to the survival.

Some species have been listed based on perceived threats. After listing adequate scientific data was established to demonstrate the perceived threats were not real or were much less significant than originally perceived, and did not threaten the survival of the species.

E) Removal of disincentives to reintroduce endangered species.

Example: The carbonate endemic subspecies in the San Bernardino Mountains. Planting and nursery studies have shown that the plants can be successfully reintroduced during reclamation, however, agencies refuse to allow credit for their reintroduction in reclamation. However the reintroduced plants are given full protection under ESA. Full credit must be given for successfully reintroduced plants, and disincentives removed.

F) Provisions for non permanent disturbances and benefits to habitat must be allowed.

Mines are non-permanent disturbances, and reclamation is required. Reclamation may result in the creation of new habitat, which will benefit or promote reintroduction of the species.

Example: The San Bernardino Mountains Carbonate endemic plant species. Most of the overburden from the carbonate mines is subeconomic carbonate rock, which is placed in overburden sites. These overburden sites create new habitat for the plant species, where it did not previously exist, and thus, create habitat connectivity and promote reintroduction of the plants, yet no credit is given for this activity, rather it is viewed as a threat to the species. This needs to change and beneficial aspects must be recognized.

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MINING DATES BACK TO THE DAWN OF CIVILIZATION

<bullet> THE FIRST PEOPLE IN AMERICA WERE AWARE OF MINED MATERIALS IN THE FORM OF TOOLS OR MINERALS WHICH PRESERVED OR IMPROVED THE FLAVOR OF FOOD

<bullet> MINING AND UTILIZATION OF RAW MATERIALS IS THE ROOT OF CIVILIZATION

<bullet> CIVILIZATION AS WE KNOW IT COULD NOT EXIST WITHOUT MINING

EMPLOYMENT

<bullet> Desert mining industry directly employs 16,640 in Imperial, Inyo, Kern, Riverside, and San Bernardino Counties

<bullet> Mining employs 19,630 In Southern California

<bullet> Each $1 million in mineral production directly accounts for12.8 jobs in the 5-county desert area, and 15.1 jobs in Southern California

TAXES

<bullet> Within the 5 county desert area, mineral production accounts for: $34.3 million in local taxes and $54.4 million in state taxes

<bullet> Southern California mineral production accounts for: $37.5 million in local taxes and $61.3 Million in state taxes

IF YOU CANT GROW IT, YOU HAVE TO MINE IT

<bullet> MOST PEOPLE DO NOT RECOGNIZE THE IMPORTANCE OF MINING IN THEIR LIVES

<bullet> CIVILIZATION COULD NOT EXIST WITHOUT MINING AND CONSUMER PRODUCTS MADE FROM MINERALS

<bullet> MINING IS NOT JUST TRUCKS AND LOADERS

<bullet> MINING IS THOUSANDS OF CONSUMER PRODUCTS MADE FROM MINERALS

THE MINING REGULATORY ENVIRONMENT

<bullet> SURVEY RANKING FACTORS WHICH INFLUENCE MINERAL INVESTMENT ATTRACTIVENESS

<bullet> COMPARES AREAS IN USA, CANADA, AND THE WORLD

<bullet> TOP OF CHART IS ATTRACTIVE FOR INVESTMENT BOTTOM OF CHART IS DETERRENT

<bullet> CALIFORNIA RANKS NEAR THE BOTTOM FOR MANY FACTORS

<bullet> DUE TO ABUSE OF THE ENDANGERED SPECIES ACT AND EXCESSIVE ENVIRONMENTAL REGULATIONS

NORTHEAST COLORADO RIVER DESERT AREA

NECO AREA

<bullet> MANY AREAS WITH MINERAL POTENTIAL

<bullet> HOWEVER, ABUSE OF THE ENDANGERED SPECIES ACT AND THE REGULATORY ENVIRONMENT WILL MAKE PERMITTING A NEW MINE VERY DIFFICULT

<bullet> EVERY INCH OF LAND IN THE 5.5 MILLION ACRE NECO AREA IS HABITAT FOR ENDANGERED TORTOISE OR OBSCURE SPECIES OF RATS, BATS, OR LIZARDS

<bullet> UNTIL REGULATORY CHANGES OCCUR AND THE ENDANGERED SPECIES ACT IS MODIFIED, OTHER PLACES ARE MORE ATTRACTIVE FOR MINERAL INVESTMENT

RESOLUTION OF THE ISSUES WILL INCLUDE:

1) LACCESS TO PUBLIC LANDS FOR MINERAL EXPLORATION,

2) LSTREAMLINED REGULATORY ENVIRONMENT,

3) LPROACTIVE COLLABORATIVE NEGOTIATED DESIGNATION OF CONSERVATION AREAS

4) LREVISIONS TO THE ENDANGERED SPECIES ACT,

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[GRAPHIC] [TIFF OMITTED] T8929.001

[GRAPHIC] [TIFF OMITTED] T8929.002

[GRAPHIC] [TIFF OMITTED] T8929.003

[GRAPHIC] [TIFF OMITTED] T8929.004

[GRAPHIC] [TIFF OMITTED] T8929.005

[GRAPHIC] [TIFF OMITTED] T8929.006

Mr. Radanovich. Thank you very much, Mr. Brown. I appreciate your testimony. We are now joined by Ms. Sheri Davis, who is the Director of the Inland Empire Film Commission. Ms. Davis, welcome to the Subcommittee, and you may begin.

STATEMENT OF SHERI DAVIS, DIRECTOR, INLAND EMPIRE FILM COMMISSION, RIVERSIDE, CALIFORNIA

Ms. Davis. Thank you very much for the opportunity to

present our concerns and perhaps suggestions on commercial uses within the California Desert Conservation Area. As you mentioned, my name is Sheri Davis, and I am the director of a regional film office, the Inland Empire Film Commission, and my area covers a large portion of the CDCA.

Even though the Imperial Sand Dunes are not within my region, all issues regarding filming in the desert have a common thread. To explain a little bit about what a film commission does, our job is location scouting, problem solving, the liaison in between agencies and the industry; permitting, protection of crew and services development, specifically designed to keep production in our jurisdictions.

To give you an idea of the typical project recently, Disney came to me looking for a location to simulate the deserts in Morocco. They had just recently returned from Morocco, and were about to give up filming in California because they were told by other location professionals that it was too difficult to accomplish this in the California desert.

However, working with the regional film offices and the BLM film offices, Disney was able to utilize both cut back in the Dumont Dunes, and therefore have successful shootings in San Bernardino County.

It is also a pleasure when you work with an industry that practices good stewardship of the public land, as well as to be monitoring, and voluntarily self-regulated. The film industry is one of the 10 top economic industries in California and generates almost $30 billion in economic activity Statewide.

However, according to the U.S. Department of Commerce the runaway production is currently costing the American economy over $10 billion in economic loss in the year 2001 alone. Ironically, the locations most often sought in these countries can be found right here in California, and quite often within the CDCA area.

In the CDCA area, a major cause of runaway production is due to the limited amount of pre-approved filming locations, overly burdensome processes, and time consuming and restricted conditions.

The mission of the BLM that requires compatible, multiple, and sustainable use of public land now appears to only allow specific management for specific uses without regard to the potential compatibility of a mandate for multiple use.

It is particularly distressing to my industry, as we appear to be excluded as one of the specific users. The film industry does not need a large tract of land permanently set aside for our use. We just need joint compatible use with other public land users on an intermittent basis.

An interesting fact is that even if the land is available to public and other commercial use, it is not necessarily open for filming. In the County of San Bernardino alone, the Barstow field office manages 30 million acres.

One example that I can give you is the El Mirage OHV area, which encompasses 25,858 acres, open to the public, but only 3,000 of those acres has a problematic environmental assessment done to ensure that filming will not have a negative impact in this OHV recreation area.

An example recently occurred in a area designated as a long term visitor area, LTVs, and in this area anyone can pay $100 for a permit to camp for a 6 month period and not be restricted to the use of roads or camping areas.

Unfortunately, when a film crew wanted to use exactly the same LTVA for a few days of filming, the story was very different. Recently, a Warner Brothers' production was required

to contract for writing an environmental assessment, a biological evaluation, and paid for conducting a Section 7 consultation, and required to hire a certified desert tortoise monitors, with a total permitting cost to the film production in the same LTV area of $170,000.

With these types of restrictions, and seemingly unequal treatment of desert users, it is not surprising to find that filming of several major features and television have moved to Australia and dressed their deserts as our deserts in California.

A major challenge that faces the industry when trying to film on public lands is the long processing process. And I believe the general consensus of the industry is that the Federal agencies are unresponsive.

However, filming by its very nature is a temporary land use, and is generally fully compatible with the mandate of the Federal Land Management Policy Act to manage land for multiple use and sustained yield.

Given the concern that the implementation of a new desert management plan will have an adverse economic impact on the desert communities and user groups, the issues of the film industry should certainly receive attention. We can have a dramatic impact on communities adjacent and near the Federal lands open for filming.

And just to give you an example. A feature film will spend between the $70,000 and $100,000 a day when coming to your district to film, and commercials can average $30,000 to $50,000 a day; with still photographs coming to about $10,000 a day or more.

With the magnitude of the economic impact in the desert areas from filming is considered, it is more than a little startling to see either zero socio-economic analysis to no more than a few lines dedicated to filming restrictions in each of the desert plans.

A potential solution currently to the issues of filming in the CDCA under consideration for proposal to the BLM and other DOI agencies by the film industry is the formation of a large-scale programmatic environmental assessment or EIS for filming in various regions.

A proposal is currently in development will be presented to the BLM desert district office and State office within the next few months.

In summation, I would like to say that the film industry is committed to good stewardship of the land, conservation, and the environment, and will remain dedicated to the protection of the endangered species.

We are not looking for preferred treatment, but just to be considered equal as one of the mandated multiple uses of the Federal lands. The public lands must remain open for multiple use for all land users, and such multiple use should be encouraged and supported by the Department of the Interior.

Thank you for your time in listening to the concerns of this film industry, and I will be happy to answer any questions. And, Mr. Chairman, I would just say that a wise person surrounds themselves with wiser counsel, and so I would like to ask that Marshall Wittenberger and Ray Arthur join me during the questioning period, as they have been instrumental in helping me to develop my testimony and can add significantly to responding to your questions. Thank you.

[The prepared statement of Ms. Davis follows:]

Statement of Sheri Davis, Director, Inland Empire Film Commission,

Riverside, California

Thank you Chairman Pombo and Committee members for the opportunity to present concerns and suggestions on behalf of numerous movie, television, media and film industry professionals regarding commercial and non-commercial uses of the 10 million acre California Desert Conservation Area (CDCA). As with the panel members who have already presented or spoken prior to me regarding issues related to access and restrictions in the CDCA in relation to their particular interests, the film industry also has certain issues that must be addressed in order to ensure access to public lands for filming.

First, by way of introduction, my name is Sheri Davis and I am the Director of the Inland Empire Film Commission. The role of the Inland Empire Film Commission and the role of all regional or state film commissions are to serve as an ombudsman between the film industry and our local, regional or state jurisdictions. The region my office represents covers the vast majority of the area covered by the CDCA. The Imperial Sand Dunes is not within my region but all issues regarding filming in the desert have a common thread. Our services to the film and media industry include but are not limited to providing location scouting, information gathering, processing and suggestions on permitting issues, handling local concerns and citizen and governmental groups. To give you an idea of a project I might typically work on, my most recent assignment was helping Walt Disney Productions find a location to simulate the country of Morocco for a film called ``Hidalgo.'' Disney was about to give up given the constraints they were faced with and after being told it would be too difficult to accomplish this in the California desert. I am pleased to report though that through hard work and cooperation from the BLM, Disney was able to utilize the Dumont Dunes in San Bernardino County as the location. Everyone worked together to serve the industry well and kept the filming and money generated by the production within the United States and in particular within San Bernardino County.

Other responsibilities of the film commissions include maintaining databases of professional crew and services, which is specifically designed to keep jobs in our jurisdictions. Marketing includes trade shows, industry calls, trouble shooting and becoming the problem solver for both the industry and the jurisdiction is just all part of a day's work in the life of a film commission. The Inland Empire Film Commission interacts daily with the Barstow Field Office of the Bureau of Land Management. As a regional film office, we have found them to be exemplary with their approach to filming on the public lands that they manage. We daily discuss filming permits, which includes discussing the necessity of bonds depending on the type of filming activity, special effects and any other possible impact to the land. But it is extremely helpful to be part of an industry that is concerned about the environment and health of the public lands, willing to be monitored, and to be voluntarily self-regulated.

The film industry is certainly one of the most important industries in California as well as in the United States It is estimated by industry analysts that:

<bullet> The film industry is within the top 20 economic industries in California and generates almost $30 billion a year in economic activity statewide;

<bullet> The Film industry is among top 20 California industries as ranked by output (Gross State Product);

<bullet> The Film Industry is Ranked 5th in employment among California export industries, providing more than 270,000 jobs;

<bullet> With the largest concentration of motion picture activity, California accounts for 70% of total revenues and 60% of the total employment in the industry nationwide; and

<bullet> Filming is a Driver industry with linkages to tourism,

apparel design and manufacturing, furniture and cosmetics generating hundreds of millions of dollars in economic activity and keeping thousands of workers employed each year. It is a multi-billion dollar industry nationwide.

Even though there have been some marvelous successes, unfortunately, due to several of the concerns being expressed here today regarding the limitations of access to public lands, the film industry, particularly in California, has been experiencing what is termed as ``domestic runaways'' or ``runaway productions''. This occurs when a film or production company determines that the costs or constraints of filming in a United States location are too restrictive and seek an alternate location, usually Canada, Australia or Great Britain in order to allow filming to occur in an expedient and economical manner. Domestic runaways are a very serious problem. The United States Department of Commerce estimated that ``domestic runaways'' cost the American economy over $10 billion in economic loss to foreign countries in the year 2001 alone. Ironically, the locations that are most often sought in other countries are usually sought to simulate the Mojave or Colorado deserts, the American Southwest, Midwest, forest lands, rivers and open ranges--all of which could have been provided right here in the United States of America and many within the CDCA area.

In the CDCA, a major cause of domestic runaways is due to the limited amount of pre-approved filming locations, overly burdensome processes and time consuming and restrictive conditions imposed upon the film industry due to public land use plans and policies, perceived conflicting uses, endangered or sensitive species concerns and cultural resources issues. While the film industry is keenly aware that all of these matters are of the utmost importance to preserving the California desert for now and for generations to come, we believe that the restrictions caused by the multitude of management plans and endangered species concerns have caused the mission of the BLM to be altered from the Congressionally mandated requirement under the Federal Land Management Policy Act (FLPMA) that requires compatible multiple and sustainable use of public lands to be a mutated phenomena that allows only specific management for specific uses without regard to potential compatibility or the mandate for multiple use. This is particularly distressing for the film industry as they appear to be summarily excluded as one of the specific users, being limited on a regular basis to filming on a few thousand acres of land within the millions available within the CDCA. The best part though of this situation is that the film industry does not need large tracts of land permanently set aside for exclusive use, we need only joint compatible use with other public land users and uses on an intermittent basis.

This ``specific use'' phenomenon is apparent in the amount of land available on a regular basis for filming activities as compared to the quantity available exclusively for grazing activities, recreation and mining. A common misunderstanding is the fact that even though land is available to the public for use as well as land available for mining, grazing and other uses, it is not necessarily open for filming. As an example, in the County of San Bernardino, the Barstow Field Office manages 3 million acres. This acreage is open to recreation and mining unless prohibited. However, most of the land is not currently open for filming and special permission including environmental assessments, environmental impacts reports and Section 7 consultations often have to be performed in order to film in locations that are used on a daily basis by the public for everything from casual mining to OHV open-use areas.

As a specific example, the El Mirage OHV area has 25,850 acres open to the public but only 3,000 acres have a programmatic Environmental Assessment done to ensure that filming will not have a negative impact in this OHV recreation area. It is my experience that not only is

filming a welcome and exciting sight for the public using these areas, the public are thrilled to have been there and seen it happen--conflicts rarely, if ever, occur.

There have been several instances where film companies and other user groups have been required to perform desert tortoise surveys or other sensitive species surveys, cultural resources surveys and write environmental assessments in areas that the BLM has designated as Long Term Visitor Areas (LTV areas) or other like unrestricted public use areas as a restriction of filming. In the LTV areas, anyone who pays a $100 permit can camp out for a six-month period; they are not restricted to roads or camping areas. The LTVAs are basically giant (some 10,000+ acres) free-for all public access and camping zones. When a film crew comes in though and wants to use exactly the same LTVA for a few days of filming the story is very different. In a recently filmed Warner Brothers production soon to be released called ``Torque,'' the film company was required to contract for writing an environmental assessment, a biological evaluation and paid for conducting a Section 7 consultation and required to hire certified desert tortoise monitors. Most of this location was located within a BLM LTVA and other areas that had already undergone environmental review for prior projects. The total cost to the film production was in excess of $170,000. Had exiting NEPA environmental documentation been utilized by way of tiering, the cost to the production company and time in processing could have been significantly reduced.

While the need to protect special status species is a given, and desert tortoise monitors are required to protect the animals, the excessive documentation and permitting requirements imposed upon a highly regulated, self-policing and low impact compatible user appears to be incredibly burdensome. With these types of restrictions and seemingly unequal treatment of desert users, it is not surprising that filming for several major features and television productions has moved to Australia and dressed the sets to appear to be the California desert.

A major challenge that faces the industry when trying to film on Public Lands is the long permit processing time. It is the role of the regional and state film offices to educate the BLM Field Offices with regard to the exigencies of the production schedule from the original contact, to scouting to shooting. Often a commercial production may only have a couple of weeks or even days from being selected by an ad agency to the last day of filming. To give you an example, Plum Productions, a local Los Angeles-based production company was recently awarded a contract for filming a commercial for Ford Motor Company. The commercial had to be completed in 15 days from the agency awarding the contract. There were hundreds of locations to be scouted with 23 locations being selected, and multiple agencies from which to gain permission and permits including the BLM, the U.S. Forest Service, and the Los Angeles Department of Water and Power. Then the company had to put 2 production crews shooting simultaneously, daily having to move 50 vintage cars (some not running) and on the 15th day, the production company wrapped and went home. They also left the land cleaner, the community of Lone Pine, California, an economically depressed area, inviting them back and great images to show the world.

Admittedly, there may be different impacts caused by certain types of filming that require an environmental analysis to be performed and not all locations would be appropriate for bringing in even a small film crew. However, filming by its very nature is a temporary land use that is generally fully compatible with the mandate of the Federal Land Management Policy Act to manage land for multiple use and sustained yield. Filming is and can be compatible with areas approved for grazing, off road vehicle activity, mining and recreational use and camping. With proper environmental planning and restrictions, any filming activity can be fully controlled, monitored and any potential

damage fully mitigated by pre-planning efforts. Even in the most sensitive of environments, adequate and even beneficial controls and measures can be implemented to allow the use of the area for filming, again keeping the business in the area in which it belongs, the California desert.

There are many examples of the film industry restoring federal lands to a better condition than when they arrived. The industry has funded numerous federal historical projects as well as financial contributions to further protect the federal lands for use by future generations to enjoy. The film industry has long been a great partner to the federal agencies and the environment. Just one example is the Earth Communications Office (ECO). Founded 10 years ago, the ECO uses the power of communication to improve the global environment. They utilize the skills and talents of members of the entertainment industry to create public service campaigns that educate and inspire people around the world to take action to protect the planet. Some prominent board members include: Pierce Brosnan, Cindy Crawford, Woody Harrelson, Producers Ron Howard and Brian Grazer just to mention a few. The ECO also consults with and educates studios, ad agencies, postproduction houses and other communications-based business on how to operate their facilities in a more environmentally friendly manner. Two of their successes are the elimination of rain forest wood Lauan in movie and TV set construction and helped stop wasteful packaging of the CD longbox used by record companies

Given the concern that the implementation of the new desert management plans will have an adverse economic impact on the desert communities and user groups, the issues of the film industry should certainly receive attention from members of Congress and the Department of Interior representatives. The Film Industry can dramatically impact the communities adjacent or near the federal lands open for filming. For example, a feature film can spend between $70,000 and $100,000 a day when filming on location while commercials average $30,000 to $50,000 per day, with still photography spending up to $10,000 a day. When the magnitude of the economic impact in the desert areas from filming is considered, it was more than a little startling to see either zero socioeconomic analysis to no more than a few lines dedicated to filming restrictions in each of the desert plans, NECO, NEMO an WEMO, that could would restrict filming activities even further.

A potential solution currently to the issues of filming in the CDCA under consideration for proposal to the BLM and other DOI agencies by the film industry is the formation of large-scale programmatic environmental assessment or EIS for filming in various regions. This programmatic could then be used as a prototype for other public land areas such as National Forests and other BLM managed lands. Pre-identification of filming locations and the co-use of areas currently permitted for other activities such as mining, grazing and recreation as long as the uses remained compatible would be preferable and allow maximum flexibility for scouts to identify locations and obtain permits rapidly. Providing maximum choice and rapid permitting will work to keep filming in the desert and will keep the economic activity from leaving the borders of the State and counties. This effort will require multi-jurisdictional involvement and an open mind from our federal partners including the United States Fish and Wildlife Service. The film industry needs more than just five or six places consisting of a few thousands acres in which to film on a regular basis. An inventory of public lands where biological and cultural data is available or other EIS or EAs have been approved will aide in the identification of potential filming sites. We believe that we can work together to identify hundreds of sights within the CDCA alone that would be pre-approved locations and have required mitigation measures in place that must be followed in order to use the area.

Again keeping the business where it belongs, in the CDCA and in the counties of southern California. This proposal is currently in development and will be presented to the BLM Desert District office and State Office within the next few months.

In summation, I would like to say that the film industry is committed to preservation and conservation of the environment and the industry will remain dedicated to protection of endangered species. However, the public lands must remain open for multiple uses for ALL land users and where compatible use can be had--and such multiple uses should be encouraged and supported by the Department of the Interior. There may need to be some policy and attitude changes that occur in order for us all to work together but this is not impossible--after all nothing is impossible in the movies!

Thank you for the time to listen to the concerns of the film industry and please forward any questions or comments you may have directly to me.

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Mr. Radanovich. Thank you very much, Ms. Davis, I appreciate your testimony.

Next is Mr. Mike Hardiman, who is an Inholder within the California Desert Conservation Area from Imperial County. Mr. Hardiman, welcome to the Committee.

STATEMENT OF MIKE HARDIMAN, INHOLDER WITH THE CALIFORNIA DESERT CONSERVATION AREA, IMPERIAL COUNTY, CALIFORNIA

Mr. Hardiman. Thank you, Mr. Chairman. I have three blown-up photographs that I would like to put on the three easels.

Mr. Radanovich. Sure. You can have someone help you there.

Mr. Hardiman. Thank you, Mr. Chairman. Thank you for the opportunity to testify at today's hearing. My name is Mike Hardiman, and I own a parcel of private property that is surrounded by government-owned land, a situation referred to as an inholding. Inholdings are common in the western United States, although there are inholdings in nearly ever State.

My property is surrounded by the Bureau of Land Management lands in northern Imperial County, just off the Bradshaw Trail. This trail is a county-maintained dirt road, which stretches from the north shore of the Salton Sea, eastward to the town of Palo Verde along the Colorado River.

I purchased the inholding in 1990 when I was a resident of Orange County, and I could get out there once a month or so. Now living back east, I am lucky to see it twice a year. During the battle over the Desert Protection Act, I watched Senator Cranston, Congressman Beilenson, and their allies aim to lock up as much public land as they could.

I decided that if I wanted to keep pitching a tent in the desert, I may have to buy own campground and so I did. Mr. Chairman, inholders are an important part of the overall mix that benefits recreational use in the desert. Here are a few examples.

The current issue of Blue Ribbon Magazine reports that the Widowmaker motorcycle hillclimb has returned for the first time since 1988. Featured on ABC's Wide World of Sports and located on public land for 25 years, it was shut down by politics 15 years ago.

The revived Widowmaker was held totally on private property this year in Croydon, Utah, providing an excellent recreation opportunity for 747 entrants and 15,000 spectators. At the northern end of the Imperial Sand Dunes, the Glamis Beach Store is located on an inholding.

It offers a full range of food, supplies, and gasoline, and is open year around. Across the road is an ATV repair shop. No other retail establishments are available for many miles, and so these provide significant convenience for recreationalists.

At the Ocotillo Wells offroad recreation area, the Blu-In Diner has gas, diesel fuel, ice, and friendly advice. The Split Mount Store is part of a large inholding with many property owners that includes an RV park, diner, an ATV parts and repair business, and residences that are generally used as weekend homes.

These inholdings are preferable to the lease arrangements found in many national parks, which are much more subject to the whims of hostile bureaucracy and extreme environmental groups. The inholdings are also generally independently owned small businesses, whereas the Feds tend to show favoritism toward large corporations in their lease negotiations.

My inholding is unimproved vacant land. Over the years, I have used it for camping, as a base camp for rock climbing, and hiking on surrounding public lands, for sightseeing, and to educate uninitiated urbanites.

My nephew earned several Boy Scot Merit Badges in the desert, including Astronomy, Backpacking, Climbing, Geology, Rifle Shooting, and Wilderness Survival. A group of hunters uses the land with my permission on Veteran's Day weekend each year to hunt chukar and quail.

Mr. Chairman, in many ways there is more public access to my private property than there is to surrounding public lands. This is due to my willingness and that of other inholders to voluntarily allow use of our property, combined with increasing restrictions on public lands.

For example, near my land is an ACEC, or area of critical environmental concern, and two WSAs, or wilderness study areas. These study areas can be studied forever without an agency making further land use decisions. There is no deadline. Even worse, while it is being studied, it is managed even more strictly than wilderness, because a management plan has not been completed.

And, of course, there is the Endangered Species Act, looming like the Grim Reaper over both private property rights and multiple use of the public lands. This interlocking directorate of land use controls is excessive, and new proposals should not move forward until the existing ones are handled properly.

Here are a few photos that I took just last week when I was out in the desert. The first one is an example of excessive restrictions placed on public land use. We hear that you can do things in the wilderness and this kind of thing. This is a reality and it is right here.

Thirty feet from a central line and that is it, and in some areas it is 100 feet from a central line, and in this case, it is only 30 feet from the center line, and you can pull off and camp out. And this is along Dupont Road in the Chuckwalla Mountains in Riverside County.

A 30-foot restriction on pulling off the road to go camping does not permit enough privacy or cover from dust kicked up by other vehicles that may travel through. Next is a dramatic example of maintenance and cleanup failures by our public land agencies, and in this case, the Department of Defense.

Over there in the front, that is me surrounded by those bombs that are larger than human beings, each larger than an adult, and adjacent to the Bradshaw Trail, a county maintained two-lane road that Imperial and Riverside Counties maintain.

Those bombs are adjacent to the Bradshaw Trail as it passes by the Chocolate Mountain Navy Bombing Range. And I believe they are inert, but I do not know what environmental hazards they may hold. And there is the Bradshaw Trail right there adjacent to it.

It seems that the Federal land management agencies place a high value of visual landscapes and are anxious to establish zoning and viewshed restrictions on adjacent private property. Perhaps the Federal agencies, and in this case the Department of Defense, should clean up their own act on public lands first.

Finally, here is what could be called the Desert Tortoise Berlin Wall right there. This is located north of the Imperial Sand Dunes, along the highway, including a barbed wire topping the chain link fence. It is over 8 feet tall, and stretched out away from the road out of sight over a hill, a menacing eyesore.

Mr. Chairman, just as President Reagan spoke to the Soviet Union years ago about bringing down the Berlin Wall, I ask this Committee to tear down this wall. Indeed, endangered species can be protected alongside recreational access and private property rights. The Endangered Species Act needs to be reformed to reestablish its basic credibility, for the benefit of both species and people.

I see that my time is up, and I will quickly ask the Committee to examine and hopefully act on three bills; H.R. 1662 by Congressman Walden, which will improve the process of evaluating scientific data under the Endangered Species Act.

And H.R. 1517 by Congress Graves, which will focus on the Land and Water Conservation Fund revenues to recreational facility maintenance and improvements, and prohibit further land acquisition from the fund.

And finally H.R. 1153 by Congressman Simpson, which would place up to a 10 year maximum limit on studying Wilderness Study Areas. Thank you for the opportunity to testify today.

[The prepared statement of Mr. Hardiman follows:]

Statement of Michael Hardiman, Private Property Inholder,
Imperial County, California

Good afternoon Mr. Chairman, thank you for the opportunity to testify at today's hearing.

My name is Mike Hardiman. I own a parcel of private property that is surrounded by government-owned land, a situation referred to as an inholding. Inholdings are common in the western United States, although there are inholdings in nearly every state.

My property is surrounded by Bureau of Land Management lands in northern Imperial County, just off the Bradshaw Trail. This trail is a maintained dirt road which stretches from the north shore of the Salton Sea eastward to the town of Palo Verde along the Colorado River.

I purchased the inholding in 1990 when I was a resident of Orange County, and I could get out there once a month or so. Now living back east I am lucky to see it twice a year. During the battle over the Desert Protection Act, I watched Senator Cranston, Congressman Beilenson and their allies aim to lock up as much public land as they could. I decided that if I wanted to keep pitching a tent in the desert, I may have to buy my own campground! And so I did.

Mr. Chairman, inholders are an important part of the overall mix that benefits recreational use in the desert. Here are a few examples.

The current issue of Blue Ribbon magazine reports that the ``Widowmaker'' motorcycle hillclimb has returned for the first time since 1988. Featured on ABC's Wide World of Sports and located on

public land for twenty-five years, it was shut down by politics fifteen years ago. The revived Widowmaker was held--totally on private property--this year in Croydon, Utah, providing an excellent recreation opportunity for 747 entrants and 15,000 spectators.

At the northern end of the Imperial Sand Dunes, the Glamis Beach Store is located on an inholding. It offers a full range of food, supplies and gasoline, and is open year round. Across the road is an ATV repair shop. No other retail establishments are available for many miles, and so these provide significant convenience for recreationalists.

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These inholdings are preferable to the lease arrangements found in many national parks, which are much more subject to the whims of hostile bureaucracy and extreme environmental groups. The inholdings are generally independently owned small businesses, whereas the feds tend to show favoritism toward large corporations in their lease negotiations.

My inholding is unimproved vacant land. Over the years I have used it for camping, as a base camp for rock climbing and hiking on surrounding public lands, for sightseeing and to educate uninitiated urbanites. My nephew earned several Boy Scout Merit Badges in the desert, including Astronomy, Backpacking, Climbing, Geology, Rifle Shooting and Wilderness Survival. A group of hunters uses the land with my permission on Veteran's Day weekend each year to hunt chukar and quail.

Mr. Chairman, in many ways there is more public access to my private property than there is to surrounding public lands. This is due to my willingness and that of other inholders to voluntarily allow use of our property, combined with increasing restrictions on public lands.

For example, near my land is an ACEC, or Area of Critical Environmental Concern, and two WSAs, or Wilderness Study Areas. These study areas can be studied forever without an agency making further land use decisions. There is no deadline. Even worse, while an area is being studied, it is managed even more strictly than wilderness, because a management plan has not been completed.

And of course, there is the Endangered Species Act, looming like the Grim Reaper over both private property rights and multiple use of the public lands. This interlocking directorate of land use controls is excessive, and new proposals should not move forward until the existing ones are handled properly.

Here are a few photos I took just last week. This first one is an example of the excessive restrictions placed on public land use. It is located on Dupont Road, a lightly traveled single track dirt road in the Chuckwalla Mountains in Riverside County. A thirty foot restriction on pulling off the road to go camping does not permit enough privacy or cover from dust kicked up by other vehicles that may travel through. Next is a dramatic example of maintenance and cleanup failures by our public lands agencies. These bombs, each larger than an adult, are adjacent to the Bradshaw Trail as it passes by the Chocolate Mountain Navy bombing range. I believe they are inert. I do no know what environmental hazards they may hold.

It seems that the federal land management agencies place a high value on visual landscapes and are anxious to establish zoning and viewshed restrictions on adjacent private property. Perhaps the feds should clean up their own act on public lands first.

Finally, here is what could be called the Desert Tortoise Berlin Wall. This is located north of the Imperial Sand Dunes. Including the barbed wire topping the chain link fence, it is over eight feet tall,

and stretched out away from the road out of sight over a hill, a menacing eyesore.

Mr. Chairman, just as President Reagan spoke to the Soviet Union years ago about bringing down the Berlin Wall, I ask this Committee to tear down this wall. Endangered species can be protected alongside recreational access and private property rights. The Endangered Species Act needs to be reformed to reestablish its basic credibility, for the benefit of both species and people.

I ask the Committee to support legislation such as H.R. 1662 sponsored by Congressman Walden and others to require more thorough, qualified and independently reviewed biological evidence of a species being in trouble before it can be listed as endangered or threatened.

Two other legislative recommendations. I suggest the Committee consider H.R. 1517 by Congressman Graves. This would dedicate Land and Water Conservation Fund revenues to recreational maintenance and improvements and prohibit further land acquisition from the fund. H.R. 1153 by Congressman Simpson would place an expiration of ten years on Wilderness Study Area reviews.

Thank you for your consideration.

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Mr. Radanovich. Thanks, Mr. Hardiman. I appreciate your testimony. We will go to the question and asking portion of this hearing. Mr. Denner, give me an idea of what you would like to see as a result of this hearing. What might you like to see accomplished after this?

Mr. Denner. I guess I could write a book in answering that question, but if I came up with two key things that we have addressed here today, the first one is, and which was repeated by several people, and that is the concept of mitigation; mitigation on the impacts of public uses of land when portions of the Endangered Species Act are implemented.

Mr. Radanovich. No net loss--

Mr. Denner. No net loss, or perhaps even a positive ratio of mitigation for recreation, just like if it is a not very serious closure, because there is not really very good science, but it looks like it ought to be closed. Well, I would consider that as a poor reason for closing an area.

So maybe the area that we lose should be mitigated on the basis of 3 or 5-to-1 like we do when there is a serious mitigation for an impact on a species. And I guess the second thing, which was repeated over and over again, is that it is hard for me to believe that you have a board of stakeholder members who are appointed by the United States Secretary of the Interior, who have no muscle.

You know, these people sit in a group to advise the BLM, and we have given you repeated examples of how our advice, and I have been informed over and over again, is not ignored. They take it into account, but they just refuse to act on it.

And it seems like it is out of proportion for a group of people appointed by the U.S. Secretary of the Interior to have no strength, and that they can be overridden by a local BLM area manager's decision on his or her own part.

So I would like to see some muscle put into the advisory councils that advise the Federal agencies.

Mr. Radanovich. Thank you very much, Mr. Denner. Can I ask the same question of anybody who might want to respond to that as well? Mr. Hubbard, did you want to respond to that?

Mr. Hubbard. I would like to respond to it. I think that when you heard more than once is that there needs to be some legislative reform with respect to the Endangered Species Act.

Not the least of which from a lawyer's perspective, one of

the biggest problems is that once an Endangered Species Act lawsuit is filed, almost quick on its heels is a motion for a preliminary injunction, which is legalese for the plaintiff coming in and asking the court to shut down an area until the merits of the case can be adjudicated.

In most circumstances there is a balancing of hardships to determine whether the injunction should be issued, but when the Endangered Species Act is invoked the rules change. There is not really a balancing of hardships. If the plaintiff can demonstrate with a very small amount of evidence, and maybe not even very credible evidence, that there is some human-related threat, the court will issue the injunction, and it doesn't matter how it might affect people.

That needs to change so that those people who are interested in protecting access can at least put those who would shut down areas through the paces, and force them to look at the data, and force them to present evidence that there really is a threat warranting an injunction.

And that would be one area that I think would greatly assist us in establishing some kind of a balance. But I think overall the entire Act needs to be reviewed, because not only does it not assist in the many businesses and the public who wants to access these lands, but the fact is that it is a complete failure in its primary responsibility, which is to protect species and get them out of endangered status.

The number of success stories that the Endangered Species Act can claim is very, very few, and the entire framework needs to be changed. The last thing or the second thing that I think needs to come out of this is when you are arguing for public access to public lands, and you are coming up against another group that is using the Endangered Species Act, you are at an immediate disadvantage because your interests by law are not on par with the Endangered Species protection, and that needs to change as well.

There needs to be a congressional effort and a legislative directive that protects public access, including motorized access for recreation. Until that happens, we are going to continue to see this erosion of public ability to access the desert, and other places throughout the United States.

Mr. Radanovich. Mr. Hubbard, while I have you, I just want to ask one quick question. You had mentioned that CDCA was ground zero between access and those who oppose access. Are those that are opposing access, is that access of any kind, or is it limited to motorized access in your view?

Mr. Hubbard. It is not limited to motorized access. The same groups that have brought these lawsuits, they are trying to eliminate mining, eliminate grazing, and they are not real thrilled with the equestrian community.

It is not just motorized access. Motorized access I think for them is an easy target, and so they have moved into the fore, but it is not just motorized access.

Mr. Radanovich. OK. Thank you very much. Mr. Chairman.

Mr. Pool. Thank you. If I can, I would like to start with Mr. Kemper, and one of the things that we have heard testimony on today was about the loss of grazing land and a number of ranches within this whole area. Can you explain a little bit to the Committee why that is happening, and what are some of the factors that are playing in that have caused a number of ranches to fold up in the area?

Mr. Kemper. Unfortunately, when the ranching community applied for intervenor status in the CDCA lawsuit they were not granted, and so the ranchers were really without representation

or a negotiating tool during the settlement agreement.

The settlement agreement that was entered into between the Bureau of Land Management and the Center for Biological Diversity required the grazing community to remove cattle for spring closure and also a fall closure, which was economically devastating.

You know, we are not talking about something that could be managed. There were not fences to hold them off those portions of the ranches, and it was simply an impossible task in order to comply, and I believe very few ranchers were able to comply a hundred percent. I was one of them, but I had to remove cattle. From a financial standpoint, it was devastating to our family, as well as for the others.

Mr. Pombo. So what you are saying is that a settlement was reached that the grazing community was not a party to? You were not in the room negotiating it and the folks that were in the room decided that you had to go?

Mr. Kemper. That is correct.

Mr. Pombo. And was that based on ESA, on the Endangered Species Act?

Mr. Kemper. It was based on a lawsuit that was filed, because BLM had missed a deadline for consultation with Fish and Wildlife, and it was not really a specific issue, but for a missed deadline in consultation.

Mr. Pombo. Well, thank you. Mr. Hardiman, you are currently an inholder within the area. The access to your property where you are, has that changed over the years, or do you still enjoy the ability to get to your property?

Mr. Hardiman. Unfortunately, the property is near the Bradshaw Trail, which is about a mile-and-a-half off the trail, on a very lightly traveled road. That road is maintained by the various inholders that are out there, and it has not been shut down or attempts to do that yet.

But, for example, with the R.S. 2477 regulation, Bradshaw Trail certainly qualifies, but I am just off of what used to be called the Nyland Road. It used to be that you could go from Nyland to Blake, but it was cutoff about 50 years ago when the bombing range was established in the Second World War.

So much of the road has gone into disrepair, but a mile-and-a-half or 2 miles of it or so are still maintained by inholders themselves. I am out there with a shovel literally. So it has been OK so far, but I would guess that is because maybe it has not been considered to be important enough to bother with yet. The key word is yet.

Mr. Pombo. Are you familiar with any other inholders, and what their situation is, in terms of access? Has here been access that has been cutoff to private property?

Mr. Hardiman. Outside of this area there has been something with the Forest Service, but I think with the other agency as well, and that if you want to get to your property that you have to have a permit or an approval of some sort to travel over a road.

One example that I recall in Colorado was a family was restricted from using a well-established road during the winter. The road was about 12 miles over public land, and during the winter, they were no longer allowed to use snowmobiles. they had to walk the 12 miles with supplies to get in there during the winter.

And which was a very high elevation, and effectively restricted the use of their land to just the summer months. And since they lived there year around, that was a very big problem for them. So there are problems with restricting access, and

that is one example that I can think of off the top of my head.

Mr. Pombo. If I could go back to Mr. Kemper on the whole issues of access to private holdings. I understand that you also have private holdings within the area?

Mr. Kemper. Yes.

Mr. Pombo. And has access to the private lands been a problem?

Mr. Kemper. The private holdings that I have within the Federal grazing lease are actually pipelines and fence lines, and that sort of thing. But we are somewhat restricted because we have five wilderness areas on our grazing lease that cross over fenced boundaries, and fenced maintenance roads, pipeline roads, cofferdams, well sites, and we are told that we can't maintain those in the same fashion that we have in the past in order to continue to trap waters, and in order to allow cattle to continue to graze.

Mr. Pombo. Because of the wilderness designation?

Mr. Kemper. Because of the wilderness designation.

Mr. Pombo. But if all of those features exist, it would not qualify as wilderness.

Mr. Kemper. I don't believe it is wilderness. My understanding of a wilderness is a roadless area that is untrampled by man. We have got wells, window sites, 28 miles of pipeline, 30 miles of fence, and the maintenance roads for those improvements, and lots of those improvements are within the wilderness areas.

Mr. Pombo. Thank you.

Mr. Radanovich. Thank you, Mr. Chairman. Mr. Filner.

Mr. Filner. Thank you, Mr. Chairman. I do appreciate the courtesy of being allowed to sit with you since I am not a member of this Committee. I guess I don't appreciate the discourtesy of not being informed officially of the hearings since we are dealing with issues in my area, in my district, and it is usually Congressional protocol to at least notify folks who have an interest in that area to invite them.

An official congressional hearing as I understand it generally has members of the minority party staff present, and it has minority party members, and it has alternation between Democrat and Republican, and also witnesses chosen by the minority party.

I don't see any of that here, which leads me to believe that this is not a true congressional hearing. But be that as it may, I want to tell you without being hostile, Rich, and George, my friends, as you know in the redistricting process, I was assigned Imperial County.

I did not have Imperial County before, and I am an urban guy. And I had a lot to learn about my new district, and I set out to learn it. I set out to learn about people who are farming. I went out to every farmer that I could find, and went through the fields with them, and tried to understand the processes.

I went out to the desert with a group from the Desert Protective Council. I went off-roading with a group from the American Sand Association. I had a lot of fun by the way. That is a great sport.

So I am really trying to learn about the issues, and I don't know enough about them, and an oversight congressional hearing should be one in which we learn from each other, where I could learn about what the off-road community wanted, and what the grazing community wanted, what the inholders wanted.

I even know that expression, and I have learned a lot by listening, too, and frankly, Mr. Chairman, I have heard a lot

of stupid things that are being done that I would like to work with you to solve. But when a hearing like this is stacked without hearing another side --

Mr. Pombo. Would the gentleman just yield for a second?

Mr. Filner. Sure. You don't like the word stacked, I know.

Mr. Pombo. Well, I don't care. You can use any word that you want. But I think that the record deserves to be accurate in that respect. Every single member of the Committee was invited. The minority chose not to attend, and they chose not to invite witnesses.

Mr. Radanovich. And the minority chose not to inform you that the hearing was going to be held.

Mr. Filner. Look, George, if I would set up a hearing, I could arrange--you might be on legal grounds, but look, I am talking about good public policy. We are trying to learn about these issues, and you have got to have both sides to learn about them frankly.

You can learn a lot by listening to one side, and I can learn a lot listening to the other side. I don't even consider myself on one side or the other by the way. I am here to learn from both sides, and I only have one, which leads me to believe that we are not--when you are not being fair, you force someone like me who is trying to learn to another position, because you are not allowing a free exchange of position.

Frankly, I think you would profit by it. If the people who want or are trying in your view to prevent access, or the lack of an environmentalist, if they appear that way in a public hearing, it is obvious to people.

And therefore everybody learns from each other. I would not be afraid of setting up something in which not everybody is on the same side. It leads you to believe that you are afraid of a debate, and you should not be afraid, and nobody should be afraid of that.

I don't even see--is there an agenda here as is required? I don't see a public commentary, which I understand is--does the public have this? Nobody in the public seems to have this, and is there a public comment period as required by law? I don't see it on here.

Mr. Radanovich. Two weeks after today's date.

Mr. Filner. No, I mean oral comment. You just have these 13 people and that is it?

Mr. Radanovich. That is the standard operating procedure, and it is written comment 2 weeks afterwards.

Mr. Filner. Look, George, I would rather not be on this legalistic debate. If you want to come up with good policy you have a public debate on it, and that is how you could have arranged this if you wanted to, but you chose not to.

You want to show that these people that you are going to defend them back in Washington, and they will think that you are going back and fighting for them, when actually they are doing you a disservice, I say to the folks in the orange shirts, because they come back, and everybody says, oh, they had a stacked hearing and I am not going to even bother looking at any of the comment, or any other thing.

I mean, nobody is doing me a big favor when they do this, although they are trying to show you that they are. So, you know, this is a dog and pony show which has no effect on the legislation, and forces people to say or to go this way.

You guys want intelligent policy, and I want intelligent policy. We don't get intelligent policy unless we see there is a clash of opinion. I don't even know--I have not made up my mind on the BLM plan.

Mr. Pool will tell you that I have had many discussions with him and I have read all the stuff, and I wanted to see what both sides would say. I don't get both sides. That leads me to think that you are afraid of having that again.

So if you are going to educate folks who will put good public policy back in Washington rather than have people polarized on each end, and who can yell at each other, you can have that. But that is what you are doing.

You are the majority, and you can do whatever you want. But you are not going to get good public policy as a result, and these folks might not even have their best interests served as a result. I thank the Chairman.

Mr. Radanovich. The Subcommittee Chairman would respond that I am sad that this is a one-sided hearing, but I am afraid that your problem is with your minority staff and your minority who chose not to send people here. I don't think the people in this group, or the members that sit here, either the Chairman or myself, are afraid of intelligent debate when the other side does not show up.

Mr. Filner. You could have just called me and said, Bob, would you like to be at a hearing and do you have any suggestions. You could have done that, George. You know that. Come on. If I was in your position, I would have done that.

Mr. Radanovich. Under protocol the minority statute--

Mr. Filner. I don't care what protocol. You guys know each other, and just give me a call and say we are doing stuff in Imperial County, and do you have any suggestions.

Mr. Radanovich. OK. Thank you.

Mr. Filner. And I appreciate your kindness and your--

Mr. Radanovich. You are welcome. Any other questions--

Mr. Filner. And you guys can do an overblown and do whatever you want, and it is not going to do your cause any good.

Mr. Radanovich. You are out of order. Maybe now is the time to go to the Finding Nemo joke that was on the board here a little bit earlier. Mr. Brown, in your opinion, can mining be accomplished in the CDCA in such a way that it has little or no impact on mining and the endangered species?

Mr. Brown. Well, we have to have regulations, and mining is a heavily regulated industry. Every aspect of a mining operation is scrutinized by numerous agencies long before the first shovel of material is moved, and right now the environment, the permitting environment, is one that is excessively time consuming and expensive, and if not changed will ultimately force the industry to go elsewhere.

In 1999 when Congress requested a study by the National Research Council to assess regulatory framework for hard rock mining on Federal land, one of the conclusions was that the permitting process was needlessly long, and recommended that the BLM and Forest Service should implement a more timely process.

And I think the effort that the BLM is trying to put forth in the West Mojave Plan and also in NECO and NEMO, which I am going to call the Las Vegas model, in theory should streamline the process, whereby a mitigation fee or mitigation ratio is established, and the proponent pays the fee, and moves through the process, rather than an endless amount of litigation.

I think that it is a pragmatic and practical procedure, although not without flaws, since as significantly increased mitigation ratio of the fees to streamline the process, and ultimately result in solutions that are beneficial to both the species and the proponents of the project. So I think that the

answer is yes.

Mr. Radanovich. Thank you, sir. Are there any other questions of this panel?

Mr. Pombo. If I could, Mr. Chairman, just one further question to Ms. Davis. I was somewhat intrigued by your testimony. Because it has become increasingly difficult or bureaucratic to have access for the industry that you are talking about, they are making decisions to film in what you said was Australia?

Ms. Davis. And Canada.

Mr. Pombo. And Canada, and other places. Is it worth it to them to make that big of a move just because of that process that exists here?

Ms. Davis. Oh, absolutely, because most of the land that has the location look that they are over unfortunately is not available to them in the normal CDCA area and the rest of the land in the United States under Federal agencies.

That is why we are looking at doing a programmatic that would perhaps open up the land for us for additional use and programmatics have already been done for other commercial users, so that perhaps we can be competitive with that.

Mr. Pombo. That is interesting. I would be interested in working with you in the future to try to see if we could not move that along.

Ms. Davis. I would love that.

Mr. Pombo. Because that is--I know that industry spends a huge amount of money like others, and when you talk about multiple-use land, that is definitely part of it. So, thank you.

Mr. Radanovich. Any other questions? Mr. Filner.

Mr. Filner. I apologize, as I was late and missed the testimony. Mr. Brown, just again as someone who is trying to understand this, and trying to be respectful to both sides on this issue, but exactly how would you change the BLM plan that has been presented from the interests of the off-road community?

Mr. Brown. The plan starts with its foundation in a scientific process that was filed from the start, and our concern with that is that with the listing of Peirson's Milk Vetch was incomplete data to start with, and even with the Fish and Wildlife Service, their own staff, they questioned the validity of that science when it was used to do that.

And now that more studies have been done in the bureau's own monitoring process that the original studies that were conducted were not repeatable and verifiable, and therefore they could not monitor with them to see year to year how that process was going on.

And as they developed a better monitoring process, they found that the plant was not having the difficulties that they originally felt that it was having across this range, and since then there has been extensive study done that have proven that there are more than 70,000 viable species in 1 year, and a large seed bank that will continue to allow this particular species to continue.

And so if you take that as the foundation--I mean, it is a foundation on sand, and so from there you just keep building on that process, and as you create a ramp to protect something that does not necessarily need the protection as great as the ESA provides, you make management decisions that then lead to this type of a ramp situation being larger and more draconian than it should be, and not necessarily protective of the environment.

And by restricting the uses into an ever smaller area, and restricting the number of people who can go into a specific area of the dunes, you may actually do more harm to the plant than good.

So we see that this whole thing is built on a foundation of poor science to start with. We certainly would like to see them decide whether or not the plant should be delisted. There is a petition in front of them to delist the plant.

If they were to delist the plant, then we would obviously see a whole another view of that ramp. They are going ahead--the Fish and Wildlife Service continues down the path of critical habitat designation.

The Bureau's statement in the press yesterday was that they have taken that into account in this process, and probably would not change the ramp. But still we just see--and then a business plan to implement a ramp that is designed for science.

So you are asking me specifically what we would change; those conditions within a ramp that have to do with specifically protecting a species that does not reach the criterion, which included the 4-year revisit clause, and includes the limits of visitation in the center part of the dunes, and the restriction of the camping around certain areas, and any sort of buffer zone that is outside that area to hold those uses within a given quadrant.

Mr. Filner. What is the congressional role in the situation now? BLM has put out a draft plan for comment. Does the Congress have any role, or is there any legislation one way or the other that can deal with it now?

Mr. Radanovich. We might want to hear from the Director in the next panel.

Mr. Filner. I have been trying by the way, and I think I was successful, along with Mr. Hunter, in getting increased funds for--I don't know the word that I want to use--for protection of the people. That is, some more police protection in the area. Is that something that you have any problem with, or something where you would want to see increased visibility of security?

Mr. Brown. I think that those issues are intensely important to us, and we do feel strongly about that, and we appreciate the help that you have done in bringing that funding here, and it is something that needs to be repeated annually.

These folks are going to continue to come and they are going to continue to go there to recreate, and they need the visitors services, and that is part of what we feel strongly that Congress needs to interject itself in, is the continual funding source to make sure that recreation across the west, and not just in the CDCA, but throughout the west.

Our sand and recreation folks have many available spots on the Bureau of Lands throughout the western United States, as well as just general access to public lands, that provides a recreation component that needs to be funded by Congress.

Mr. Filner. One last thing if I may, Mr. Chairman. I as a newcomer to Imperial County, I had thought that the county has not developed its echo tourism to the extent that it might. I mean, it is an incredibly beautiful area as the people who come there for the dunes know.

Is there anything that the county or the State, or Federal, can do to be more welcoming to your community? What would you like to see done?

Mr. Radanovich. Excuse me, but I am going to have to interrupt. No response from the crowd, please. This is a hearing. The information needs to go into the record and so the

people who are recording it need to be recording it properly. So you may continue, but I would encourage people to--

Mr. Filner. I mean, for example, that there might be a visitors center set up, et cetera, those kinds of things.

Mr. Brown. And there has been north of the Glamis Store, and there the Bureau of Land Management has placed an area to interpret that, and to provide wilderness parking. The county has provided on the county property that is within the dunes a vista overlook that encourages the general public to come there and enjoy that view and vista. And with the interpretative site --

Mr. Filner. Is there anything else that could be added?

Mr. Brown. Not unless they were to do something to encourage more use, which certainly they could advertise or put an ad in the Sunset Magazine and ask more folks to come there. But as far as facilities, that is one of the problems with wilderness designation, is that you cannot build any facilities within the wilderness that provide visitor service.

So they would all have to be built, all the services, all the visitor centers, all these interpretative signs, anything that you want, parking areas, any type of development would have to be done off of the lands that are designated wilderness.

So the eco-tourists is certainly a viable possibility, but the numbers, I just--that area has been designated non-motorized since 1980.

Mr. Filner. Yes, but you get there from Interstate 8 one way or the other, or from the north. I mean, you can do something along those roads, I assume.

Mr. Hubbard. Congressman Filner, if I could perhaps add a comment. The problem I think with eco-tourism in this particular area is that if you eliminate vehicle access, you have created for yourself really a safety issue. This is an extremely hostile environment if you are forced to walk very far.

And one of the problems with the loss of access is that except for extremely able-bodied hikers, you have really reduced the areas that most people can go to safely anyway, and you can't very well have a strong eco-tourism in this area unless you are providing some level of vehicle access.

And without the vehicle access, people will not go there. It is not safe for them to do so. So maybe eco-tourism with very tight restrictions on vehicle access works in some areas, but in this particular part of the desert it creates a safety issue, and I just don't see it happening.

Mr. Brown. Imperial County does have an escape document here that they have printed, with the idea of bringing all forms of recreation to Imperial County. So it encourages all forms of access to public lands.

Mr. Filner. Thank you.

Mr. Radanovich. Any other questions of this panel, because we are going to dismiss this panel? Ladies and gentlemen, thank you so much for your testimony, and I appreciate you being here.

We are going to bring up our third and final panel. Mr. Mike Pool, who is the California State Director of BLM< who is here from Sacramento, and Mr. Steve Thompson, who is the California-Nevada Operations Officer of the U.S. Fish and Wildlife Service, Sacramento.

[The witnesses were sworn.]

Mr. Radanovich. Thank you very much. Please be seated.

STATEMENT OF MIKE POOL, CALIFORNIA STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, SACRAMENTO, CALIFORNIA

Mr. Radanovich. Mr. Pool, I do not know how you manage an area as big and complex as this, as well as you, Mr. Thompson, and so I am looking forward to your testimony. If you want to go ahead and start, and again 5 minutes each, and then we will open it up for to the panel for what I am sure will be many questions, and we certainly appreciate it. Welcome to the Committee, and you may begin.

Mr. Pool. Thank you. I do have some opening remarks. Mr. Chairman, and members of the Subcommittee, welcome to Southern California. Just to the east of us lies the California desert conservation area, or the CDCA. This 25 million acre region was recognized as unique among landscapes throughout the country when it was designated by Congress in 1976 as the Nation's second and by far its largest national conservation area.

When that designation was made as part of the Federal Land Policy Management Act, Congress highlighted through its official planning a wide range of land management challenges. Some of these challenges include the very same conflicts that you have heard about today.

That is, how to balance recreational access, particularly off-road vehicle access, with the protection of sensitive desert resources, particularly rare and endangered species of wildlife and plants. This landmark legislation was also recognized as very special public land resources that were uniquely located adjacent to an area of a large population.

Your congressional predecessors were very foresighted legislators. In fact, the challenges that led out for the BLM in 1976 made it more daunting today than they were back then. For example, in 1976 there were only five wildlife plant species in the California desert listed as threatened or endangered under the Endangered Species Act, and now there are 14 wildlife species and 10 plant species listed by the Fish and Wildlife Service in this region.

The human population in Southern California has grown from an estimated 12 million in 1976 to 20 million people now, with dramatic growth occurring in the western desert region known as the Inland Empire.

To address these challenges the Federal Land Policy and Management Act directed BLM to prepare a comprehensive long range plan for the management, use, development, and protection of the public lands in the CDCA.

It also established the California Desert Conservation Area Advisory Committee to ensure full public participation and involvement in this important planning process, and that Committee, now called a council, plays a vital role in helping us guide management of the desert.

The overall plan was completed in 1980 was developed in cooperation with State and local governments. The Los Angeles Times characterized the plan at that time as, quote, a balanced plan, and no one group will be entirely happy with it, and that is a good sign.

Twenty-three years later the BLM is in the midst of updating that plan through six regional plan amendments that are being characterized by the media as much the same. Controversial plans that neither recreationalists nor environmentalists, nor the effected users, are very happy with.

Whether that is a good sign or not, I will leave that to editorial writers and others to decide in the future. I can tell you that my staff, and I am here in California, are trying

to do to the very best of our abilities to balance public interests as we develop these plan amendments and to make these plans fair.

As State Director, I have made it clear that our overriding goal is to allow as much public access and use of the desert as we can, while meeting the legal requirements of the Endangered Species Act.

The legal tightrope that we are talking about in this region is very real. The BLM alone has seven major lawsuits currently being litigated by both sides regarding this plan updates and implementation actions, with four more notices of intent to file lawsuits pending.

The Fish and Wildlife Service has additional lawsuits filed whose outcomes will also affect BLM's ability to authorize various public land uses in the desert. Much of the controversy being discussed today can be traced back to one of those lawsuits filed in early 2000 by the Center for Biodiversity, the Sierra Club, and others, and settled to a series of five consent decrees between August of 2000 and April of 2001.

This controversial settlement made in our behalf by the U.S. Department of Justice was done to avoid the likelihood of a Federal Court granting the plaintiffs' request for a desert-wide injunction on all BLM authorized activities under the California Desert Plan until Endangered Species Act requirements were met.

The injunction would have included almost the complete closure of the Imperial Sand Dunes to off-highway vehicle use, the elimination of livestock grazing, large scale road closures, and other massive disruptions to public uses in the desert.

Rather than taking that risk the settlement required the BLM to reconstruct a much more narrowly focused range of public activities until we complete the land use amendments now underway.

For the last 3 years, the BLM has been working against the clock to complete those plans. They have been very expensive, and they have been very controversial, and they have been very time consuming. However, with input from thousands of members of the public, as well as State and local governments, we have completed four of these regional plan amendments.

These include plan amendments for the Northern and Eastern Colorado Desert, the Northern and Eastern Mojave Desert, the Coachella Valley, and the Western Colorado Desert. The final two plans for the West Mojave Desert and the Imperial Sand Dunes Recreation Area are still underway.

The Imperial Sand Dunes comprise 160,000 acres located approximately 130 miles to the east of us, and we are in the final stages of developing a major update to our recreation activity plan, or RAMP, developed in 1987.

In my personal opinion, the Imperial Sand Dunes provide a world-class recreation opportunity for off-highway vehicle use. Literally hundreds of thousands of recreationalists and other visitors come to the dunes annually to enjoy its vistas and off-highway vehicle opportunities.

As one of the most popular OHV areas in the Southwestern United States, this area presents significant management challenges, including law enforcement, visitor safety and services, and protection of sensitive resources.

The listing of a plant called Peirson's milk-vetch by the Fish and Wildlife Service in 1998 requires BLM to determine how to balance recreational use with required legal protections of the Endangered Species Act.

We believe the plan now being finalized does that, with the creation of a 33,000 acre adaptive management area that will allow us to monitor the plant, while still providing limited OHV access use, so that we can gather evidence one way or the other as to whether the plant and vehicle are compatible.

The settlement described earlier required us to close 49,000 acres of the 160,000 acres of dunes used for OHV use. Our pending plan would open the 49,000 acres back to off-highway vehicle use, including the 33,000 acres within the adaptive management area. We hope to have that plan completed very shortly.

The West Mojave Plan now in draft for public review is by far the most comprehensive of the six regional land use plans. It is also a habitat conservation plan that is being prepared in collaboration with the region's cities, counties, State, and Federal Agencies to meet cross-jurisdiction requirements.

As such, it is the largest HCP ever developed, covering 9.3 million acres. The overall goal is to streamline and develop less costly procedures for complying with the requirements of both the Federal and California Endangered Species Acts. This approach is aimed to stimulate economic development within this rapidly growing region, while still conserving more than 100 identified federally listed, State-listed, and sensitive plan and animal species.

An innovative and broad-based super group of interests, representing the many public entities and groups affected by this plan, have held countless meetings to develop many aspects of the draft. The rest of our public is now providing us comments through September and we hope to have that plan out in early next year. Let me know how much time I have. I have more comments.

Mr. Radanovich. How long do you think?

Mr. Pool. I would say probably 2 minutes.

Mr. Radanovich. Two minutes? You have got it.

Mr. Pool. Thank you. Even though BLM has received tremendous public assistance and involvement in all these planning efforts, we know probably that none of these groups are completely satisfied with the plan's outcome.

We understand their views, and we want to assure them that their comments are indeed being carefully considered. However, we also acknowledge that Congress gave us a tough job in balancing these widely divergent public expectations and desires about the future of the California Desert.

I must also point out that the implementation of these plans will indeed be extensive. We will be working with the administration, the appropriations Committee, and members of the California delegation to try to obtain the necessary funding so we are not vulnerable to similar future lawsuits.

A number of the California Desert's Congressional delegation have already been very supportive of funding needs, and we thank them for their personal efforts. In summary, Mr. Chairman, as a fellow Californian, I appreciate you bringing your esteemed Subcommittee here to listen to the public regarding these important issues.

I very much appreciate hearing the views of those who are testifying today, and I assure you that the BLM here in California remains strongly committed to trying to reach a fair and balance approach to management of the public lands in this important region.

That concludes my summary, and I have written testimony provided for the record. I have also provided the Subcommittee with an additional transcript of my written testimony. And I am

glad to answer any questions that you may have.
[The prepared statement of Mr. Pool follows:]

Statement of Mike Pool, State Director,
California Bureau of Land Management

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify today on access to the California Desert National Conservation Area (CDCA) and, in particular, the Imperial Sand Dunes Recreation Area.

Background

In 1976, with passage of the Bureau of Land Management's (BLM) organic act, the Federal Land Policy and Management Act (FLPMA), Congress recognized the 25 million-acre CDCA as unique among landscapes throughout the country. When the CDCA was designated as part of FLPMA, Congress highlighted a wide range of land management challenges in this area. Some of these challenges include the very same conflicts you are examining today--that is, how to balance recreational access, primarily off-road vehicle access, with the protection of sensitive desert resources, particularly rare and endangered plant and animal species. FLPMA also recognized that these very special public land resources were ``uniquely located adjacent to an area of large population.''

The challenges Congress recognized when it created the CDCA twenty-seven years ago are even more daunting today. For example, in 1976, there were only five plant or animal species in the California Desert that were listed as either threatened or endangered under the Endangered Species Act (ESA). Currently, there are 10 plant species and 14 animal species in this region listed by the U.S. Fish and Wildlife Service (FWS). Moreover, the urbanization of this region has increased; the population in Southern California has grown from an estimated 12 million in 1976 to 20 million people today. Dramatic growth has occurred in the western desert region, often referred to as the ``Inland Empire.''

To address these resource management challenges, FLPMA directed the BLM to prepare a comprehensive, long-range plan for the ``management, use, development, and protection'' of the public lands in the CDCA. Congress established the California Desert Conservation Area Advisory Committee to ensure full citizen involvement and participation in this important planning process. The overall plan, developed in cooperation with the State and local governments, was completed in 1980. Twenty-three years later, the BLM is in the midst of updating that plan through six regional plan amendments. The California BLM is working diligently to balance the various competing public interests as we develop these plan amendments. It is our goal to allow public access and use of the CDCA consistent with the resource and species protection requirements of the ESA.

Plan Amendments

For the last three years, the BLM has been working to complete plan amendments for the six plans that encompass the CDCA. The plan amendments fulfill the requirements of five consent decrees entered between August 2000 and April 2001, in connection with a lawsuit filed by the Center for Biological Diversity, Sierra Club, and Public Employees for Environmental Responsibility against the BLM. The resulting plan amendments, while controversial and very time-consuming, have been developed with substantial public, State and local government input. At present, we have completed four of these amendments. They are the Northern and Eastern Colorado Desert, the Northern and Eastern Mojave Desert, the Coachella Valley, and the Western Colorado Desert amendments. Attached to this statement is a detailed update on the progress of these four plan amendments. The two remaining plan amendments, covering the Imperial Sand Dunes Recreation Area and the West Mojave Desert, are still underway, and are discussed more fully

below.

The Imperial Sand Dunes (Dunes) comprise 160,000 acres located approximately 130 miles to the east of us. We are in the final stages of developing a major update to our Recreation Area Management Plan (RAMP) for the Dunes. The RAMP was originally developed in 1987. The Dunes provides world-class recreation opportunities for off-highway vehicles (OHV). Over a million recreationists come to the Dunes annually to enjoy its vistas and OHV opportunities. In 2002, 1.2 million people visited the Dunes, with visitation during the busy Thanksgiving holiday weekend exceeding 170,000. As one of the most popular OHV areas in the Southwestern United States, the Dunes presents significant management challenges, including law enforcement, visitor safety and services, and protection of sensitive resources.

The 1998 listing of the Peirson's milk-vetch as a threatened species by the FWS required the BLM to determine how to balance recreation use with resource protections under the ESA. We believe the plan now being finalized achieves this balance, through the creation of a 33,000-acre adaptive management area that will allow us to monitor the plant while still providing limited OHV access to determine the impacts of interaction between the plant and OHV use. While settlement of the litigation required us to close approximately 49,000 acres of the Dunes, our proposed plan would re-open those lands to OHV use, including the 33,000 acres within that adaptive management area. A Final EIS/Proposed Plan was released on May 23, 2003. Since the end of the required 30-day public protest period, the BLM has been evaluating 11 protests it has received.

On August 5, 2003, the Service proposed to designate critical habitat for this species on approximately 52,780 acres of sand dunes in Algodones Dunes in Imperial County, California. Earlier this year, the Service completed consultation on BLM's draft Recreation Area Management Plan (RAMP) for the Dunes. Based on the review of the draft RAMP and the provisions to conduct monitoring and study efforts, the Service determined that implementation of the RAMP would not likely jeopardize the continued existence of the Peirson's milk-vetch in the Algodones Dunes within the next four years.

The West Mojave Plan, a resource management plan amendment which is also an interagency Habitat Conservation Plan (HCP), was prepared in collaboration with the region's cities, counties, State and Federal agencies, and covers 9.3 million acres in the western portion of the Mojave Desert. It includes within its boundaries China Lake Naval Weapons Center, Edwards Air Force Base, Fort Irwin, the Marine Corps Logistics Base at Barstow, and the Marine Corps Air Ground Combat Center. It is by far the most comprehensive of the six regional land use plans and is intended to streamline and develop less costly procedures for complying with the requirements of both the Federal and California Endangered Species Acts. The HCP is intended to stimulate economic development within this rapidly growing region while conserving more than 100 identified Federally-listed, State-listed and sensitive plant and animal species.

The HCP would establish a balanced and equitable program that would cut permitting costs in half, eliminate construction delays through the adoption of a pre-approved conservation and mitigation strategy, and enhance business planning certainty. Cost reductions would result primarily from the elimination of the administrative costs associated with the preparation of the reports and applications necessary to obtain incidental take permits. The HCP would allow for appropriate resource use and community expansion. The West Mojave Plan would also include a regional strategy for conserving sensitive wildlife species that would be implemented in a collaborative manner by local governments and State and Federal agencies. The plan would be implemented on public lands through the amendment of the BLM's CDCA Plan, and on private lands through the issuance of programmatic

incidental take permits to local cities and counties by the California Department of Fish and Game and FWS.

An important part of this effort has been designing a network of motorized vehicle access routes for the western Mojave Desert to provide access to recreation venues, commercial and industrial sites, and other destinations. On March 21, 2003, the BLM published an environmental assessment that examined the impacts of establishing a vehicle access network. A 30-day public comment period followed. On June 30, 2003, the Record of Decision was issued for the West Mojave route designation. This access network is also included in the draft West Mojave Plan/HCP now out for public comment. The 90-day public comment period on the draft plan will close on September 12, 2003.

Conclusion

The CDCA is a vast, challenging, controversial, and fascinating resource area. In keeping with Secretary Norton's 4Cs--consultation, cooperation and communication all in the service of conservation--the BLM remains steadfast and committed to reaching a fair and balanced approach to managing the public lands in this important region. We believe this approach will best serve the many competing needs and interests of the area. Mr. Chairman, that concludes my testimony. I would be happy to respond to any questions the Committee may have for me.

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Mr. Radanovich. Thank you, Mr. Pool. I appreciate your testimony. Mr. Thompson, welcome to the Subcommittee, and you may begin yours, and then we will open it up to the panel for questions.

STATEMENT OF STEVE THOMPSON, CALIFORNIA-NEVADA OPERATIONS OFFICER, U.S. FISH AND WILDLIFE SERVICE, SACRAMENTO, CALIFORNIA

Mr. Thompson. Thank you, Chairman Radanovich, and Congressman Pombo, and Congressman Filner. Again, my name is Steve Thompson, and I am the manager for the Fish and Wildlife Service operations in California, Nevada, and the Klamath Basin. and so we certainly have our hands full with Fish and Wildlife Service issues in the two States and Klamath.

The Service really appreciates the invitation to make a presentation today about the Desert Tortoise Recovery Plan and its impact on access to Federal Land. The Service has a long history of working closely with the Bureau of Land Management, and Mike Pool and his staff, and John Jarvis of the National Park Service, and the State agencies, such as Bob Hiatt at Fish and Wildlife and their Fish and Game here in California, and Terry Cropworth in Nevada.

Now, our purpose is the use of the public lands while providing for conservation and recovery of the Desert Tortoise and other listed species. The Desert Tortoise is one of the better known inhabitants of the California desert, and is currently listed as threatened under the Endangered Special Act. In 2994, the Service finalized critical habitat for the Mojave Desert population in California, Nevada, Arizona, and Utah.

Now, this is a species that has been well studies by over 40 years of research in the desert community and we still need to know a lot more about the desert tortoise. There is a tremendous amount of information that has yet to be learned.

We also finalized the recovery plan for the tortoise in 1994, and the goal of the recovery plan is to protect habitat and reduce mortality, through the establishment of management actions and partnership efforts, leading to the eventual

delisting of the species.

Recovery implementation balances conservation for the Desert Tortoise, with continued use of public resources. We continue to try to accomplish our primary objectives with the cooperation and involvement of local communities, land management agencies, State Fish and Wildlife agencies, and other partners.

The Desert Tortoise Recovery Team was disbanded after the final recovery plan was approved by the Service in 1994. Subsequent recovery implementation and monitoring became a conservation strategy taken on by the Desert Tortoise Management Oversight Group, and the Desert Managers Group.

Because recovery implementation occurs largely on public lands, recovery guidance and oversight involves land managers such as the Department of Defense, BLM, the National Park Service, as well as the Fish and Wildlife Service.

Based on new information which indicates that there is a substantial decline in the Desert Tortoise population in numerous areas the Service is conducting a formal review for the 1994 recovery plan.

In March of 2003, we formed an assessment team of scientists, comprised with expertise in desert tortoise biology, conservation biology, desert ecology, and disease, along with the scientists that would review the monitoring techniques to address concerns raised by the report completed by the GAO in December of 2002.

The assessment committee will reassess the recovery plan, and recommend changes based on the new information. This assessment process is open to stakeholder involvement, and the assessment committee will submit a report with their recommendations to the Desert Tortoise Management Group and the Desert Management Group, or excuse me, the oversight group, for consideration by January of 2004.

These groups will then use this new information to revise the recovery plan, which will take approximately 1 year. In our attempt to balance species recovery with appropriate land use, the BLM and the Service has been challenged on several lawsuits related to the Desert Tortoise.

We currently have active lawsuits from environmental groups, to the off-road vehicle groups. Finding a balance between recreational use and environmental protection in the California desert is truly a challenge and our goal.

Mr. Chairman, the Service is diligently working with BLM and interest groups so that an appropriate number of roads and trials can be developed that allows for both the conservation and the recovery of the desert tortoise, and access to the California desert.

We are required by law to work toward the recovery of the desert tortoise. But we don't do it alone. We welcome the participation of any and all users of the desert, and only with broad participation can we develop plans that will protect the desert for people, and our tremendous wildlife heritage that we have in this country.

We thank you for the opportunity to present this testimony, and I will be happy to answer any questions.

[The prepared statement of Mr. Thompson follows:]

Statement of Steve Thompson, Manager, California/Nevada Operations Office, Fish and Wildlife Service, U.S. Department of the Interior

Mr. Chairman and Members of the Subcommittee, thank you for the invitation to appear before you to present testimony regarding the

desert tortoise recovery plan and its impact on access to Federal land in the California Desert Conservation Area and the Imperial Sand Dunes Recreation Area. I am Steve Thompson, Manager of the U.S. Fish and Wildlife Service's (Service) California/Nevada Operations Office.

The Service is working with the Bureau of Land Management (BLM), the National Park Service (NPS), and State wildlife agencies to provide access and use of public lands while providing for the conservation and recovery of the desert tortoise and other listed species. We are required by law to work toward recovery of the desert tortoise; but we cannot do it alone. We encourage and welcome your assistance and guidance and the participation of any and all users of the desert. Only with broad participation can we develop plans that will conserve imperiled species and their habitats.

Background

The desert tortoise is one of the better known inhabitants of the California Desert and is currently listed as threatened under the Endangered Species Act (ESA). Information on high mortality rates associated with a respiratory disease resulted in the emergency listing of the Mojave desert tortoise as endangered in 1989. In 1990, further review of other threats to the desert tortoise, such as habitat loss and degradation and predation by common ravens, led to its listing as threatened. In 1994, the Service finalized critical habitat for the Mojave Desert population in California, Nevada, Arizona and Utah.

The threatened Peirson's milk vetch is another listed species found in the area. On August 5, 2003, the Service proposed to designate critical habitat for this species on approximately 52,780 acres of sand dunes in Algodones Dunes in Imperial County, California. The Service listed the plant as a threatened species under the Endangered Species Act in 1998 primarily because of threats to the plant by off-highway vehicle use. Earlier this year, the Service completed consultation on BLM's draft Recreation Area Management Plan (RAMP) for the dunes. Based on the review of the draft RAMP and the provisions to conduct monitoring and study efforts, the Service determined that implementation of the RAMP would not likely jeopardize the continued existence of the Peirson's milk-vetch in the Algodones Dunes within the next four years.

Desert tortoise recovery plan

The Service initiated work on the recovery plan for the desert tortoise in October 1990 with the establishment of a recovery team including nationally recognized scientists in desert tortoise biology, conservation biology, desert ecology, and diseases of reptiles. The recovery team incorporated scientific data provided by researchers from the Service, BLM, NPS, and four State wildlife agencies from California, Nevada, Arizona and Utah, and from universities from southern California, Nevada and Colorado. The recovery team completed a draft recovery plan in 1993 and, after an opportunity for public comment, finalized it in 1994.

The desert tortoise faces a variety of threats to its recovery. Upper respiratory tract disease, predation by the common raven, and habitat loss and degradation are among the foremost threats facing this species in the areas covered by the recovery plan. Human activities contribute to these sources of mortality by altering landscapes, which in some cases can increase resources for the common raven.

The recovery strategy for the desert tortoise is based on accepted principles of conservation biology, including the creation of habitat reserves (desert wildlife management areas, or DWMAs) of sufficient size with establishment of adequate regulatory mechanisms to halt human-caused habitat destruction, degradation, and fragmentation and direct mortality of the species. To achieve the goal of habitat protection and species persistence, the recovery plan identifies and recommends, based on an extensive body of published literature, that certain types of management actions be taken to assist in the recovery

of the species. In addition, the recovery plan called for monitoring of the recovery units to document the species condition over time. Furthermore, the plan identified delisting criteria which include: 1) as determined by a scientifically credible monitoring plan, the population within a recovery unit must exhibit a statistically upward trend or remain stationary for at least 25 years; 2) the long-term viability of desert tortoise populations within a recovery unit must be ensured through habitat protection or intensive management; 3) provisions must be made for population management within each recovery unit so that discrete population growth rates are maintained or increased; 4) regulatory protections or land management commitments are to be implemented to provide for the long-term protection of the species and its habitat; and 5) the population in the recovery unit is unlikely to need protection under the ESA in the foreseeable future.

Based on the Desert Tortoise Management Group's (MOG) and others' input, the best available scientific and commercial data available at the time was used to formulate the management actions and options recommended in the recovery plan. The goal of the recovery plan is to protect habitat and reduce mortality via the establishment of management actions and partnership efforts, leading to the eventual delisting of the species. The recommendations in the recovery plan were consistent with BLM's Management Plan for desert tortoise habitat protection and with the NPS goals for Mojave Desert habitat protection.

To achieve the goal of habitat protection and species recovery, the recovery plan identifies and recommends management actions be taken to assist the recovery of the species. Management actions target the recovery needs for each recovery unit, and land management agencies, both Federal and State, establish the specific boundaries and management of these areas through their land use plans.

Recovery Implementation

Recovery implementation balances conservation of the desert tortoise with continued use of public resources. We continue to accomplish recovery objectives for the desert tortoise recovery with the cooperation and involvement of local communities, land management agencies, State fish and wildlife agencies and other partners. With the help of local communities, tortoise-proof fencing has been constructed along major roads and highways that bisect important tortoise habitat. In addition, other activities have contributed to recovery implementation including: the removal of excess wild horses and burros; the U.S. Department of Agriculture - Wildlife Services has conducted raven-control activities in Nevada to protect young tortoises vulnerable to raven predation; research has been initiated and conducted to address desert tortoise recovery issues including disease, translocation techniques, and effects of grazing; livestock permits have been purchased from willing sellers; habitat has been enhanced or restored through the efforts of many conservation partners; and a range-wide population monitoring program was initiated in 2001 to identify population trends and document recovery.

Management actions in these conservation areas are not the sole decision of the Service or the BLM. We are a member of two organizations that provide management guidance related to tortoise recovery throughout the Southwest--the MOG, which is chaired by the Service, and the Desert Managers Group (DMG). Both groups have representatives from several federal and state land management agencies. These groups also seek input from the users of the desert, from environment organizations to off-road enthusiasts.

The Desert Tortoise Recovery Team was disbanded after the final recovery plan was approved by the Service in 1994. Subsequently, recovery implementation and monitoring became a responsibility of the MOG and the DMG for the California deserts. The MOG and DMG work in concert to coordinate rangewide desert tortoise recovery implementation. Because recovery implementation occurs largely on

public lands, recovery guidance and oversight involves land managers such as the Department of Defense, BLM, NPS, as well as the Service, which are all represented in the MOG and DMG.

The Service has worked as a member of the MOG to outline processes and time frames for completing Section 7 consultations on BLM's land use plans. Since the listing of the desert tortoise and other species in the California Desert Conservation Area, the Service has issued over 250 biological opinions, which have allowed the BLM and the public the ability to use and enjoy these lands. In addition, the Service has developed programmatic biological opinions, which allowed and continue to allow BLM activities and projects to go forward in desert tortoise habitat where the effects of the activities are expected to be small.

Land use prescriptions recommended in the recovery plan have been implemented across the range of the desert tortoise to a limited extent. In its December 2002 report to Congress, the General Accounting Office stated, ``To protect the tortoise, government agencies have restricted grazing and off-road vehicle use and taken other protective actions in desert tortoise habitat, but the effectiveness of these actions is unknown. Research is underway, in several areas, including tortoise disease, predation, and nutrition, but the research has not assessed the effectiveness of the protective actions.'' The Service believes that the effectiveness of recovery actions is difficult to determine because desert tortoises may not respond in a measurable way for a number of years following implementation of recovery actions because of the length of time required for desert tortoises to reach maturity. Years of below-average rainfall will further slow the pace of recovery of the numbers of desert tortoises and the condition of their habitat.

The future of desert tortoise recovery

Based on new information that indicates substantial declines in desert tortoise populations in numerous areas throughout its range, the Service is conducting a formal review of the 1994 recovery plan. In March 2003, we initiated an assessment of the 1994 plan by forming an Assessment Committee comprised of scientists with expertise in desert tortoise biology, ecology and disease, along with scientists who will review the monitoring techniques to address concerns raised by the recently completed GAO report. The Committee will reassess the recovery plan to gather and evaluate existing and new information on the status and trends of desert tortoise populations and recommend changes to the recovery plan based on new information. This assessment process is open to involvement from interested parties through participation in the MOG and DMG monthly meetings. The Committee will submit a report with its recommendations to the MOG and DMG for consideration by January 2004. These groups will use this new information to revise the recovery plan, which will take approximately one year.

A desert tortoise disease workshop was conducted in November 2002, involving wildlife disease experts. At the workshop, the group concluded that the cause of mortality is influenced by multiple factors including drought, poor nutrition, environmental toxins, predation, and habitat degradation including human developments and infrastructure. These factors, in combination, may cause disease and mortality. The California Department of Fish and Game and U.S. Geological Survey are preparing a report which summarizes the discussions and recommendations from the workshop to address disease management. We anticipate this report in the near future.

In our attempt to balance species recovery with appropriate land use, the BLM and Service have been challenged in several lawsuits related to the desert tortoise. We currently have active lawsuits from environmental groups and off-road vehicle groups. Finding a balance between recreational use and environmental protection in the California Desert is truly a challenge and our goal.

Conclusion

Mr. Chairman, the Service is diligently working with BLM and interest groups so that an appropriate network of roads and trails can be developed that allows for both the conservation and recovery of the desert tortoise and access to the California desert. We are required by law to work toward recovery of the desert tortoise; but we don't do it alone. We welcome the participation of any and all users of the desert. Only with broad participation can we develop plans that will protect the desert for people and wildlife. Thank you for the opportunity to present this testimony and I would be happy to answer any questions.

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[Mr. Thompson's response to questions submitted for the record follow:]

Responses to questions submitted for the record by Steve Thompson, Manager, California/Nevada Operations Office

The following are responses to questions raised at the above-referenced hearing regarding reported declines in desert tortoise populations within wilderness areas in the California Desert Conservation Area and concerns about the listing of Peirson's milk-vetch, which was published on October 6, 1998.

Regarding desert tortoise populations, recently published studies conducted in the California desert by researchers with the U.S. Geological Survey Biological Research Division have reported population declines at several permanent study plots. We are currently reviewing these studies to determine if they provide evidence of long-term population trends in wilderness areas in the California desert.

In his testimony, David Hubbard, Counsel for the Off-Highway Recreation Community, stated that the U.S. Fish and Wildlife Service (Service) had requested additional information regarding the Peirson's milk-vetch from the Bureau of Land Management (BLM). Mr. Hubbard emphasized that the Service never received this requested information, and asked why, despite this lack of response, we moved forward to list the plant. We believe he is referring to our November 14, 1996, memorandum (Attachment 1) to BLM that requested ``additional information on the abundance of Peirson's milk-vetch on BLM lands''. Our memo described what documents the Service had and asked specific questions to determine if BLM held other pertinent information. BLM provided no written response to our memo, but they did provide a letter (Attachment 2) during the earlier comment period which stated that no additional information or monitoring on the Peirson's milk-vetch had been conducted since 1992.

Although BLM was not able to provide us with additional information regarding the Peirson's milk-vetch, we determined that the species should be listed, based upon the best available science. For any listing decision, the Service evaluates the five factors prescribed in section 4(a)(1) of the Endangered Species Act. After our evaluation of all the listing factors in section 4(a)(1), the Service concluded that Peirson's milk-vetch should be listed as threatened (rather than endangered) based on specific concerns relative to factors A (the present or threatened destruction, modification, or curtailment of its habitat or range), D (inadequacy of existing regulatory mechanisms), and E (other natural or manmade factors affecting its continued existence). A copy of the five factor analysis from the Federal Register notice listing the plant and a bibliography which demonstrates the science used by the Service in deciding to list the Peirson's milk-vetch are attached (Attachment 3).

You also expressed concern at the hearing that Service staff disagreed on the listing of Peirson's milk-vetch. We have reviewed the available information and have determined that the Ventura Fish and Wildlife Office and Carlsbad Fish and Wildlife Office were in agreement

on the listing decision (Attachment 4).

Finally, the Service recently made a 90-day finding that the petition to remove Peirson's milk-vetch from the Federal List of Threatened and Endangered Wildlife and Plants presented substantial information indicating that delisting this plant may be warranted. We have initiated a status review to determine if delisting this species is warranted. The comment period to provide information to the Service to be considered for the 12-month finding closed on November 4, 2003.

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Mr. Radanovich. Thank you very much, Mr. Thompson. I do have a couple of questions that I am going to start asking. Mr. Pool, you had mentioned that the Center for Biological Diversity has filed a lawsuit in conjunction with the Sierra Club and the Public Employees for Environmental Responsibility against the BLM.

What has been the financial impact of that lawsuit in terms of time and responding to it and such. Can you give me an idea?

Mr. Pool. Well, we have estimated that it is close to $9 million over a 3 year period. It has been very expensive, and very time consuming, and laborious, because those were court ordered deadlines in which to complete the plans.

Mr. Radanovich. What has been the effect of these lawsuits and your overall ability to manage the desert and maintain consensus with your various constituencies?

Mr. Pool. I think that it has taken away from kind of part of our culture, BLM's culture for many, many years, to actually collaborate and sit down and talk to people, to public land users, and when you get into litigation arenas, I think it takes on kind of a life of its own. It is derisive, and causes polarization among the users, and polarization with county and local governments.

Litigation can take people into a venue where they perhaps are excluded. They don't have a stake at the table. So I think it has been a heavy impact on the agency, and ever since that suit has been filed, and we have followed through or attempted to follow through diligently on the consent decrees, we have then tried to rebuild these relationships.

We value our public users. Our field offices are in close proximity to areas where we deal with our users every day. But this has been kind of a new phenomenon for BLM on a grand scale. With the courts and deadlines that are dictating our outcomes, as opposed to taking more time to sit down and talk, and collaborate all interests at the table.

And I am hopeful that once we get these plans complete that we can move back into that arrangement and plan implementation.

Mr. Radanovich. Thank you. It was mentioned by some of the other people that were addressing the Committee that the Desert Advisory Council, whose members are appointed by the Secretary, and by other folks, it was mentioned that the BLM is sometimes unresponsive to their recommendations or input. What would be your response to that? It was mentioned that there were these 10-to-2 votes,

Mr. Pool. Yes, and I am aware of some of those dynamics. We do value our council. They are nominated and they are selected to advise the BLM in a variety of program categories. Some, and not all, but some cases partially do we adopt the recommendations.

I would say that in the last 3 years, because of the emphasis placed on these plans that we were not able to adopt all or part of the recommendations, but to the extent possible, we tried to factor the recommendations and thoughts into our

land use plans.

The land use plans were the driving force because of the consent decree and the timeframe in which to complete these plans.

Mr. Radanovich. Mr. Thompson, I just want to ask briefly if I may, and I don't know too much about the Desert Tortoise, and I don't have any desert in my district, and so this is all pretty much new to me. But I understand that there is an 80 percent mortality rate in the Desert Tortoise on land designated as wilderness.

In other words, in lands where there is on recreational use permitted, how do you reconcile that? Is that something that is a tough thing to reconcile, or--

Mr. Thompson. I am not aware of that number, and so that is a new number to me. I can ask the biologists and get a answer back to you in writing to answer that question, but that is something new to me.

Mr. Radanovich. All right. Under the Desert Recovery Plan, in the absence of monitoring, how do you determine the effectiveness of the Desert Tortoise Recovery Plan?

Mr. Thompson. Well, we do have a monitoring program going on and previously there was a density system that was working and we are now in a line sampling system that is in, I believe, its third year.

And my understanding is that we will be doing that for another couple of years until we can get a trend established and a baseline to move from that. The problem or the challenge that we have I guess is that sampling on an area from Nevada, and Utah, and California, it is huge area to sample, and to get a typically significant sample costs a significant amount of dollars.

All the agencies, including the Park Service, BLM, and a huge push in the Department of Defense, we have been able to do as much monitoring as we can afford. But we need to do more.

Mr. Radanovich. And my question was based I guess on a GAO 2002 report which criticized the Fish and Wildlife for its lack of monitoring of the Desert Tortoise, and am I to understand that those have been changed on what has been happening since then?

Mr. Thompson. Yes.

Mr. Radanovich. All right. Thank you. I am going to have to leave. I have a six o'clock flight out to go back home, but I just wanted to thank the Chairman for holding this Subcommittee hearing here, and I think it is really good to get this information in the record, and I appreciate the opportunity to do that, and so we will recognize my Chairman for any questions.

Mr. Pombo. I am going to recognize Mr. Filner for any questions that he may have at this point.

Mr. Filner. Just briefly, I think, George, that you showed in your colloquy with Mr. Pool the difficulties when you get into litigation. I mean, with litigation, and again I would just say--and I say it with all sincerity, and not to cause you any--or just to be ornery or anything.

The only way to avoid that is to get people into the same room and talking with one another, and get them at the same table and try to figure it out. I don't know about the past, but if we are going to go like this, we are never going to get out of litigation.

I mean, you have one side that says one thing, and the other side another, and there are different rooms, and different times, and they just clash. And there will be

litigation out of that.

We are in this business of politics because we believe that there is rational decisionmaking that is possible, and there are compromises that are there, and people have to give and listen, and out of that process we believe that good policy can come out.

And I would just encourage you in the future to try to get that discussion--and again, I don't know what has happened in the past, but all I can see is what I see in front of me, and we are not having that kind of discussion and we ought to.

And I would pledge to be there and to have that discussion so we can in fact get away from spending $9 million in 3 years on litigation, which we all recognize is stupid, and it just does not help anybody.

And we ought to figure out from people who wear the orange shirts, and people who don't wear the orange shirts, how to get that dialog done rationally. Thank you.

Mr. Pombo. Well, I would just say to my colleague that welcome to our world. In the years that I have had the opportunity to be a member of Congress and to work on these issues, the conflict that is there sometimes is--that you see no way around it.

And you work extremely hard to try to solve the problems. Mr. Pool, we have handed you what in my determination would be an impossible job, and that is to manage an area under a number of different Federal laws, with a number of different judges' decisions coming down on top of you, and told you to figure it out.

If we were able to stop the clock where we are right now with all of the decisions that have been made with all of the--of what I believe are contradictory Federal laws that are in place that you have to somehow manage this millions and millions of acres under, do you think that it would be possible to work out a multiple use plan for the desert that would protect the areas that are pristine, and the areas that are wilderness, and to protect those as wilderness areas; and to set aside the areas that are endangered species habitat, and come up with some kind of a plan that would allow this multiple use that we gave you, and we told you that it had to be managed as multiple use, could you put that all together if we could just stop the legal clock for a minute? Is it possible to put that together?

Mr. Pool. That is a tough question. I think in looking at Southern California that what has happened over several years is that the desert is being allocated, and some of these allocations are permanent.

Other allocations are still pending, like WSAs. Even when we complete these plans, we will get new demands on the landscape. So as the demands grow, and with the conservation in use, the landscape is finite. So the pressures will continue.

I guess in reference to your question, Congressman, I feel strongly that how we go about these allocations should be done in an open collaborative way, such that people can feel comfortable to meet, and to discuss, and respect the other person's point of view, and the best solutions that I have seen in public plan management is when we create and allow those forums to become synergistic.

People come up with new ideas, and I can say that everybody that I have gotten to know in this room today has always had that attitude, and have always expressed a willingness to work with BLM in a collaborative way and to go the extra step to assist on the ground.

But there are those on the fringe, on the environmental fringe, that have no desire to do that whatsoever, and that I think is part frustration, and that's why I think we will continue to see more lawsuits, and countersuits, and it is enforcement that many of the land use decisions that we are obligated to make given our multiple resource charter is dictated by the courts.

And so I am hopeful that with these new planning efforts, and they are by no means perfect, as they never are, that we can move forward and work with our user groups. And I will add this. That these plans will be extensive. The 1980 plan was extensive.

And I think back in the '80's when BLM, and not only in California, but elsewhere, prepared a variety of land use plans. We were reliant, and perhaps solely reliant, on Congressional appropriations.

And I think that in recent years that we have learned how to better leverage our resources to challenge cost shares, forming fringe groups, foundations, and building upon our volunteer program.

The public lands belong to all members of the public, and the Bureau cannot go it alone. We need their assistance in all of our use categories, particularly recreation here in Southern California, to help manage these areas in an effective manner.

Mr. Pombo. Well, I have got to tell you that I really do feel for you on the job that is in front of you, because--and the reason that I asked the question the way that I did, if we could stop the clock for a minute, was because we both know that no matter what solution that you come up with that there will be new lawsuits filed.

And that changes the dynamic of everything and our ability to try to sit down and get different groups at the table and work something out. As long as there is always a constant threat of another lawsuit coming down, it makes it extremely difficult to effectively manage these areas.

I think that most people that are the off-road groups and the outside users, the mining groups, they just want some certainty in this process. Tell us what we can do and what we can't do, and then leave us alone.

And with that constituency, I think that is the most frustrating part, and one of the reasons why we are holding this hearing today is because of the frustration of so many people who have contacted the Committee and contacted me personally.

Mr. Pool. I can appreciate that.

Mr. Pombo. Mr. Thompson, just a couple of questions for you. In your prepared statement, you--and I am paraphrasing, and this may not be exactly what you said. But you said a balance between conservation and access.

The Endangered Species Act really does not allow you to do that. The Endangered Species Act requires you to do whatever it takes to recover that species.

Mr. Thompson. Well, we do have some flexibility with the Act, and I think it gets back to your earlier discussion about what I would really characterize as non-discretionary deadlines. And those are legal deadlines now that--both legal and through the courts that are on us.

When we have the time to sit down--and we have some outstanding biologists, and they do a darn good job in my opinion of sitting down with all folks and working through tough challenges. There is some flexibility in the Act, and we have to take care of the species, and that is what the Act says

to do.

But when we are able to sit down with BLM up front and work hard through the process, we have done over 250 biological opinions in the desert, and the majority we have not heard about today. There have been some that we have had difficulty in getting through.

So there is some flexibility in the Act, and if we had more time, we can normally work through these issues and get to a solution that people can live with and can also recover the species.

Mr. Pombo. One of the issues that was testified to earlier involved new data and new studies that have been done on Peirson's Milk Vetch, and I believe the gentleman's name was Dr. Arthur Phillips.

And the gentleman testified--Mr. Bramham testified earlier--about this new information that had come up. Are you familiar with that, and have you had a chance, or have the people in your agency had an opportunity to review that?

Mr. Thompson. Yes, they have. They presented the data to us as part of their package, and we reviewed that with all the other data that is out there. We have to use the best available science to make a decision, and that is certainly part of it, the data presented by the folks today.

Mr. Pombo. And I wouldn't ask you to prejudge what decision would come of that, but if a delisting procedure would be asked for, at that time you would pull in all of this new information and look at the possibility of delisting?

Mr. Thompson. Yes. The first thing that we would do is make a 90 day finding, and at that point we would determine whether it was substantial or not, and then make a recommendation to the Director and to the Secretary, and they would make the final decision.

Mr. Pombo. Just out of curiosity, on the original listing on the Milk Vetch, what was the scientific information that that was based on?

Mr. Thompson. I would have to get back to you on that. I have not read the original package, and a part of it was the threats from the off-road vehicles, and that is part of the package that came in and I do know that part. But I would have to look at the original data and I have not seen that.

Mr. Pombo. If you could provide that for the community, I would appreciate it, because I would be very interested to know what science was used in making that original decision. What year was that listed? Do you remember or does anybody know? '98?

Mr. Thompson. 1998.

Mr. Pombo. All right. If you could provide that on what information was used, because as you know, we have been working on the science provisions in the Endangered Species Act for the past few years, and we really would like to get to a point where we have more confidence in the science that is being used, and give you guys the ability to have more confidence in the decisions that are being made.

I know that that when you get in the middle of lawsuits that sometimes a lot of that gets lost, but we would at least like to give you guys a fair shot at having better science, in terms of that. Mr. Filner, do you have any further questions?

Mr. Filner. No, I would just thank you for coming down to San Diego. I do appreciate people sitting through several hours of testimony. I think we all learned from it. I came to learn, and I have learned a lot, and I will continue to try to learn from what appears to be two sides here.

Just one thing, Mr. Pool, bothered me I guess a little bit on your statement to the Chairman, where you used the statement, environmental fringe. You were not implying that there was a fringe on only one side of this issue?

Mr. Pool. No, no.

Mr. Filner. That everybody on one side is OK, and the other side is not?

Mr. Pool. No, let me correct that. There is fringe on every program category. I mean, over the course of my career. I am just saying that for what we have been dealing with more recently in Southern California, it seems like that there is an environmental fringe that purposely elect not to participate in a lot of our forums.

And from scoping, to people devoting time at evening meetings, and on weekends, to try to come up with a consensus, and it is not as if they have been excluded and they are not invited. They have.

But it seems that the only tool that they elect to place on BLM is litigation, and that is what I am saying, Congressman.

Mr. Filner. All right. Well, Rich, I hope that we can find some way to improve some of these things that cry out for improvement. And I know that I am a new guy as you just said to these issues, but I want to work with you to solve them, and without putting people on two sides, if we can do that, and getting an intelligent decision out of here. Thank you.

Mr. Pombo. Well, thank you, and I welcome your voice to the debate. This is something that has been going on for many, many years, and I know that with your new district that it is something that impacts your constituency a great deal.

Mr. Pool and Mr. Thompson, I want to thank you very much for making the effort to be here to testify. I look forward to working and continuing to work with both of you on these issues in the future.

Again, I want to thank our hosts for opening this facility for us for all of the interested members of the public for attending this. Thank you all for being here, and the hearing is adjourned.

[Whereupon, at 5:05 p.m., the Subcommittee was adjourned.]