

S. HRG. 108-531

**CLEARWATER BASIN PROJECT ACT; ARAPAHO AND  
ROOSEVELT NATIONAL FORESTS LAND EXCHANGE ACT;  
AND HIGHLANDS CONSERVATION ACT**

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**HEARING**

BEFORE THE  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
OF THE

COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

**S. 433**

A BILL TO PROVIDE FOR ENHANCED COLLABORATIVE FOREST STEWARDSHIP MANAGEMENT  
WITHIN THE CLEARWATER AND NEZ PERCE NATIONAL FORESTS IN IDAHO, AND FOR OTHER  
PURPOSES

**S. 1280**

A BILL TO DIRECT THE SECRETARY OF AGRICULTURE TO EXCHANGE CERTAIN LANDS IN THE  
ARAPAHO AND ROOSEVELT NATIONAL FORESTS IN THE STATE OF COLORADO

**H.R. 1964**

A BILL TO ASSIST THE STATES OF CONNECTICUT, NEW JERSEY, NEW YORK, AND PENNSYLVANIA  
IN CONSERVING PRIORITY LANDS AND NATURAL RESOURCES IN THE HIGHLANDS REGION, AND  
FOR OTHER PURPOSES.

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MARCH 24, 2004



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**CLEARWATER BASIN PROJECT ACT,  
ARAPAHO AND ROOSEVELT NATIONAL FOR-  
ESTS LAND EXCHANGE ACT; AND HIGH-  
LANDS CONSERVATION ACT**

WEDNESDAY, MARCH 24, 2004

U.S. SENATE,  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:32 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Larry E. Craig presiding.

**OPENING STATEMENT OF HON. LARRY E. CRAIG,  
U.S. SENATOR FROM IDAHO**

Senator CRAIG. Good afternoon, everyone. The Subcommittee of Public Lands and Forests of the full Committee of Energy and Natural Resources will be convened.

This afternoon we are giving an oversight hearing to H.R. 1964, a bill to assist four States in conserving priority lands in the Highlands region of New York, New Jersey, Connecticut, and Pennsylvania; S. 433, a bill to enhance collaborative forest stewardship within the Clearwater and Nez Perce National Forests in my home State of Idaho; and S. 2180, Senator Campbell's Arapaho-Roosevelt National Forest land exchange to allow the completion of a city of Golden, Colorado pipeline.

First and foremost, I want to welcome Congressman Frelinghuysen who is with us here to testify on a bill that he has worked mightily hard on, H.R. 1964. I understand that possibly Senator Specter and Senator Santorum will be joining. I know this is an important piece of legislation to your constituency, Congressman. I have met with the Congressman, the sponsor of H.R. 1964, and would like to make a couple of observations and address a couple of issues that I hope our witness will be able to speak to today.

First, I believe this legislation should do a better job in describing the boundaries of the lands involved in the Highlands area. Senator Corzine has just joined him and will be testifying also. I am commenting, at least in the opening comments, Senator, on the Highlands bill.

In my mind, the American public deserves a more refined description of the area covered in the legislation. I do not think that the language currently used to describe the boundaries of the Highlands area, as defined by the Reading prong and the ecologically

similar, adjacent upland areas that encompass more than 2 million acres, is a clear enough description for most people of the actual area we seek to protect. I want to know how much more than 2 million acres, if at all possible, and what ecologically similar, adjacent uplands really means.

I have seen maps from The Highlands Coalition that extend the area all the way to the Maryland border and south to Gettysburg, Pennsylvania. I hope we will be able to establish how large an area we are really talking about.

Next, I find it very difficult to understand who is responsible for nominating the areas to be preserved. In section 5, the bill clearly says the areas have to have been identified by the Forest Service in the original Highlands study and its 2000 update. In the definitions under land conservation partnership project, it again indicates that the Forest Service has identified projects having high conservation values. As near as I can see, the Forest Service has listed only potential projects in New York and New Jersey, thus other language in section 5 suggesting that the Governors of the four States can nominate projects would seem to be in conflict.

Additionally, I see no areas in Pennsylvania or Connecticut that have been identified by the Forest Service in those studies. This warrants a bit of elaboration then as to why this bill is not limited only, let us say, to the States of New York and New Jersey.

Finally, on H.R. 1964, I see we are going to fund up to half of the purchase price of these lands with Federal dollars. What I fail to see is any provision that requires or ensures a public process that would allow the public or nearby landowners to at least comment on the proposed acquisitions and the management of those areas after they are acquired. Coming from a heavily Federalized State, as I do, where our public land managers cannot even build a picnic table without an environmental assessment and sometimes an environmental impact statement—and that would even include an appeals process—I have to wonder why similar language has been left out of the legislation. In my mind, the fact that 50 percent of the money being used to purchase the land is Federal money does trigger that potential concern.

The public in my State has at least as much interest in what is being acquired and how it will be managed. So do the folks in New York and New Jersey and Connecticut and Pennsylvania who comment on Federal timber sales in my State have the same concern about projects in their States? I think a reasonable concern.

To paraphrase the folks who continually demand access to Federal management decisions—and I quote. I have heard it too often—it is public land and all Americans have a right to comment on how it is managed.

I know this proposal is very, very important to the delegation of the States, and I look forward to working with you to make this legislation what we can and making it better. I want you to hear this: I want to help you get this passed and signed into law.

Let me comment on S. 433, the Clearwater Basin Project Act. This bill that I have cosponsored in some ways provides an interesting comparison to H.R. 1964. The sponsors of H.R. 1964 tell me their proposal has broad public support and they do not feel they need to encumber their land managers with additional environ-

mental processes. In the instance of S. 433, the local folks in the Clearwater and Nez Perce National Forests would like more input into the decision making process and more input into when, where, and how stewardship contracts are undertaken in this area as well. These same people have been very frustrated by the inability and the unwillingness of the Federal land managers to deal with insect, disease, and other forest-related issues in central Idaho.

Thus, I hope that we can work together to help the people of New York, New Jersey, Pennsylvania, and Connecticut in H.R. 1964 and that these delegations will help us and the constituents of my State allow a greater part of public input and local input into the process.

Last we are going to take testimony on S. 2180, the Arapaho-Roosevelt Land Exchange. This legislation was passed in the House of Representatives as H.R. 2766. It was introduced by Senator Ben Campbell to my right of Colorado. It facilitates a land exchange so that a water pipeline can be completed across Forest Service lands, thus allowing the city of Golden, Colorado to complete a reservoir project that is badly needed by that city. Anytime I see a city giving the Federal Government 140 acres in exchange for less than 10 acres, I know the city really needs to complete this exchange.

We are having a prolonged drought in the West and this reservoir will increase the city's water storage capacity by 40 percent if the pipeline can be completed. I hope that we can all work together to expedite this bill.

I would ask the witnesses to limit their oral comments to no more than 5 minutes. We will include both your written and oral testimony in the official record of the hearing. We will keep the record of the hearing open for 10 days and you are welcome to send the subcommittee any additional testimony or comments you want.

Now, before I call Senator Corzine and Congressman Frelinghuysen before us, let me turn to my colleague from Colorado for any statement that he would want to make. And we have just been joined by the Senator from New York who is interested in the Highlands bill. Ben.

[The prepared statement of Senator Santorum follows:]

PREPARED STATEMENT OF HON. RICK SANTORUM, U.S. SENATOR  
FROM PENNSYLVANIA, ON H.R. 1964

Mr. Chairman and Members of the Committee, thank you for the opportunity to submit this statement regarding the critical need for conserving the natural resources and wildlife habitat of the Highlands region, a significant portion of which stretches through Pennsylvania.

The Pennsylvania Highlands are comprised of more than one million acres of unspoiled, mountainous woodland that arc across the most densely settled and fastest growing portions of the state. This national treasure provides drinking water and recreational opportunities for millions of citizens in my commonwealth from the areas surrounding Philadelphia, Harrisburg, York, Lancaster, and the Lehigh Valley.

Rivers such as the Delaware, Lehigh, Schuylkill and Susquehanna, flowing from the Pennsylvania Highlands region, are naturally filtered by this pristine woodland, enabling millions of state residents to have access to clean and reliable drinking water. In heavily urbanized Southeast Pennsylvania, the Highlands are one of the most important wildlife habitat areas that protect a dwindling array of species. The Highlands also afford a number of recreational opportunities such as hiking along the nationally renowned Appalachian Trail and whitewater rafting down the Lehigh River. Superb hunting and fishing opportunities also abound in the Highlands area.

Clearly, preservation of the Highlands region is an important conservation initiative. According to the most recent study by the USDA Natural Resources Conservation Service, Pennsylvania currently ranks fifth in the nation for acreage of rural land that has been converted for development. In addition, the Delaware River Basin Commission reports that this trend of sprawl endangers a stretch of the watershed most vital for maintaining water quality in the Delaware River.

I have consistently supported conservation efforts that are compatible with private property rights. The measure the Committee considered today strikes the right balance between protecting a significant natural resource and wildlife habitat and addressing the concerns of private property owners. I thank the Chairman for holding this hearing today, and I urge the Committee to take swift action to approve this measure.

**STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL,  
U.S. SENATOR FROM COLORADO**

Senator CAMPBELL. Mr. Chairman, I ask unanimous consent to submit my complete opening statement for the record and abbreviate a little bit, if it is all right.

This deals with S. 2180. I know that sounds a little strange I guess why a city would trade 10 acres for 140-foot stretch of ground, but in this case it is an extremely important exchange.

As you mentioned, this bill passed as H.R. 2766 last year. We did not do any hearings on it, though, and so I elected to reintroduce it this year so that the committee would also be aware of the importance of this bill to the city of Golden in our State in what looks like is going to be probably the fifth year of drought we have had out there.

In this exchange, the city would receive 10 acres. The city needs this land to complete the construction of just a 140-foot stretch of pipeline connecting the west fork of Clear Creek with a brand new water storage reservoir known as the Guanella Reservoir. This reservoir is already complete and sits there and has not been filled, obviously because they have not been able to get the last little piece of the puzzle so they can start storing the water.

But the legislation is critical. The national forest boundary and the authorization is needed from either the Forest Service or from Congress to complete that small remaining stretch of land, and until that authorization is provided, the reservoir is going to remain empty as we move more and more toward the summer months. The Forest Service has indicated it would take quite some time, possibly years, if they do it through their normal process, to authorize the pipeline, and we have agreed with them that this land exchange is probably the best approach for everybody's needs and timeframes.

Additionally, I would like to note that while providing the city of Golden the ability to finish a critical water storage supply, the proposal would also benefit I think the United States. In return for the 10 acres it will give up, the Forest Service will receive up to 80 acres of land near a popular trail and recreation area in Evergreen, Colorado and will also receive another 55 acres of land on and near the Continental Divide National Scenic Trail in Clear Creek and Summit Counties. The 55 acres are located along one of the most popular stretches of the trail and is one of the ways hikers and other users can access the popular Gray's and Torrey's Peaks, two of the most heavily climbed 14,000-foot peaks in our State.

Further, the bill provides that all land values will be determined in accordance with the Forest Service appraisal procedures, so we will be ensuring that the United States will receive full market value for its land.

In addition, the city is making a donation to the Continental Divide Trail lands above which are required. I think it is really truly a win-win situation for both the Federal Government and the city of Golden, too.

It is supported not only by the county commissioners of all three counties that are involved in the land exchange, but the Continental Divide Trail Alliance, which is a nonprofit group, the city of Black Hawk Public Works Department, the Georgetown Loop Scenic Railway, and numerous other groups. So I think it is a very good bill and I look forward to the swift passage of it from the committee.

Thank you, Mr. Chairman.

[The prepared statement of Senator Campbell follows:]

PREPARED STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL,  
U.S. SENATOR FROM COLORADO, ON S. 2180

Mr. Chairman, I am pleased to introduce a bill today that would effect a small land exchange to help the City of Golden, Colorado in its efforts to augment its water supply, that it might better prepare for a resumption of the drought which has plagued our state in the past several years. The bill I am proposing would direct that the U.S. Forest Service complete a land exchange with the City of Golden at the earliest possible date.

In the land exchange, the City would receive approximately 10 acres of National Forest land near Empire, Colorado. The City needs this land to complete construction of a 140-foot stretch of water pipeline connecting the West Fork of Clear Creek with a brand new water storage reservoir, known as the Guanella Reservoir, which the City completed in December. The Guanella Reservoir will increase the City's existing water storage capacity by approximately 40 percent, and better enable it to cope with future water shortages.

This legislation is critical, because while the Guanella Reservoir is now completed, as is the diversion dam, penstock, and all but 140 feet of the connecting pipelines, the reservoir remains dry. In short, the pipeline is completed up to the National Forest boundary, and authorization is needed from either the Forest Service or Congress to complete the small remaining stretch of pipeline that must cross National Forest land. Until that authorization is provided, the reservoir is sitting empty, and that is a situation we do not want to see continued into the dry summer months. Unfortunately, the Forest Service has indicated it would take quite some time (possibly several years) to authorize the pipeline, and we have agreed with them that this land exchange is the best approach to meet everyone's needs and time frames.

For this reason, I am introducing this important legislation, and ask the Committee on Energy and Natural Resources to expedite it in every way possible.

Additionally, I would like to note that while providing the City of Golden the ability to finish a critical water storage project, my proposal is also a beneficial deal for the United States. In return for the 10 acres it will give up, the Forest Service will receive up to 80 acres of land near—a popular trail and recreation area in Evergreen, Colorado, and will also receive 55 acres of land on and near the Continental Divide National Scenic Trail in Clear Creek and Summit Counties. The 55 acres are located along one of the most popular stretches of the Trail, and are one of the ways hikers and other users can access the popular Gray's and Torrey's Peaks, two of the most heavily-climbed 14,000-foot peaks in our state. Further, my bill provides that all land values will be determined in accordance with Forest Service appraisal procedures, so we will be insuring that the United States will receive full market value for its land. In addition, the City is making a donation of Continental Divide Trail lands above which are required. I believe this is truly a "win-win" situation for all concerned, and commend the City for making the additional donation to the Forest Service.

Finally, I would like to note that my proposal has been endorsed by the County Commissioners of all three counties that have lands involved in the trade, the non-

profit Continental Divide Trail Alliance, the City of Black Hawk Public Works Department, the Georgetown Loop Scenic Railroad, and by numerous others.

As well, in an encouraging show of unity, this legislation is supported by the entire Colorado Congressional Delegation, including Senator Allard who is cosponsoring the bill in the Senate, and as evidenced by the passing of a similar bill in the House last fall.

Again, I would recommend this legislation for my colleagues' quick approval in order that the City of Golden can get on with its urgent needs to supply adequate additional water to its residents this summer.

I ask that a copy of my remarks be printed in the Record.

Thank you, and I yield the floor.

Senator CRAIG. Senator, before the room filled with people today, I paced off the room from this wall to that wall to determine its length to try to understand what 140 feet of right-of-way is—and that is what we are talking about—for a pipeline to be laid, connecting water source with reservoir. So we are talking about a distance about twice the length of this room. It is going to cost hundreds of thousands, if not millions, of dollars of process required under Federal law to allow this to happen. Sometimes I agree with Pogo, and for those of you who are not familiar with that, he discovered that the enemy was himself.

With that, I will turn to my colleague from New York, Senator Schumer.

**STATEMENT OF HON. CHARLES E. SCHUMER, U.S. SENATOR  
FROM NEW YORK**

Senator SCHUMER. I hope there was no intended segue there, Mr. Chairman.

[Laughter.]

Senator CRAIG. None whatsoever. Those in New York are, on occasion, enlightening. Please proceed.

Senator SCHUMER. Thank you, Mr. Chairman, and I want to thank you for holding this hearing, and I want to take the opportunity to lend my strong support to H.R. 1964, which is the Highlands Conservation Act. I want to thank Senator Corzine and Congressman Frelinghuysen who have done a great job on this issue, as well as the director of The Highlands Coalition, Thomas Gilbert, for his hard work and dedication to the cause.

The Highlands region is an environmentally unique area that encompasses more than 2 million acres, extending from eastern Pennsylvania through New Jersey and New York to parts of Connecticut. It is located within an hour of 25 million Americans, forming a greenbelt of forest and farmland in the backyard of the Philadelphia, New York, and Hartford metropolitan areas. The Highlands play an extremely vital role to the region. They provide clean drinking water to over 15 million people, serve as a home to wildlife habitat for 247 threatened and endangered species, and 14 million visitors make use of the area's recreational resources every year.

In my State of New York, people are very proud of our open spaces and we value the importance of protecting, conserving, and restoring areas of great natural and cultural importance. The precious resources of the Highlands region, in combination with their proximity to the largest metropolitan areas in the United States, makes the Highlands nationally significant according to the U.S. Forest Service.

Despite this special status, vital open spaces in the Highlands are being lost to suburban sprawl, about 5,000 acres annually in the New York-New Jersey Highlands alone. Continued population growth and land use patterns in the Highlands region not only threatens the availability and quality of water, but air quality, forest growth, migration corridors, forest habitat, and these result in the loss of recreational opportunities and scenic, historic, and cultural resources.

So, Mr. Chairman, we have to do everything we can to prevent the Highlands from being decimated by continued urban growth and development. This bill appropriately recognizes the serious threats facing the region and seeks to promote the conservation of natural resources and priority conservation lands within the Highlands region. We have a responsibility for protecting and conserving the resources of the Highlands region, and unless serious steps are taken soon to protect the Highlands, the future will be in jeopardy.

So with that, Mr. Chairman, I thank you and welcome our witnesses today on H.R. 1964.

Senator CRAIG. Well, thank you very much, Senator, for that testimony.

Now let us ask our first panelists to come forward, the Honorable Jon Corzine, Senator from New Jersey, the Honorable Rodney Frelinghuysen, U.S. Congressman from New Jersey. Please be seated, gentlemen. Senator, you may proceed.

**STATEMENT OF HON. JON CORZINE, U.S. SENATOR  
FROM NEW JERSEY**

Senator CORZINE. Thank you, Mr. Chairman. I appreciate very much your holding this hearing. I have a formal statement which I will submit for the record.

Senator CRAIG. Without objection, it will become a part of the record.

Senator CORZINE. It actually feels and sounds almost as if Senator Schumer and I went to the same school of writing with regard to subject matter.

This is a big deal for all of us in all four States. This is an incredibly unique property which I think Congressman Frelinghuysen and I would both argue is reasonably defined, that 2 million acres, within the Forest Service's previous studies. There is work afoot to make sure that studies are in place in Pennsylvania for certain. Senator Specter has been very active in promoting that.

I will speak formally that there are no forced sales at all in this project. So as a consequence, there will be full public comment within the context of what is happening, although we are very open to working with you, Mr. Chairman, to make sure that we address the issues.

The idea that 14 million visitors and 11 million folks are dependent on clean water I really think speaks for itself. It is one of the most beautiful areas that still remain on the eastern seaboard. Our States are all making commitments to join in partnership in this effort. It is a very active issue in New Jersey discussions both at the Governor's level and through the State legislature.

So I look forward to the work that will actually allow this to come together because I need to be as helpful as my colleague, Congressman Frelinghuysen, has been on this. He has been a hero on this throughout the 1990's. I am a newcomer to this fight. He has done absolutely everything that anyone could ever expect in trying to work in a bipartisan way to address the issues of concern on the House side and certainly has encouraged me to try to reach out in the same way here. He really is the leader on this more than anyone with respect to trying to bring this to a positive conclusion. I look forward to working with him and his staff and yours as well to see if we can somehow or another work through the concerns that you expressed in your opening statement.

But we are very pleased. This is truly something that is of a bipartisan nature in our communities and one that I think will make a very lasting legacy for the millions and millions of people in the surrounding area.

Thank you very much for holding this hearing.

[The prepared statement of Senator Corzine follows:]

PREPARED STATEMENT OF HON. JON S. CORZINE, U.S. SENATOR  
FROM NEW JERSEY, ON H.R. 1964

Thank you, Mr. Chairman, for agreeing to hold a hearing today on the Highlands Conservation Act. This is important legislation that would help protect the open space in the Highlands Forest that runs through New York, Pennsylvania, Connecticut and my state of New Jersey. I appreciate your willingness to consider the bill seriously, and hope we can work together with all the members of the Subcommittee to secure its prompt enactment.

I also want to take this opportunity to express my appreciation to Congressman Rodney Frelinghuysen, who successfully secured approval of this bill on a unanimous vote in the House of Representatives last year. As the Chairman of the House resources Committee, Congressman Pombo, has said, Congressman Frelinghuysen's work on this bill provides a model of how to get conservation bills passed through Congress in a bipartisan way. And it has been a real privilege for me to work so closely with Congressman Frelinghuysen on this bill.

Mr. Chairman, the legislation being discussed today is a modified version of S. 999, the Highlands Stewardship Act, which I introduced last year with the support of my fellow Senators from New Jersey, New York, Connecticut and Pennsylvania. The goal of the legislation is to preserve one of the last open space treasures in our densely populated region, the Appalachian Highlands Forest.

Mr. Chairman, the Highlands region stretches from northwestern Connecticut, across the lower Hudson River valley in New York, through my State of New Jersey and into east-central Pennsylvania. It encompasses more than two million acres of forest, farms, streams, wetlands, lakes and reservoirs. It also includes historic sites, such as Morristown National Historic Park, where George Washington had his headquarters during the American Revolution, and the United States Military Academy at West Point.

Mr. Chairman, the value of the natural, recreational and scenic resources of the Highlands cannot be overstated. Highlands aquifers provide quality drinking water for over 11 million people. And the Highlands provide a home to well over 200 threatened or endangered species.

In addition, the Highlands serve more than 14 million people, who visit for recreation. That's more than Yellowstone National Park. One in nine Americans live within two hours of the Highlands. Unfortunately, these lands are at risk. According to the Forest Service, more than 5,000 acres of forest and farm land in the New York and New Jersey sections of the Highlands have been lost annually to development between 1995 and 2000, and nearly 300,000 acres of land critical to future water supplies remain unprotected.

Mr. Chairman, this legislation is an important step in protecting the Highlands. It is modeled after the successful Federal-state partnership that was used to protect much of Sterling Forest, a crown jewel of the Highlands. The bill calls on the governors of the four states to recommend conservation projects within certain threatened areas. It also would authorize \$100 million over the next ten years for easements or acquisition of land within those areas. As in the preservation of Sterling

Forest, the money would come from the Federal side of the Land and Water Conservation Fund.

Mr. Chairman, the only land to be acquired would be land owned by people who want to sell. This amendment would not force anyone to sell, nor interfere with any other property right. Nor would the amendment interfere with any local zoning ordinance or local government land use plan. Nor would it create any new federal ownership or management responsibilities. Title to the land or easement purchased would belong to the state where it is located.

In conclusion, Mr. Chairman, the Highlands are a national treasure, and it is critical that they be preserved. I hope we can work cooperatively to make that happen.

Senator CRAIG. Jon, thank you for that testimony. You have provided an excellent segue, as we turn to the Congressman. The Congressman has aggressively but appropriately pursued me and a hearing for this legislation to move it forward, and I appreciate his commitment to the project and to the value resource as he sees it. So we appreciate your being here and look forward to your testimony. Please proceed.

**STATEMENT OF HON. RODNEY FRELINGHUYSEN,  
U.S. REPRESENTATIVE FROM NEW JERSEY**

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman, for having this hearing. I appreciate your keeping your word for setting this up. Let me echo, as Senator Corzine has said of me, his unparalleled support for the Highlands Conservation Act. It has been my pleasure to work with him.

At the outset, I would like to ask permission to include in the record of this hearing a statement from the gentleman from New Jersey, Congressman Saxton, a senior member of the House Committee on Natural Resources, if that is agreeable.

Senator CRAIG. Without objection, that will become a part of the record.

Mr. FRELINGHUYSEN. Mr. Chairman, not to be redundant but President Bush's fiscal year 2004 forest legacy budget designated, indeed, the Highlands as one of nine national priority areas threatened by development, and there is good reason for that designation. 5,000 acres on an annual basis are being developed in the Highlands region and we need to do something and we need to do it soon.

It has been pointed out that this area affects the high quality drinking water for over 15 million Americans and over 25 million Americans live within an hour's drive of these valuable watersheds.

More important than the numbers, however, is that this bill fits into the Bush administration's vision for land conservation. In a Nation where the government owns 1 out of every 5 acres of land and is responsible for maintaining 1 out of every 4 acres, we all need to be aware that operations and maintenance costs to the Federal Government have increased dramatically, endangering the very assets we all seek to preserve.

Please be assured that this proposal stresses local responsibility and public-private partnership. In fact, this bill does not call for any Federal ownership, nor does it call for any future Federal maintenance and upkeep.

As Senator Corzine has stated, instead this bill will require State and local governments to work with willing sellers. There are no strong-arm tactics here. Similar to the forest legacy program, the Highlands Stewardship Act only provides Federal assistance to

willing sellers. In short, this bill is seeking a helping hand from the Federal Government rather than an over-regulating, strong-armed mandate.

Local communities, the counties, involved welcome the partnership. Not one community, municipality, county, or public entity has expressed opposition.

I should also say that this bill, as has been stated, is very important to New Jersey and New York and Connecticut. By not providing Federal ownership or future Federal maintenance responsibilities and by acquiring land from only willing sellers, H.R. 1964 does, indeed, conform to the administration's best practices and vision for land acquisition.

I introduced this bill last May with 30 bipartisan cosponsors. The bill was the subject of a hearing before Chairman Radanovich's subcommittee in June. From that moment until passage by the House on November 21, I worked, as I told you, with Chairman Pombo and members of his Resource Committee, all of whom are highly opinionated on land use issues, to address each and every concern they had. In this context, I would like to share with you the words of Chairman Pombo on the House floor last November, and I quote.

"I will tell my colleagues, on any legislation like this in the future that we choose to move through the Committee on Resources, we will use this bill"—he was referring to mine—"as a template, as a way to get things done in a bipartisan way in trying to move forward with a Federal and local partnership in protecting lands that are environmentally sensitive and that are important, but at the same time protecting the property rights of those individual owners, which is something that is extremely important to me."

This is important to all of us. This legislation is completely consistent with Secretary Norton's four C's, the National Park Service's guiding principles: conservation through cooperation, consultation and communication. Secretary Norton reiterated those principles before my Energy and Water Appropriations Subcommittee just this month.

This is, as Senator Corzine said, a big deal for the States of New York, New Jersey, Pennsylvania, and Connecticut. It has everything to do with our future in terms of water resources and purity and recreational value. We are keen on getting the bill moved.

And we appreciate your genuine commitment to help us work through the process to get this bill done, and we would be pleased to address all of those issues you raised, including the definitions of the boundaries, if we need to tighten those up. But to some extent, we are taking some guidance from the U.S. Forest Service, which actually expanded this from sort of a New Jersey and New York Highlands to include both Connecticut and Pennsylvania. So we will be happy to work on the boundary issue and any other issues that we can address that would work toward your committee's eventual approval.

Thank you.

[The prepared statements of Mr. Frelinghuysen and Mr. Saxton follow:]

PREPARED STATEMENT OF HON. RODNEY P. FRELINGHUYSEN,  
U.S. REPRESENTATIVE FROM NEW JERSEY, ON H.R. 1964

Good afternoon, Chairman Craig, Ranking Member Wyden, members of the Subcommittee, thank you for allowing me this opportunity to testify in support of my legislation, H.R. 1964, the Highlands Conservation Act.

(At the outset, I would like to ask permission to include in the record of this hearing a statement by the gentleman from New Jersey, Mr. Jim Saxton, a senior Member of House Committee on Natural Resources.)

Mr. Chairman, President Bush's Fiscal Year 2004 Forest Legacy Budget designates the Highlands as one of nine national priority areas threatened by development. There is good reason for this designation.

The time to act is now! The U.S. Forest Service Study found that each year more than 5000 acres of the New York/New Jersey Highlands are being developed. From 1990 to 2000, the population within the Highlands increased by 11 percent. When you consider that New Jersey is already the most densely populated state in the union, this is a significant increase.

While it is not my intention to drop a laundry list of numbers highlighting the Highlands importance to the northeast, several noteworthy examples are in order:

According to a US Forest Service Study on the area, the Highlands watershed lands contain reservoirs and aquifers that provide and protect high quality drinking water for over 15 million Americans.

Over 25 million Americans live within an hour's drive of these invaluable watersheds, wildlife habitat, and recreation opportunities that lie in the roughly 2 million acres that encompass the Highlands.

More important than these numbers, however, is the fact that this bill fits into the Bush Administration's vision for land conservation. In a nation where the government owns 1 in every five acres of land and is responsible for maintaining 1 out of every 4 acres, we all need to be aware that operations and maintenance costs to the Federal government have increased dramatically endangering the very assets we all seek to preserve and protect.

Please be assured this proposal stresses local responsibility and public/private partnerships. In fact, this bill does not call for any Federal ownership, nor does it call for any future Federal maintenance and upkeep.

Instead, this bill would require state and local governments to work with willing sellers. Similar to the Federal Forest Legacy Program, the Highlands Stewardship Act only provides Federal financial assistance for willing sellers. In short, this bill is seeking a helping hand from the Federal government rather than an over-regulating, strong armed mandate.

Local communities welcome this Federal partnership and 24 towns and 4 New Jersey Counties have passed resolutions in support of the conserving the Highlands' resources. Notably, not one community has expressed opposition.

At the Federal level, along with a large number of our colleagues from New York, Connecticut, and Pennsylvania, the entire New Jersey delegation has co-sponsored this bill. Thus, this truly is a bipartisan effort. The bipartisan spirit exists because the bill provides deference to local authority, while recognizing the need for Federal assistance to preserve nationally significant natural resources in our local forest areas, just as Congress did with a similar collaborative state/Federal partnership seven years ago with Sterling Forest.

In short, this bill is important to New Jersey, New York, Connecticut, and Pennsylvania. By not providing Federal ownership or future Federal maintenance responsibilities, and by acquiring land from only willing sellers, H.R. 1964 conforms to the Bush Administration's best practices and vision for land acquisition. As such, I see this bill as a victory for the Congress and the President.

I want to close by reflecting on the path this legislation took in the House.

I introduced this legislation last May with 30 bipartisan cosponsors. The bill was the subject of a hearing before Chairman Radanovich's Subcommittee in June. From that moment until passage by the House on November 21, I worked with Chairman Richard Pombo and Members of the Resource Committee, the Committee staff and interested parties like the National Association of Homebuilders to address each and every concern they may have.

It is in this context that I want to share with you the words of Chairman Richard Pombo on the House floor last November:

*Quote: "I will tell my colleagues, on any legislation like this in the future that we choose to move through the Committee on Resources, we will use this bill as a template, as a way to get things done in a bipartisan way in trying to move forward with a Federal and a local partnership in protecting lands that are environmentally sensitive and that are important, but at the same time protecting the property rights*

*of those individual owners, which is something that is extremely important to me."*  
Close quote.

Mr. Chairman, it's very important to all of us.

This legislation is completely consistent with the four C's Secretary Norton has used as the National Park Service's guiding principals—Conservation through Co-operation, Consultation and Communication. In fact, Secretary Norton reiterated these principals before our Energy and Water Appropriations Subcommittee just this month.

With this legislation, we have an opportunity to sustain a genuine and critically important partnership between the federal government and state governments and local groups, all in the name of preserving open space.

Mr. Chairman, the partnership we seek today is between the House and the Senate. In this regard, I respectfully urge your Committee's support of H.R. 1964. I thank you for your time. I welcome any questions you may have.

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PREPARED STATEMENT OF HON. JIM SAXTON, U.S. REPRESENTATIVE  
FROM NEW JERSEY, ON H.R. 1964

I am so pleased Chairman Craig, Vice-Chair Burns and Ranking Member Wyden, of the Subcommittee on Public Lands and Forests, have agreed to hold a hearing on H.R. 1964, The Highlands Conservation Act. My colleague, Mr. Frelinghuysen, also of New Jersey, has introduced this important piece of conservation legislation.

I have long been an advocate for, and worked hard to preserve open space and prevent the encroachment on and development of significant tracts of land in both my district and throughout the State of New Jersey.

I am proud of the fact that New Jersey has been a leader on the issue of open space, recognizing the importance of not developing every acre of land possible.

We need areas of undeveloped land, for a wide range of reasons, from habitat protection to simply providing areas for people to recreate and enjoy the outdoors.

In Burlington County, which is in my Congressional district for example, there are over 162,000 acres of protected land. There is 4,000 acres of Federally protected land, which is primarily in the New Jersey Pine Barrens; 130,000 acres of State-held acres, of which 120,000 is also located in the Pinelands; the Municipality has 8,000 acres and the County 1,500 acres; 4,000 acres are held by Non-Profit organizations and there are over 15,000 acres acquired as Farmland Preservation areas.

This is an impressive number of acres and demonstrates New Jersey's ongoing commitment to these important and often fragile lands and ecosystems.

Mr. Frelinghuysen has also recognized this important need, which is why he introduced this piece of conservation legislation. The New York/New Jersey Highlands, consisting of nearly 2 million acres, has been identified by the U.S. Forest Service and virtually all other federal, state, local and private authorities as critical lands in need of preservation.

This region provides and protects the drinking water supplies for over 15 million residents of the New York and Philadelphia metropolitan areas. The Highlands region hosts more than 14 million recreational visits annually, which is more than Yellowstone and many of our national treasures in the West.

The USDA Forest Service found that over 5,000 acres of land are being developed a year in the NY-NJ Highlands alone, threatening the quantity and quality of water supplies, and other critical resources in the Highlands.

Currently, 294,000 acres, which is 77% of high-value lands in the Highlands are unprotected and 100,000 acres of this high-value land are immediately threatened.

I was pleased this legislation was reported out of the House Committee on Resources on October 29, 2003, and I encourage the Senate Committee on Energy and Natural Resources to do the same, to enable this legislation to then come before the Full House and Senate and be signed into law, thus forever protecting this important area of our country.

Thank you.

Senator CRAIG. Well, Congressman, thank you. Senator, thank you for your commitment to this legislation. As I said in my opening comments, we will work with you to move this legislation. This is not just a hearing to hear it. It is a hearing from which we can begin to work to refine any of those differences we might have, and I think they are limited but there are some questions that I had asked early on. I know that you and your staff will be forthright

in working with us to address them. So we thank you very much. Appreciate it.

Now let me call our first panel, the Honorable David Tenny, Undersecretary, Natural Resources, U.S. Department of Agriculture, and Robert McIntosh, Associate Regional Director of Planning and Partnerships of the Northeast Region, the United States Department of the Interior, National Park Service.

Of course, gentlemen, I would expect that you would, obviously, address your comments appropriately to the three different pieces of legislation that are before us. David, good to see you again. Thank you for being here. Please proceed.

**STATEMENT OF DAVID TENNY, DEPUTY UNDERSECRETARY,  
NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT  
OF AGRICULTURE**

Mr. TENNY. Thank you, Mr. Chairman. At the outset here, I would note that I am joined by Marcus Phelps, who is the Highlands Coordinator for the Forest Service's Northeastern Area. Marcus and I have an understanding. He is prepared to answer all the hard questions. I am prepared to answer all the easy questions.

Senator CRAIG. Do you want him at the table?

Mr. TENNY. No, that is fine. I was just going to point out, Mr. Chairman, that you will probably be the one to decide which are the hard questions and which are the easy ones.

Senator CRAIG. We will go to work while you are testifying then. All right.

[Laughter.]

Mr. TENNY. Mr. Chairman, in the interest of time, let me just say in summary that we do not oppose any of these bills.

I have testified on the Highlands bill in the House and could make just a few points about that.

First of all, this is an area where the Forest Service has done a considerable amount of work in the past. There has been some progress made. We are working cooperatively with the communities and the interests in the region. We have done some study in New York and New Jersey. We have work yet to do to be more precise in what we are talking about in Connecticut and in Pennsylvania. I think that has been pointed out. We are willing to work with the committee and the others interests involved in working through differences. We have some recommendations of our own that we have submitted in the written statement that I have submitted for the record. But we are prepared to go to work and are certainly interested in helping this process in anyway we can.

With respect to the other two pieces of legislation, listening closely to what Senator Campbell said about the legislation involving the city of Golden, Colorado, we are prepared to help that process move along because it is a very reasonable concept in this bill. We are talking about an area that has been struck with severe drought. We want to be as prepared as we can to be helpful as this legislation moves forward and in the preparation that leads up to the enactment of the bill.

And with respect to the bill that addresses a very important issue in my home State and yours, let me say also, Mr. Chairman, that we are very intent to making things work out there. We recog-

nize this piece of legislation as much as the policy in the legislation is the message behind the legislation that we are hearing loud and clear from the communities that surround the Nez Perce and the Clearwater National Forests. We are prepared also to work with the committee and work with you on this legislation and outside of this legislation to get the job done out there on the ground.

So with that, Mr. Chairman, I will defer the balance of my time and be prepared to answer any questions you might have.

[The prepared statement of Mr. Tenny follows:]

PREPARED STATEMENT OF DAVID TENNY, DEPUTY UNDERSECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE, ON H.R. 1964, S. 2180, AND S. 433

Mr. Chairman, thank you for the opportunity to appear before you today in order to provide the Department's views on H.R. 1964 The Highlands Conservation Act, S. 2180 to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado and S. 433 The Clearwater Basin Project Act. I am accompanied today by, Marcus Phelps, Highlands Coordinator of the Forest Service Northeastern Area.

#### H.R. 1964 THE HIGHLANDS CONSERVATION ACT

H.R. 1964, the Highlands Conservation Act would authorize the Secretary of the Interior and the Secretary of Agriculture to work with States, local units of government, and private landowners in the conservation of lands and natural resources in the Highlands region of Connecticut, New York, New Jersey, and Pennsylvania.

The Department defers to the Department of the Interior for general views on the bill but would like to offer several comments on section 6 of the bill as well as a brief discussion regarding the Department's previous and ongoing work within the Highlands.

H.R. 1964 directs the Secretary of Agriculture, acting through the Chief of the Forest Service and in consultation with the Chief of the Natural Resources Conservation Service, to continue to assist the Highlands States, local units of government, and private forest and farm landowners in the conservation of lands and natural resources in the Highlands region. H.R. 1964 would authorize appropriations of \$1,000,000 to the Secretary of the Agriculture for each of fiscal years 2005 through 2014 to carry out this section.

At the direction of Congress, in 1992, the USDA Forest Service completed the New York-New Jersey Highlands Regional Study that characterized the water resources, wildlife habitat, outdoor recreation opportunities, and agricultural resources in the region. This study identified lands with important resource values such as the Sterling Forest located near Tuxedo, NY.

At the direction of Congress, the Forest Service updated the New York-New Jersey Highlands Regional Study in 2002. The original study area was expanded from the Hudson River eastward to the New York-Connecticut border. The Update identifies a number of many important natural resources in the Highlands, and the effect of existing patterns of land use change on these resources. So the key findings from the 2002 Update include:

- The Highlands adjoin a metropolitan area of more than 20 million people.
- More than 11 million people rely on the Highlands water resources.
- More than 14 million people visit the Highlands each year for recreational opportunities.
- 5,200 acres per year of land was developed between 1995 and 2000.
- Almost 40 percent, 540,000 acres, are considered to have high conservation value. Nearly half of these lands are currently in some type of permanent conservation arrangement, such as an easement or under a nonprofit land trust holding.
- Approximately 100,000 acres considered to have high conservation value have a high likelihood of change.
- Forty-two of the 51 existing Hydrologic Unit Code 11 watersheds (which have an average area of about 50 square miles) presently have 10 percent or less impervious surface cover (a significant indicator of water quality). Depending on the rate of land use change, the number of Hydrologic Unit Code 11 watersheds with less than 10 percent or less of impervious surface cover could fall from 42 to about 9 to 18 in the next thirty years.

- The future population in the New Jersey-New York Highlands could increase by 26 to 48 percent in the next 30 years, based on our analysis.

In addition to updating the 1992 Study, Congress directed the Secretaries of Agriculture and the Interior to jointly develop a set of recommendations identifying ways that Federal government can work with State, local and non-profit partners to address important resource issues, based on the findings of the 1992 Study and 2002 Update.

Our efforts to address these findings continue in the New York and New Jersey portions of the Highlands region through a Forest Service staff position established to coordinate and implement conservation strategies, and the ongoing support of an internet mapping system at Rutgers University to provide direct access to study data and maps. Also, a recent regional meeting held at the Lautenberg Visitor Center in what is now the Sterling Forest State Park in Tuxedo, New York, brought together, for the first time, representatives of the various Federal agencies involved with the Highlands region to share information and identify ways to improve inter-agency communication and coordination.

Over the past 10 years, the Forest Legacy program has protected 3444 acres with \$4,200,000 in Federal funds that has leveraged over \$14,000,000 in non-federal funds in New Jersey and New York. Over the last five years, the Forest Legacy program has provided \$14,300,000 of funding that is expected to protect over 8,700 acres in the New Jersey Highlands and to leverage over \$32 million of state and private partner funds for land conservation. In addition, the Forest Service has provided assistance to private landowners, nonprofits and State and local governments, through a range of Forest Service non-regulatory, cooperative programs of more than \$1,000,000 toward land conservation activities in those two states. These include technical and financial assistance to states and communities and landowner assistance for management planning and implementation of conservation practices.

I want to bring to the Committee some issues that the Department has identified with H.R. 1964 that may require further consideration by the Committee.

First, the legislation covers a four-state region. The Department's efforts to date have concentrated on the 1.5 million acre New York-New Jersey portion of the region, and have only generally characterized the resource values and boundaries of the Pennsylvania and Connecticut portions of the Highlands. More thorough consideration and inventory of the resource values in Pennsylvania and Connecticut is needed. In addition, the committee may wish to consider adding language that would direct the Secretaries to prepare a map to delineate the Highlands Conservation Area and eliminate any uncertainty regarding the area within projects would be eligible for assistance.

To our knowledge, the bill does not authorize any activity by the Forest Service and the Department of Agriculture that is not already authorized under current law. USDA could designate the Highlands area as a high priority within existing authorities to permit its agencies to address resource issues in the Highlands region. The bill's targeting of technical assistance, financial assistance, and land conservation projects could require USDA to determine the priority of these activities relative to other high-priority programs or projects that may rely on the same funding source.

#### S. 2180 ARAPAHO AND ROOSEVELT NATIONAL FORESTS LAND EXCHANGE ACT OF 2003

The Department does not object to S. 2180 but would like to recommend some changes to the bill for the Committee's consideration.

S. 2180 directs the Secretary of Agriculture to exchange to the City of Golden, Colorado all right, title and interest in 9.84 acres of Federal land within the Arapaho National Forest, upon receipt of acceptable title to 135.9 acres of non-Federal land. The 135.9 acres consist of two separate parcels, including 80 acres near Evergreen, Colorado known as Cub Creek and 55.9 acres near Argentine Pass, Colorado known as Argentine Pass. The 55.9 acre Argentine Pass property is made of 15 patented mining claims. The bill modifies the exterior boundary of the Arapaho National Forest to incorporate the Cub Creek parcel.

The bill requires the exchange values to be equalized. If the non-Federal parcel market value exceeds the approved market value of the Federal land, the values may be equalized by reducing the size of the Cub Creek non-Federal parcel or with a cash equalization payment without regard to the cash equalization limitation of 43 U.S.C. 1716(b), as amended.

If the Federal land market value exceeds the market value of the Cub Creek non-Federal parcel, the values shall be equalized by the Secretary preparing a statement of value for the Argentine Pass non-Federal parcel and utilizing as much of such contributory value as is necessary as a credit to equalize value. Argentine Pass

lands not needed to balance the exchange values will be donated to the Forest Service. In the event the Secretary declines to accept the Argentine Pass lands for any reason, Golden shall make a cash equalization payment to the Secretary as necessary to equalize the values of the Federal land and the Cub Creek parcel. We recommend that any cash equalization funds received be considered money received and deposited pursuant to Public Law 90-171 (16 U.S.C. 484(a)), commonly known as the "Sisk Act," and may be used, without further appropriation, for the acquisition of lands for addition to the National Forest System in the State of Colorado.

S. 2180 indicates Congress' intent that the land exchange be consummated no later than 120 days after enactment and authorizes the City of Golden to construct a water pipeline on the 9.84 acres of Federal land immediately upon enactment and prior to the consummation of the exchange. We are concerned that we may not be able to complete environmental consultation and clearances required for the disposal of the federal property in 120 days. We request extending this timeframe to 180 days. While we are appreciative of the inclusion of the timing and interim authorization clause as described in the bill, we do not support construction occurring prior to conveyance of this property to the City of Golden. At the very least, we would expect that the City would be required to operate under a special use permit as long as the property remains in Federal ownership. Our preference is to delay construction of the pipeline until the conveyance is completed.

S. 2180 directs the City of Golden to pay for any necessary land surveys and appraisals. Further, the bill authorizes and directs the Secretary to sell the Federal land to Golden at its appraised value, if the land exchange cannot be consummated for any reason.

Public interest could also be served by the Arapaho National Forest acquisition of the 135.9 acres of non-Federal land. Specifically, the acquisition would eliminate a forest inholding, and could: reduce cost of forest boundary administration, increase recreation opportunities, and ensure permanent public access to a portion of the Continental Divide National Scenic Trail. The Department supports the concept of the exchange identified in S. 2180 and would like to work with the Committee to see this exchange proceed with mutual benefit.

S. 2180 highlights how detailed legislation is often required to conduct land exchanges. The FY 2005 Budget includes a proposal to amend the Small Tracts Act, the Sisk Act, and the Townsite Act, which would provide the Secretary the authority to sell or exchange land, to promote more efficient real estate management of National Forest System lands and facilities. The Budget also includes a proposal for a Facilities Acquisition and Enhancement Fund that would enable the Secretary to sell facilities and appurtenant administrative land, excess to agency needs, and to use the proceeds for acquiring or developing land and improvements for administrative purposes. The Department will submit proposed legislation concerning these proposals in the upcoming weeks.

#### S. 433 THE CLEARWATER BASIN PROJECT ACT

S. 433 would establish a pilot program and the Clearwater Advisory Panel (CAP), for the purpose of improving collaborative relationships and providing advice and recommendations to the Forest Service regarding a pilot project and activities under the pilot project on National Forest System lands in the Clearwater and Nez Perce National Forest in Idaho.

Under S. 433, the CAP and the Forest Service, working collaboratively with the Nez Perce Tribe and other interested parties, would identify and complete high priority activities to improve ecosystem health for fish, wildlife, and other community values that complement existing management of the Clearwater and Nez Perce National Forest.

Based upon experience with collaborative management and stewardship projects, the Department believes this legislation generally reflects objectives and provisions currently authorized in the Consolidated Appropriations Resolution, 2003, amending Public Law 105-277, section 347. We are not opposed to the measure, but it may add additional costs that could in turn reduce the amount of on-the-ground resource management that could be accomplished. We would like to work with the committee to make necessary improvements to the bill.

Section 3 Establishment and Purpose subpart (d) Composition and Advisory Panel states that the advisory panel shall be comprised of 15 members who shall be representative of the interests of three categories of individuals. While we agree with this purpose, the bill is unclear as how the Advisory panel would proceed in the event that all fifteen positions could not be filled. In addition, it would appear that the North Central Idaho Resource

Advisory Committee may provide the necessary forum to achieve the purpose of establishing collaborative relationships and identifying stewardship projects for the pilot project area.

Section 4 Clear-water Basin Pilot Project subpart (c) Stewardship Contracts identifies a total of three stewardship contracts authorized for recommendations by the advisory panel. The bill is unclear as to whether the identified stewardship contracts are for the entire life of the pilot project or for the first five year period.

S. 433 would require the Forest Service to conduct and complete any applicable procedures under the National Environmental Policy Act (NEPA) and any review, consultation, or coordination under other laws within one year. Non-compliance within the required one-year period would not be a basis for challenging or delaying submittal, approval, or implementation of an activity, if the applicable Forest Supervisor, in consultation with CAP, finds that sufficient review, consultation and coordination has occurred and a sufficient record exists to make a reasoned decision regarding approval of the activity.

While setting a required one-year time period for completion of the above mentioned analysis and decision making may be appropriate for routine proposals brought forward by the CAP, it may not be sufficient for other high priority, complex and broader scale ecosystem health actions the CAP would propose for analysis. In addition, it would be highly unlikely there would be a sufficient record (NEPA analysis, Biological Opinions and Consultations to comply with other applicable environmental laws) available to make a reasoned decision in the event the one-year time period elapsed and insure a defensible decision while being subject to the rigors of the agency's appeal and dispute resolution processes in accordance with 36 CFR 215.

Under subsection (g) Review by Forest Supervisor the bill states—if the Forest Supervisor does not issue a decision within a 30-day period, the schedule would be deemed approved and subject to the agency's appeal and dispute resolution process. If there is no NEPA decision document issued, it is unclear as to what would be subject to agency appeal. Environmental analysis is not complete unless a decision document has been signed by an authorized official and thus would not be in compliance with NEPA or subject to agency appeals and dispute resolution processes in accordance with 36 CFR 215.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions you may have for me at this time.

Senator CRAIG. David, thank you very much. I will have a couple of questions, but before that, let me turn to Director McIntosh for his testimony, if you would please, sir.

**STATEMENT OF ROBERT W. McINTOSH, ASSOCIATE REGIONAL DIRECTOR FOR PLANNING AND PARTNERSHIPS, NORTH-EAST REGION, NATIONAL PARK SERVICE**

Mr. McINTOSH. Thank you, Mr. Chairman. I am here to testify on H.R. 1964 and not the other bills in front of the committee at this time. Thank you for this opportunity.

The first section of my testimony I do not need to restate. It recognizes the Forest Service's studies, and the previous testimony with respect to the importance of these resources. The Department certainly understands and respects the importance of these resources and the need to assist in their protection.

The Department of the Interior looks forward to a continuing, productive relationship with the Department of Agriculture, the four States, local governments, and many present and new partners in the Highlands region to strive to protect these resources.

We do believe, however, that the goal of the bill can best be achieved through existing public and private partnerships between the Federal Government, State and local jurisdictions, and the private sector without earmarking funds from the Land and Water Conservation Fund.

In June 2003, the Department of the Interior testified before the House subcommittee. During that testimony, the Department indi-

cated that it would defer to the position of the USDA who was the lead agency as introduced. We also cited concerns about cost and identified a number of existing programs that could meet the needs in the Highlands region.

During markup, H.R. 1964 was amended, including designating the Department of the Interior rather than USDA as the lead agency relative to the land acquisition grants program.

For these and other reasons discussed, the Department does not support the bill and we would defer to USDA regarding provisions of the bill that affect the Forest Service.

As we mentioned in our previous testimony, we see many opportunities for participation in the Highlands region through existing programs of the Department of the Interior. Many projects within the region may qualify for rivers and trails conservation assistance, wild and scenic rivers assistance, monies from the Land and Water Conservation Fund, and assistance from the existing national park system units within the area.

H.R. 1964 would authorize appropriations of \$100 million from the Land and Water Conservation Fund or from the general fund of the Treasury over a 10-year period beginning in 2005. We believe that the financial assistance to the region should continue through the existing authorities of the Department. For example, the Department has made Land and Water Conservation Fund grants available to the four States, totaling over \$46 million between 2000 and 2003. Through the land and water program, various communities throughout the region have received grants for various purposes.

We have consistently opposed earmarking the State grants program of the Land and Water Conservation Fund because it circumvents State authority for determining its own priorities for the use of fund moneys through the Statewide Comprehensive Outdoor Recreation Plan. It potentially affects the amount available to other States that rely on this program. Significant protection can be accomplished through grants to the States as they choose to prioritize acquisitions and projects in the Highlands region under the current provisions of section 6 of the land and water program. We also would have concerns if the funds for this bill came from the general Treasury and were appropriated through Interior, as we are trying to focus our resources on taking care of current responsibilities in our national parks.

This concludes my testimony. Should the bill move forward, we would be pleased to work with the committee, the Congressman and yourself, Mr. Chairman, in various technical refinements, and I would be pleased to answer any questions. Thank you.

[The prepared statement of Mr. McIntosh follows:]

PREPARED STATEMENT OF ROBERT W. MCINTOSH, ASSOCIATE REGIONAL DIRECTOR FOR PLANNING AND PARTNERSHIPS, NORTHEAST REGION, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, ON H.R. 1964

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on H.R. 1964, a bill to assist the States of Connecticut, New Jersey, New York and Pennsylvania in conserving priority lands and natural resources in the Highlands Region, and for other purposes.

The Highlands Region, comprising more than 2 million acres in one of the most urbanized sections of the country, contains numerous natural and cultural resources worthy of protection. It is a water supply source for over 11,000,000 persons, pro-

vides critical habitat to a wide variety of plant and animal species, and is the site of many historic events that have shaped our nation including significant actions related to the American Revolution. It is also an area rapidly experiencing the impacts of urbanization.

The Highlands Region also contains units of the National Park System including Morristown National Historical Park, Hopewell Furnace National Historic Site, and the Delaware Water Gap National Recreation Area; designated Wild and Scenic Rivers including the Upper Delaware and Farmington Rivers; and two designated national heritage areas—The Hudson River Valley National Heritage Area and the Delaware and Lehigh National Heritage Corridor. The National Park Service has enjoyed long-standing partnerships with the States and many of the governments and organizations in this region.

The Department of the Interior (Department) looks forward to continuing this productive relationship with the U.S. Department of Agriculture, the four states, local governments, and many present and new partners in the Highlands Region as we, together, strive to protect natural, historic, and cultural resources. We believe, however, that the goals of the bill can be best achieved through existing public and private partnerships between the Federal government, the States, local jurisdictions and the private sector, without earmarking funds from the Land and Water Conservation Fund (LWCF) Act.

On June 17, 2003, the Department testified before the House Subcommittee on National Parks, Recreation, and Public Lands on H.R. 1964. During that testimony, the Department indicated that it would defer to the position of the USDA, who was the lead agency in H.R. 1964, as introduced. We also cited concerns about cost and identified a number of existing programs that could meet the needs of the Highlands Region. During markup, H.R. 1964 was amended in several ways, including designating the Department rather than the USDA as the lead agency. For these and other reasons discussed below, the Department does not support this bill. We continue to defer to the USDA regarding provisions of the bill affecting the Forest Service.

The Highlands Region has been the subject of many past studies described in the bill that document its important natural and cultural resources. In 1992, the Forest Service completed its initial study of a portion of the Highlands Region as described in the bill, which was authorized by the 1990 Farm Bill. The study supported land stewardship and watershed-based planning activities, identified voluntary and non-regulatory means to protect important areas, fostered public awareness of the region's resources, and identified priority areas for protection. In 2000, under Representative Frelinghuysen's leadership, Congress recognized the need to revisit the study's findings and authorized an update in Public Law 106-291. The Forest Service completed the update in 2003 with the National Park Service providing comments on the draft report. The draft report is the product of extensive public participation across the Highlands Region, including involvement by members of the working group from over 120 municipalities, non-profit groups, private groups, and citizens in 12 Counties as well as other Federal agencies and members of Congress.

Congress requested that at the conclusion of the update, the Secretaries of Agriculture and Interior report on how they will work together to implement the recommendations of the study. In the draft report, three recommendations are provided for a continued Federal role in the Highlands Region including supporting the stewardship of the Highlands Region, ensuring the availability of science-based information, and partnering in local land stewardship activities. This report is currently pending interagency review.

As we mentioned in our previous testimony, we see many opportunities for participation in the Highlands Region through existing programs of the Department. Projects within the region may qualify for Rivers, Trails and Conservation Assistance and Wild and Scenic Rivers assistance, and the LWCF, among others. Through our Rivers, Trails and Conservation Assistance Program, we are working with local groups along the Delaware and Hudson Canal to create a 220-mile network of trails (including water trails), scenic railroads, and scenic byways.

H.R. 1964 would authorize appropriations of \$100 million from the LWCF, or from the general funds of the Treasury, over 10 years beginning in FY 2005. We believe that financial assistance to the region should continue through existing authorities of the Department. For example, the Department has made LWCF grants available to the four States totaling over \$46.6 million between 2000 and 2003. Through the LWCF program, Rockaway Township in the Highlands Region in the State of New Jersey recently acquired 294 acres of land adjacent to the Wildcat Ridge Wildlife Management Area for trails, low impact recreation, and to protect open space inhabited by endangered species including the threatened Bald Eagle.

We have consistently opposed earmarking the state grant portion of LWCF because it circumvents state authority for determining its own priorities for use of fund monies through the comprehensive statewide outdoor recreation planning process. It potentially affects the amounts available to the other states that rely on this program. Significant protection can be accomplished through grants to the states as they choose to prioritize acquisitions and projects in the Highlands Region under the current provisions of Section 6 of the LWCF Act. We also would have concerns if the funds for this bill came from the general funds of the Treasury because we are trying to focus our resources on taking care of our current responsibilities in our national parks.

This concludes my testimony. I would be pleased to answer any questions the Committee may have this bill.

Senator CRAIG. Thank you very much, Director McIntosh.

Several questions of both of you, David, I understand that the Federal contribution—and I think Director McIntosh just referred to it—in H.R. 1964 for the land acquisition is the Land and Water Conservation Fund and that would be a 50 percent share for each acquisition. Is that how you read it?

Mr. TENNY. That is correct.

Senator CRAIG. If I remember correctly, Land and Water Conservation moneys that flow through to the trust fund are generated by receipts for Outer Continental Shelf and gas and oil drilling. Is that not correct? Offshore?

Mr. TENNY. Yes, that is correct.

Senator CRAIG. Outside of State.

Mr. TENNY. Yes. There are a number of different sources, but the predominant source, as I understand it, is the Outer Continental Shelf.

Senator CRAIG. I also remember all of the appropriations riders correctly that we have put on gas and oil drilling moratoriums, in effect, exempt the entire Atlantic seaboard. Is that not correct?

Mr. TENNY. From my memory, yes, that is correct.

Senator CRAIG. I think the Senator and the Congressman know where I am coming from. I am always frustrated by States who will disallow drilling off their shore, but want large portions of the Land and Water Conservation moneys to enhance their internal properties. It is a Federal resource. I know that and I know that it is distributed amongst the States, Director McIntosh, as you have spoken to it in part. But I wanted for the record to at least express this chairman's frustration that sometimes those that will disallow still ask a great deal from those who allow. If I had my way about it—of course, my people in Idaho would be very frustrated, but I would say to Alaskans and to those folks in Louisiana, you are the ones that allow the drilling, you ought to get the greater return. But, of course, we all benefit because those are national resources.

Dave, in your reading of the bill, who is responsible for choosing the high priority projects to be proposed to the Secretary? I mentioned that in my opening comments. In essence, is it the Governors of the States or is it the Forest Service?

Mr. TENNY. Mr. Chairman, as I read the bill, it appears as though the Governors of the States make recommendations. The Secretary of the Interior is responsible for selecting the projects after consulting with the Secretary of Agriculture. I believe that is how it works in my reading of the bill. Although I would note that

it is not absolutely precise on that point, that is how we would read it.

Senator CRAIG. So those are merely recommendations of selections to be made coming from the Governors. Is that correct?

Mr. TENNY. Yes, that is correct as we read it.

Senator CRAIG. The Congressman is the real authority here. Am I reading that correctly, Congressman? Why do both of you not come back to the table, if you wish? Is that a correct assumption as how we acquire or how the selected parcels are chosen?

Senator CORZINE. Would the chairman repeat?

Senator CRAIG. Yes, okay. What I am, in essence, saying here, as it relates to selection, is it is the Governors of the States or the Forest Service that ultimately make the decisions on the lands selected? Mr. Tenny has suggested that it is the Governors that make the recommendations. The Secretary makes the choices with recommendations from or consultation with the Forest Service.

Mr. FRELINGHUYSEN. My read on it is that the Governors obviously play a critical role in terms of those areas that are most under the gun with development, but I can tell you my office works very closely with organizations like the Trust for Public Lands. So there is a very successful collaboration, at least in the State of New Jersey, in terms of public and private partnerships determining what pieces of property are most endangered. Because our land prices are so expensive, there is not much we can do in terms of large swaths of land, but it is generally a partnership between the private sector and the public sector.

Senator CRAIG. But the list of proposed lands comes from the Forest Service. Is that correct?

Mr. FRELINGHUYSEN. Inasmuch as they have designated through their studies those that are particularly in jeopardy because of—

Senator CRAIG. And the Governors of the individual States or collective States add to or make recommendations beyond that list?

Senator CORZINE. Mr. Chairman, the way I read the specific law is annually the Governors of the Highlands States, with input from pertinent units of local government and the public—and there are commissions certainly in New Jersey that work with the Governor—identify land conservation partnership projects in the Highlands region that shall be proposed for Federal financial assistance and submitted, as a list of those projects, to the Secretary of the Interior.

Mr. FRELINGHUYSEN. Defined in section 5.

Senator CRAIG. Yes, I am looking at that section now. All right.

David, I see by your testimony last year on H.R. 1964 before the House Resources Committee, you had a number of concerns, and I know that a number of amendments—and the Congressman has talked about the way he and the chairman worked—were made to the House bill. Did those amendments address your concerns and the concerns of the Department in large part?

Mr. TENNY. To a point, yes. There are still some concerns that we have identified in our testimony that we have submitted today. And I would say that probably the most important is the precision of the designation of the area. We have done a lot of work over the last 13 years in the New York-New Jersey area. We have done much less work—in fact, we are more or less at the beginning—

with respect to the areas in Connecticut and in Pennsylvania. We know much less about those areas and probably ought to do a lot more work there in order to be able to identify the same types of high-value areas in Connecticut and Pennsylvania that we have been able to identify in New York and New Jersey.

Senator CRAIG. I have got, obviously, these brochures in front of me that speak to proposed suggested lands and boundaries and areas of concern. I wonder if you can give—and I am speaking to any of you—a better understanding of the total area in which the Highlands project would be located. From the bill, I know it is larger than about 2 million acres. I also know it is within the Reading prong and other similar ecological upland areas. But can you help clarify not only the length of the Highlands area but also how wide this area might be in total? Is there a way to do that?

I guess I am always frustrated by the endless process, if you will, and we are trying to define it here to put some limitation on it or boundaries on it and, at the same time, recognize the areas that are most sensitive.

Congressman.

Mr. FRELINGHUYSEN. We referred to it. The U.S. Forest Service did publish an update to the New York-New Jersey Highlands regional study. That study adopted the Highlands study area boundaries from the original 1992 study, and they expanded them eastward from the Hudson River to New York to the Connecticut border using topography and geography, as key determinants. The Forest Service study goes on to say—and I quote—“The boundaries of the study could be revised again in the future,” and suggest “implementation could also be extended to ecologically similar areas in Pennsylvania and Connecticut.” To some extent, we incorporated in our legislation the larger area that they sort of designated that was very similar in geographic nature.

Senator CRAIG. Well, Congressman, Senator, we will work with you to see if there is not a way to define boundaries in a little clearer way. I think when we deal with systems, if you will, or types of geography, it is open-ended. This thing could stretch on down the Appalachia a considerable ways, and I think that we are all concerned about that. While I do not argue the sensitivity of areas involved, I do believe it is incumbent upon all of us to try to put some definition to it. I will see if I cannot tackle that a little bit, but it will be done in full cooperation with all of you.

Mr. FRELINGHUYSEN. We would be pleased to work with you in better defining those boundaries. Thank you very much.

Senator CRAIG. Thank you.

Let me switch to S. 433, Dave, and that deals with, as I have mentioned and as you have appropriately mentioned, the central Idaho area.

A year ago, concern in this area was so great that the forests primarily in the Nez Perce were dead and dying in many instances in the Red River basin and others in and around Elk City that activity had to occur of some kind not only to reinstate the health of the forests, but to try to improve the historic partnership relationship with the communities involved. A rather extensive meeting was held in Grangeville. Secretary Rey attended as did many oth-

ers. It was extremely well attended by officials of the Forest Service. That was a year ago approximately.

The good news is the meeting was well attended. The good news is a great many promises were made. The bad news is nothing has happened.

The Red River basin is now, for all intents and purposes, dead. I talked with a variety of interests there over the weekend. I was in that area. They would suggest that none of the timber left is of any value for logging purposes. There might be some post or pole or logs that could be utilized in a salvage way for log home building.

I find it ironic that this large stretch of critical watershed is approximately the same climax forest area where the great forest fires of 1910 were started that swept out across north Idaho into Montana and back across Idaho, when millions of acres burned, many people were killed, and communities were wiped out. It is strange that the perfect storm started not far from what we are dealing with today.

I must tell you that all of the communities of interest are extremely frustrated at this moment. You are in part correct. Those who came together to propose to us legislation embodied in S. 433 came out of absolute frustration, dead and dying communities and dead and dying forests all around them, and a Forest Service that is unable to move or unwilling to move. I have not quite determined which it is.

But I have determined that if the perfect storm starts, meaning firestorm, that all of those watersheds could be wiped out. The devastation to wildlife habitat and water quality in the upper reaches of the Clearwater, a major contributor to the Snake, an extremely valuable water resource and fish habitat, could be badly damaged, let alone communities like Elk City—and we will hear from a person from Elk City today—entirely wiped out.

And yet, the Forest Service cannot move. So if you cannot move, we will move you, as is happening all over the United States today and as the Congress finally did last year with the Healthy Forest bill. We are tired of watching millions of acres go up in smoke, all in the name of whatever, I guess the beauty of a wildfire or the destruction of it.

So you are in part correct that the legislation is going to get a hearing and a voice because of that. But you are also correct in that action could replace this but inaction will not and action has not occurred. I do not know that you wish to comment any more about it, but you are certainly welcome to if you wish.

Mr. TENNY. Mr. Chairman, I would like to comment on this. One thing I noted, when I have looked into this myself in preparation for the hearing, that was a very good thing, was that the commitments of the forests were posted on their web site, had a link to your web site so that it could be completely transparent what was committed to. I have to be honest in saying that I was disappointed in seeing what had resulted from those commitments.

I have had conversations with Gail Kimball, who is the new regional forester in region one, who I would note has played a pivotal role in the development of the tools both administrative and in the technical side of development of the legislation from the Depart-

ment's side of that effort. They are all part of the Healthy Forest initiative and the Healthy Forests Restoration Act. She is very familiar with the tools and what needs to be done. She is very passionate.

She has taken a few steps that I think you should be aware of. First of all, on the Nez Perce, the Nez Perce now has a deputy forest supervisor who is going to be helpful in that effort in the management of that forest. She is going to be meeting with the forest supervisor there next week and then going out to the forest the following week. And her focus is going to be pretty straightforward. It is going to be on how well the agency is using the tools that have been provided, both the administrative tools and now the legislative tools. She will be very, I think, adept at being able to train and identify the opportunities, especially in the stewardship contracting area and in the use of the expedited NEPA authorities, and I think she will, in my mind, make a difference there.

I do not want to leave you, Mr. Chairman, or anyone else with the impression that the agency is not doing anything out there because I think they are trying to do some things. I do not think it is moving it forward quickly enough. There are some limited successes, but they are limited. Given the nature of the problem, given the potential for the devastation that might occur, as you noted, in this area that has historically had some of the worst wildfires in the Nation's history, time is really not on our side. So I was very heartened when Gail told me that one of her first priorities and top priorities coming into the job was to look into this particular matter and play a personal role in it.

Senator CRAIG. Well, Dave, thank you for those comments and observations. I hope you judge by my comments that we are more than anxious to work with you and our new regional forester to resolve this issue. We are certainly willing to give all parties time. I know we asked for a deputy at the Grangeville meeting. I am glad to hear that we are getting that.

I do believe the resource demands some expedited process. Mother Nature will take care of it if we do not help her go in another direction. And I think we have all seen what Mother Nature has been doing the last several years in these wildfire scenarios. And we are sitting ripe for one at this moment in that environment. The bad news of 1910 was obviously tragic and a lot was destroyed, habitat, wildlife, and communities. This area is now even more populated today with people than it was back then by a considerable amount, and I think it would be terribly tragic, now that we have all built the record and seen the problem, if we were a year from now frustrated by the smoke in our eyes and the communities wiped out because we failed to act. So I thank you very, very much for that.

On S. 1280, we are talking about 140 feet and 2 years and bureaucratic impossible ways of moving. I understand we are going to get it done now. I have a marvelous picture here of two stakes drawn along a road that are very visible that show the length of distance we are talking about that take all of the Congress' and the House's time because the Forest Service, by its current law, cannot act to allow a right-of-way for this purpose. I guess enough is said there, but we will expedite this as quickly as we can.

It is beyond me to think that the Forest Service or any Federal land management agency is not capable, within current law and process, of resolving an issue of a 140-foot right-of-way without having to go through all kinds of land exchanges and surveys and boundary adjustments and assessments to determine values and the phenomenal complication.

Let me ask just this of you. I would like to know how much in the end, when it is all done and the dust clears and the land is exchanged—I want you to draw a line and total up the cost and come back and tell this committee how much it will cost for our Federal Government to work with a local government to establish a 140-foot right-of-way for a pipeline. Would you do that?

Mr. TENNY. I think that is a fair request, Mr. Chairman.

Senator CRAIG. I think it would be appropriate for the record. And I think it would be very frustrating to all of us who stagger around here trying to find the necessary moneys to fund our public land agencies so that they can go out and protect, defend, and manage the resource appropriately. Thank you.

David, thank you. Director McIntosh, thank you very much. We will work on all of these projects jointly with you and we will appreciate your advice and counsel in them as we work to finalize them. Thank you.

Now we will call our second panel forward: Thomas Gilbert, executive director, The Highlands Coalition, Titusville, New Jersey; Dr. Bonner Cohen, senior fellow, National Center for Public Policy Research, Warrenton, Virginia; Susie Borowicz, Elk City, Idaho; and Rick Johnson, executive director of the Idaho Conservation League in Boise.

A little instruction on the use of the mikes for all of you but also for our court reporter to hear and for the rest of the folks in the room to hear: pull those mikes as close as is comfortable. Make sure the little button on the face of the stand there is lighted and proceed. Mr. Gilbert, we will proceed with you, executive director, The Highlands Coalition, Titusville, New Jersey. Welcome to the committee.

**STATEMENT OF THOMAS A. GILBERT, EXECUTIVE DIRECTOR  
OF THE HIGHLANDS COALITION, TITUSVILLE, NJ**

Mr. GILBERT. Thank you, Mr. Chairman. I very much appreciate the opportunity to testify in support of H.R. 1964, The Highlands Conservation Act.

The Highlands Coalition is an alliance of over 100 organizations whose mission is to protect and enhance the sustainability of natural and human communities in the Highlands region of Pennsylvania, New Jersey, New York, and Connecticut.

Rather than reiterate all of the important resource values of the Highlands region that were very eloquently described by the bill sponsors, let me focus on how in our view The Highlands Conservation Act responds to the challenges identified by the Forest Service by authorizing Federal matching funds to assist the Highlands States in conserving priority lands identified in the Forest Service studies and by authorizing financial and technical assistance to private landowners in the region.

This legislation was developed with significant input from diverse interests, including representatives of national and state homebuilders associations and the local Farm Bureau. It has broad and bipartisan support at all levels of government. In fact, I am authorized by Governor Pataki of New York to let you know how important the passage of this act is to the State of New York. The New York State Environmental Commissioner had wanted to testify in person here today but has submitted written testimony instead.

I also have with me over 50 resolutions from local governments throughout the Highlands region in support of this legislation.

Senator CRAIG. Tom, are you leaving those with us for the record or for the file?

Mr. GILBERT. If I can, I would be happy to.

Senator CRAIG. Certainly. Thank you. We appreciate that.

Mr. GILBERT. The Highlands Conservation Act is modeled after the State and Federal partnership that was used to conserve Sterling Forest, a crown jewel of the New York Highlands. In 1996, Congress authorized \$17.5 million from the Federal side of the Land and Water Conservation Fund, not the State side. That was matched by State and private funds totaling over \$55 million for the purchase of more than 15,000 acres that are now part of Sterling Forest State Park in New York. H.R. 1964 would facilitate similar State and Federal partnerships to conserve other high priority lands in the Highlands region. Since these lands would be owned and managed by the States, there would be no increase in Federal landholdings or management responsibilities.

The Forest Service has recognized the Highlands region as extending into Pennsylvania and Connecticut in their excellent studies of the New York-New Jersey portion of the region and we would concur with Mr. Tenny that in order for the entire Highlands region to be eligible for the Federal assistance provided under this act, that the Forest Service would need to extend these studies to include Pennsylvania and Connecticut.

I would mention that Forest Service staff have met with State and local officials in both States to begin fleshing out what the boundaries might look like for a possible study expansion and perhaps those discussions and those draft maps could be a good starting point to address the very legitimate concern that you have raised about the boundaries of the region.

I would also like to point out that the act would confer no regulatory authority to any level of government and funds could only be used to acquire lands or development rights from willing sellers. I would refer you to the extensive language in section 7 describing the respect for private property rights, the lack of regulatory effect, which explains the glowing words of support from Chairman Pombo for the legislation, as well as his praise for Mr. Frelinghuysen and Mr. Saxton for their work with him in the committee on the bill.

Finally, I would add that having the Federal Government partner with the Highlands States to conserve vital watershed lands is a necessary and wise investment in our future, and it makes good economic sense. The North Jersey District Water Supply Commission estimates that water purveyors in the Highlands currently

spend \$14.3 million annually to treat 550 million gallons of water per day. They further estimate that if development trends continue in the Highlands, the costs of treating this water could reach over \$30 billion by 2054.

So in conclusion, I urge you to support this bipartisan legislation to help safeguard the water supply for millions of Americans through an innovative State and Federal partnership that strongly respects private property rights. I appreciate the time and we look forward to working with you to help advance this important legislation. Thank you.

[The prepared statement of Mr. Gilbert follows:]

PREPARED STATEMENT OF THOMAS A. GILBERT, EXECUTIVE DIRECTOR OF THE  
HIGHLANDS COALITION, ON H.R. 1964

Thank you, Mr. Chairman, for the opportunity to testify in support of H.R. 1964, the Highlands Conservation Act. The Highlands Coalition is an alliance of over 100 organizations whose mission is to protect and enhance the sustainability of natural and human communities in the Highlands region of PA, NJ, NY, and CT. The Highlands region is defined by the easternmost ridge of the Appalachian Chain that serves as the backyard to several major metropolitan areas, including Philadelphia, New York City and Hartford. The region lies within an hour of some 25 million Americans and provides and protects the water supply for over 15 million people. The Highlands receives more recreational visitors each year than many of our most heavily visited national treasures.

For all of these reasons, the Highlands region has been recognized as nationally significant by the U.S. Forest Service in several studies. In their most recent study, the Forest Service documented the development of over 25,000 acres of land in the NY-NJ Highlands between 1995 and 2000, and estimated that build-out could be reached within 20 to 30 years. If those trends continue, they predict significant impacts on future water quality and supplies. They identify approximately 300,000 acres of high-value watershed lands that need further protection.

The Highlands Conservation Act responds to the challenges identified by the Forest Service by authorizing federal matching funds to assist the Highlands States in conserving priority lands identified in the Forest Service studies, and authorizing financial and technical assistance to private landowners in the region. This legislation was developed with significant input from diverse interests, including representatives of national and state homebuilders associations, and the local Farm Bureau. It has broad and bipartisan support at all levels of government. In fact, I am authorized by Governor Pataki of New York to let you know how important the passage of this Act is to the State of New York. The New York State Environmental Commissioner had wanted to testify in person here today, but has submitted written testimony instead. I also have with me over 50 resolutions from local governments in the region in support of this legislation.

The Highlands Conservation Act is modeled after the state and federal partnership that was used to conserve Sterling Forest, a crown jewel of the NY Highlands. In 1996, Congress authorized 517.5 million from the federal Land & Water Conservation Fund to match state and private funds totaling over \$55 million for the purchase of more than 15,000 acres that are now part of Sterling Forest State Park. H.R. 1964 would facilitate similar partnerships to conserve other high priority lands in the Highlands region. Since these lands would be owned and managed by the states, there would be no increase in federal land holdings or management responsibilities.

The Forest Service has recognized the Highlands region as extending into Pennsylvania and Connecticut in their excellent studies of the NY-NJ portion of the region. In order for the entire Highlands region to be eligible for the federal assistance provided under this Act, the Forest Service would need to extend these studies to include PA and CT.

The Act would confer no regulatory authority to any level of government, and funds could only be used to acquire lands or development rights from willing sellers. Prior to House passage of the bill, Congressman Richard Pombo, Chairman of the House Resources Committee and an ardent supporter of private-property rights, hailed the Highlands Conservation Act as a template for advancing land conservation in a bipartisan fashion while respecting private-property rights. Mr. Pombo also

applauded Rep. Rodney Frelinghuysen, the bill's sponsor, for his work with Resources Committee members and staff to craft a balanced, reasonable bill.

Finally, I would add that having the Federal Government partner with the Highlands States to conserve vital watershed lands in the Highlands is a necessary and wise investment in our future, and makes good economic sense. The North Jersey District Water Supply Commission estimates that the Highlands water purveyors currently spend an estimated \$14.3 million annually to treat 550 million gallons of water per day. The Commission estimates that if development trends in the Highlands continue, treatment costs will reach over \$30 billion annually by 2054.

I urge you to support this bipartisan legislation to help safeguard the water supply for millions of Americans through an innovative state and federal partnership that strongly respects private-property rights.

Thank you.

Senator CRAIG. Mr. Gilbert, thank you very much.

Now let me turn to Dr. Bonner Cohen, senior fellow, National Center for Public Policy Research in Warrenton, Virginia. Doctor, welcome before the committee.

**STATEMENT OF BONNER R. COHEN, Ph.D., SENIOR FELLOW,  
NATIONAL CENTER FOR PUBLIC POLICY RESEARCH**

Dr. COHEN. Well, thank you very much, Chairman Craig, for the opportunity to comment on this bill this afternoon.

It has fallen to me to be the voice of dissent on The Highlands Conservation Act, and let me briefly outline the problems I have with the legislation, which are both philosophical and practical.

At a philosophical level, I am somewhat disturbed, to say the least, by kind of the underlying principle of the legislation that would seem to equate government ownership of land with sound environmental conservation. I believe that the record will show that you will find nowhere in the United States forests which are more disastrously managed than our own national forests, disease-ridden and overgrown that they are. The chairman addressed this problem earlier in the committee and it is an absolute tragedy. It is a problem that has been ongoing for several decades and under the best of circumstances, it is going to take decades to undo all the damage that has been done.

What I mean by this is that this should serve as a cautionary tale for those who see in government ownership of land something that will lead to sound conservation. That takes us into now The Highlands Conservation Act which foresees \$10 million a year in the purchase of lands. \$10 million a year in the grand scheme of things is not a lot of money. \$100 million over a 10-year period. Nevertheless, I think this is a step in the wrong direction.

What I am truly concerned about, aside from the principle of government ownership of land—the government already in this country owns approximately 40 percent of that land, but I am very concerned about the protections for private landowners.

I was pleased to hear Senator Corzine say and Mr. Gilbert also say that the bill contains protections for private landowners. However, I do not think any of us should be under the illusions about the amount of pressure that can be brought to bear on a private, isolated landowner in a predominantly rural area by State environmental regulators working closely with nongovernmental organizations. There is something in the conservation debate known as the myth of the willing seller. And if a landowner is not in agreement with the policies being carried out in the name of conservation in

a particular area, things can be done to that landowner to make his life miserable. We have seen this over and over again. I am certain the chairman is familiar with the problems of inholders in federally owned land out West. Why we would want to take a step, small and incremental though it may be, to replicate the system in this part of the country that has done so much harm in the Western United States is something I do not understand.

Over and beyond that, I am somewhat disturbed—and I was glad to hear the chairman address this in his remarks—by the lack of definition in the bill. What exactly constitutes the area that we are talking about? There is nothing in the bill to keep this some day from being extended northward into Vermont and southward into Maryland. Equally, I doubt very seriously if the activities foreseen in the bill will cease on December 31, 2014. What I think we have here is an open-ended bill.

You know, looking at this from kind of a philosophical perspective, I want to come back to the whole idea of government ownership of land. If I wanted to develop a strategy for the pauperization of rural America, one of the first things that I would do is I would make sure that the Government owns as much land as possible. The Government could be Federal or State. And at the same time, if I could not buy all the land, then I would make sure that I could control how that land is being used.

We can see this in the chairman's own home State of Idaho, a beautiful place. I have had the opportunity to visit many times. But 63 percent of it is owned by the Federal Government, in addition to which there are State lands. Parts of rural Idaho, as well as Montana and other parts of the West, suffer greatly for a variety of reasons, not the least of which is the enormous burdens placed upon local communities by Federal ownership of land. Counties with problems that they have to solve with respect to infrastructure, schools, and what have find that they do not have the tax base to support that.

I think the people who are in the Highlands now support the legislation—I want to compliment Mr. Gilbert and other people here who have done a splendid job of packaging this. But I think down the road—I hope I am wrong, but I think down the road that they are going to have strenuous objections to what is being done. I believe the bill takes a step in the wrong direction and I believe that ultimately that property owners and local governments in the area are going to regret many of the things that the bill contains.

I see that the red light is flashing, so I will conclude my remarks. Thank you.

[The prepared statement of Dr. Cohen follows:]

PREPARED STATEMENT OF BONNER R. COHEN, PH.D., SENIOR FELLOW, NATIONAL CENTER FOR PUBLIC POLICY RESEARCH, ON H.R. 1964

Good afternoon, my name is Bonner Cohen. I am a senior fellow with the National Center for Public Policy Research in Washington, D.C. and a member of the Board of Directors of the American Policy Center in Warrenton, Virginia. I want to thank Chairman Craig and the other members of the subcommittee for the opportunity to comment on the "Highlands Conservation Act," H.R. 1964.

I believe the legislation under consideration by this subcommittee is flawed in several key respects. At a fundamental level, it equates government ownership of land with conservation, an idea our Founding Fathers would have found amusing, to say the least. At least 40 percent of the land area of the United States is owned

by government—federal, state, and local. Much of this land is poorly managed—from overgrown, disease-ridden national forests that routinely spawn catastrophic wildfires, to national parks that are in such a state of disrepair that the Park Service estimates it will take \$5 billion and many years to undo the damage. To set aside more hard-earned taxpayer dollars for additional land acquisitions, in the name of conservation, is to ignore the disastrous environmental consequences of the already bloated public estate.

Unfortunately, this is exactly what the Highlands Conservation Act does. The bill will increase the size of the public estate in the Highlands region. In doing so, it will pose a severe threat to the rights and livelihoods of property owners in the targeted area. While the bill gives property owners the right to decline selling their lands, this “willing-seller” provision is illusory. In the real world, there is no such thing as a “willing seller.”

In the case of the Highlands Conservation Act, “non-federal entities,” also known as non-governmental organizations (NGOs), with a clear political agenda will identify lands for “management” and will oversee the ensuing conservation actions. Few landowners will be able to withstand the pressure of environmental groups working in concert with state and local governments, eager to acquire private lands with taxpayer money. As the public estate in the region grows, the value of adjacent private lands will diminish. And, as property values decline, landowners will have little choice but to sell their land at a fraction of its former worth.

Furthermore, the removal of private land from the tax rolls will have a devastating effect on local revenues. Raising property taxes on the remaining private lands will be the only way local governments can make up the revenue short-fall. This, in turn, could force additional landowners to sell their property to the government.

We are told that the bill will cost \$100 million, to be disbursed in \$10 million increments between 2005 and 2014. But there is nothing in the bill that prevents Congress from continuing appropriations beyond 2014. Similarly, the scope of the bill is currently limited to some 2 million acres in Pennsylvania, New York, New Jersey, and Connecticut. But there is nothing in the legislation to keep the area from being expanded to include highland areas in, say, Maryland and Vermont. In fact, the bill grants the U.S. Forest Service the right to continue land assessments studies and provides \$1 million toward that end. As such, the legislation is an open-ended invitation for government and its carefully selected “partners” to lock up more land.

Indeed, equally disturbing is the cozy relationship the Highlands Conservation Act envisages between government and certain NGOs. The governors of the four states *currently* covered under the bill will identify lands in the Highlands region for management, based on recommendations made by state and local environmental organizations. These suggestions will then be forwarded to officials at the Departments of Interior and Agriculture for review, who will submit final recommendations to Congress for the purpose of appropriating the 50 percent federal share of matching funds.

Once this process has been completed, the NGOs will set about overseeing and managing the lands they themselves played a large part in identifying. As a sign of just how cozy the relationship is between the NGOs and the various government entities involved in the Highlands Conservation Act, one of these groups, the Palisades Interstate Park Commission, is specifically cited in the bill.

Allowing these organizations—elected by no one and accountable to no one—to join forces with friendly state regulators supported by federal funds and impose land-use restrictions on unsuspecting property owners makes a travesty of representative democracy. While the bill keeps federal bureaucrats largely out of the land-management decisions, it simply replaces them with state regulators and allied environmental groups. To the landowner, this is a distinction without a difference.

At a time of skyrocketing budget deficits at the federal, state, and local level, using scarce taxpayer dollars to acquire more land—taking it out of productive use and removing it from the tax rolls—makes no economic sense. The key to an economically and environmentally vibrant rural America does not lie in government ownership of land. American agriculture leads the world not because the land is owned by the government and managed by politically favored NGOs, but because it is under the stewardship of farmers whose livelihoods depend on how they use and conserve their land.

The Highlands Conservation Act ignores this lesson. If enacted, it will be harmful for the people in the Highlands and their environment.

Thank you very much.

Senator CRAIG. Dr. Cohen, thank you very much.

Because the panel is divided in the way we have asked you to be seated, let me ask questions of both you, Mr. Gilbert and Dr. Cohen, before we move on to testimony on the other legislation of S. 433. I trust you two can be patient while we work our way through this. Thank you very much.

Mr. Gilbert, I do not in any way question the intent or the value that you see in the Highlands conservation project. I think Dr. Cohen has expressed some concerns that I have to some extent, and yet I value tremendously the public land base of my State. It has given us our uniqueness and our beauty, but it is a public land base that in some instances has been mismanaged, and we now work to correct that, and in other instances where it is not being managed at all, Mother Nature is not treating it so well. So it appears to be a base of property that has endless value and endless turmoil. You will probably hear a little bit of that in the next two panelists. I wish it were not that way. I guess it is the character of it.

And yet, in rapidly urbanizing areas, I do not question the desire to have open space or the desire to protect watersheds from being concreted and asphalted over. I appreciate that. I am also always reminded when I take a night flight from here into New York, how it is almost all lights, and that concerns me that we would totally, if you will, develop the eastern seaboard and not protect some of its lands. Certainly we are working to do that. You obviously are working mightily to do so.

But having said that, I do like to legislate in ways that have definition and understanding, that are clear, that do not provoke lawsuits or frustrations, that do protect private landowners. And at the same time, I do agree that private landowners can find themselves in very difficult situations if they were to stand in the way of certain broader public desires, if you will.

You have heard me ask the two gentlemen from our different agencies about the size. It is obvious, when I look at the Highlands proposal, I look at one that spreads not from New York through New Jersey, but from one that spreads from New York to the Pennsylvania-Maryland line. While it is true that the Forest Service has not expressed that, it appears that the desires of those who are the advocates express and believe in that.

Would you talk to us a little bit about definition and a boundary and the support you might give to being specific about boundary and limitations within this proposed legislation?

Mr. GILBERT. Certainly, Mr. Chairman. Admittedly, the legislation I think is somewhat open-ended in terms of the extent of the region. I would point out that the acreage of the New York-New Jersey study area, as per the 2002 update, is 1.5 million acres. So just to put a little bit of context in the figure over 2 million, how much more land might we be talking about in Connecticut and Pennsylvania, so potentially expanding by roughly half a million acres.

The Highlands Coalition—again, our membership and our view of the region is as a greenbelt that really spans from the Maryland border to the Massachusetts border, and the explanation for that is that this is the eastern-most ridge of the Appalachian chain as it borders these metropolitan areas. That is the key definition.

That is what makes the Highlands important is that these are the lands that are very close to millions of people, that provide and protect the water supply, that provide recreation opportunities close to home. So from our perspective that is the most compelling definition.

Now, as you said, that is not necessarily the Forest Service's definition. That is the case that we are making. It will be up to the Forest Service based on their assessments, which, as I have mentioned, they have already met with State and local officials and begun to look at ecological mapping, to figure out what a scientific basis for defining the region might be in those two States. That will be and should be their call.

But in response to Mr. Cohen, in terms of the open-endedness of this, I think the legislation clearly defines the region as Connecticut to Pennsylvania, so there is no authority within the legislation to expand beyond that, while certainly there is a need to better define the region within those two States.

Senator CRAIG. Section 5(5)(a) says, projects will be consistent with areas identified as high conservation value named in the Highlands study area.

Mr. GILBERT. That is correct. So I guess my interpretation of that is that in order for Pennsylvania and Connecticut to then become eligible for the funds authorized under the act, the Forest Service would first need to identify such lands in those States. In the absence of that identification by the Forest Service, those States would not be eligible for the funds.

In fact, there was language in an earlier version of the bill that was stripped out at some point which, under the eligibility requirements, said, and other similar studies conducted by the Forest Service in the Highlands region, which was essentially a placeholder. I am not sure why and when that was stripped out, but perhaps that is something that could be clarified through report language or amendment to the legislation.

Senator CRAIG. So in your mind can a Governor propose a project outside of the Forest Service list?

Mr. GILBERT. No. As I read the bill, Mr. Chairman, that would be an eligibility requirement. That is the starting point from which the Governors must identify projects. It has to be within areas identified as high value by the Forest Service.

Senator CRAIG. By definition, when these lands are acquired, they move from a private to a public status.

Mr. GILBERT. As I read the bill, the eligible use of the funds would include State purchase of—again, this is non-Federal acquisition—lands or interest in lands. So development rights could be purchased, and in that case public dollars are stretched further and the land remains in private hands. Traditional uses of the lands can continue. So I think that is an important distinction to note here as well that this is non-Federal. This is State acquisition or purchase of development rights.

Senator CRAIG. But none of them would become Federal by definition in your mind. They would become State properties.

Mr. GILBERT. As I read the bill, it is limited to State acquisition or purchase of development rights.

Senator CRAIG. Dr. Cohen, you had expressed some concerns similar to mine in relation to the length of the Highlands area, as well as the width of the area. Given your reading of the bill, do you see this as an expansive process or a limited process?

Dr. COHEN. I think it is kind of the nature of the beast. Once you create these things, there is nothing in the current language of the bill to keep, at some point down the road, someone from offering an amendment or something like that to further expand the area under coverage, say, north into Vermont and south into Maryland. As of right now, as far as I can see, other than the point that Mr. Gilbert made and others have made, it is not clearly defined what the area within the four States is, but I am concerned that at some point down the road, things being what they are, the area could be expanded into additional States.

Senator CRAIG. You expressed some concern here. If the private property and willing seller/willing buyer language is not strong enough for you, would you provide my staff with an alternative private property protection language?

Dr. COHEN. Yes, I would be happy to. Let me give you an example, a very quick one, of the kinds of things we have to guard against here.

Ann Corcoran is an owner of a farm near the Antietam Military Battlefield in Maryland. A few years ago, she found out that the Conservation Trust, in close cooperation with the U.S. Park Service, was going around the battlefield and the area near the battlefield and purchasing parcels of land and then turning around and selling that land to the U.S. Park Service. Had that been allowed to continue, her farm would have become an inholding. As you well know as someone who is out West, this is not a very pleasant state of affairs and it is something that can greatly reduce the value of the property.

Fortunately for Mrs. Corcoran, who incidentally was a former employee of the Nature Conservancy and the Audubon Society, the irony being what it is, she was politically well connected enough and had enough money to defend herself. But I am deeply concerned about smaller landowners who will not have the money to go to an attorney to defend himself. And this is just the kind of thing that I think needs to be put into the bill. So I would be happy to do that for you.

Senator CRAIG. Well, thank you. Thank you, both. As I expressed to the Senator and the Congressman, I express to both of you, as we move this legislation forward, we will work closely with you to see if some of these additional questions might be resolved and/or clarified before it will move out of this committee and to the floor for a vote. So I thank you both very much for your time and your commitment to these issues.

Now let me turn to my colleagues from Idaho and S. 433. A lady from Elk City, Idaho. For those of you who have never been to Elk City, Idaho, it truly is the community at the end of the road, and a wonderful community it is, small and at the end of a very long road through a national forest. So, Susie, you have traveled a long distance just to get to pavement, let alone for that pavement to take you to an airport, let alone for that airport to bring you here.

So we welcome you before the committee and appreciate your testimony. Please proceed.

**STATEMENT OF SUSIE BOROWICZ, ELK CITY, ID**

Ms. BOROWICZ. Thank you very much, Senator. I would really like to thank you for the opportunity to appear before you today. I bring greetings from beautiful north central Idaho and especially from my home town, Elk City, which is a small, rural, wonderful town. It is at the very end of the road and at the headwaters of the south fork of the Clearwater River. We are surrounded by 2.2 million acres of the Nez Perce National Forest.

I certainly appreciate your very strong words and your expression of frustration over the situation in our woods, in our forests. I totally share that. When the Healthy Forests Restoration Act was passed, Forest Service Chief Dale Bosworth had the words for us, we will not fail, we shall not fail. And my message to him is basically we have failed in Red River. We have failed to meet an obligation there and they have failed us to be good neighbors. They have made us promises. They have made excuses. But to this point in time, they have not come through with anything of value to help out our community.

They have a responsibility to us, and this bill provides an opportunity to help in this area and to give us another opportunity to act with them.

Two years ago, I retired as the principal from Elk City school, and our school population during the time that I was principal dropped from 132 students to now 32 students in grades K through 8. I had nine and a half teachers on my staff, and now there are only three. Many, many of these staff cuts came because of budget constraints because of the Federal forest moneys not being available to schools. The Craig-Wyden legislation has definitely been a lifesaver for our district. I cannot tell you how much it has done for us.

This pilot project bill is certainly needed to provide an opportunity to augment these moneys in our district where 89 percent of our land is federally owned and where we have 92 percent of our children in our school on free and reduced lunch. Those timber receipt revenues and other economic benefits that are foreseeable from activities in this pilot project will be definitely a shot in the arm to communities like ours in the Clearwater basin, including our schools and our roads. I cannot tell you how much it is needed there.

There is a great and very imminent need to implement this pilot project. Forest insects and disease, wildfire, and other threats to fish and wildlife habitat in our local communities are particularly severe, and they are very, very much in need of treatment. The Forest Service is trying to do their best to get started in developing and implementing some strategies, but it is only a small fraction of what needs to be done. The Red River and American River drainages around Elk City are perfect examples where the Forest Service has not come close to keeping up with their insect infestations and they are destroying the living forest.

There is much more preventative, remedial, and restorative work that needs to be done. Folks in Grangeville, in Orofino, in Kamiah,

in Kooskia, and other communities in the basin share the concerns of the citizens in Elk City about the conditions of the forest that surround them. I cannot tell you about the fear of sitting on a deck at night at our home and hearing the lightening strike around us and not know what is going to happen that night, whether the fires will start close to home or far away from home. It is a tremendous fear to live through something like that and to have the forests threatened and your livelihood threatened and your home threatened.

The people who live and work among the Federal forests in the West are now much less isolated than we were in prior years. We have access to the same sources of information and we discuss a lot of the same issues that any Americans do. Just because we are backwoods does not necessarily mean that we are backward. We share the new national values toward conservation and we share the restoration of the national ecosystems.

But as neighbors and stewards of federally managed land, we know that the government can too often act as an absentee landlord. That is why we want to be good neighbors, along with others who care a great deal about our public lands. We want to help those Federal managers to conserve and sustain those national treasures.

About 5 years ago, I was asked to serve on the Federal Forest Lands Task Force, and this S. 433 is very near and very dear to my heart. Our mission was to come up with pilot projects to test new approaches to the management of Federal public lands that had been studied in an earlier task force report. Our attention was to assist these Federal managers to manage the lands more effectively, more efficiently, and more responsive to local communities and broader national interests.

This report was widely distributed. It got 80 percent favorable comments, and the Clearwater Basin Stewardship Project is one of those that is adapted from the five that we proposed.

In conclusion, I would like to just strongly support the prompt enactment of S. 433. I would like to thank you especially for this opportunity to share my excitement about the possibilities this bill would create for those of us living in north central Idaho. I am a member of the North Central Idaho RAC committee, and our group is probably one of the strongest, one of the best, and I think one of the most active groups in Idaho. A lot of our work has been done on watershed restoration, and this bill would be a perfect fit for our group, which has a wide, diverse group of people that represent a large number of constituents of varying backgrounds.

The national forests in our basin are currently facing the threat of catastrophic wildfire and disaster from forest conditions that are out of historical balance. We are on a 100-year rotation cycle and our 100 years is almost up because it is timed right with the 1910 fires that Senator Craig mentioned. So we only have 6 more years.

With the efforts of the collaborative group such as this bill would create, we can work together to reduce these threats around our homes and we can work to enhance the sustainability of the forests, the fish, the wildlife and the ecological wealth of north central Idaho.

Thank you very much.

[The prepared statement of Ms. Borowicz follows:]

PREPARED STATEMENT OF SUSIE BOROWICZ ON S. 433

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today. I bring greetings to you from beautiful North Central Idaho and in particular from my home, Elk City. Elk City is a wonderful, small rural town near the headwaters of the South Fork of the Clear-water River. We are surrounded by the 2.2 million-acre Nez Perce National Forest.

Senate Bill 433, the Clearwater Basin pilot project bill, is very near and dear to my heart. About five years ago I was asked to serve on the Federal Forest Lands Task Force Working Group. Our mission was to come up with pilot projects within the state of Idaho to test new approaches to management of federal public lands that had been studied in an earlier Task Force report. Our intention has always been to assist federal managers to manage these public lands in ways that are more efficient, effective and responsive to local communities and to broader national interests. We issued a December 2000 report, *Breaking the Gridlock: Federal Land Pilot Projects In Idaho*, in which we recommended specific pilot projects to be considered for implementation. The report was widely distributed for public comment, and 80% of the comments received were favorable. The Clearwater Basin Stewardship Collaborative Project, from which S. 433 is adapted, was one of the pilot projects that we recommended in the report. I think that the entire Working Group shares my strong belief that a Clearwater pilot project can be successfully implemented, based on the collaborative efforts of citizens and communities in the Clearwater basin.

As a member of the Working Group and a citizen who lives in the Clearwater Basin, I support the enactment of S. 433. S. 433 sets out a pilot project that will, based on a public process for local and national interest constituencies to reach agreement with the Forest Service, identify and implement high priority conservation and stewardship activities on Clearwater and Nez Perce National Forest lands in the Basin. The bill could yield sorely needed environmental and community benefits over the next several years.

The bill will establish a broad-based collaborative advisory panel to work with the Forest Service, Nez Perce Tribe, and other stakeholders to focus on fish and wildlife habitat restoration, forest health, and other particular projects in need of priority attention to improve the condition of the national forest lands in the Basin. With consensus reached on these activities, priority would be given to complete environmental review, public participation and other required procedures for the Forest Service to consider and reach final decisions regarding implementation. I believe that the structure of the bill will allow a very useful practical test of an approach to getting past what has been called the "gridlock," "analysis paralysis" and "process predicament" that has consumed the Forest Service in paperwork, appeals, and lawsuits, and greatly slowed and encumbered getting environmentally sound and beneficial work done in the field.

There is a great and imminent need to implement this pilot project. Forest insects and disease, wildfire and other threats to fish and wildlife habitat and our local communities are particularly severe and very much in need of treatment. The Forest Service is trying to do their best to get started in developing and implementing some treatments, but this is only a small fraction of what needs to get done. The Red River and American River drainages around Elk City are examples of areas where the Forest Service has not come close to keeping up with insect infestations that are destroying the living forest and creating a huge fire hazard. However, there is much more preventive, remedial, and restoration work to be done on other national forest lands in the Basin as well. People in Grangeville, Kamiah, Orofino, and many other communities in the Basin share the concerns of citizens in Elk City about the current condition of national forest lands and the need for more effective management actions. This pilot project would mesh with and enhance efforts to address these needs under the Healthy Forests Restoration Act, our national, Idaho and community fire plans, stewardship contracting authority and other recent initiatives.

The people who live and work among the federal forests in the West are now much less isolated than we were in prior years. We have access to the same sources of information and discuss most of the same issues as any Americans today. We share the new century's national values toward conservation and restoration of important ecosystems. But as neighbors and stewards of federally managed lands, we know that the government can too often act like an absentee landlord. That's why we citizen neighbors, along with others who care a great deal about these public lands, must help federal managers to conserve and sustain national forest treasures.

Fortunately, we already have a collaborative advisory group that works with the Forest Service on Clearwater and Nez Perce National Forest issues. I am a member of the North Central Idaho Resource Advisory Committee ("RAC") established under the Craig-Wyden legislation. I believe that the North Central Idaho RAC is one of the strongest, and most active, well-run RACs in our state. Our RAC group is made up of very diverse individuals with varying backgrounds and interests. Our meetings are very remarkable, with much give and take and everyone listening intently to each other. Because we have folks from across the full spectrum of environmental, business, and community interests, we represent many, many different constituents.

The current work of the North Central Idaho RAC is basically limited to projects eligible for County funding under the Secure Rural Schools and Community Self-Determination Act, also known as the Craig-Wyden legislation. Much of our work has concerned watershed restoration activities. S. 433 takes a reasonable step beyond the Craig-Wyden legislation and other existing law to empower a stakeholder advisory panel to work with the Forest Service on a substantially broader range and scale of priority stewardship projects. It is my hope that the North Central Idaho RAC can be eligible to serve as the collaborative advisory panel under the provisions of S. 433, or that its members can be eligible to serve on the panel. This would facilitate implementation of the pilot project, since the North Central Idaho RAC is already established, and its members have proven over the course of 2½ years to be able to work together to agree upon getting projects done out on the ground.

The timber receipt revenues and other economic benefits that are foreseeable from activities that are expedited through the pilot project will be a shot in the arm to the communities in the basin, including our local schools and roads. Two years ago I retired as principal from Elk City School. Our school population during my tenure as principal dropped from 132 students in grades K-10 to where now we have 32 students in grades K-8. I had a staff of 9½ teachers and now there are only 3 on staff. Many, many of my staff cuts came because of budget constraints because of the Forest Funds monies not being available to us. The Craig Wyden legislation has been a lifesaver for our district, but this pilot project bill is certainly needed to provide an opportunity to augment those monies in our district—where 89% of the land is federally owned and where we have 92% of our children on free and reduced lunch.

From a community point of view there is very strong local support for this bill. It offers us another important opportunity to make our forests healthier. It gives us another avenue of action and another chance to "break the gridlock" and help the Nez Perce and Clearwater National Forests on their way to become more productive, beautiful and sustainable forest lands.

I believe that this legislation should receive bipartisan support at the national level as an Idaho pilot project that can be fully implemented within existing national forest laws. The bill does not exempt any Forest Service decisions or activities from environmental laws, administrative appeal or judicial review. It does not dictate that any particular activities occur, it simply provides a framework for achieving improved evaluation and agreement on activities that should receive priority attention. It doesn't present a threat to any resource or user group. It is structured to facilitate inclusive, collaborative efforts to further conservation and environmental objectives.

In conclusion, I strongly support prompt enactment of S. 433. I thank each of you for this opportunity to share my excitement about the possibilities this bill would create for those of us living in North Central Idaho. The Clearwater Basin country is truly a treasure. The national forest lands in the basin are currently facing the threat of catastrophic wildfire and other disaster from forest conditions that are out of historical balance and that continue to deteriorate. With the efforts of a collaborative group such as this bill would create, we can work together to reduce these threats. We can work together to enhance the sustainability of the forest, fish, wildlife, and ecological wealth of North Central Idaho!

Senator CRAIG. Susie, thank you very much.

Now let me turn to Rick Johnson, executive director of the Idaho Conservation League from Boise. Rick, welcome before the committee.

**STATEMENT OF RICK JOHNSON, EXECUTIVE DIRECTOR,  
IDAHO CONSERVATION LEAGUE, BOISE, ID**

Dr. JOHNSON. Thank you for the opportunity to comment today. The Idaho Conservation League has been working to protect and restore the air, water, wildlands, and wildlife of Idaho for over 30 years.

The Clearwater basin, as defined by this bill, is comprised of over 2.7 million acres on the Clearwater and Nez Perce National Forests. Over half of this 2.7 million acres is roadless and undeveloped and, in many respects, still today as it was in frontier days. The last section of the Lewis and Clark trail that is still a trail, still a footpath through the forest, can be found here.

High quality spawning habitat for salmon and steelhead are found in the Clearwater. These ocean-going fish are but just one tangible example of how the Clearwater is a national treasure. The Clearwater contains a myriad of sites sacred to the Nez Perce and today provides Idahoans of all ages unparalleled recreation experiences.

As our Nation pauses to commemorate the bicentennial of the Lewis and Clark expedition, we should be gathered here to praise and protect the Clearwater to enhance protections, not to cast it to new and untested management regimes.

Our primary concern with S. 433 is that it takes this very special part of our national forests, held in trust for all Americans, and places much of it in the control of a majority vote of 15 local people.

I understand the frustrations that develop over Forest Service management, and I am not here to defend them, but I suggest that frustration with the agency in favor of a new group with no proven expertise or legal requirement for national interest stewardship is the wrong path.

A few points of concern with the proposed legislation.

The 5-year schedule of activities developed by the advisory panel would have a rushed environmental review that could lead to insulation from the protections of environmental law and weakens current planning and public participation processes.

The 5-year schedule of activities would consolidate a wide variety of projects into one decision document, in effect, raising the stakes of legal challenge rather than lessening the impact of judicial challenge that is now focused on individual site-specific activities.

Finally, from its beginning in the State of Idaho's Federal Land Task Force, we have seen a troubling yet fairly obvious objective: to weaken or eliminate the safeguards of environmental law and public involvement in order to promote and expedite logging and other commodity uses. We see this as contrary to the purposes of our Nation's public lands.

Senator, as you know, the Idaho Conservation League regularly demonstrates an openness to engage in cooperative and collaborative projects on public lands. Success, unfortunately, has been modest in these endeavors. We would advise investing deeper in the collaborative projects now underway to create a record of success that we can all be proud of on the ground before legislatively forcing new processes on a very skeptical public.

Collaboration comes from the bottom up and is based on local leadership and involvement. The situation has to be ripe and ready for people to come together and invest the needed time to succeed.

For instance, in the Owyhee Canyonlands, at the invitation of the Owyhee County Commission, the Idaho Conservation League has been at the negotiation table with ranchers and other local interests for over 2 and a half years. This is unprecedented work and we did not need Congress to tell us to do it.

Closer to the Clearwater, the Idaho Conservation League participated in the Meadow Face Pilot Stewardship Project on the Nez Perce. We also worked on the forest RAC's, are engaged in numerous discussions on fire and restoration in and around the wildland/urban interface. We are involved in the Clearwater Elk Collaborative and more.

In summary, the Idaho Conservation League opposes S. 433 on several grounds, and these include that the Clearwater and Nez Perce National Forests contain some of the Nation's finest and most vulnerable unprotected wildlands. This is a place worthy of our Nation's greatest stewardship, not untested management schemes.

S. 433 would set up a new set of regulations controlled by a few people, some with a commodity production mandate, to control the future of one of our most prized national treasures.

And finally, we believe there is a growing role for cooperative projects on our public lands, but local involvement needs to start at home rather than be mandated by Congress. Collaboration is borne of trust, not force and comes in steps, not leaps.

Thank you very much for the opportunity to participate in today's hearing.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF RICK JOHNSON, EXECUTIVE DIRECTOR, IDAHO  
CONSERVATION LEAGUE, ON S. 433

Thank you for the opportunity to comment on S. 433. The Idaho Conservation League works to protect and restore the air, water, wildlands, and wildlife of Idaho, and for over thirty years the Idaho Conservation League has been an advocate for Idaho's outdoor values. The Clearwater Country is important to us: we have an office in the area, and our members hunt and fish, camp and hike, live and work, and otherwise enjoy this remarkable part of the West. We appreciate the opportunity to speak to you today.

I have three points I'd like to make:

- First, the Clearwater Basin is one of the nation's premier forest landscapes and worthy of the highest stewardship and protection.
- Second, under the banner of local involvement, which we do support, what would be actually be created is a new form of exclusive command and control management over National Forests, where national and regional values could all too easily be usurped by special interests.
- Finally, a purpose of this act is to "improv(e) collaborative relationships." The Idaho Conservation League is very involved in a variety of collaborative forums, and we do not need new laws to continue or improve them. We do, however, need leadership and additional resources to allow them to succeed.

THE CLEARWATER

As we sit here in Washington, I'd like to share for the Committee a bit about this wonderful country Sen. Craig and I are blessed to call home.

The Clearwater Basin as defined by this bill, is comprised of over 2.7 million acres on the Clearwater and Nez Perce National Forests and is a national treasure. Over half of this 2.7 million acres is roadless and undeveloped, in man, respects still

today as it was in frontier days and homeland to the Nez Perce Indians. In fact, the last section of the Lewis and Clark trail that is still a trail, still a footpath through the forest, can be found here.

High quality spawning habitat for salmon and steelhead are found in the Clearwater. These ocean-going fish are but one tangible example of how the Clearwater is a national treasure. Commercial and sport fishermen, native tribes, and an entire Northwest identity are tied to these fish that travel from Idaho, to Washington, Oregon, and out to the sea and back again. The Clearwater contains a myriad of sites sacred to the Nez Perce, and today, provides Idahoans of all ages unparalleled recreation experiences in places like Kelly Creek, the Lolo Trail, the Lochsa River, Pot Mountain, Weitas Creek, and the Mallard-Larkins.

As our nation pauses to commemorate the bicentennial of the Lewis and Clark expedition, we should be gathered here to praise and protect the Clearwater for all time, to enhance protections, not to cast it to new and untested management regimes. As Idahoans, the lands encompassed in this bill are anchors to our quality of life, our history, and indeed, our future. The Clearwater Country represents some of the finest examples of public land in our nation; as much as anywhere these are indeed our National Forests.

#### S. 433

Our primary concern with S. 433 is that it takes this very special part of our National Forests, held in trust for all Americans, and places much of it in the control of 15 local people.

I understand frustrations that develop over Forest Service management. I'm not here to defend the US Forest Service. But I will suggest that frustration with one of our nation's most trusted agencies in favor of new command and control management from a new group with no proven expertise and no legal requirement for national-interest stewardship is the wrong path.

This proposal originates in the deeply flawed Federal Lands Task Force, a State of Idaho scheme to take over portions our public lands. Our organization was involved in the early phases of this task force until it became clear that regardless of our input it was an industry-controlled effort to maximize production.

A few points of concern with the Clearwater project as we understand it:

- The 5-year schedule of activities developed by the advisory panel would have an rushed environmental review by the agency that could lead to insulation from the protections of environmental law.
- The 5-year schedule of activities would consolidate a wide variety of projects into one decision document lumping both non-controversial projects with those raising greater concern from the public. This, in effect, raises the stakes from various legal challenges rather than lessening the impact of judicial challenge now focused on site-specific projects.
- Finally, from its very beginning in the State of Idaho's Federal Land Task Force, we have seen a troubling yet fairly obvious objective: weaken or eliminate the safeguards of environmental law and public involvement in order to promote logging and other commodity uses. We see this as a direct conflict with the purposes of public lands generally, but extraordinarily troublesome on the Clearwater, one of the nation's greatest examples of unprotected, undeveloped National Forest.

#### COLLABORATION

My third point addresses a key goal of this legislation: to improve collaborative relationships. Now there are many in the conservation community who are very suspicious of collaborative processes. Such concerns are not without basis, but I am here as a conservationist willing to engage in such work.

As Senator Craig well knows, the Idaho Conservation League has a long history and regularly demonstrates openness to cooperative and collaborative projects on public lands. Success, quite frankly, has been modest. We would advise investing deeper in collaborative projects now underway to create a record of success before legislatively forcing new processes on a very skeptical public.

Collaboration comes from the bottom up, and is based on local leadership and involvement. The situation has to be ripe and ready for people to come together and invest the needed time to succeed.

For instance, in the Owyhee Canyonlands, at the invitation of the Owyhee County Commission, the Idaho Conservation League has been at the negotiation table with ranchers and other local interests for over two and a half years. We hope to see leg-

isolation come from that process to this committee this year. This is unprecedented work, and we didn't need Congress to tell us to do it.

Closer to the Clearwater, the Idaho Conservation League participated in the Meadow Face Pilot Stewardship Project on the Nez Perce Forest. This effort resulted in a good proposal with multiple benefits, but overall it failed because the goods-for-services concept of payment could not cover the costs of the project—a high-risk area with low value timber—and the conservation work we all agreed to do had no other means of funding.

#### CONCLUSION

In summary, the Idaho Conservation League opposes S. 433 on several grounds. These include:

- The Clearwater and Nez Perce National Forests contain some of the nation's finest and most vulnerable unprotected wildlands. This is a place worthy of our nation's greatest stewardship, not untested management schemes.
- S. 433 will set up a new set of regulations, controlled by a few people—some with a commodity production mandate—to control the future of one of our prized national treasures.
- A finally, we believe there is a growing role for cooperative projects on our public lands. But local involvement needs to start at home rather than be mandated by Congress. Collaboration is borne of trust not force, and comes in steps not leaps.

Thank you for the opportunity to participate in this hearing.

Senator CRAIG. Rick, thank you very much.

A couple of questions of both of you. I think we probably all share some of the same frustrations and maybe with different ways of getting at them. I am pleased to watch the Craig-Wyden RAC's at work. They appear to be working in many instances. They have tackled some reasonably tough issues, but not some of the larger issues that still plague us. I think that the task force addresses itself to that broader approach to some extent.

Rick, I know you have concern and question and there is a great deal of good work that the Idaho Conservation League does.

In the composition of the advisory panel on pages 4 and 5, we attempted to be as open and as inclusive as possible. What we are finding out—and I think you would agree to some extent—is that while not one size fits all, local input is extremely valuable sometimes and that while we can establish broad Federal guidelines that have to be met within a process, that we should not allow that Federal guideline to absolutely control the uniqueness of a given area, a watershed, as long as certain standards are met.

In certain categories and in category 2 of an advisory panel, we talk about those from national environmental organizations, regional and local environmental organizations, dispersed recreational activity groups, archaeological and historical interests, national and regional fish and wildlife interests. That is in category 2. So we do reach out, as we have with the RAC's, to organizations like yours and even beyond yours to maybe national organizations who could participate in what is a collaborative process. Do you object to that?

Dr. JOHNSON. No. We appreciate the opportunity and are frequently given the opportunity to both participate in formal and informal collaborative processes. The agency has full authority to, as you know, initiate advisory panels and things like that, and we are often called to do that.

One of the challenges that we face, however, is despite the contention of some that the environmental movement is this huge,

giant monolith, there really actually are very few of us, and the ability to adequately staff and participate in these often very time-consuming processes is frankly not easy. And the transportation, with all due respect, to get to the end of the road can sometimes be pretty challenging.

We do, however, as citizen participants in public land processes in Idaho appreciate the opportunity and, as often as possible, take the opportunity to participate. I think, as you well know, there are many in the conservation community, however, that do not engage in collaborative processes and that frankly limits the pool.

Senator CRAIG. I appreciate the commitment because both sides have to participate. They have to give time away from their jobs. Some are paid for doing it, some are not. But we all understand that in the public process in a representative democracy, I would much prefer the public to be making the decisions than a bureaucrat in some instances. While it is certainly the responsibility of an agency person to make sure that guidelines are adhered to, if we are to have some say in the way our local communities survive and the environments around them, there has to be a level of local participation.

What we are striving for here—and I would think that Idahoans, be they of the community or of all of these category groups, would want to participate if the participation—and this is what is key—is meaningful. If it is simply to meet and meet and meet and then have a Federal agency say, well, that does not really count, we are going to go ahead and do it this way, I think that is what has frustrated us for so long and frankly, as you well know, has brought about the kind of conflict that has brought public land policy to a stalemate and in many instances, I would argue, might have created the loss of millions of acres of wildlands in the last several years.

So what we are striving for here is to try to create a full participatory process, but to bring just a little of it home just to give Idahoans a little bit of the right, all Idahoans, to have a say in the management of these lands.

As I say, to date because we have put incentive into the Craig-Wyden RAC's, they are working in many instances. Things are getting done. Folks who have been at conflict with each other for a decade are now becoming coffee cup friends, seeing that they can work together for the common good, and we have incentivized them to do so.

Well, there are a good many questions I could ask, and I will leave it open. But is there any additional comment you would like to make to what I just said, Rick?

Dr. JOHNSON. Well, I think one of the challenges that we face in Idaho and across the West right now is, as has been repeatedly mentioned, is the issue of fire in dealing with private property, in dealing with the communities that are adjacent. I would suggest for the record and just as fellow Idahoans here whether it is the red tree project or the red tree issue in the Sawtooth NRA or ponderosa overcrowding by Douglas fir in the Payette or cheat grass infestations all across the Snake River plain or then up in the Clearwater, the forest succession that is a result of the 1910 fire, that we have many, many big challenges in front of us dealing with

the issue of fire in the West. It is quite accurately a ticking time bomb out there.

But I think that we are perhaps a tad arrogant to suggest that a committee or a group of people putting together a group of projects is going to fix that. So in any circumstance, be it this bill, be it other bills, be it forest planning, I would hope that we do not become so enamored with some of these processes to suggest that that is what is going to fix the issue of too much forest succession and too much fire suppression in the Intermountain West.

I would also close by just a reminder that ultimately there will be fires in the West and we will have to ask communities and fellow citizens to gather to deal with them. Nature always bats last.

Senator CRAIG. Well, Rick, I thank you. We would like to have you, if you will, provide us with a variety of realistic changes or changes that you see as realistic in S. 433 that might help expedite some of these projects that deal with the situation around Elk City.

Your last and closing comment is consistent with what I have just said and what I will say. You are absolutely right. We cannot fix the current circumstance. There is not enough money in the Federal Government. There is not enough time in the day for the next 20 years to resolve the dead and dying nature of 160 million acres of Federal forest lands, and some of them we would not want to fix anyway.

But we did speak out this last year collectively as a Congress that around communities it is incumbent upon us to try to save them. To deny that opportunity is foolish because those are the projects we can affect. We can affect some urban and community watersheds and save them maybe. And I am not talking about broad and expansive reaches beyond the definition that would be millions or hundreds of thousands or tens of thousands of acres, not at all. But to know that Elk City is sitting there ready to burn and not to engage in a way that might create a reasonable and environmentally sound buffer around it is in my opinion foolhardy.

As I turn to you, Susie, here is my concern about the uniqueness of that property and those people. A few years ago, Rick and Susie, I had the opportunity to visit Elk City again and the school. As I was walking up to the school, it was about noon hour. Two kids came out the front door of the school with fishing poles. They had just left a computer and they were headed out for the lunch hour and they were going to fish in the local stream behind the school. I thought at that time what a phenomenal, idyllic situation and environment to grow up in.

Well, 100 of those 132 kids are no longer there. They had to leave because the community changed because there was nothing left for them to do there or their parents. I can accept those kinds of economic changes. I cannot accept them when they are arbitrarily and capriciously decided by a group outside of Idaho for the common good or the broader general good or philosophical need of interests. That is what frustrates me.

And that is what we are talking about in Elk City at this moment. Now we are talking about survival not of a sawmill or of a job base, but of the homes.

Susie, you are right in expressing your concern for fear. Last year 2,700 homes went up in smoke because the lightning either

struck near or the winds took the lightening strike closer. And the gridlock on the Clearwater and the upper reaches is obvious. I had mentioned it to Dave Tenny in a meeting a year ago, and yet nothing has been done 1 year later after multiple promises, and the supervisor of that forest sitting right there and nodding his head all the way through it, and just weeks ago in Elk City saying he could not nor would he do anything. My goodness. Such power that local supervisor has or such an activity he has chosen to take. That is frustrating.

Could you speak to us about that gridlock and specifically as it concerns the immediate area and what brought us to the task force and ultimately the legislation?

Ms. BOROWICZ. The folks in the area around Elk City have been working consistently year after year after year after year meeting in workshops, going to meetings, working on the task force, trying to get things going, looking for opportunities, looking for something to help us out. I mean, this is not just an overnight thing. This has been going on for a long, long time. That is, I think, where most of our frustration level comes from is the promises being made and the excuses being given as to why things cannot happen. And we get the same thing year after year after year. And we go to the same meetings year after year, and things are not getting any better. They are getting worse.

Senator CRAIG. I think you and Rick share that frustration, at least with the meeting cycle.

Ms. BOROWICZ. I know what he is talking about because it does take a lot of time. The people in Elk city have to take time to go the meetings outside too. So it works both ways.

The Clearwater Elk Collaborative came up with figures for 2003 as to what is happening on the Nez Perce Forest, and there were 495 acres that were harvested on the entire forest in 2003, compared to 40,000 acres that were burned. The percentages there are just phenomenal. It is .1 percent of the forest was harvested. That is .1 of 1 percent. Almost over 2 percent of the forest was burned, and that includes not only the fires but also the fires that were set to maintain the habitat as well.

It is just amazing the gridlock that we have got there and the things that are not happening in the places where there are opportunities for things to happen. When things come from the bottom up, I am the bottom. I mean, I am the community. I am one of the bottom people. And that is where it is coming from. It is coming from folks like me in the community on the bottom, coming up to you and asking you for the chance to make this opportunity happen, to have us help those forest people get along and get going and make these projects happen.

Senator CRAIG. You mentioned the North Central RAC and that you thought that was a step in the right direction as regards collaboration. Do you feel the RAC process goes far enough or should go further?

Ms. BOROWICZ. I would like you to attend one of our meetings for the North Central Idaho RAC. They are remarkable. There is a lot of give and take. Folks are listening. Both ends of the spectrum are there, everybody in between. It has got a wide representation. It is very good.

Anytime you do write a bill, you always know that it is going to cover most situations, but it will not cover all situations. In this case, the Craig-Wyden bill is there as a framework, but it needs a little fine-tuning in this one particular situation. This might not apply to someplace else, but it does apply to our situation here. So by honing in on that one pilot project in this one area, you can do a lot of good and a lot of help. You cannot foresee, when you write a bill, all circumstances. That is not for us to do, but you do your best job when you do write a bill. But there is something that comes up and you have to clarify it and fine-tune it a little bit more, and that is where this would come in in connection, in partnership with the Craig-Wyden bill, which is phenomenal. I cannot say enough good stuff about it. It is working where we are.

Senator CRAIG. Well, thank you both very much for your presence here today, your time out to come testify. I know you both appreciate these issues with passion and commitment. We will see if we can work our way through this one that can bring about the kind of balance that I think, Rick, you are concerned about and the kind of activity that Ms. Borowicz is concerned about. If we could accomplish those two things, we might just save Elk City, and in this instance I am not talking about saving its job base. I am talking about saving its physical structure because I am extremely concerned that that is a community destined to experience wildfire if we cannot in some way try to create an environmentally compatible buffer around it that assures the water quality and the sustaining of that community. It is a very real issue at this time.

Thank you both for attending. For any additional comments, the record will be held open for the appropriate amount of time. We will work with both of you as we move legislation forward to see if it cannot be fine-tuned to gain especially groups like the Idaho Conservation League's support. We want them involved. We want you participating in the process so that action is compatible with as broad a majority or base of the interested parties in Idaho as we can create. Thank you all very much.

The subcommittee will stand adjourned.

[Whereupon, at 4:17 p.m., the hearing was adjourned.]



## APPENDIXES

### APPENDIX I

#### Responses to Additional Questions

THE HIGHLANDS COALITION  
Titusville, NJ, April 29, 2004.

HON. LARRY C. CRAIG,  
*Chairman, Subcommittee on Public Lands and Forests, Senate Committee on Energy and Natural Resources, Washington, DC.*

DEAR CHAIRMAN CRAIG: Thank you for the opportunity to testify before the Subcommittee on Public Lands & Forests in support of the H.R. 1964, the Highlands Conservation Act. We greatly appreciate that you scheduled a hearing on this important legislation, and your commitment to work with the sponsors to address the pressing land conservation and water protection needs in our densely populated region.

I also appreciate your thoughtful questions to clarify the legislation and have done my best to respond to your questions below:

*Question 1.* In your reading of the bill, who is responsible to choose the high priority projects to be proposed to the Secretaries: the Governors of the states, or the Forest Service?

*Answer.* As I read the bill, the Governors of the Highlands states would propose the projects to the Secretaries. However, they would be limited to selecting projects from within areas identified as having high conservation value by the Forest Service. This process would be similar to the project selection process under the Forest Legacy Program in which the states submit projects from within eligible Forest Legacy Areas that have been previously approved by the Forest Service.

*Question 2.* I am wondering if you can give me a better understanding of the total area of where the Highlands projects will be located. From the bill I know it is larger than 2 million acres. I also know it is within the Reading Prong and other similar ecological upland areas. But, can you help clarify not only the length of the Highland area, but also how wide an area is included?

*Answer.* The extent of the Highlands region has been well defined in NY and NJ by the Forest Service in the *NY-NJ Highlands Regional Study: 2002 Update* (see map enclosed\*). Since completion of the Update, a team from the State and Private Forestry Division of the Forest Service has met with state, local and private partners in both CT and PA to define a study area boundary for an extension of the Update to the two states. The Forest Service has subsequently developed a draft map of the region in CT (enclosed), and is finalizing a map of the region in PA. In the interim, we have developed a revised draft map of the region in PA that we have provided to the committee that addresses the concerns that you have raised about the extent and integrity of the PA portion of the Highlands. We feel confident based on our most recent conversations with the Forest Service that this map is consistent with the agency's current thinking and we believe that it will go a long way toward addressing concerns raised by you and your staff.

The land area represented by our revised four-state map is approximately 3.3 million acres, and is clearly limited by geology and other scientific criteria. This figure is significantly larger than the actual Highlands landform because the boundaries are drawn to municipal lines, as per the methodology used by the Forest Service for ease of analysis and administration. Furthermore, only those portions of the area within this boundary identified by the Forest Service as having high conservation

\*NOTE: All enclosures have been retained in subcommittee files.

value would be eligible for the federal matching funds provided for in Section 5 of the Act. Thus the net area of focus would be far less than 3.3 million acres.

The northern boundary along the entire length of the Highlands is clearly outlined by the broad Great Valley (an Ordovician formation), which separates the Highlands from the Ridge and Valley region. The southern edge of the Highlands is also limited by geologic lines, beginning with Cameron's Line in Connecticut down to the southern edge of the Diabase Hills in Pennsylvania—in effect the southern edge of the Appalachian region in these four states.

The eastern boundary is limited by the Connecticut-Massachusetts line (where the Berkshire region begins), as indicated in the US Forest Service draft map, and the western limit in Pennsylvania is the terminus of the central Diabase Hills, a Jurassic-Triassic geologic formation that interlocks with the Reading Prong, ending close to the Susquehanna River. With this refined boundary in place, the approximate length of the delineated four-state region is now 250 miles, and the width averages approximately 30 miles.

*Question 3.* I see in the legislation that the projects to be undertaken come from a couple of the lists in the 1992 Highlands Study and its 2000 update. I also see those studies only examined areas within the New York and New Jersey. Can you help us understand how the Governors or Secretaries can submit any projects from Connecticut or Pennsylvania given the current wording of the bill?

*Answer.* The intent of the legislation is that the Forest Service would first have to identify areas that have high conservation value in Connecticut and Pennsylvania in order for projects in those states and areas to be eligible for funding under Section 5. Toward this end, we have worked with the delegations of both states to request funding of \$500,000 in FY05 for the US Forest Service to complete an extension of the 2002 Highlands Study Update to the two states, thereby providing this necessary identification of eligible areas of high conservation value.

An earlier version of H.R. 1964 included the following language in Section 5(c)(5) as an additional eligibility condition:

(e) Other similar studies conducted by the Forest Service in the Highlands region

We feel that this or similar language should be included in the legislation to make explicit the opportunity for a Forest Service extension of the 2002 Study Update to trigger eligibility for projects from Connecticut and Pennsylvania.

*Question 4.* I notice there is nothing in this bill that allows for a potentially impacted neighbor of one of these projects to voice his or her concerns in a formal process directed by the legislation. Let's say I am a neighbor to a parcel and I am worried about the added use that will occur as a result of an acquisition. Can you describe what alternative state process, for each state in the bill, would protect the interests of the individual neighbors involved?

*Answer.* Under Section 5, in identifying projects for submission to the Secretaries, the Governors would be required to take "input from pertinent units of local government and the public". Given the densely populated nature of our region, it is generally very attractive to homeowners and landowners to have adjacent properties conserved as open space, since development of those properties typically has more impact on local traffic and their quality of life. Property values also tend to rise for homes adjacent to conserved lands.

By requiring the states to take input from local governments and the public, the legislation, in my view, very appropriately leaves it to the states to determine how this input is provided. Clarifying committee report language could make it clear that neighbors on adjacent parcels of land be notified and given opportunity to comment on any proposed projects, and also that opportunity to comment come both during and after a project proposal. As a matter of course states typically adopt this approach, but clarifying this in report language would underscore its importance.

*Question 5.* When we require full NEPA on even the simplest of federal projects in my state, and we are going to utilize up to 50% Federal funding to pay for these acquisitions, don't you think we should impose the Federal NEPA process on these projects in the Highlands bill?

*Answer.* I do not read the bill as currently written to alter any requirements for review that might occur under NEPA. Given that NEPA review is not typically required for federal matching grants for land conservation projects through the Land and Water Conservation Fund, Forest Legacy, or other similar programs, we feel that adding any additional NEPA requirements to this legislation would be inconsistent with this precedent.

*Question 6.* Would you support exempting some projects on federal lands in my state from NEPA if the state supports the projects?

Answer. The mission and focus of the Highlands Coalition is limited to the four-state Highlands region and thus we do not get involved in any issues beyond our region. Again, I don't read this bill to alter any requirements that might occur under NEPA.

*Question 7.* Does your organization have a position on outer continental shelf oil and gas drilling off the states of Connecticut, New Jersey, New York and Pennsylvania?

Answer. This issue is beyond the scope of our mission and we have no position on it.

*Question 8.* I note that the bill speaks to paying for the Federal share of these projects out of the Land and Water Conservation Trust Fund and other federal and general funds of the Treasury. Can you be more specific about what specific funds of the Treasury you would recommend using?

Answer. This legislation is modeled after the state and federal partnership to conserve Sterling Forest in New York. In 1996, Congress approved \$17.5 million from the federal Land & Water Conservation Fund to match state and private funds for the purchase of over 14,000 acres that are now part of Sterling Forest State Park. Our assumption is that funds authorized in Section 5 of the Act would be provided from the Federal Land & Water Conservation Fund. It is worth noting that as in the case of Sterling Forest, any projects undertaken through the Highlands Conservation Act would result in no new federal land ownership, and thus no new continuing federal obligations.

Thank you again for your time and careful consideration of the Highlands Conservation Act. Please let me know if you need further clarification regarding any of these issues, or if there is any additional information we can provide.

Sincerely,

THOMAS A. GILBERT,  
*Executive Director.*

[Enclosures.]

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OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS,  
UNITED STATES DEPARTMENT OF THE INTERIOR,  
Washington, DC 20240

Hon. LARRY E. CRAIG  
*Chairman, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Enclosed are responses prepared by the National Park Service to questions you submitted following the March 24, 2004, hearing on H.R. 1964, "To establish the Highlands Stewardship Area in the States of Connecticut, New Jersey, New York, and Pennsylvania."

Thank you for the opportunity to provide this material for the record.

Sincerely,

JANE M. LYDER,  
*Legislative Counsel.*

[Enclosures.]

QUESTIONS FROM SENATOR CRAIG

*Question 1.* In your reading of the bill, who is the lead agency related to implementation, the Department of the Interior, or the Forest Service?

Answer. In our reading of the bill as passed by the House, both the Secretaries of the Interior and Agriculture have a role to play in the implementation of the bill. The Secretary of the Interior has the lead in section 5 which provides a process by which a list of projects eligible for financial assistance are submitted to Congress. To be eligible, a non-Federal entity must enter into an agreement with the Secretary. Funds to carry out section 5 are authorized to be appropriated to the Department of the Interior, totaling \$100 million over 10 years. The Secretary of Agriculture has the lead in section 6 which provides that the Forest Service undertake further studies and research, communicate the findings of the studies, and assist in identifying and using relevant financial and technical assistance programs in the Department of Agriculture. Funds to carry out section 6 are authorized to be appropriated to the Department of Agriculture, totaling \$10 million over 10 years.

*Question 2.* Who is responsible for choosing the high priority projects to be proposed to the Secretaries. Is it the Governors of the States, or is it the Forest Service or someone else?

**Answer.** It is my understanding that the Governors of the Highlands States, with input from units of local governments and the public, submit a list of proposed projects to the Secretary of the Interior. The Secretary of the Interior, in consultation with the Secretary of Agriculture, submits a list to Congress from the list provided by the Governor of those projects that are eligible to receive financial assistance as described in the bill.

**Question 3.** I note that your agency has recommended finding other funding sources to pay for the costs of this bill. Could you provide us some alternative sources to consider?

**Answer.** We believe that existing programs and authorities, such as Rivers, Trails and Conservation Assistance, Wild and Scenic Rivers' assistance, and the Land and Water Conservation Fund (LWCF), among others, could be used for the purposes of the bill. For example, between 2000 and 2003, the Department has made LWCF grants available to the four states totaling over \$46.6 million.

**Question 4.** I see that your agency believed on June 17, 2003 that the bill "does not authorize any activity not already authorized under current law." Was there anything added in the amendment process that changed that belief?

**Answer.** No.

## APPENDIX II

### Additional Material Submitted for the Record

THREE RIVERS TIMBER, INC.,  
*Kamiah, ID, March 26, 2004.*

Hon. LARRY CRAIG,  
*Chairman, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR SENATOR CRAIG: This letter will provide input for Three Rivers Timber, Inc., on S. 433, the Clearwater Basin Project Act.

Three Rivers Timber, Inc., is a family owned, small business sawmill operation located at Kamiah, Idaho. We employ 115 people in the mill, and provide contract jobs to log, truck, and build roads for an additional 85 people. Raw material for our rurally located operation comes from private and state lands in the area. A small portion of raw material comes from the 4 million acre Forest Service land base tributary to our operation. In recent years, this federal source of timber supply has been gridlocked by procedural challenges that prevents it from significantly contributing to the raw material needs of converting facilities in the Clearwater Basin.

During this period of gridlock, lack of active timber management has resulted in a serious decline in forest health and other resource values. Forest insect and disease problems continue unabated, resulting in an increase in serious wildfire events. Conditions are mounting for a large, catastrophic wildfire that will threaten local rural communities, and surely damage water and fishery resource values.

In addition, during this period one of the premier public lands elk herd in the country has suffered a severe population crash caused by a lack of habitat. Due to the procedural gridlock in the last eight years, active management projects designed to provide elk habitat, particularly in winter range, have not moved forward as was supposed to happen under forest plan objectives. As a result, winterkill has taken the herd to low levels, and the herd has not significantly recovered despite relatively mild winters the last few years.

Recently, new authorities, especially the Forest Health Initiative and National Fire Plans, have given the Forest Service new management tools. Unfortunately, there has not been a significant effort made at the local level to aggressively take advantage of these options. Further, we have been involved in numerous collaborative efforts to develop community-based projects. All have failed to produce an implementable project. Either national environmental organizations have cleverly frustrated local solutions, or the Forest Service has internally not supported these innovative projects.

The only projects to enjoy implementation have been produced by the North Central Idaho Resource Advisory Committee acting under the authority of the Craig-Wyden legislation. We believe these efforts have been successful because of the makeup of this particular RAC, and the unique feature of Craig-Wyden to control funding approval and allocation.

We need S. 433, and strongly support prompt enactment. This unique legislation should have bipartisan political support as it can be implemented within all existing environmental and land management laws and regulations. It does not exempt decisions and implementing activities from administrative appeal and judicial review, if needed. It provides a collaborative framework to provide quality input from local publics, and to implement actions in a more efficient and timely manner.

We also recommend use of the current North Central Idaho RAC, previously referenced, as the collaborative advising panel as outlined by S. 433. This group is in place, functioning efficiently, and can be quickly operational. This is an extremely important feature of S. 433, and key to finally getting projects on the ground. The RAC has demonstrated the ability to perform.

We greatly appreciate the opportunity to comment on S. 433. It appears to us that this legislation demonstrates clear recognition of the serious decline of federal for-

ests in the Clearwater Basin, and provides a tool to address this problem in timely fashion.

BILL MULLIGAN,  
*President.*

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CLEARWATER ELK RECOVERY TEAM,  
*Moscow, ID, March 26, 2004.*

*Energy and Natural Resources Committee, U.S. Senate, Washington, DC.*

Reference: Senate 433

The Clearwater Elk Recovery Team (CERT) advocates for the creation and rejuvenation of elk forage on winter transition and summer range through logging and burning throughout the federal forests in Idaho's Clearwater Basin. The CERT was first organized as a public collaborative group for the Stewardship Pilot Project, Middle-Black on the Clearwater National Forest. CERT members have participated in numerous public collaborative groups for projects such as the Meadow-Face Stewardship Pilot Project and the Red River Stewardship Project on the Nez Perce National Forest. Most recently (January 2003-present) CERT members have taken part in Senator Mike Crapo's Clearwater Elk Collaborative.

The CERT and an organization called Save Elk City worked together on the initial concepts and design of the Clearwater Basin Project and bill. The CERT believes in the need for strong elk herds and economically strong and safe rural communities. Our Clearwater Basin elk herds have been reduced in many areas to below self-sustaining levels due to lack of critical winter forage and predation by wolves, bears and lions.

Senate 433 will get action on the ground by focusing on the forage needs of elk and the economic and public safety needs of rural communities in the Clearwater Basin. Elk City residents live next to a time bomb created by diseased and dead forests that surround them. Elk need openings in the thick forests of the Clearwater and Nez Perce so that brush fields, grasses and forbs can provide them necessary nourishment.

Federal forest officials in positions of leadership have failed local Clearwater citizens and a once world-renowned Clearwater elk herd by never adequately implementing the recommendations of citizen collaboration. Senate 433 will correct that situation. Utilize the Craig-Wyden Act's standing Regional Advisory Committee to implement a passed Senate 433 and we can begin the process of recovering forest health and elk in the Clearwater Basin.

The CERT strongly supports passage of Senate 433.

Sincerely,

ED LINDAHL,  
*Chair.*

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CONCERNED SPORTSMEN OF IDAHO, INC.,  
*Viola, ID, March 26, 2004.*

*Energy and Natural Resources Committee, U.S. Senate, Washington, DC.*

Reference; Senate 433

The Concerned Sportsmen of Idaho, Inc. (CSI) fully supports Senate 433. Passage of S. 433 will take care of treating dead and dying forests in the Clearwater Basin and provide necessary elk feed by creating disturbance in thick, fuel-choked, mid-seral forests in the Clearwater and Nez Perce National Forests.

Healthy forests and healthy elk herds will contribute to the economic strength of rural communities and will make them safe from the ravages of catastrophic wildfires.

Members of the CSI participated in drafting the Clearwater Basin Project and the CSI supports utilizing the presently constituted Regional Advisory Committee for project evaluation and approval.

Please pass S. 433 quickly so that healthy elk herds and forest health can return to the Clearwater Basin.

Sincerely,

JIM HAGEDORN,  
*President.*

SOCIETY OF AMERICAN FORESTERS,  
Bethesda, MD, March 31, 2004.

Hon. LARRY CRAIG,  
Chairman, Subcommittee on Public Lands and Forests, Senate Committee on Energy  
and Natural Resources, Washington, DC.

DEAR CHAIRMAN CRAIG: The Society of American Foresters advocates the development, authorization, and implementation of pilot projects to test alternative approaches for managing federal forest lands administered by the U.S. Forest Service and Bureau of Land Management (BLM). Pilot projects are needed to address and help resolve the ecological, economic, and social challenges presented by the currently complex and confusing statutory and regulatory framework that encumbers federal lands management decision making. Forest and range health, as well as productive uses of federal lands, have declined, partly as a result of these time-consuming and cumbersome decision-making processes. Through careful monitoring, well-designed locally-developed pilot projects can evaluate innovative ways to improve deteriorating ecosystem conditions through enhanced stakeholder collaboration and trust, consensus building, and efficiency, while meeting congressionally established goals for federal lands. Thus pilot projects can assist further refinement and implementation of federal land management reform at a broader scale.

The SAF believes pilot projects should incorporate collaboration, public participation, environmental protection, long range planning, and multiple use and sustained yield principles. The inclusion of objective monitoring and assessment of on-the-ground results would greatly enhance the integrity and scientific validity of pilot projects. The SAF supports the further development and implementation of existing pilot projects and additional new projects.

*The Clearwater Basin Project Act* (S. 433) would create a pilot project on the Nez Perce and Clearwater Forests in Idaho, allowing the Agencies to work with local stakeholders in developing, implementing, and monitoring projects and activities on these forests. This bill would maintain environmental protections through NEPA, the Endangered Species Act, FLPMA, and all other applicable laws; maintain consistency with land and resource management plans; and provide opportunities for public participation, through an Advisory Panel and through public meetings, public comment periods, and appeals and judicial review. Thus, the SAF supports S. 433 as means to test new processes on these two National Forests.

The SAF strongly supports the efforts in this legislation to improve and expedite NEPA processes through tiering. Tiering maintains environmental review while removing redundancies in this review. The SAF also applauds the inclusion of monitoring and encourages flexibility to utilize the lessons learned through this monitoring via adaptive management.

SAF encourages Congress to consider the creation of additional pilot projects in other regions of the country.

Thank you for your consideration.

Sincerely,

MICHAEL T. GOERGEN, JR.,  
Executive Vice-President, CEO.

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STATEMENT OF FRIENDS OF THE CLEARWATER ON S. 433

Friends of the Clearwater appreciates the opportunity to submit this written statement on S. 433, the Clearwater Basin Project Act. We request that these comments be included in the hearing record on this legislation. Friends of the Clearwater is a Moscow, Idaho-based, local conservation organization focusing primarily on the public lands in the Clearwater basin including the Clearwater and Nez Perce National Forests.

These public wildlands contain many unprotected roadless areas and wild rivers, and provide crucial habitat for countless rare plant and animal species. Nearly 1.4 million acres of this project area consists of inventoried roadless land—areas that are crucial for fish and wildlife such as salmon, bull trout, steelhead, lynx, wolverine, fisher, and goshawk. Recent research has shown the Clearwater Basin is the most important area, including Yellowstone and Jasper National Park, in the Rocky Mountains of the US and Canada for the recovery of large carnivores. This area is also a hot spot for endemism and genetic diversity.

We are concerned this bill would exclude most of the public from having an effective voice on public forest management rather than foster cooperation. This bill would greatly diminish the role of NEPA—the law that provides *all* citizens the

same rights to participate. This bill could have a detrimental effect on the public assets, resources, and values held by all Americans.

Section 2 defines this as a pilot project. That is the exact language used by the State of Idaho's study called the Federal Lands Task Force. The goal of this study is to privatize public lands. This pilot project is the implementation of one of those proposals.

Section 2 also emphasizes stewardship contracting. That authority already exists; this bill is redundant. In any case, stewardship contracting has a poor track record in the region. Of the two stewardship contract projects in this region, it looks like neither is fiscally workable. The stewardship contract for the Meadow Face project (Nez Perce National) received no bidders. It looks likely the Middle-Black project (Clearwater National Forest) may not work as a stewardship contract for economic reasons.

The local advisory committee make-up in section 3 would be largely special interests reflecting economic and/or extractive users of public land. Public lands are not well served by a model that amplifies a commodity/extractive interest over the public interest.

It is also important to note all committee members must be Idaho residents, "and to the extent practicable, within or adjacent to the pilot project area." That effectively precludes participation from the majority of the public. Ironically, much of the Clearwater and Nez Perce National Forests are closer to towns in Montana than any town in Idaho. This provision also precludes participation of entities such as Columbia River Basin Tribes in Oregon and Washington whose treaty rights are directly affected by activities on the Clearwater and Nez Perce National Forests.

This committee operates by a majority vote. Most so-called collaborative processes operate by consensus.

Even though the State of Idaho's Public Lands Task Force pilot project omitted the Wilderness, section 4 of this bill seems to indicate this project would apply to all of the Lochsa, Powell, North Fork, Moose Creek, Red River/Elk City, and Clearwater Ranger Districts. As such, that includes most of the Selway-Bitterroot and some of the Gospel Hump and Frank Church-River of No Return Wildernesses. One of the stated reasons for this legislation is restoration of ecosystem health—a topic of much uncertainty and controversy. The science behind the ICBEMP shows the areas with the greatest integrity are wilderness and roadless lands. Thus, the inclusion of wilderness and roadless lands in this legislation is puzzling.

Section 4 makes the committee more than advisory as its schedule becomes the priority and drives national forest management. Since the projects themselves are labeled "priority" in the legislation, they become more important than projects that go through the normal agency/public processes. This section also requires the Forest Service to do NEPA and other law compliance on a draft 5-year project list within one year, approve the final schedule within thirty days, and implement the projects. It seems that the whole schedule would be approved in one decision document rather than on a project level as required by NEPA and NFMA. Currently, the agency evaluates projects according to the forest plan and related priorities.

The schedule requires consultation, not concurrence, from the Forest Service and Nez Perce Tribe. There is only one provision for the Forest Service to reject the schedule, and that is in the final 30 day NEPA review period. The committee selects and therefore drives management on the Clearwater and Nez Perce National Forests.

It seems that noncontroversial projects would be thrown in the same mix as controversial ones. This is not sound policy. Also, mixing five years worth of projects into one document or analysis can't meet quality standards of thoughtful site-specific analysis.

The bill notes in the last sentence of Section 4(d)(4) that:

"The schedule may include any amendment of the applicable forest land and resource management plan that the advisory panel recommends or that the applicable Forest Supervisor determines is necessary to allow or facilitate implementation of one or more activities in the schedule."

This part of the bill will basically make forest planning meaningless, especially coupled with section 4(f)(3). For example, the committee could suggest wholesale changes to the forest plan standards and guidelines intended to maintain water quality. Since the Forest Service and Nez Perce Tribe only need to consult with the committee on the list, these could go forth under analysis even if they were not agency priorities.

There is a real danger that non-priorities could get moved up the agenda in this political process. While the Forest Service could reject a project in the final stage, there is no mechanism to prevent projects from being analyzed by the agency. Rath-

er than create efficiency, this bill would create a process that could waste agency time.

The proposed bill states Sec. 4(f)(3):

"If any review, consultation, or coordination required under the National Environmental Policy Act of 1969 or other law has not been completed for a schedule within the required one-year period, the lack of completion shall not be a basis for challenging or delaying submittal, approval, or implementation of an activity in the schedule, if the applicable Forest Supervisor, in consultation with the advisory panel, finds that sufficient review, consultation, and coordination regarding the activity has occurred and a sufficient record exists to make a reasoned decision regarding approval of the activity."

This would effectively do away with NEPA, NFMA, the ESA and largely take the public out of public land management. In other words, these laws are discretionary based upon the whims of a committee and the Forest Supervisor. Public accountability is reduced in this process.

This section assumes a project-centered approach that may not be appropriate for much of the area. Biological constraints such as carrying capacity are not mentioned in the legislation and there seems to be an implicit assumption that those real constraints are irrelevant.

Section 5 requires monitoring by the Forest Service but does not spell out what parameters are to be monitored. This section also suggests that the University of Idaho's College of Natural Resources monitor implementation as well. The University of Idaho's funding problems are well known. Asking them to do more in this current fiscal climate could put an additional burden on the institution. It is not clear that the U of I would receive appropriated funding for monitoring like the Forest Service.

#### SUMMARY

It seems the legislation is based upon an assumption the current public process doesn't work, at least for some who want to run the show. It is true democracy is a messy process. However, legislating significant diminution of public involvement and public processes by establishing imperfect surrogates and requiring strict timelines won't result in less controversy or better decisions. It will only increase conflict.

#### STATEMENT OF THE WILDERNESS SOCIETY ON S. 433

The Wilderness Society appreciates the opportunity to comment on S. 433, the Clearwater Basin Project Act, and requests that our comments be included in the hearing record on this legislation. The Wilderness Society is a national environmental organization with 200,000 members and eight regional offices. Founded in 1935, The Wilderness Society works to protect America's wilderness and develop a nationwide network of wildlands through public education, scientific analysis, and advocacy.

#### CONCERNS WITH S. 433

The Wilderness Society has serious concerns about the proposed legislation because it would weaken environmental safeguards and unduly complicate management planning in one of the nation's outstanding wildland areas. Rather than pursuing a flawed and controversial "charter forest" in the Clearwater Basin, we recommend that Congress provide additional funding to enable the Forest Service to accomplish needed stewardship work in the Basin.

The proposed Clearwater Basin Pilot Project Area affects 2,719,000 acres of federal land within the Clearwater and Nez Perce National Forests. The streams and forests of these federal lands provide exceptional water quality, wildlife habitat, and wilderness resources, including some of the best habitat in the lower 48 states for salmon, steelhead, lynx, and wolf. More than half of the Project Area—approximately 1.4 million acres—consists of inventoried roadless areas.

The bill authorizes an unwieldy and burdensome decision-making and environmental review process for the Pilot Project Area. First, the Secretary of Agriculture would appoint a 15-member Clearwater Advisory Panel (CAP), which would have the responsibility to develop a proposed 5-year schedule of high priority management activities in the Clearwater Basin. The Forest Service would have the impossible burden of completing within 1 year all the environmental analyses, endangered species consultations, public involvement, and any other consultation and coordination on the proposed activities. The CAP would then recommend a final 5-year

schedule to the Forest Service for approval. Upon approval of the schedule, "the Forest Service may issue any permits, contracts, or other authorizations for activities in the schedule *without further review, consultation, or coordination under the National Environmental Policy Act of 1969 or other laws.*" Sec. 4(h) (emphasis added). Apparently, the 5-year schedule would be subject to administrative appeal, but the individual project authorizations would not. While the 5-year schedule would be subject to judicial review, citizens would be barred from challenging the projects based on incomplete environmental analysis. After 5 years, the process would start again, with the CAP proposing a second 5-year schedule of activities. The bill also authorizes 3 stewardship contracts within the project area. The pilot project would be authorized to continue until at least 2012.

The proposed pilot project has several major problems. Most important, it would be extremely difficult for the Forest Service to conduct an adequate site-specific environmental review of a 5-year schedule potentially involving dozens of projects scattered over thousands of acres. The bill implicitly recognizes this problem by imposing a 1-year deadline on the environmental review and consultation process and giving the CAP and Forest Service power to deem the process "sufficient." Sec. 4(f)(3). Very likely, the Forest Service would be rushed into doing a superficial analysis of environmental effects and providing minimal opportunity for public involvement for anyone except CAP members. Consequently, environmentally damaging projects could be proposed with inadequate scientific and public review, thus jeopardizing the endangered salmon and other exceptional environmental values of the Clearwater Basin.

The pilot project is also extremely risky because all the activities included in the 5-year schedule would be highly vulnerable to legal challenge. Ordinarily, environmental appeals and lawsuits focus on a relatively small number of controversial activities (like large timber sales and road-building projects), allowing non-controversial activities to be implemented. However, the bill essentially requires that the analysis of all projects must be completed before any project can be implemented. By bundling all of the CAP-proposed activities into a single decision document (the 5-year schedule), the bill practically invites a "train wreck" of complete gridlock in the Clearwater Basin. This is not the way to build collaborative relationships over federal land management.

Another problem with S. 433 is that it would duplicate legal authorities already provided by Congress. The bill's authorization of three stewardship contracts is redundant, since Congress last year provided broad stewardship contracting authority to the Forest Service for the next ten years (Section 323 of Public Law 108-7, 16 U.S.C. 2104 note). Also, direction to create the Clearwater Advisory Panel is unnecessary, since the Forest Service already has ample authority and direction to establish advisory boards for these national forests under the National Forest Management Act (16 U.S.C. 1612(b)).

#### PILOT PROJECTS AND "CHARTER FORESTS"

The Clearwater Basin Pilot Project originated as one of five pilot projects proposed by the Idaho Federal Lands Task Force that would give local and state officials greater control over nearly half of Idaho's national forests. The Bush Administration in 2002 suggested establishing "charter forests" within the National Forest System, based on proposals by the Idaho Task Force and others.

The Wilderness Society strongly opposes the concept of charter forests. The national forests are a cherished part of America's natural landscape and social fabric. Currently, the Forest Service must abide by various federal laws, policies, and plans to protect fish habitat and other environmental values in all the national forests. Since these are federal public lands, the agency must consider the interests and concerns of all Americans, including future generations, in determining appropriate management. However, under a charter forest, local interests and concerns would take priority, and non-local viewpoints inevitably would take a back seat.

The Clearwater Basin is a good example of why turning national forests into locally-governed charter forests is a bad idea. The Clearwater and Nez Perce National Forests provide critical spawning habitat for salmon and steelhead that migrate through the Snake and Columbia Rivers to the Pacific Ocean. Those anadromous fish are vitally important to commercial and sport fishermen, the tourism industry, Indian tribes, and the general public in Oregon, Washington, and elsewhere, far beyond the Idaho border. Yet, the State of Idaho and local interests would presume to balance the salmon habitat protection interests of all Americans with the logging, grazing, and mining interests of local residents.

We are very concerned that the underlying objective and effect of charter forests would be to weaken or eliminate environmental safeguards and public participation,

while promoting logging and other commodity uses of the national forests. Turning national forests into charter forests to be managed by local boards for local interests is a fundamentally flawed idea that will never fly with the American people.

#### COLLABORATION AND FUNDING

While the bill states that the purpose of the Clearwater Advisory Committee is to "improv[e] collaborative relationships," we believe that the pilot project would have the opposite effect. Based on The Wilderness Society's experience with collaborative processes in Idaho, Oregon, and elsewhere, we have learned that the collaboration can be a productive way to bring diverse interests together to identify and advance mutual goals. However, collaboration takes a lot of time and patience to find common ground; it is probably not the key to speeding up decisions, cutting red tape, or increasing efficiency in federal land management. Existing public participation and planning processes—while often frustrating—at least are somewhat reliable and well understood.

We believe it would be a serious mistake for Congress to impose deadlines, assign specific procedures, or otherwise attempt to formalize collaborative efforts. Collaborative groups need to be able to develop their own rules and procedures, based on their unique make-up. They can function effectively and creatively as informal advisors to the federal land managers, complementing—rather than replacing—public participation laws and processes. Also, any effort to turn over control of federal lands to local interests would be extremely divisive and polarizing, likely leading to environmental boycotts of collaborative efforts and further gridlock of federal land management.

The Wilderness Society is a member of a collaborative group that Senator Crapo called together to discuss elk populations on the Clearwater National Forest. One mutual goal is that the conservative elk hunters, like The Wilderness Society, want the Forest Service to expand its use of prescribed fire and allowing wildfires to burn. The Clearwater National Forest allowed more wildfires to burn this year, in part because of the growing recognition of the benefits of wildland fire. The Wilderness Society would never have participated in this collaborative had the intention been to short circuit or circumvent existing laws and procedures.

Congress can and should encourage the positive work of broad-based, inclusive collaborative groups in Idaho and elsewhere by providing more financial assistance. Restoration and monitoring of federal lands traditionally have been hampered by severe shortage of funding. However, these activities hold the greatest promise for gaining broad-based collaborative support and energy. The Forest Service has many restoration projects that are stalled simply due to lack of funds. Some money has become available for restoration and monitoring through the federal county payments Title II program adopted by Congress in 2000, but more funds are needed to achieve on-the-ground results. Funding is also needed to help collaborative groups operate effectively and to train local workers in restoration-oriented job skills.

Unfortunately, S. 433 provides no dedicated funding to accomplish the stewardship work that the bill purports to encourage. The Forest Service would have to take money away from similar work in other regions of the country in order to pay for the Idaho pilot project.

#### CONCLUSION

The Wilderness Society opposes S. 433 and strongly recommends that Congress steer clear of the charter forest concept. Instead, policy-makers should focus on ways to help collaborative groups and federal land managers succeed in putting people to work restoring the ecological integrity of public lands, for the benefit of all Americans.

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#### STATEMENT OF ANTHONY D. JOHNSON, CHAIRMAN, NEZ PERCE TRIBAL EXECUTIVE COMMITTEE, NEZ PERCE TRIBE, ON S. 433

On behalf of the Nez Perce Tribe, I would like to thank the Committee for allowing the Tribe this opportunity to share its views on the Clearwater Basin Project Act (S. 433). The bill as written is intended to provide for enhanced collaborative forest stewardship management within the Clearwater and Nez Perce National Forests in Idaho, and as such will certainly effect the Nez Perce Tribe. As previously conveyed to the Energy and Natural Resources Committee through correspondence, the Tribe has concerns that the bill unnecessarily replicates processes already in place and weakens environmental laws. However, if the bill is enacted there are

amendments that the Tribe would like included in order to ensure that involvement of the Tribe will be guaranteed and adequate appropriations authorized.

The Tribe believes that establishing the Clearwater Advisory Panel is duplicative of an existing legislative process. Section 3 of the bill establishes the Clearwater Advisory Panel, "for the purpose of improving collaborative relationships and providing advice and recommendations to the Forest Service." However, the region already has a North Central Idaho Resource Advisory Council (the RAC) that currently recommends projects to the Clearwater and Nez Perce National Forests for implementation. The RAC was established under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Public Law 106-393).

Similarly, collaboration and cooperation between local stakeholders already occurs. In addition to the RAC, the Forest Service actively engages local communities and stakeholders when they are designing projects. Leadership on both national forests design projects with the timber industry, elk habitat (burning and thinning) and fish habitat (road decommissioning and culvert replacement) in mind. Additionally, under the leadership of Senator Crapo, a collaborative process has been formed with local industry, environmental groups, the Tribe and others to develop projects to benefit elk.

Section 4 of the bill authorizes 3 stewardship contracts. However, stewardship contracting already exists. Stewardship contracting authority is now a permanent tool that the Forest Service can use for selling timber and providing other services such as road and trail maintenance or fish and wildlife projects. On February 20, 2003, Section 323 of Public Law 108-7 authorized the Forest Service and the BLM to implement stewardship end result contracting provisions.

In the event that this legislation is advanced by the Subcommittee, the Tribe would like to see that section 4 is amended in order to ensure that environmental analysis required under existing law is not diluted or eliminated. Section 4(f) discusses the NEPA requirements and other legal requirements for the five year schedule of activities and specific projects. This section significantly reduces the level of environmental analysis under NEPA and the ESA. Section 4(f)(1) requires the Forest Service to complete all environmental analysis and consultations within one year of the submission of the five year schedule. Section 4(f)(3) states that if any legal requirement is not met within that one year requirement, then the Forest Service's failure to meet the legal requirements is not a basis for challenging a project. The five year schedule must then be approved by the Forest Supervisor, and that approval is subject to administrative appeal, but presumably not on grounds such as NEPA or the ESA. The five year schedule presumes that sufficient time should be allocated for activity-specific environmental analysis. This section is written loosely enough to be interpreted that there is no requirement to complete environmental analysis on the five year schedule or on specific activities contained in the schedule, effectively ignoring environmental laws.

The Nez Perce Tribe also requests that this legislation be amended to specifically state that the Forest Service is authorized to enter into stewardship, action design, NEPA compliance activity, action implementation, and monitoring contracts with the Nez Perce Tribe. The Tribe has the demonstrated capability of performing such work, and has a strong interest in ensuring that work performed in national forests on and adjacent to the Reservation is carried out in a professional manner protective of tribal treaty resources.

Finally, the Tribe would like the Subcommittee to include in section 6(a)(2) authorizing language for appropriations adequate for the Tribe to provide the technical assistance provided for in section 4(d)(2) of the bill. Tribal technical assistance would include input from a tribal interdisciplinary team including cultural, fisheries, water, wildlife, soils, forestry, fire ecology tribal interests.

In summary, the Nez Perce Tribe believes that this proposed legislation is repetitive of existing efforts, but if it goes forward it requires amendments to ensure compliance with existing environmental laws, clarification that the Forest Service can contract with the Tribe to perform activities authorized by the legislation, and inclusion of an appropriations authorization sufficient to ensure that the Tribe can provide the necessary technical assistance.

Thank you for the opportunity to share the views of the Nez Perce Tribe with respect to this legislation.

STATE OF NEW YORK,  
Albany, NY, March 22, 2004.

Hon. LARRY E. CRAIG  
*Chairman, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: New York State strongly supports the proposed Highlands Conservation Act (H.R. 1964) currently pending before the Senate Energy and Natural Resources Committee.

The State has worked for many years with the United States Forest Service and the Department of Interior on issues related to the conservation of the Highlands region. We also have worked closely with Congresswoman Sue Kelly, in whose District much of the Highlands region in New York is included, on the current version of the legislation.

The legislation is respectful of New York's long tradition of "home rule" and requires that any land acquisition activities that would take place as a result of the legislation would be voluntary in nature and conducted strictly on a willing seller/willing buyer basis, based on priorities identified by the State in consultation with local governments, conservation organizations and citizens in the region.

The legislation also authorizes funding for implementation of best management practices on private forest land, which will help maintain lands in private ownership while ensuring that these lands will also contribute to water quality protection and other environmental values.

Congress has an excellent opportunity this year to help the States of New York, New Jersey, Pennsylvania and Connecticut to conserve this important region. The attached testimony from our State Commissioner of Environmental Conservation, Erin M. Crotty, outlines in greater detail the State's position of support for this legislation.

I appreciate your consideration of this legislation.

Very truly yours,

GEORGE E. PATAKI,  
*Governor.*

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STATEMENT OF BONNER R. COHEN, PH.D., ON H.R. 1964

Good afternoon, my name is Bonner Cohen. I am a senior fellow with the National Center for Public Policy Research in Washington, D.C. and a member of the Board of Directors of the American Policy Center in Warrenton, Virginia. I want to thank Chairman Craig and the other members of the subcommittee for the opportunity to comment on the "Highlands Conservation Act," H.R. 1964.

I believe the legislation under consideration by this subcommittee is flawed in several key respects. At a fundamental level, it equates government ownership of land with conservation, an idea our Founding Fathers would have found amusing, to say the least. At least 40 percent of the land area of the United States is owned by government—federal, state, and local. Much of this land is poorly managed—from overgrown, disease-ridden national forests that routinely spawn catastrophic wildfires, to national parks that are in such a state of disrepair that the Park Service estimates it will take \$5 billion and many years to undo the damage. To set aside more hard-earned taxpayer dollars for additional land acquisitions, in the name of conservation, is to ignore the disastrous environmental consequences of the already bloated public estate.

Unfortunately, this is exactly what the Highlands Conservation Act does. The bill will increase the size of the public estate in the Highlands region. In doing so, it will pose a severe threat to the rights and livelihoods of property owners in the targeted area. While the bill gives property owners the right to decline selling their lands, this "willing-seller" provision is illusory. In the real world, there is no such thing as a "willing seller."

In the case of the Highlands Conservation Act, "non-federal entities," also known as non-governmental organizations (NGOs), with a clear political agenda will identify lands for "management" and will oversee the ensuing conservation actions. Few landowners will be able to withstand the pressure of environmental groups working in concert with state and local governments, eager to acquire private lands with taxpayer money. As the public estate in the region grows, the value of adjacent private lands will diminish. And, as property values decline, landowners will have little choice but to sell their land at a fraction of its former worth.

Furthermore, the removal of private land from the tax rolls will have a devastating effect on local revenues. Raising property taxes on the remaining private

lands will be the only way local governments can make up the revenue short-fall. This, in turn, could force additional landowners to sell their property to the government.

We are told that the bill will cost \$100 million, to be disbursed in \$10 million increments between 2005 and 2014. But there is nothing in the bill that prevents Congress from continuing appropriations beyond 2014. Similarly, the scope of the bill is currently limited to some 2 million acres in Pennsylvania, New York, New Jersey, and Connecticut. But there is nothing in the legislation to keep the area from being expanded to include highland areas in, say, Maryland and Vermont. In fact, the bill grants the U.S. Forest Service the right to continue land assessments studies and provides \$1 million toward that end. As such, the legislation is an open-ended invitation for government and its carefully selected "partners" to lock up more land.

Indeed, equally disturbing is the cozy relationship the Highlands Conservation Act envisages between government and certain NGOs. The governors of the four states *currently* covered under the bill will identify lands in the Highlands region for management, based on recommendations made by state and local environmental organizations. These suggestions will then be forwarded to officials at the Departments of Interior and Agriculture for review, who will submit final recommendations to Congress for the purpose of appropriating the 50 percent federal share of matching funds.

Once this process has been completed, the NGOs will set about overseeing and managing the lands they themselves played a large part in identifying. As a sign of just how cozy the relationship is between the NGOs and the various government entities involved in the Highlands Conservation Act, one of these groups, the Palisades Interstate Park Commission, is specifically cited in the bill.

Allowing these organizations—elected by no one and accountable to no one—to join forces with friendly state regulators supported by federal funds and impose land-use restrictions on unsuspecting property owners makes a travesty of representative democracy. While the bill keeps federal bureaucrats largely out of the land-management decisions, it simply replaces them with state regulators and allied environmental groups. To the landowner, this is a distinction without a difference.

At a time of skyrocketing budget deficits at the federal, state, and local level, using scarce taxpayer dollars to acquire more land—taking it out of productive use and removing it from the tax rolls—makes no economic sense. The key to an economically and environmentally vibrant rural America does not lie in government ownership of land. American agriculture leads the world not because the land is owned by the government and managed by politically favored NGOs, but because it is under the stewardship of farmers whose livelihoods depend on how they use and conserve their land.

The Highlands Conservation Act ignores this lesson. If enacted, it will be harmful for the people in the Highlands and their environment.

Thank you very much.

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STATEMENT OF ERIN M. CROTTY, COMMISSIONER, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ON H.R. 1964

Senator Craig and members of the Subcommittee on Public Lands and Forests, thank you for providing the New York State Department of Environmental Conservation with this opportunity to present our testimony on H.R. 1964, the Highlands Conservation Act. The enactment of this legislation can do much to enhance the comprehensive open space conservation program that has been a cornerstone of the administration of New York Governor George E. Pataki, and it has the strong support of the New York State Office of Parks, Recreation, and Historic Preservation as well as the Department. On behalf of Governor Pataki and my sister New York State agencies, I want to express our appreciation to the Subcommittee for agreeing to hold a hearing that includes this important legislation.

The Highlands spreads like a necklace of green around the New York metropolitan region, stretching from Pennsylvania through Southeast New York and Northern New Jersey to Northwest Connecticut. The region in New York, about 629,000 acres encompassing all or part of 25 municipalities in five counties, contains rolling forested hills, pristine streams and wetlands, historic sites, special geologic features and exceptional scenic vistas and various State parks, including Sterling Forest, Harriman, Bear Mountain, Hudson Highlands and Fahnestock, as well as several State Forests and Wildlife Management Areas.

The Hudson Highlands has long been identified as an important resource area in many studies and is included as a priority project in New York State's Open Space Conservation Plan. Under Governor Pataki's leadership, the State has worked in

partnership with local governments, conservation organizations, the federal government, the interstate Palisades Interstate Park Commission and the State of New Jersey to conserve outstanding portions of the Highlands.

Indeed, since 1995, the State has acquired 26,777 acres in the Highlands area which includes:

- The acquisition of 18,044 acres to create Sterling Forest State Park in Orange County;
- The 794-acre Wonder Lake State Park in Putnam County;
- 5,197 acres of additions to Clarence Fahnestock State Park, Putnam County;
- 2,458 acres to create Schunemunk State Park, Orange County;
- A 53-acre addition to High Tor State Park, Rockland County; and
- A 231-acre addition to Hudson Highland State Park in Putnam County.

The acquisition of Sterling Forest in 1998—which, at the time, was the largest privately held undeveloped property within the region—was accomplished with the assistance of funding from the State of New Jersey, private donations and the federal Land and Water Conservation Fund. Just as this acquisition was viewed by Congress as worthy of a commitment of federal funding to help preserve the water supply for millions of residents of the New York Metropolitan area, the conservation of the larger Highlands Region is deserving of the federal recognition and attention which the Highlands Conservation Act would bring to this magnificent area.

The legislation would authorize appropriations of \$10 million annually from both the Federal Land and Water Conservation Fund (LWCF) for state land purchases, and \$1 million annually from the United States Department of Agriculture for private landowner assistance through the United States Forest Service (USFS).

Our Department has worked for many years with the USFS and the United States Department of Interior to promote the conservation of the Highlands region. We worked closely with the USFS on the 2002 Highlands Regional Study, which documented the growing need to conserve the region's natural resources from the increasing pace of growth that threatens to fragment the forests of the area and degrade water quality. The State also has worked with the USFS to designate the Highlands Region in New York State as a federal Forest Legacy Area, and received a \$1.5 million grant from the program in 2003 for the acquisition of Pochuck Mountain in the Town of Warwick, Orange County. The USFS also has provided funding to the State to encourage private forest land owners within the region to develop Forest Stewardship Management Plans which can be implemented with cost sharing assistance from the Forest Land Enhancement Program.

A portion of the Highlands region east of the Hudson River is included in New York City's watershed, another vitally important economic and environmental resource that is deserving of federal assistance, in addition to the support it is receiving from the City and State agencies.

We worked closely with former United States Congressman Benjamin Gilman on the original Highlands legislation and are grateful to Congresswoman Kelly for her leadership on the current bill. The basic tenet of this legislation is that federal assistance to help conserve this region is appropriate, based on the long tradition of local decision-making that defines the region. Any acquisitions which would be made under this legislation would be done on a voluntary basis with willing landowners. Priorities for conservation and private landowner assistance would be identified at the local and State level, with the input and support of local governments and citizens.

The Highlands Conservation Act recognizes the importance of the multi-state Highlands Region, where one in nine Americans lives within a two hour drive. Land use changes spurred by rapid population growth within this still largely rural region have placed stresses on the area that will diminish its value as a major water supply and a recreational destination for the Metropolitan New York area. Taking the prudent steps authorized in the Highlands Conservation Act now to encourage private landowners to conserve their holdings, while augmenting the funding that is available to public land management agencies to acquire open space in the region, can help to ensure that this region will continue to provide millions of Americans with irreplaceable environmental benefits.

I urge the Subcommittee to approve this legislation, and quickly forward it to the full Committee on Energy and Natural Resources for its consideration. Thank you.