

Statement of James M. Peña
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Before the United States House of Representatives
Committee on Natural Resources
Subcommittee on National Parks, Forests, and Public Lands

June 28, 2012

Concerning

H.R. 4109, the “Los Padres Conservation and Recreation Act of 2012”

Mr. Chairman, Ranking Member Grijalva, and members of the Committee, my name is Jim Peña. I serve as the Associate Deputy Chief for the National Forest System. Thank you for inviting me here today to testify regarding H.R. 4109 the “Los Padres Conservation and Recreation Act of 2012”. H.R. 4109 is a large and complex bill that involves designation and specific management direction related to nearly 63,600 acres of new wilderness, designation of approximately 88.6 miles of new wild and scenic rivers, creation of about 18,500 acres of a new special management area, designation of two new OHV areas comprising close to 65,800 acres, and execution of a land exchange with the United Water Conversation District of California.

The Department does not oppose H.R. 4109, but would like to work with the bill sponsor and the Committee to address several concerns.

TITLE I – ADDITIONS TO NATIONAL WILDERNESS PRESERVATION SYSTEM

Consistent with the Wilderness Act and National Forest Management Act, the Department supports wilderness designation for areas that are dominated by the forces of nature, and that offer outstanding opportunities for solitude or primitive and unconfined recreation. The majority of the land parcels proposed for Wilderness designation were recommended through the Land and Resource Management Plan for the Los Padres National Forest. These lands encompass expansive grasslands, chaparral covered slopes, rolling badlands, high elevation mountains, and deep, winding river canyons. Endangered

Condors make their home here and unique plants like the Santa Ynez false-lupine exist here and nowhere else on earth. However, there are several key issues the Department would like to work on with the Subcommittee and Bill sponsor.

The Department shares the concerns about wildfire suppression and pre-suppression with the community, the Subcommittee and the bill sponsor. However, the Department cannot support the prescriptive wildland fire language included in section 102(e)(2) that changes the Forest Service delegation of authority. Under the current policy for suppressing and managing wilderness fires the Forest Supervisor is the responsible federal official who makes a verbal request to the Regional Forester for approval to use motorized equipment for suppressing the wildfire. This time-tested policy outlines the delegation of authority for use of motorized and mechanized equipment and allows the Agency to implement a wide range of activities in both administrative and emergency situations. Consistent with the National Incident Command System, the incident commander operates under a delegation of authority from the hosting agency for the purpose of managing the incident. The incident commander exercises the delegated authority of the agency during the incident. The Department would recommend that the current system of requests and approvals be continued for the Wilderness designated under this bill.

Under existing authorities the Forest Service has successfully implemented a wide range of emergency and administrative activities in support of fire suppression and pre-suppression. The Forest Service has the capability under existing approval procedures to respond in a timely manner when authorizing motorized equipment and mechanical transport in wilderness areas.

In addition, in section 102(e)(3), the bill refers to “post-wildfire hazards on the land”. This term is unclear and the Department would like to work with the Subcommittee and the bill sponsor to clarify its meaning. The Forest Service uses a Minimum Resource Decision Guide (MRDG), or “minimum tool analysis” to guide the appropriate response for addressing emergency conditions within wilderness. Based on a case-by-case analysis, the “minimum tool” can authorize the use of motorized equipment with in wilderness consistent with section 4(c) of the Wilderness Act of 1964.

In section 102(f), the bill refers to “expedited emergency lifeline repair projects.” If the road is outside of the wilderness boundary and the boundary is sufficiently set back to

allow for anticipated maintenance-associated features such as culverts and retaining walls, then this language is unnecessary. The Department suggests that section 102 (j) should be changed to read that the allowed right of way shall run with the land, rather than the lawful owner of such property shall be allowed right of way to their property. The Department would like to work with the Subcommittee and bill sponsor to further clarify our concerns.

TITLE II – ADDITIONS TO NATIONAL WILD AND SCENIC RIVER SYSTEM

The Department generally supports the designation of additional rivers to the National Wild and Scenic River System. However, several of the new segment classifications are inconsistent with the classification findings in the eligibility and suitability studies for the proposed Wild and Scenic Rivers. There is also a discrepancy in the total mileage listed for Piru Creek and the sum of the mileages of the individual segments. The Department would like the opportunity to work with the Subcommittee and bill sponsor to change the segment classifications to be consistent with the eligibility and suitability findings and to clear up the Piru Creek mileage discrepancies.

The Department would like to work with the Committee and the bill sponsor to identify an approach that is more consistent with the Wild and Scenic Rivers Act for the designation of Upper Sespe Creek. Subparagraph (B) of that designation exempts the effects of maintenance, repair or improvements of California Highway 33 by the California Department of Transportation. As written, subparagraph (B) could reduce the Agency's ability to ensure that activities in the wild and scenic river corridor are consistent with protecting river values, free flow and water quality present at the date of designation. The Department requests the opportunity to work with the Subcommittee on the concerns regarding Highway 33, while remaining consistent with the Wild and Scenic Rivers Act.

TITLE III – CONDOR RIDGE SCENIC AREA

H.R. 4109 provides additional protections for 18,520 acres along the crest of the bucolic Gaviota Coast. The Land and Resource Management Plan for the Los Padres National Forest recommended Condor Ridge for Wilderness designation; however, the Department supports the creation of the Condor Ridge Scenic Area. In addition, the Department requests the Committee provide more time than three years to develop the comprehensive management plan.

TITLE IV – OFF HIGHWAY VEHICLE USE

Off Highway Vehicle (OHV) use is a popular activity on the National Forests, and the Department supports the provision of diverse OHV opportunities for recreational users. However, designating new OHV areas and trails and opening existing trails to new uses without first conducting environmental analysis to determine potential resource effects, including threatened and endangered species, is a serious concern.

If this legislation moves forward, the Department requests that the Subcommittee expressly clarify the new designations are subject to National Environmental Policy Act (NEPA). The mitigation measures identified in the NEPA process would provide the appropriate enforcement plans and closures to ensure the protection of the resources, including threatened and endangered species in the area.

TITLE V – LAND EXCHANGE

The land exchange outlined in this bill directs an exchange with the United Water Conservation District (UWCD) of California. The United States would acquire 350 acres (more or less) near Lake Piru on the southeastern edge of the Los Padres National Forest near the Ventura/Los Angeles county line, in exchange for the conveyance of 440 acres (more or less) of federal lands, including the Blue Point Campground along Piru Creek, a one-mile stretch of Piru Creek, several parcels of land along the lake's shoreline, and all of the remaining federally-owned portions of the access road around the lake's perimeter.

The Department does not oppose a land exchange with the UWCD, but cannot support this land exchange as written. The Department prefers to allow the Forest Service to conduct this exchange administratively in order to ensure an equal value exchange, a public interest determination, and appropriate environmental review occurs. The Department would like the opportunity to work with the Subcommittee and bill sponsor to ensure that this exchange is in the public's best interest.

Section 502(a) requires the Secretary to enter into an exchange with the UWCD, while allowing “de minimis” changes to the parcels based upon public input from the NEPA process. In addition, section 502(d)(1) states that the lands to be exchanged are depicted

on the overview map. However, the detail present on the overview map is not sufficient to inform either the Subcommittee or the Secretary of the parcels involved in the land exchange. The Department would suggest that a separate and discrete land exchange map, clearly identifying the parcels and their locations be included with the legislation as it moves through Committee.

Section 502(g) excludes water rights, which presumably means the UWCD will continue to be able to use National Forest System lands for its water uses. By UWCD retaining water rights, the United States will not be in a position to determine the management activities on NFS lands, including managing resources and activities that require water. The Department respectfully requests that the Subcommittee amend this provision to ensure that the United States acquire all rights, title and interest in the lands, including water rights.

In addition, the Department does not know if there are title issues related to the UWCD lands included in the exchange. The fact that it remains included in the legislation as a specific cost that the UWCD will not be responsible for concerns the Department that there may be title issues. Further, curing defects to title are the responsibility of the current landowner to resolve prior to conveyance to the United States. Since the Department of Justice Title Standards 2001 apply (502(d)(5)) which limit the ability of the United States to acquire land with defective title, it remains unclear why the United States would expend funds to clear potential title defects on property it does not yet own.

In previous iterations of the land exchange, the UWCD was to pay for the construction of a parking lot allowing for public access to the Potholes Trail on National Forest System lands. The current bill requires the UWCD to construct this parking lot, but section 502(d)(4) exempts the UWCD from paying for the costs of construction. The Department would like to work with the Committee, the bill sponsor and the UWCD to address this provision in a mutually satisfactory manner that addresses the need for public access and parking for the Potholes Trail. The bill also requires the proceeds from the equalization payment shall be deposited in the general fund of the Treasury. Utilizing Public Law 90-171, commonly known as the "Sisk Act" (16 U.S.C. 484a), would allow for the deposit of proceeds received for a conveyance into the fund established under the Sisk Act for the acquisition of land or interests in land within the State of California.

Map Concerns

The Department has concerns regarding the overview map that is referenced in the bill. The Forest Service provided mapping services to the bill Sponsor, creating six detailed legislative maps of the proposed new wilderness areas/expansions, as well as the two proposed new OHV areas. Citing the more general overview map only, instead of the specific legislative maps, would likely open the door to future boundary disputes. Technically correct maps are vitally important to our on-the-ground management and implementation of Congress's direction. The Department would like to work with the Subcommittee and bill sponsor to ensure the detailed legislative maps dated February 27, 2012, are included in the bill text.

Summary

In summary, the Department supports the intent of H.R. 4109 that would add additional outstanding landscapes to the National Wilderness Preservation System, additional miles of protected rivers to the National Wild and Scenic River System, and provide additional OHV opportunities. However, my testimony outlined several critical concerns to the Committee with H. R. 4109 in its current form. The Department would like to work with the Committee and the bill sponsor to address our concerns. Furthermore, we understand that the Department of Justice may have concerns with the bill that it would like to with the Committee.

This concludes my statement and I am happy to answer any questions you might have.

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Concerning
H.R. 4484 the “Y” Mountain Access Enhancement Act

Mr. Chairman, Ranking Member Grijalva, and members of the Committee, my name is Jim Peña. I serve as the Associate Deputy Chief for the National Forest System. Thank you for inviting me here today to testify regarding H.R 4484, the “Y” Mountain Access Enhancement Act.

H.R. 4484, the “Y” Mountain Access Enhancement Act, would direct the Secretary to convey to Brigham Young University (BYU) all right, title, and interest of the United States to two parcels comprising approximately 80.99 acres of National Forest System land in the Uinta-Wasatch-Cache National Forest in the State of Utah, as shown on the accompanying map. The southern

parcel is a split estate, so the United States would only convey what it owns (the surface estate). The United States does not own the underlying mineral estate.

The Department does not object to the conveyance of the two parcels, but would like to work with the Subcommittee and the sponsor to address public access at the trailhead. The parcels are adjacent to land currently owned by the University. The trailhead and beginning portion of the “Y Mountain Trail” are located on land already owned by the University. Historically, the public has been permitted access to the trailhead and trail. Section 2(c) of the bill seeks to provide the same reasonable public access for the trail that historically has been allowed. To accomplish this objective, the Department recommends that section 2(c) be revised to provide for the reservation by the Secretary of an easement for public access for the portion of Forest Service Trail #2062 that would be conveyed to the University. Currently no legal public access to the trail exists at the trailhead and across BYU owned property. To ensure legal public access, the Department suggests the Committee consider an amendment to allow the Secretary to obtain an easement from BYU for the trailhead parking lot and the portion of trail that traverses across BYU property.

As a technical matter, the legal description in Section 2(a) should be amended to correctly describe Lot 4. The legal description for this conveyance should be: SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 6 S., R. 3 E., and Lot 4 of Section 5, T. 7 S., R. 3 E., Salt Lake Base & Meridian.

The bill provides for the conveyance of this land for consideration in the amount equal to the fair market value of the land. The bill also requires the proceeds from the sale shall be deposited in

the general fund of the Treasury to reduce the Federal debt. Utilizing Public Law 90-171, commonly known as the “Sisk Act” (16. U.S.C. 484a), would allow for the deposit of proceeds received for a conveyance into the fund established under the Sisk Act for the acquisition of land or interests in land within the State of Utah.

This concludes our testimony and I would be happy to answer any questions that you may have.