

**Statement of
Jim Pena, Associate Deputy Chief
Forest Service
United States Department of Agriculture
Before the United States
House of Representatives
Committee on Natural Resources
Subcommittee on Public Lands and Environmental Regulations
March 6, 2014
Concerning
H.R. 1839
Hermosa Creek Watershed Protection Act of 2013**

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today and provide the Department of Agriculture's views regarding H.R. 1839, the "Hermosa Creek Watershed Protection Act of 2013".

The Department supports H.R. 1839 except that, unlike the Senate version of this bill (S. 841), H.R. 1839 contains section 10 which may limit the Forest Service's ability to implement the bill.

H.R. 1839 would designate 107,886 acres of the San Juan National Forest as the Hermosa Creek Watershed Protection Area to protect water resources within the Hermosa Creek Watershed, which supplies residents of the Animas River valley and the city of Durango, Colorado with clean drinking water. This designation would be consistent with the Forest Plan. This bill recognizes the important role that National Forests play in providing clean drinking water, recreation opportunities and economic value for surrounding communities.

Of the 107,886 acres, 68,289 acres would be designated as the "Hermosa Creek Special Management Area." The purpose of the Special Management Area is to conserve and protect the watershed, geological, cultural, natural, scientific, recreational, wildlife, riparian, historical, educational, and scenic resources and values of the area. Overall this special area designation will focus attention and management priority to these non-commodity values within the area, including protection of native Colorado River cutthroat trout.

The bill also would require the creation of a management plan for the Special Watershed Management Area. The Department has concerns about the overlap of the Special Management Area plan with the San Juan Forest Plan. The management of the values and resources within the area can be addressed as components of the existing San Juan Forest Plan. We suggest adjusting this language to reflect incorporation of the management guidance as an amendment to the San Juan Forest Plan, rather than creating a new planning process.

In addition, 37,236 acres of the 107,866 acres would be designated as the Hermosa Creek Wilderness under the National Wilderness Preservation System. This area encompasses some of Colorado's most majestic, remote landscapes with many abundant wildlife species including elk,

deer, bears and a variety of birds. This area also provides opportunities to experience solitude and primitive recreation use for members of the public seeking areas to connect with nature.

Section 10 of the bill would provide that any signs, fixtures, alterations, or additions needed in connection with the designations established in this Act or for the advertisement of such designations shall be paid for only with non-Federal funds or amounts made available for such purposes in Acts of appropriation before the date of the enactment of this Act. This provision may limit the agency's ability to implement the designations and have unintended consequences.

Finally, the Department has minor technical recommendations that we would like to include in this bill that we would be happy to share with this Committee.

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

**Statement of
Jim Peña
Associate Deputy Chief
U.S. Forest Service
Department of Agriculture
House Natural Resources Committee
Subcommittee on Public Lands & Environmental Regulation
March 6, 2014
Concerning
H.R. 3606
“Emigrant Wilderness Historical Use Preservation Act of 2013”**

Mr. Chairman and members of the Subcommittee thank you for inviting me to testify today regarding H.R. 3606, the “Emigrant Wilderness Historical Use Preservation Act of 2013”. The Emigrant Wilderness, designated by Congress in 1975 in Public Law 93-632, is comprised of 113,000 acres on the Stanislaus National Forest in California. It is bordered by Yosemite National Park on the south, the Humboldt-Toiyabe National Forest on the east, and State Highway 108 on the north.

The Emigrant Wilderness is a glaciated landscape of great scenic beauty, with elevations ranging from below 5,000 feet up to 11,570 feet. The northeastern third of the Wilderness is dominated by volcanic ridges and peaks; the remaining portions consist of many sparsely vegetated, granitic ridges interspersed with numerous lakes and meadows. The area receives an average annual precipitation of 50 inches, 80 percent of it in the form of snow.

The Emigrant Wilderness is a popular wilderness destination contiguous to Yosemite National Park. There are many opportunities for the public to hike, backpack, horseback ride on its 200 miles of trail, including a portion of the Pacific Crest Trail. Day use in the wilderness is growing in the Highway 108 corridor. Some of the Emigrant Wilderness still includes cattle grazing allotments. There are two pack stock commercial outfitters within the wilderness that would be affected by this Bill.

The Department fully supports protecting the unique wilderness character of the Emigrant Wilderness and ensuring that it retains an appropriate array of activities and levels of public access. However, the Department cannot support H.R. 3606 for several critical reasons. First, this legislation essentially prioritizes commercial services in the Emigrant Wilderness over non-outfitted public recreational use. Such an action would also prioritize commercial use over the protection of the area’s wilderness character. The legislation would set commercial use at the highest level measured between 1964 and 1974, allowing for the largest amount of commercial use ever recorded in the Emigrant Wilderness. The Agency needs the discretion to be able to adjust commercial use levels if needed or warranted to preserve wilderness character. A consequence of this language is that any future adjustments in use (reductions) would have to come from that allocated to non-outfitted public use.

Second, this legislation would prevent the Agency from managing commercial services according to the provisions of the Wilderness Act that recognizes that commercial use is allowed only to the extent necessary for the realization of the recreational and other purposes of the Act. The Agency has a long tradition of balancing the needs of outfitted and non-outfitted publics in a manner that protects and preserves wilderness character. Preventing the Agency from applying its expertise to adjust management because of resource management issues or to comply with other legal requirements, such as those in the Endangered Species Act, could result in litigation to resolve the contradictions created by enactment of the legislation.

H.R. 3606 Section 3: Continuation of Historical Activities and access to federal land comprising Emigrant Wilderness, Stanislaus National Forest, California

The Department is concerned that Section 3 (b) would override the provisions of the Wilderness Act and Public Law 93-632. The language in H.R. 3606 would eliminate the Agency's ability to manage commercial use in accordance with policy and Forest Plan direction. It would also prevent the Agency from taking action to preserve wilderness character when action is indicated through field-based monitoring activities mandated by the Stanislaus Forest Plan.

More specifically, the language in Section 3 (c) would exempt the Emigrant Wilderness from provisions in the Wilderness Act of 1964 which clearly place the provision of commercial services under Agency discretion to determine the "extent necessary" for activities which are proper for realizing recreational or other wilderness purposes. The overriding purpose is the preservation of wilderness character.

Court decisions related to commercial pack stock use levels in California, and recently in Washington, have emphasized the importance of basing management decisions for commercial services on the "extent necessary", as documented by robust needs assessments. Decisions must also take into account biophysical and social conditions based on good monitoring. The language in Section 3 (c) would circumvent the Agency's ability to be aligned with the Courts' interpretation of our responsibility for determining the "extent necessary".

The language in Section 3 (e) would prevent the agency from exercising its legal authority and responsibility under law, policy, and management direction to minimize development and preserve wilderness character in the Emigrant Wilderness. For example, it would eliminate the Agency's ability to make management decisions regarding the trail system based on the need for protection of wilderness character, social conflicts, safety and maintenance capability.

Conclusion

While we fully support protecting the Emigrant Wilderness from losing its unique wilderness characteristics and ensuring that it retains an appropriate array of activities, including opportunities for the public to enjoy commercial outfitted trips, the Department cannot support H.R. 3606.

Thank you for the opportunity to testify on H.R. 3606, the "Emigrant Wilderness Historical Use Preservation Act of 2013". I am available to answer any questions.