Testimony of:
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H.R. 3400 – Recreation Not Red Tape Act
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Chairman McClintock, ranking member Hanabusa, and members of the Committee thank you for your interest in outdoor recreation and for the opportunity to testify on H.R. 3400, the Recreation Not Red-Tape Act. I am the Chief Executive Officer of Western River Expeditions and the Moab Adventure Center. My company provides a range of recreation activities on Bureau of Land Management Lands in Utah and raft trips under National Park Service contracts in Grand Canyon National Park and Canyonlands National Park. I also serve on the Board of Directors of America Outdoors Association, which represents the interests of approximately 2,000 outfitting businesses through its membership and network of affiliates. I am representing those interests with this testimony.

I want to commend the Chairman and this Committee for their interest in outdoor recreation and the attention that has been given to the issues impacting access to recreation on public lands. The Recreation Not Red-Tape Act (RNR) recognizes that the processes currently required to issue permits and regulate use can be improved. While we support the intent of the bill and many of the concepts in it, we believe that RNR needs significant adjustment before it becomes law. I want to identify those issues and suggest some changes in my testimony. We look forward to working with the Committee on those changes.

My testimony will primarily analyze the sections of the bill that we believe need adjusting, followed by an overview of the sections that we believe are good.

SECTION 1 of the bill expresses the SENSE OF CONGRESS REGARDING OUTDOOR RECREATION. We suggest not citing specific economic data in this section of the bill. The proposed Act cites economic figures for the outdoor industry in C. 3. (1) and (3), which is the contribution of the broader recreation industry to the entire economy and is not a measure of the specific economic benefits of recreation on public lands. Better data is needed on the economic benefits of recreation on public lands because most models only account for spending within a restricted geographic radius of the site visited. For example, some study models may only measure economic benefits within a 60-mile radius of the recreation site. Therefore, current spending estimates are understated because the estimates do not include at-home and some of the enroute spending in calculating the estimated $51 billion impact of recreation visits to public lands (Federal Outdoor Recreation Trends: Effect on Economic Opportunities, NCNRER, White et al, October 2014, page 18).

We support other elements of this SECTION, such as the encouragement of state and federal coordination of outdoor recreation.

TITLE 1 – MODERNIZING RECREATION PERMITTING is very important, but we think the provisions in this title need significant adjustment.

One of the key components in C. 101 (2) calls for the agencies to review the process for issuance and renewal of outfitter and guide permits. We believe many of the provisions in H.R. 289 "The GO Act" should be added to this section to provide direct statutory authority for streamlining. We also recommend including groups that represent the interests of outfitters and guides at the national level as one of the stakeholder groups to provide input on streamlining.

The provision in (C) PERMITS FOR CROSS-JURISDICTIONAL TRIPS is generally good with one exception. The Forest Service and the Bureau of Land Management have a cost-recovery rule that requires payment of the full costs of processing permits when the time required for coordination and analyses exceeds 50 hours. Agency rules provide a 50-hour credit if the permitting process requires less than 50 hours. However, that credit evaporates and full cost recovery applies back to the first hour once processing time exceeds 50 hours. The current cost recovery rule for the BLM and the Forest Service has the potential to reward the agencies financially for increasing red-tape and analyses since they may charge full-cost recovery when the time required for permit processing exceeds 50 hours.

Reforming this rule would be an appropriate provision in RNR. It is especially import for this combined permit provision to be effective. Coordination of permits to allow issuance of one permit instead of multiple permits is a worthy goal; however, most small outfitters are not likely to be able to afford the processing costs required unless some cost recovery reform is included in this section.

To make this clear, let me offer an example. If a guided hiking trip goes from BLM lands to Forest Service lands and the outfitter currently holds permits from each agency that require 30 hours of processing time for each permit, then there would be no cost recovery for the two permits issued separately. However, if the permits are combined and one permit is issued by the lead agency, the lead agency must include the concerns and issues of the subordinate agency in the permit. If the total time to coordinate and combine the permits exceeds 50 hours, full cost recovery back to the first hour is applicable.

The GO Act includes much the same language as that in RNR, but it exempts the coordination among agencies to combine the permits into one from cost recovery, making the combined permit much more affordable for the small outfitter. The Congressional Budget Office determined that the GO Act, with this provision in it, would have negligible impact on the deficit in part because the agencies have not fully implemented cost recovery and the BLM seldom uses it. In some cases, for combining simple permits, the cost recovery issue may not arise, but in other cases it could easily become an issue.

While I believe there is a genuine interest by federal agencies to increase access, the focus is on youth and the underserved, which is commendable. However, it could leave economically and socially desirable constituencies, such as families, out in the cold with regard to streamlined access. Therefore, Congress needs to provide statutory direction on streamlining since the agencies often cite Acts of Congress as the justification for their permit documentation requirements.

Among the most important provisions of the GO Act which need inclusion in RNR are the provisions that reform cost recovery, that provide for categorical exclusions for previously studied activities, that authorize temporary permits for new uses, flat fees for day uses, and other strategies to manage permits to improve access.

In general, one of the barriers to issuing permits for new activities is often old management plans which failed to consider new recreation activities when the plan was written. RNR does not address this issue. The GO Act authorizes temporary permits for new activities when those activities are not inconsistent with the management plan. This statutory authorization for temporary permits will help the agencies expand access and avoid litigation or challenges, provided that they monitor the activity.

SECTION 302 addresses RECREATION PERFORMANCE METRICS including recreation and tourism outcomes and enhanced recreation visitor experiences. Under b (2) METRICS, we suggest adding the economic benefits of recreation as a metric as well as visitation by families. While youth and school groups are important, recreation experiences by families are of equal value, as there can be no more desirable outcome than the bonding that occurs between a parent and child on a backcountry trip.

SECTION 305 authorizes the National Recreation Area System within the Bureau of Land Management and the National Forest System. SECTION 305 (d) (1) calls for "maximizing protection and enhancement of remarkable recreation values of the System unit (including natural features that support the recreation experiences)". Because "natural features" is defined as "healthy ecological, geological, hydrological, scenic, cultural or historic feature(s)", maximizing protection could be interpreted to mean protecting ecological and other features to the greatest extent possible and to the exclusion of recreation activities. We believe this provision should be revised to reduce the potential for litigation and for the creation of additional red-tape.

We also believe that areas included in the System should be managed primarily for recreation uses and not just for values, which are defined as opportunities, enjoyment, natural features, and benefits.

Our suggestion is to modify this section to read:

(1) In general.—The Secretary shall manage each System unit in a manner that enhances the remarkable recreational uses and other important values of the System unit, consistent with subsection (a), and provides for the enjoyment by this and future generations.

Also in this section, a savings clause should be added that allows for the continuation and, where appropriate, the initiation or expansion of uses, including outfitted and guided recreation services.

SUB-SECTION (e) (1) calls for the Forest Service and the BLM to draw maps and provide legal descriptions of areas eligible for inclusion in the National Recreation Area System and provides that these maps will have the force of law. Therefore, it is essential that the language authorizing this system not be written to restrain or restrict sustainable recreation uses, which could begin as interim management priorities soon after the maps are drawn.

SUB-SECTION (e) (2) authorizes Comprehensive Management Plans and again calls for management plans to maximize protection and enjoyment of recreational values, which as we have pointed out, is defined in part as healthy ecological features. This presents another concern for potential litigation and should be revised.

SUB-SECTION (h) authorizes standard amenity fees for National Recreation Areas, which amounts to an entrance fee for existing and future National Recreation Areas. This may be controversial, especially if other amenity fees are in place. While we are not opposed to this fee provision, it should be carefully considered.

One of the most commendable areas of the bill is SECTION 201, ACCESS FOR SERVICE MEMBERS AND VETERANS. We also support SECTION 301, EXTENSION OF SEASONAL RECREATION OPPORTUNITIES and SECTION 303, which expands the recreation mission to a number of federal agencies currently providing recreation opportunities and infrastructure.

While we are not experts on ski areas, we believe SECTION 304 is important. SECTION 304 (a) (2) establishes a Ski Area Fee Retention Account. A similar account should be setup for outfitter and guide fees and held in that account for expenditure on permit processing, streamlining and related infrastructure, and be available in that account for those uses without further appropriation.

I very much appreciate the opportunity to submit testimony on H.R. 3400, the Recreation Not Red-Tape Act and look forward to working on this bill as it moves forward in the Congress.