

**TESTIMONY OF  
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NATURAL RESOURCES AND ENVIRONMENT  
UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE**

**COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND  
PUBLIC LANDS  
UNITED STATES HOUSE OF REPRESENTATIVES**

**July 26, 2007**

**CONCERNING**

**H.R. 3058 – Public Land Communities Transition Assistance Act of  
2007**

Mr. Chairman and members of the committee:

Thank you for the opportunity to provide the Department's views on H.R. 3058 a bill to provide transitional payments for fiscal years 2008 through 2012 to those States and counties that previously received payments under the Secure Rural Schools and Community Self-Determination Act of 2000, P.L. 106-393 (the SRS Act), and for other purposes. We appreciate the committee's work on addressing this important matter. We recognize the impact that uncertainty of future payments has created on the States and counties that have relied on these payments to fund important local programs.

The Administration has worked diligently with this Committee and other interested Members on a reauthorization of the SRS Act. The Administration supports the reauthorization of the Secure Rural Schools and Community Self Determination Act with agreed upon offsets and eventual phase out of payments. The Department could support many of the provisions contained in H.R. 3058. However, we must strongly oppose mandatory funding for Payments-in-Lieu of Taxes (PILT). Additionally, we have serious concerns about the adequacy of the funding mechanisms contained in the bill, the total payment costs, the lack of realistic offsets, and the lack of reauthorization of programs and expenditures covered under Title II and Title III of the SRS Act. We remain ready to work with the committee to address these concerns.

## **Background**

Since enactment of the law known as the Twenty-five Percent Fund Act (16 U.S.C. § 500) in 1908, the Forest Service has distributed 25% of the gross receipts derived from the sale or use of commodities on each national forest to the state in which each national forest is located.

Beginning in the late 1980s, timber sale receipts, the primary funding source for the 25 percent payments, began a precipitous decline which continued and then stabilized at a much lower level in the 1990's. Under the 1993 Omnibus Budget Reconciliation Act, and for several years thereafter, Congress provided "safety-net" payments that totaled an average of \$338 million per year. On October 30, 2000, the SRS Act was signed into law in part to offset the effect of decreased revenues available to states from declining timber harvests on Federal lands. The Act authorized an alternative to a receipts-based payment. The SRS Act embraced three objectives: 1) to stabilize payments for a temporary period, for schools and roads in States and counties that were effected by decreased timber revenues to allow time for local economies to adjust to lower receipts; 2) to make additional investments in public and adjacent private lands; and 3) to improve the cooperative relationships among the people who use and care for federal lands, and the agencies who manage them.

The authority to make payments under the SRS Act expired after the payment for FY 2006. However a provision was included within the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 P.L. 110-28, Section 5401, to extend provisions under Title II and Title III of P.L. 106-393 for one additional year. Additionally P.L. 110-28 provided that payments shall be made, to the extent practicable, in the same amount for the same purposes and in the same manner as were made to States and counties in 2006 under the SRS Act.

## **H.R. 3058**

H.R. 3058 would amend chapter 69 of title 31, United States Code, by making the (PILT) Program mandatory for fiscal years 2008 through 2012. Additionally, H.R. 3058 provides for five additional years of secure rural schools transition payments to eligible States and counties for the same period. Specifically, the bill would require payments totaling \$2.7 billion over a five year period through fiscal year 2012 to eligible States and eligible counties. In addition, the legislation directs \$1.9 billion in mandatory spending to counties receiving federal land payments through the PILT program.

The Administration strongly opposes mandatory spending requirements in H.R. 3058 for PILT. The conversion of PILT payments from discretionary to mandatory spending for a multi-year period is both unwarranted and unrelated to the reauthorization of SRS payments. Including PILT payments substantially increases the cost of the bill and results in the need for additional mandatory spending offsets. Continuing these payments at the end of the five year authorization period would require further offsets, imposing obligations on future Congresses. Based on the difficulties that the present Congress is

having in finding offsets for reauthorizing the SRS Act, finding offsets for reauthorizing a future PILT program could be problematic. Moreover, H.R. 3058 would significantly increase PILT funding over recent appropriated levels, even though PILT funding has already increased by 74 percent since 2000. The FY 2007 payments authorized through the annual Administration budget request and Congressional appropriation process maintained the levels provided in FY 2006, which were the highest funding level in history.

The Administration also opposes the amounts of increased mandatory spending described in Section 3 of H.R. 3058. The transition payments to eligible States and counties would exceed the costs of simply reauthorizing the SRS Act with a 10 percent ramp down over the next four fiscal years by nearly \$1 billion. The costs for payments under H.R. 3058 exceed the costs of a reauthorization recently introduced in the Senate by approximately \$475 million. This is a result of increasing the authorization for a full payment from four years to five years and extending the base time period for the transition funding for Oregon, Washington and California before ramping down the payments.

The Administration appreciates efforts of the sponsors to include provisions that reduce the amount of transition payments over time. However, the bill does not fully phase out all SRS payments, a position the Administration has consistently indicated is an essential characteristic of any reauthorization. The bill would contribute to the unsustainable growth of mandatory spending which is opposed by the Administration.

H.R. 3058 borrows from many of the concepts of the SRS Act which the Administration has supported. However, while the bill would provide stable payments to States and counties it diverges from the original objective of providing these payments to States and counties affected by reduced timber receipts. Specifically, H. R. 3058 includes a revised formula for payments to States and counties with BLM land. The new payment formula uses multiple factors, including acres of Federal land within each eligible county, the full payment amount distribution to each eligible county under the SRS Act, and the per capita personal income for each eligible county.

The formula provides equal weight for the amount of acres and the full payment amount distributions for each eligible county and then requires an adjustment for the per capita personal income. The resulting adjusted share for each eligible county is used to calculate the State payment and the county payment by multiplying the adjusted share by the full funding amount for the given fiscal year. A State payment is the sum of these amounts for counties in the State. Under this calculation, payments are based less on historical receipt levels and more on eligibility criteria that resemble an entitlement authorization. The bill transitions payments by ramping down the total payments by 10 percent each year. Implementing the funding formula described in H.R. 3058 will allow some States to receive a two or three fold increase in payments from previous years and in some cases, much more.

During the first 4 years of payments under H.R. 3058, additional funds would be provided to the uniquely affected States of Washington, California, and Oregon to provide a transition to the new funding levels under the new formula. The transition payments in FY 2008 for these States are the same as the FY 2006 payments under the SRS Act, after which the transition payments would be reduced by 10 percent annually through FY2011. These payments are in lieu of the payment amounts that otherwise would have been made under the new payment formula until the year 2012 at which point all States would be covered under the new payment formula. We believe that by taking into account the additional payments to States and counties for FY 2007, required by P.L. 110-28, that an additional four years of payments through FY 2011, should be sufficient to meet the transitional needs of States and counties. We suggest that transitional payments be phased out after the transition payment for FY 2010.

H.R. 3058 requires eligible counties that receive a share of the State payment or the BLM county payment to reserve no less than 15 percent of their payment for expenditures in accordance with Title II and Title III of the SRS Act. However, there are no provisions to extend the expiration dates of these Titles which were extended in P.L. 110-28 for one additional year. Additionally, the bill does not direct that Title II funds be deposited in a special account in the Treasury and that they are available to the Secretary for projects proposed by resource advisory committees. The bill also does not provide for annual elections by the county regarding allocations to Title II or Title III projects, does not provide for proper accountability for Title III funds, and does not reauthorize resource advisory committees to monitor the implementation of Title II projects. We would like to work with the committee to ensure that these provisions and other technical corrections are included in any amendments to H.R. 3058.

H.R. 3058 would require the establishment of new fees and increases in fees for commercial activities on National Forest System lands and other federal lands as a means to offset the costs of the bill. We estimate the cost of implementing the requirements in H.R. 3058 to be \$4.6 billion over the five year period of FY 2008 through 2012.

To offset the costs of the bill, H.R. 3058 would require the Secretaries to promulgate regulations establishing new fees or fee increases for commercial activities on federal lands, National Forest System land and National Grasslands that will apply to any commercial lease or activity in effect on the date the final regulations are promulgated. It is not clear what is meant by this provision, particularly which commercial activities are covered by the language. To the extent that the bill is intended to affect pre-existing contractual or other rights and obligations, the Supreme Court has ruled that compliance with subsequent legislative acts can result in a finding that the United States is in breach of pre-existing contracts, with liability for resulting damages, *United States v. Winstar Corp.*, 518 U.S. 839 (1996). This rationale could apply to any pre-existing rights and obligations that fall within the coverage of the *Winstar* ruling.

Additionally, the bill's requirement to establish new fees through regulation does not provide a realistic approach to meet the revenue targets necessary to fully offset the bill's cost. If it is the intention of the bill to offset costs by increasing rental rates on rights-of-way across Federal lands we have a concern over the practicality of achieving the needed offsets from such an approach. Although some increase in rental rates may be justified, the total current revenues from BLM and Forest Service rights-of-way rental payments amount to only \$30 million per year; to offset the cost of payments under H.R. 3058 will require a nearly 30-fold increase in rental rates. We would be willing to continue to work with the committee on identifying mutually agreeable offsets to fully offset the cost of the payments.

As a source for offsetting payments that are phased out, the Administration continues to support our proposal that we have submitted to Congress, the National Forest Land Adjustment for Rural Communities Act. This proposal authorizes the Secretary to sell certain identified National Forest System lands in an amount not to exceed \$800 million. Under the proposal, half of the land sales proceeds will be available to make payments under a reauthorized SRS Act for FY 2008 through 2011, and half will be available in the States in which they were collected for the acquisition of lands or interests in land for National Forest System purposes, improvement of fish and wildlife habitat, restoration of National Forest System land, and conservation education. States would benefit from four additional years of payments (FY 2008 through 2011), and would also benefit from the addition of more ecologically important land to the National Forest System.

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