

**Statement of  
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**Before the  
Subcommittee on Public Lands and Forests  
Committee on Energy and Natural Resources  
United States Senate**

**Concerning  
H.R. 708 – the Mendocino National Forest Land Exchange  
S. 1167 – the Mark Twain National Forest Boundary Adjustment  
S. 1848 – the Bend Pine Nursery Administrative Site Act**

**November 18, 2003**

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to appear before you today. I would like to present the Department's views on H.R. 708, the Mendocino National Forest Land Exchange, S. 1167, to resolve boundary conflicts in Barry and Stone Counties, in the State of Missouri, and S. 1848, the Bend Pine Nursery Administrative Site Act. The Department supports H.R. 708, objects to S. 1167 unless the bill is amended to address the concerns identified in my testimony, and would like to discuss a different alternative for S. 1848.

**H.R. 708 – the Mendocino National Forest Land Exchange**

H.R. 708 authorizes the direct sale of two parcels comprising 120.9 acres of National Forest System lands on the Mendocino National Forest in California to the Faraway Ranch. Various

improvements and facilities have been constructed on these lands and they have lost much of their National Forest character. This bill provides Faraway Ranch the opportunity to acquire these lands associated with their improvements and activities.

At the time of conveyance, Faraway Ranch will make full payment of the fair market value as determined by an appraisal that conforms to the Federal appraisal standards and is acceptable to the Secretary, as well as cover all direct costs associated with completing this transaction. The Department supports this bill because it will improve management efficiency for the forest while recognizing the value of the public's assets.

### **S. 1167 – the Mark Twain National Forest Boundary Adjustment**

S. 1167 would authorize the Secretary of Agriculture or the Secretary of the Army to resolve boundary conflicts with certain landowners in Barry and Stone Counties, Missouri, who have innocently and in good faith relied on land surveys which they believed to have been correct and have, as a result, occupied, improved or claimed portions of adjoining Federal land based on such surveys.

S. 1167 would authorize the Secretaries to convey and quitclaim all right, title, and interest of the United States in land for which there is a boundary conflict; or to confirm Federal title to and retain in Federal management any land for which there is a boundary conflict where there are Federal interests, and to compensate the qualifying claimant for the value of the overlapping property for which title is confirmed and retained in Federal management, provided that a claim is filed within 15 years of the date of enactment of the Act. S. 1167 also authorizes the Secretaries to: (1) waive consideration for the value of the Federal land conveyed and quitclaimed upon a finding that the boundary conflict was the result of the innocent detrimental reliance by the qualifying claimant; (2) pay administrative, personnel, and any other costs associated with the implementation of this Act, including the costs of survey, marking and monumental property lines and corners; and (3) reimburse the qualifying claimant for reasonable out-of-pocket survey costs necessary to establish a claim under this Act.

The basic facts do not appear to be in dispute. Surveyors under contract to the US Army Corps of Engineers (Corps) in the 1970's, who conducted a series of cadastral surveys in the area around the Table Rock Reservoir in Missouri, failed to properly locate and monument a number of the original Public Land Survey System (PLSS) corners. Subsequent private land surveys, which relied on the incorrectly located corners, have confused landowners in Barry and Stone Counties regarding the location of private boundaries adjoining National Forest System lands, and we believe Corps lands as well. Unfortunately, this has led some of the affected adjoining landowners to believe they own certain parts of federally managed public land.

The Administration shares Senator Bond's concern that we need to find an equitable way to resolve the problems facing these landowners. For the Committee's information, I have attached to my testimony, a January 22, 2003, letter from Missouri State Land Surveyor to the Supervisor of the Mark Twain National Forest describing the situation in Barry and Stone Counties and the efforts of the Forest Service and the Corps to correct the problems.

S. 1167, while attempting to resolve the boundary and landownership issues with private adjoining landowners and the Federal government, does not aid other private landowners in the area with potential title claims and questionable boundaries with adjoining private landowners. The unresolved private title claims and questionable boundary locations between numerous private landowners relying on federal land surveys will encumber private land and title as long as the corners are not corrected.

We would like to work with the Subcommittee to address our concerns so that corrective land surveys are conducted and correct boundaries can be established for all potentially affected private land owners in Barry and Stone Counties, as well as for agencies of the Federal Government. However, the Department objects to the approach to this problem that S. 1167 would provide.

Our principal concern is that S. 1167 would transfer Federal land, which is the property of all U.S. citizens, at no cost. Since the passage in 1983 of the Small Tracts Act (P.L. 97-465, Stat. 2535; 16 U.S.C. 521c-521i)(STA), the Forest Service has had and has exercised the authority to resolve innocent encroachments on National Forest System lands based on erroneous land surveys or title opinions. With certain modifications addressing the specific situation in this case, we believe that the STA should be controlling here. Therefore, we urge the Committee to amend S. 1167 to provide that the affected landowners should apply to the Forest Service or the Corps, as appropriate, to resolve their claims.

In the case of boundary conflicts on National Forest Systems lands, under the STA, the Secretary has the authority to sell, exchange, or interchange by quitclaim deed parcels of forty acres or less which are interspersed with or adjacent to lands which are determined by the Secretary, because of location or size, not to be subject to efficient administration; or parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached, or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title, search, or other land description indicating that there was not such encroachment. The STA allows the Forest Service to collect all reasonable costs (appraisals, surveys, title research, etc.), as determined by the Secretary, from the claimant for completing the STA application, including the market value of the federal lands to be conveyed to the claimant. The Forest Service may waive the payment of all reasonable costs, except the market value of the federal lands to be conveyed, when there is private encroachment of federal lands in those cases in which the Secretary determines it would be in the public interest.

Finally, while the matter of which Federal agency erred may not be of particular concern to the affected landowners, we believe any corrective legislation should appropriately apportion responsibility for the problem. At this point, we believe that the Corps should take the necessary actions to correctly establish Public Land Survey System corners and the Forest Service and the Corps should work together to resolve tract-by-tract boundary conflicts in Barry and Stone counties concurrently with the Corps' progress in correcting the original surveys.

### **S. 1848 - the Bend Pine Nursery Administrative Site**

S. 1848 would amend the Bend Pine Nursery Land Conveyance Act (P.L. 106-526) to require the Secretary to offer to sell 170 acres of the Bend Pine Nursery Administrative Site, on the Deschutes National Forest to the Bend Metro Park and Recreation District in Deschutes, County, Oregon for \$3.5 million. Proceeds from this sale would be deposited in the fund established under Public Law 90-171 (16 U.S.C. 484a), commonly known as the Sisk Act. The funds would then be available to the Forest Service for the acquisition, construction, or improvement of administrative and visitor facilities and associated land in connection with the Deschutes National Forest in the Bend community, and the acquisition of lands and interests in lands in Oregon. The Forest Service has been working with the community of Bend, Oregon to implement P.L. 106-526.

S. 1848 would also direct the conveyance of 15 acres located in the northwest corner of the Bend Pine Nursery Administrative Site, for no consideration, to the Administrative School District, No. 1, Deschutes County, Oregon, in accordance with section 202 of the Education Land Grant Act (16 U.S. C. 479a).

The Department believes a better approach would be for the 170-acres to be appraised for recreational purposes. We would point out that the severing of the 15-acre tract for conveyance under the Education Land Grant Act to the Ben-La Pine School District may cause unintended delay, because additional survey work and analysis would be needed beyond what has already occurred. In lieu of this two-conveyance process, we suggest a single conveyance of the 185-acre tract, which has already been surveyed, to the District, with the requirement that the District then convey the 15-acre tract as envisioned in the legislation.

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