H.R. 231, H.R. 261, H.R. 331, AND H.R. ____, "WATERSMART ACCESS FOR TRIBES ACT"

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON WATER, WILDLIFE AND FISHERIES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINETEENTH CONGRESS

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CONTENTS

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NATURAL RESOURCES

CHAIRMAN BRUCE WESTERMAN

To: Committee on Natural Resources Republican Members

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Date: January 21, 2025

Subject: Legislative Hearing on H.R. 231, H.R. 261, H.R. 331, and H.R. ____ (Rep. Stansbury)

The Subcommittee on Water, Wildlife and Fisheries will hold a legislative hearing on H.R. 231 (Rep. Hageman), "*Colorado River Basin System Conservation Extension Act*"; H.R. 261 (Rep. Carter of GA), "*Undersea Cable Protection Act*"; H.R. 331 (Rep. Fulcher), To amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes; and H.R. ____ (Rep. Stansbury) "*WaterSMART Access for Tribes Act*" on **Thursday, January 23, 2025, at 10 a.m. EST in 1324 Longworth House Office Building.**

Member offices are requested to notify Lindsay Walton (lindsay.walton@mail.house.gov) by 4:30 p.m. on Wednesday, January 22, 2025, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- House Republicans are holding a hearing on two bills that combat the effects of long—standing drought in the American West and another bill that prevents federal marine sanctuary designations from negatively impacting the undersea cable network in the United States.
- H.R. 231 would reauthorize the Colorado River Basin Conservation Pilot Program through FY 2026.
- H.R. 331 amends the Aquifer Recharge Flexibility Act to clarify and streamline the process for transporting water for aquifer recharge projects across federal land.
- H.R. 261 would prevent the Secretary of Commerce from requiring additional permitting for fiber optic cable projects that have already been authorized by a Federal or State agency, within a National Marine Sanctuary.

II. WITNESSES

Panel I

- **Members of Congress TBD**

Panel II

- **Mr. Wesley Hipke**, Water Projects Section Manager, Idaho Department of Water Resources, Boise, ID [H.R. 331]
- **Ms. Denise Toombs**, Advisor, International Connectivity Coalition, San Franscisco, CA [H.R. 261]
- **Mr. Nathan Thayn**, Owner, Thayn Farms, Green River, UT [H.R. 231]
- **The Hon. Buu Nygren**, President, Navajo Nation, Window Rock, AZ [H.R. ____ (Stansbury)]

III. BACKGROUND

H.R. 231 (Rep. Hageman, R-WY), *"Colorado River Basin System Conservation Extension Act of 2025"*

The Colorado River Basin (Basin) covers seven states (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming) and the Republic of Mexico (see Map 1). In the United States, the Basin provides water for the irrigation of nearly 4.5 million acres, municipal water supply to about 40 million people, and supports hydropower facilities that can generate more than 4,200 megawatts (MW) of electricity.[1] Within the Basin, there are seven National Wildlife Refuges and 11 National Park Service units.[2]

Map 1: Colorado River Basin map.
Source: Glen Canyon Dam Adaptive Management Program.

The Colorado River is one of the most developed, regulated, and negotiated rivers in the United States. It has numerous diversions, several major dams, and reservoirs. It is managed through multiple compacts, laws, regulatory guidelines, contracts, court decisions, and decrees (collectively known as the "Law of the River").[3] Since 2000, the Basin has experienced historically dry conditions, and the combined storage in Lake Powell (the reservoir created by Glen Canyon Dam) and Lake Mead

[1] U.S. Bureau of Reclamation, Colorado River Basin Report, March 2021, https://www.usbr.gov/climate/secure/docs/2021secure/basinreports/ColoradoBasin.pdf.
[2] *Id*.
[3] U.S. Bureau of Reclamation, Law of the River, https://www.usbr.gov/lc/region/pao/lawofrvr.html

(the reservoir created by the Hoover Dam) reached the lowest levels since Lake Powell initially began filling in the 1960s.[4]

In 2014, the Bureau of Reclamation (Reclamation), the Colorado River Basin States, and Colorado River water users explored ideas that could mitigate the impacts of the ongoing drought in the Colorado River Basin.[5] One idea was the System Conservation Pilot Program (SCPP), a 4-year pilot program designed to explore solutions to address declining water levels in Lake Mead and Lake Powell and the potential for long-term drought in the Upper Colorado River Basin.[6] The program implemented and tested on-the-ground voluntary water conservation opportunities that may help manage ongoing record drought conditions in the Colorado River Basin.

The SCPP originally concluded in 2018. From 2015–2017, the Upper Basin SCPP funded 45 projects, for a consumptive use reduction of approximately 22,116 acre-feet at a total cost of $4.5 million.[7] In 2022, this program was authorized until September 30, 2024.[8]

H.R. 231 would extend the program's funding authorization until September 30, 2026, and require the Secretary of the Interior (Secretary) to report to Congress on the continued effectiveness of the program by September 30, 2027.

The SCPP allows the Secretary to provide grants 1) to public entities for water conservation pilot projects if the entity uses water from the Colorado River Basin for municipal purposes; and 2) for new water conservation agreements or for renewing or implementing water conservation agreements.[9]

H.R. 261 (Rep. Carter, R-GA), "*Undersea Cable Protection Act*"

Undersea cables have been used for more than 170 years,[10] and are largely responsible for the growth of international telecommunications systems in recent decades. The current undersea cable network connects every continent except Antarctica and "carries about 95% of intercontinental global internet traffic, and 99% of transoceanic digital communications . . . including trillions in international financial transactions daily."[11] In 2023, the global market for this technology was valued at $23 billion, and is projected to more than double to $53 billion by 2030.[12]

The Federal Communications Commission (FCC) grants cable landing licenses for 25 years. However, like many other types of projects, the process to site, install, and approve these cables typically involves numerous agencies at the federal, state, and local levels. According to the North American Submarine Cable Association (NASCA), over the last 20 years, "no new cables have been constructed within any existing national marine sanctuary . . . due to regulatory uncertainty, outright opposition from particular sanctuary leadership in contravention of the National Marine Sanctuaries Act ("NMSA"), and excessive regulatory burdens and fees."[13]

Under the NMSA, the National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries "may designate any discrete area of the marine environment as a national marine sanctuary,"[14] if it is determined that

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[4] https://www.usbr.gov/dcp/docs/DCP%20Basin%20States%20Transmittal%20Letter%20and%20attachments.pdf

[5] U.S. Bureau of Reclamation, Pilot Projects to Increase Colorado River System Water in Lake Powell and Lake Mead, August 2021, https://www.usbr.gov/lc/region/programs/LCBConservation&EfficiencyProgram/report_to_congress W_appendices2021.pdf.

[6] Upper Colorado River Commission, SYSTEM CONSERVATION PILOT PROGRAM (2015–2018), http://www.ucrcommission.com/system-conservation-pilot-program/.

[7] Upper Colorado River Commission, *Final Report Colorado River System Conservation Pilot Program in the Upper Colorado River Basin*, February 2018. http://www.ucrcommission.com/RepDoc/SCPPDocuments/2018_SCPP_FUBRD.pdf

[8] Pub. L. 117-328, div. CC, § 102, Dec. 29, 2022, 136 Stat. 5573.

[9] 43 U.S.C. § 620 note; Public Law 113-235.

[10] Congressional Research Service. Undersea Telecommunication Cables: Technology Overview and Issues for Congress. September 13, 2022. https://crsreports.congress.gov/product/pdf/R/R47237

[11] *Id*

[12] Global Industry Analysts. Submarine Optical Fiber Cables. July 2024. https://www.marketresearch.com/Global-Industry-Analysts-v1039/Submarine-Optical-Fiber-Cables-37720172/

[13] Comments of the North American Submarine Cable Association. National Oceanic and Atmospheric Administration. Notice of Modification to the Special Use Permit (SUP) Category for the Continued Presence of Commercial Submarine Cables within the National Marine Sanctuary System. October 1, 2024. https://www.regulations.gov/comment/NOAA-NOS-2024-0089-0007

[14] National Marine Sanctuaries Act. As amended by P.L. 106-513, November 2000. https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/library/national/nmsa.pdf

the area is "of special national significance" [15] or will "ensure coordinated and comprehensive conservation and management of the area." [16]

In amendments to the NMSA that were enacted in 1998, Congress gave NOAA the authority to issue Special Use Permits (SUPs) for certain categories of activities within a national marine sanctuary, if it is determined that the activity is needed to establish access to its resources or "promote public use and understanding of a sanctuary resource." [17] To grant a SUP, the Secretary of Commerce must provide public notice of the activity and is only allowed to authorize the activity for a period of five years.[18] These SUPs can often take years to acquire and can come with additional burdens and costs.

In 2002, NOAA created five categories of SUPs to comply with the NMSA amendments, one of which was "the maintenance of submarine cables beneath or on the seabed." [19] In 2006, this category was amended to include the "continued presence" of submarine cables and clarified that the SUP solely applies to "commercial" cables.[20]

On August 16, 2024, NOAA issued a notice to modify the SUP category for undersea cables, stating that the category "does not apply to commercial submarine cables in any new sanctuaries designated after August 16, 2024." [21] Therefore, for that two-year period, "NOAA will not require or issue SUPs for the continued presence of commercial submarine cables on or within the submerged lands of newly designated sanctuaries." [22] This notice also applied to new cables in sanctuaries that are designated in the two-year period.

H.R. 261 would make permanent NOAA's decision to no longer require SUPs for telecommunications submarine cables in a marine sanctuary and would apply this decision and prohibit any other NOAA authorization for all existing and future cables within the boundaries of any marine sanctuary. The bill amends NMSA to prohibit NOAA from requiring "any authorization for the installation, continued presence, operation, maintenance, repair, or recovery of undersea fiber optic cables in a national marine sanctuary" if such activity is already permitted or approved by a Federal or state agency.[23] The legislation effectively eliminates the SUP process and other redundant NOAA authorizations for submarine cables, relying on the existing, robust federal and state permitting processes to authorize these cables within national marine sanctuaries. This will provide more clarity and certainty for project developers and encourage investment in this infrastructure, which is critical for long-term economic security. It will also bolster our national security by promoting increased route diversity for cables while maintaining the existing protection of our marine resources.

H.R. 331 (Rep. Fulcher, R-ID), To amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes.

The Aquifer Recharge Flexibility Act (P.L. 116-260) was enacted in 2020 to facilitate aquifer recharge using federal infrastructure. In many Reclamation states, aquifer recharge programs include using existing irrigation canals and ditches to seep and percolate water into an aquifer. Many existing irrigation canals and ditches cross lands owned by the U.S. Bureau of Land Management (BLM). The irrigation canal owners already have right-of-way (ROW) with the BLM for their irrigation canals. The Aquifer Recharge Flexibility Act streamlined the process for water managers to conduct aquifer recharge.

H.R. 331 would amend the Aquifer Recharge Flexibility Act to allow the holder of a ROW grant approved by the BLM, acting on behalf of themselves or a third party, to use the existing ROW for the purposes of aquifer recharge without further authorization from the Secretary of the Interior. The bill further clarifies that this

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[15] *Id.*

[16] *Id.*

[17] National Marine Sanctuaries Act. Section 310. Special Use Permits. https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/library/national/nmsa.pdf

[18] *Id.*

[19] National Oceanic and Atmospheric Administration. Notice of Modification to the Special Use Permit (SUP) Category for the Continued Presence of Commercial Submarine Cables Within the National Marine Sanctuary System. Notice; Request for Comments. August 16, 2024. https://www.federalregister.gov/documents/2024/08/16/2024-18099/notice-of-modification-to-the-special-use-permit-sup-category-for-the-continued-presence-of

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] The Undersea Cable Protection Act. https://naturalresources.house.gov/uploadedfiles/cartga_003_xml1.pdf

use shall not be considered an expansion or modification. This change would ensure that the intent of the current law can be fully implemented.

H.R. ____ (Rep. Stansbury, D-NM) "*WaterSMART Access for Tribes Act*"

The bill would allow the Secretary of the Interior to reduce or waive cost-share requirements for tribal governments under Reclamation's WaterSMART program. It is unclear what metrics Reclamation will use to determine "that the Indian tribe does not have sufficient funds to pay such cost share" as the bill requires.

Reclamation provides funding opportunities through the WaterSMART program for projects and activities to increase water efficiency and conservation. This includes cost-shared grants for water management improvement projects such as canal lining and piping, watershed resilience projects, the Basin Study Program, and drought planning and implementation actions to address future water shortages.[24] Most WaterSMART projects require at least 50 percent cost sharing to leverage non-federal financial resources.[25] In the 116th Congress, WaterSMART was amended to allow Reclamation to contribute up to 75 percent of the cost of certain projects that are focused on environmental benefits.[26]

IV. MAJOR PROVISIONS & ANALYSIS

H.R. 231 (Rep. Hageman, R-WY), "*Colorado River Basin System Conservation Extension Act of 2025*"

- Reauthorizes the Colorado River System Conservation Pilot Program through Fiscal Year 2026.

H.R. 261 (Rep. Carter, R-GA), "*Undersea Cable Protection Act*"

- Prevents NOAA from prohibiting or requiring any authorization for the installation, continued presence, operation, maintenance, repair, or recovery of undersea fiber optic cables in a national marine sanctuary if such activity is already permitted or approved by a Federal or state agency.

H.R. 331 (Rep. Fulcher, R-ID), To amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes.

- Amends the Aquifer Recharge Flexibility Act to clarify that no additional permits or authorizations are needed to transport water across BLM-managed lands for aquifer recharge purposes. In addition, the bill introduces a 30-day notice requirement on local entities planning to use BLM infrastructure for aquifer recharge.

H.R. ____ (Rep. Stansbury, D-NM) "*WaterSMART Access for Tribes Act*"

- Gives the Department of the Interior the authority to reduce or waive cost-share requirements for tribal governments under Reclamation's WaterSMART program.

V. EFFECT ON CURRENT LAW

H.R. 231

https://naturalresources.house.gov/uploadedfiles/bill-to-law_hagema_013_xml.pdf

H.R. 261

https://naturalresources.house.gov/uploadedfiles/bill-to-law_cartga_003_xml1.pdf

H.R. 331

https://naturalresources.house.gov/uploadedfiles/ramseyer_-_h.r._331.pdf

Rep. Stansbury Bill

https://naturalresources.house.gov/uploadedfiles/bill-to-law_h.r.____stansbury.pdf

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[24] U.S. Bureau of Reclamation, WaterSMART, https://www.usbr.gov/watersmart/

[25] *Id.*

[26] P.L. 116-260, Division FF, Title XI—Western Water and Indian Affairs.

LEGISLATIVE HEARING ON H.R. 231, TO AMEND THE ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2015, TO REAUTHORIZE THE COLORADO RIVER SYSTEM CONSERVATION PILOT PROGRAM, "COLORADO RIVER BASIN SYSTEM CONSERVATION EXTENSION ACT OF 2025"; H.R. 261, TO AMEND THE NATIONAL MARINE SANCTUARIES ACT TO PROHIBIT REQUIRING AN AUTHORIZATION FOR THE INSTALLATION, CONTINUED PRESENCE, OPERATION, MAINTENANCE, REPAIR, OR RECOVERY OF UNDERSEA FIBER OPTIC CABLES IN A NATIONAL MARINE SANCTUARY IF SUCH ACTIVITIES HAVE PREVIOUSLY BEEN AUTHORIZED BY A FEDERAL OR STATE AGENCY, "UNDERSEA CABLE PROTECTION ACT OF 2025"; H.R. 331, TO AMEND THE AQUIFER RECHARGE FLEXIBILITY ACT TO CLARIFY A PROVISION RELATING TO CONVEYANCES FOR AQUIFER RECHARGE PURPOSES; AND H.R. ____, TO AMEND THE OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009 TO INCREASE TRIBAL ACCESS TO WATER CONSERVATION AND EFFICIENCY GRANTS, AND FOR OTHER PURPOSES, "WATERSMART ACCESS FOR TRIBES ACT"

Thursday, January 23, 2025

U.S. House of Representatives

Subcommittee on Water, Wildlife and Fisheries

Committee on Natural Resources

Washington, D.C.

The Subcommittee met, pursuant to notice, at 10 a.m., in Room 1324, Longworth House Office Building, Hon. Harriet Hageman [Chair of the Subcommittee] presiding.

Present: Representatives Hageman, Radewagen, Walberg, Ezell, Maloy, McDowell, Crank; Hoyle, Stansbury, Golden, Min, Elfreth, Gray, Rivas, and Huffman.

Also present: Representative Carter.

Ms. HAGEMAN. The Subcommittee on Water, Wildlife and Fisheries will come to order.

Good morning, everyone, and I want to welcome the Members, the witnesses, and our guests in the audience for today's hearing.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chair and the Ranking Member. I therefore ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o).

Without objection, so ordered.

I also ask unanimous consent that the Congressman from Idaho, Mr. Fulcher, and the Congressman from Georgia, Mr. Carter, be allowed to participate in today's hearing.

Without objection, so ordered.

We are here today to consider four legislative measures: H.R. 231, the Colorado River Basin System Conservation Extension Act of 2025, sponsored by myself; H.R. 261, the Undersea Cable Protection Act of 2025, sponsored by Representative Carter of Georgia; H.R. 331, to amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes, sponsored by Representative Fulcher of Idaho; and the WaterSMART Access for Tribes Act, sponsored by Representative Stansbury of New Mexico.

I now recognize myself for a 5-minute opening statement.

STATEMENT OF THE HON. HARRIET M. HAGEMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Ms. HAGEMAN. Again, I want to welcome everyone to the Committee on Natural Resources' first legislative hearing of the 119th Congress.

There are several new faces at the Subcommittee and, for those of you who don't know me, my name is Harriet Hageman and I represent the great State of Wyoming. I am a litigator by trade, and have spent my career challenging Federal overreach, protecting water and property rights, exposing Federal land and wildlife mismanagement, and fighting back against the unconstitutional and unlawful acts of unelected bureaucrats. I am very honored to serve as the Chair for the Subcommittee on Water, Wildlife and Fisheries.

I also want to thank Congressman Bentz for his leadership of the Subcommittee during the past two Congresses.

Today, the Subcommittee will consider four bills. Three of these center on the Bureau of Reclamation's work in the West.

First we have H.R. 231, which I sponsored, and would reauthorize the Colorado River Basin System Conservation Pilot Program, or SCPP, through Fiscal Year 2026. The Colorado River basin is one of the most developed, regulated, and negotiated rivers in the United States and in our history. I know. I have done a lot of work in that basin. It has numerous diversions, several major dams, and is managed through multiple compacts, laws, regulatory guidelines, contracts, court decisions, and decrees. The basin is also experiencing long-term drought conditions.

While many actions have been taken to address drought in the basin, my legislation seeks to reauthorize a program that has demonstrated that voluntary, compensated water conservation projects can conserve water for Colorado River system storage to help mitigate the impacts of the drought. To be clear, this program is not and should not be viewed as a permanent solution to addressing the drought conditions in the basin. However, at this time it is a tool that the upper basin States can use to reduce risk to test new innovative water management strategies.

While we are not discussing broader Colorado River basin issues today, I do want to say that this Committee is committed to working with the Trump administration, the Tribes, the seven basin States, their congressional delegation, and stakeholders to find a post-2026 solution.

Our second bill, H.R. 331, sponsored by Congressman Fulcher, clarifies the intent of the Aquifer Recharge Flexibility Act to ensure that the Bureau of Land Management understands that third parties such as the Idaho Water Resources Board, who is testifying before us today, can utilize a right-of-way to transport water for aquifer recharge purposes.

Our third Reclamation bill is sponsored by Congresswoman Stansbury, and would allow the Secretary of the Interior to reduce or waive cost share requirements for tribal governments under Reclamation's WaterSMART program. This program, which is already over-subscribed, helps fund infrastructure improvement projects such as canal lining or piping to conserve and use water more efficiently.

Our fourth bill, H.R. 261 sponsored by Congressman Buddy Carter, would prevent the Secretary of Commerce from requiring additional permitting for fiber optic cable projects that go through a national marine sanctuary if they have already been authorized by a Federal or State agency. Undersea networks are a major component of our global connectivity, enhancing the security of these cables and promoting, rather than deterring, their deployment and maintenance will protect our national and economic security and ensure that we are connected to the rest of the world.

Again, I want to take the time to thank our witnesses for being here today, and I look forward to a robust conversation.

I now recognize Ranking Member Hoyle for her opening statement.

And I want to say that I look forward to working with you during the 119th Congress as we move forward on these important issues.

STATEMENT OF THE HON. VAL T. HOYLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Ms. HOYLE. Thank you, Chair Hageman.

Good afternoon, everyone. Well, it is not afternoon, is it? It is morning. Good morning, everyone. I am excited to serve as Ranking Member of the Water, Wildlife and Fisheries Subcommittee, and I look forward to working with Chair Hageman on protecting America's natural resources.

I also want to thank Chair Bentz for his service, and it just made sense that we would have another Oregonian in leadership on this Committee as water is so critically important in the Pacific Northwest and in this country.

Now, I want to be clear. Climate change is having a profound impact on our natural world. We are seeing drought, weather changing from historic norms, leading to a strain on our on our environment, economy, and national security. The devastation in Los Angeles is just one example. Record-high temperatures, dry vegetation combined with intense winds is causing an inconceivable amount of harm.

Because of what we are facing as we keep breaking global temperature records, one of the most important things this Committee can do is help local communities better manage and conserve their water resources. This is what the three water bills in this hearing today do.

H.R. 231, the Colorado River Basin System Conservation Act, would reauthorize the System Conservation Pilot Program to support voluntary water conservation projects to address drought impacts in the upper basin through 2026.

I am also really happy to see Representative Stansbury's WaterSMART Access for Tribes Act, which authorizes the Secretary of the Interior to reduce or waive the non-Federal cost share requirements for Tribes receiving WaterSMART grants, including on today's agenda. This legislation will help remove a financial barrier for Tribes to increase drought and climate change resiliency. I hope we can work together to quickly advance this legislation and tribal water settlements through the Committees to support Tribes' access to reliable water sources.

H.R. 331, the Aquifer Recharge Flexibility Act amendments, would make it harder for communities and Tribes to have input on water management, while it allows third parties to use an existing Bureau of Land Management right-of-way, easement permit, or other authorization for aquifer recharge without further authorization from the Secretary. It also classifies this as not a major Federal action, all but guaranteeing these aquifer recharge projects are exempt from NEPA review. I hope the bill's sponsor will work with us to us to address this concern.

The one bill that we feel needs major changes is H.R. 261, the Undersea Cable Protection Act. First and foremost, we need to make sure the purposes of the national marine sanctuaries and the natural, cultural, and historical resources are considered when permits are approved. These areas are some of our most cherished ecosystems and help thousands of small businesses nationwide, including the very robust and important commercial fishing industry in Oregon and the Pacific Northwest. National marine sanctuaries are our Nation's marine national parks.

I recognize that fiber optic cables are less destructive than many other activities and necessary for our economy and national security, and I believe we can find a solution that we all agree on that balances the need for fiber optic cables and protecting and preserving our ocean ecosystems. We need to make the language less ambiguous and allow NOAA to continue to charge fair market rate and assess damages if necessary, and protect NOAA's authority to carry out the National Marine Sanctuary Act. If we get it right, it will help ensure the build-out of critical infrastructure in America and protect the sanctuary resources that local economies and small businesses depend on.

I look forward to fighting for the health and sustainability of our water, wildlife, and fisheries, and thank you to the witnesses for participating in today's hearing. I look forward to hearing from each of you.

With that, I yield back.

Ms. HAGEMAN. Thank you. I now recognize Ranking Member Huffman for his opening statement.

STATEMENT OF THE HON. JARED HUFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUFFMAN. Thank you, Madam Chairman, and congratulations to you and to Ranking Member Hoyle.

I know the majority was eager to get us started with this first Subcommittee hearing, and it is happening on a shorter timeline than is standard for regular order. Democrats agreed to this in the spirit of cooperation, but we do expect going forward that the majority will work with us on the traditional schedule, and the norms of the Committee will continue to be honored. The majority's haste of putting this hearing together also means that there are no Administration witnesses. None were invited, and that would have been non-negotiable for the majority over the past few years. I hope that, too, is not a new precedent.

But with that, I am glad to see Representative Stansbury's WaterSMART for Tribes bill included today. This is a good bill. It is going to provide essential tools to help Tribes compete for grants that improve water conservation and resiliency.

I have significant concerns about one bill, H.R. 261, the Undersea Cable Protection Act. We have to make sure that our national marine sanctuaries, which are some of America's most cherished places, continue to be protected, and this bill prohibits NOAA from requiring an authorization for the installation, maintenance, or recovery of fiber optic cables in any national marine sanctuary if such an activity was previously authorized by any Federal or State agency. That is really broad and sweeping.

The National Marine Sanctuaries Act drives a collaborative process for developing and designating these sanctuaries that encompass protection for ocean resources that ocean users, local communities, and Tribes can all be proud of. They help support coastal economies in a big way, and I know because I have a couple of these marine sanctuaries in my district. They generate $8 billion annually to local economies and support tens of thousands of jobs and businesses, including fishing, diving, tourism, recreation, and scientific research sectors. And most of that activity is driven by small businesses.

Activities in these sanctuaries have to be compatible with the purpose of the sanctuary. Small businesses such as dive boat operators, recreational fishing guides, whale watching tours, all of these must make sure that their activities comply with the rules. But in this bill House Republicans are making it clear that billion-dollar companies like Meta get a free pass from all the rules. This bill lets them ignore any assessment of the impacts of their activity on the marine sanctuary, such as whether the route will disturb its most vulnerable features like deep sea corals. And it allows them to escape any fees or liability if a disaster occurs.

And disasters do occur. In 2020 a Facebook subsidiary bungled a fiber optic laying operation off the coast of Oregon, leaving their drilling pipes, fluids, and other construction materials on the sea floor and creating two sinkholes. Why would we give billion-dollar tech bros, donors, and pals that have been exalted a little too much lately a free pass, knowing that our small businesses are playing by the rules and will be the ones to take the hit if a construction disaster occurs?

That said, I think there is nothing inherently incompatible between undersea cables and national marine sanctuaries. They exist in a bunch of existing sanctuaries, including the ones in my district. But they don't need special statutory giveaways. And if a bill is needed, we need to be thoughtful and careful and targeted about the way we do that.

So finally, H.R. 331, which amends the Aquifer Recharge Flexibility Act to make it easier for third parties to use Federal rights-of-way for aquifer recharge projects, the sponsors of this legislation have made progress to ensure that the bill complies with the directives of the Federal Land Policy Management Act and other key environmental laws. But it still contains an unnecessary NEPA exemption, and that is bad. It is going to make it difficult for Tribes and affected communities to weigh in on projects that could significantly impact them. I hope the sponsors will work with us to fix that language, and make sure this legislation doesn't place additional burdens on these local communities. And if they can do that, I think that is a bill that should have broad bipartisan support.

With that, I want to thank the witnesses, welcome everyone to Washington, and I look forward to discussing these bills further.

I yield back.

Ms. HAGEMAN. Thank you. I will now introduce our first panel. And as is typical with legislative hearings, the bills' sponsors are recognized for 5 minutes each to discuss their bills. To testify on my own bill, I recognize myself for 5 minutes.

I think it is important to give a bit of background related to H.R. 231. The Colorado River basin covers seven States: Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming. In fact, Wyoming is the headwaters with the Green River. It also covers the Republic of Mexico. In the U.S. the basin provides water for irrigation of nearly 4.5 million acres of land, municipal water supply to about 40 million people, and it supports hydropower facilities that can generate more than 4,200 megawatts of electricity. Within the basin there are 7 national wildlife refuges and 11 National Park Service units.

In 2014, the Bureau of Reclamation, the river basin States, and the river water users explored ideas that could mitigate the impacts of the ongoing drought in the basin. One idea was the System Conservation Pilot Program, or SCPP, a 4-year pilot program designed to explore solutions to address declining water levels in Lake Mead and Lake Powell, and the potential for long-term drought in the upper Colorado River basin. The program implemented and tested on-the-ground voluntary water conservation opportunities that may help manage ongoing record drought conditions in the basin.

The SCPP originally concluded in 2018. From 2015 to 2017 the Upper Basin SCPP funded 45 projects for a consumptive use reduction of approximately 22,000 acre-feet at a total cost of $4.5 million. In 2022 this program was reauthorized until September 30, 2024.

H.R. 231 would extend the program's funding authorization until September 30, 2026, and require the Secretary of the Interior to report to Congress on the continued effectiveness of the program by September 30, 2027.

The SCPP allows the Secretary to provide grants to public entities for water conservation pilot projects if the entity uses water from the Colorado River basin for municipal purposes, and for new water conservation agreements or for renewing or implementing water conservation agreements.

This is a good bill, and I urge its passage.

The Chair now recognizes Congresswoman Stansbury for 5 minutes.

STATEMENT OF THE HON. MELANIE STANSBURY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Ms. STANSBURY. All right. Well, good morning, everyone, and thank you, Madam Chairwoman and Madam Ranking Member. It is wonderful to be here with you today, and I am excited to serve on this Committee, having worked on water much of my life and my career, but also because we have great leadership. And I know, Madam Chairwoman, you have a long history working on land and water issues, as do you, Representative Hoyle, so thank you so much.

I am delighted and honored to have the have the opportunity to present the bill that we have in front of you here today. It is called the WaterSMART Access for Tribes Act.

I would like to welcome Mr. Witherspoon. Thank you so much for traveling all the way from Window Rock, Arizona, the Navajo Nation. And I know our other guests who are testifying who traveled from all over the West, thank you for being here today.

As we say in New Mexico, water is life, water is sacred, water is essential to everything we do. And yet, for many tribal communities, access to water, infrastructure, and funding needed to maintain that infrastructure is out of reach. In fact, across the Navajo Nation it is estimated that 30 to 40 percent of Dene homes do not have access to running water, piped water inside their homes. For example, in the To'hajiilee chapter, which used to be in my district but is a community near and dear to my heart, near to Albuquerque, the people of To'hajiilee have lived for many years without safe drinking water. Thankfully, the issues around water are finally being addressed.

However, there are still many homes that have to haul water from miles away that is used in homes, public buildings, and even across public buildings. This is, sadly, a common story across many communities. We have pueblos across New Mexico that have long gone without sufficient funding to address water infrastructure needs not only for drinking water, but also for irrigation and other needs.

As much of the West continues to face drought conditions and changes in water supply, it is unconscionable that we have not summoned the moral courage and the political will to address these issues. That is why this WaterSMART Access for Tribes Act is crucial. Years of under-investment in tribal water infrastructure have impacted the ability of our Tribes and pueblos to address water needs.

It is estimated that, nationwide, almost half of tribal homes lack access to adequate water or sanitation. And tribal communities are

19 times more likely to not have access to clean water overall. Make no mistake, Tribes and pueblos have lived on these lands for countless generations since time immemorial, practicing both traditional cultural ways of life and resource stewardship, as well as economic activities. But as communities have grown, infrastructure has aged, drought and water security have intensified, the need to address water security has grown more acute.

This WaterSMART Access for Tribes Act is one tool to unlock critically-needed resources to address tribal water security. For over a decade the Department of the Interior's WaterSMART program has provided hundreds of grants to communities across the West as one of the Nation's premier water conservation programs. Yet, Tribes have received fewer than 5 percent of these grants due to burdensome cost-sharing requirements which have acted as a significant barrier to accessing funds.

This bill would authorize the Secretary of the Interior to remove those barriers, and would unlock millions of dollars in investment in tribal water programs and projects. This includes projects for addressing drought, water conservation, efficiency, reuse, and recycling.

Water is fundamental to the social, economic, and cultural needs of Indigenous communities. This legislation will help to break down economic barriers to addressing those needs, and will help to unlock the funds to support tribal communities in building out infrastructure. The time to address these issues is now.

And I thank the Chair and Ranking Member for including this bill in today's hearing, and I am happy to answer any questions. Thank you very much.

Ms. HAGEMAN. Thank you, Ms. Stansbury, for your testimony today.

We do have several Members who are also participating in other hearings on the Capitol today, so they will be coming in and out. And as the bills' sponsors arrive, we will have them make their statement at that time. But to move forward with this, and make sure that we are staying on time, we will go ahead and introduce the second panel that will be testifying today: Mr. Nathan Thayn, Owner of Thayn Farms in Green River, Utah; Ms. Denise Toombs, Advisor to the International Connectivity Coalition in San Francisco, California; Mr. Dwight Witherspoon, Water Rights Unit Attorney for the Navajo Nation in Window Rock, Arizona. I was just with your president a few days ago, it was wonderful to have an opportunity to meet him again; and Mr. Wesley Hipke, Water Projects Section Manager of the Idaho Department of Water Resources in Boise, Idaho.

Let me remind the witnesses that under Committee rules they must limit their oral statements to Statements to 5 minutes, but their entire statement will appear in the hearing record.

To begin your testimony, please press the button on the microphone.

And we use timing lights. When you begin, the light will turn green. When you have 1 minute remaining, the light will turn yellow. And at the end of the 5 minutes, the light will turn red and I will ask you to please complete your statement.

I will also allow all witnesses to testify before Member questioning.

I now recognize Mr. Thayn for 5 minutes.

STATEMENT OF NATHAN THAYN, OWNER, THAYN FARMS, GREEN RIVER, UTAH

Mr. THAYN. Thank you, Chair Hageman, and Ranking Member, and other members of the Committee. I appreciate the opportunity to present to you today.

My name is Nathan Thayn. I am a fourth-generation farmer from Green River, Utah. My great-grandfather started farming in the 1880s. We lived along the Price River and moved in the late 1970s to the Green River in central south Utah because there was a lot more water there. My father, who sits behind me, 85 years old, hollowed out a corn barn to play pickleball. He is a very active part of our family operation. I also have two sons who are working with me on the farm and plan to continue our heritage of producing corn, alfalfa, and melons. I am here today to testify in favor of H.R. 231, legislation that would reauthorize the System Conservation Pilot Program.

As Committee members know, the Upper Colorado River System Conservation, or SCPP, is an important opportunity for temporary, voluntary, and compensated reduction in consumptive use of agricultural water in the upper Colorado River basin. Projects typically involve full or partial season fallowing, where farmers forgo irrigation. It is also used for forbearing and the use of excess reservoir water shares. Participants are compensated per acre-foot of conserved water to replace income lost by not using their water for its typical purpose.

Our family farm operates about 1,600 acres of river bottom and bench along the east side of the Green River, above the little town of Green River, Utah. Our best money crop is corn, followed by melons and alfalfa. We produce products. We end up putting milk, beef, and melons on the tables of American families throughout especially our region.

Over the years we have spent a lot of money investing in infrastructure. We went from flood irrigation on that acreage to pivots and sprinkler irrigation to conserve and to use water more efficiently. We were introduced to the SCP program in 1923, as we had fields that had some poor drainage. We used this as an opportunity to do projects to help those fields drain better. And then, in 2024, we did a much larger conservation project.

If you know anything about farming, it is a lot like gambling. You spend a lot of money up front on seed and fertilizer and machinery and other things, and hope that you have a good market after you finished your crop with all the vulnerabilities that apply, weather and what not, and get your money back and turn a profit.

The SCPP has introduced us to the idea that we can conserve water, leave it in the river, generate a better financial return by putting it on less productive ground and restore the productivity of fields where we have pulled water out to help with soil health, drainage issues, and nutrient management.

We haven't traditionally used fallowing, as there is very little incentive to do so. You put a lot of money into having your fields in

use and the water in use, the lose-it-or-use-it law is in addition to the economic hit that you take by not using your water. So this is kind of the first stab at thinking seriously about conservation and all the benefits that could be put with it.

We are learning that our water can be viewed as another type of cash crop that would allow us to implement a type of rotational fallowing, which could be very beneficial to our operations. The SCP program has opened our eyes to the fact that water we are saving and leaving in the river is benefiting Utah, and also meeting our obligations there and allowing water to be put in Lake Powell, Lake Mead, downstream.

And some of the uses of the SCCP, or excuse me, SCPP, appreciate your support of this program. It is working. It has changed our minds. It has changed some of the attitudes that we have towards conservation and the opportunities that it provides. And it is also helping our State and our downstream neighbors, and providing a little extra water for the fish and the environment. We have no interest in selling out. We love what we do. My kids go to classrooms where there are four kids that graduate, and they love it, and they want to come back. They like the rural area and the setting.

I encourage the Committee to pass H.R. 231 quickly to ensure the program is reauthorized. The SCPP is an important tool for farmers. At the same time I would encourage the Committee to work with States and farmers like me to make ways of making even better, designing more flexible, long-term policies that would provide water users with the tools needed to conserve energy, as our farm alone has allowed over 2,000 acre-feet of water to return to the reservoirs, and we look forward to working and striving to conserve even more.

I thank the Chair and the other members of this Committee for this opportunity, and if there are any questions I would be glad to take a stab at them.

[The prepared statement of Mr. Thayn follows:]

PREPARED STATEMENT OF NATHAN THAYN

ON H.R. 231

Thank you, Chair Hageman and members of the Committee. I appreciate the opportunity to present to you today.

My name is Nathan Thayne, I am a 4th generation farmer from Green River Utah. My great, great grandfather William Alvin Thayn put down roots in Wellington, Utah in the 1880's and started farming and raising cattle on land adjacent to the Price River. My father eventually moved to the Town of Green River Utah in the 1980's and purchased a large farm immediately adjacent to the Green River. I studied Agriculture Business at Utah State University and started full time farming with my father right after graduating college. My father is here today sitting in the gallery. I have two sons who are now working with me on the farm and plan on continuing our heritage of producing some of the best corn, watermelons and alfalfa in the West.

I am here this morning to testify in favor of HR 231, legislation that would reauthorize the Upper Colorado River System Conservation Pilot Program.

SCPP Background

As committee members know, the Upper Colorado River System Conservation Pilot Program, or SCPP, is an opportunity for temporary, voluntary, and compensated reduction in consumptive use of agricultural, municipal, or industrial water in the Upper Colorado River Basin. Projects typically involve full or partial

season fallowing of fields, (where farmers forgo irrigation), changing to lower-water-use crops, or forbearing the use of excess reservoir water shares. Participants are compensated per acre-foot of conserved water to replace income lost by not using water for its typical purpose.

SCPP is administered in Utah, Colorado, New Mexico and Wyoming by the Upper Colorado River Commission with support from local state agencies. SCPP is currently funded by Inflation Reduction Act of 2022 allocations to the Bureau of Reclamation of up to $125 million. Just under $50 million has been spent on SCPP to-date.

In 2022, SCPP was reauthorized for 2023 and 2024 as part of the Upper Colorado River Commission's 5-Point Plan responding to former Bureau of Reclamation Commissioner Touton's request for the Colorado River Basin States to reduce use by an additional 2–4 million acre-feet of water annually to protect critical elevations at Lake Powell and Lake Mead.

In 2023, the SCPP program conserved about 38 thousand acre-feet at a cost of about $16 million across the four Upper Division States. The state of Utah contributed about 16 thousand acre-feet for about $5.5 million in compensation. In 2024, SCPP featured a more focused scope of eligible projects that supported innovation and local resiliency in water conservation. In 2024, SCPP conserved about 64 thousand acre-feet at a cost of about $29 million across the four Upper Division States. Utah contributed about 22 thousand acre-feet for about $10 million in compensation.

My Experience with the SCPP Program

As I mentioned previously, my family farms about 1600 acres of river bottom and bench land along the Green River. Our best money crop is feed corn followed closely by alfalfa. Green River is known nationwide for its melons and we love growing and eating those too! The products we produce end up putting milk, beef and melons on the tables of American families throughout the Nation.

My family farm conserved about 357 acre-feet of water in SCPP in 2023, and 1,981 acre-feet in 2024 by fallowing fields that usually grow alfalfa and corn.

If you know anything about farming, it's a lot like gambling. We spend a lot of money up front on seed, equipment, fertilizer, and fuel in the hopes of growing a good crop and then having a good market to sell it in at the end of the year to make our money back and maybe turn a little profit.

We have also spent a lot of money improving efficiency in our farming operations and in the use of our most precious resource, which is water. We were introduced to the SCPP program in 2023. We always try to maximize the use of our water. Occasionally, we have a need to pull a field out of production for one reason or another. We still use the water but it goes to more marginal ground and our financial returns go down. The SCPP has introduced us to the idea that we can conserve water, leave it in the river, generate a better financial return than putting it on less productive ground and restore the productivity of the fields we have pulled out of use by working on soil health, drainage issues and nutrients needed by the crops we grow.

We haven't traditionally used fallowing as a tool in our farming operations, primarily because of the financial hit we took by taking the ground out of production. We are learning that our water can be viewed as another type of cash crop that would allow us to implement a type of rotational fallowing that would actually be very beneficial to our operations.

The SCPP program has also opened our eyes to the fact that the water we are saving and leaving in the river is benefiting Utah by meeting our obligations to our downstream neighboring States as well as benefiting the river environment and the endangered fish found in the Green River.

In summary, the users of the SCPP appreciate your support for this program. It is working. It is changing attitudes, making us better farmers, providing a little bit of certainty and security in our operations, and at the same time, helping our state and our downstream neighbors and providing a little extra water for the fish and environment. We have no interest in selling out to either developers or wall street. We want to keep farming in the family for at least another 4 generations or longer.

To wrap up, let me summarize two key takeaways:

1. PASS HR 231

I encourage the Committee to pass HR 231 quickly to ensure this program is reauthorized

2. LONGER TERM SOLUTION NEEDED

The SCPP is an important tool for farmers. At the same time, I would encourage the Committee to work with states and farmers like me to design a more flexible,

longer-term policy that will provide water users with the tools needed to conserve water on the Colorado River in a transparent and effective fashion

Thank you again, Chair Hageman, and members of the committee for this opportunity. I am happy to answer any questions you may have.

Ms. HAGEMAN. Mr. Thayn, thank you for your very helpful and informative testimony.

I see that we have now been joined by Congressman Carter, and I am going to have him testify about his bill for 5 minutes, and then we will come back to the panel.

Mr. Carter?

STATEMENT OF THE HON. BUDDY CARTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. CARTER. Thank you, Madam Chair, and thank you for giving me this opportunity to speak about H.R. 261. H.R. 261 is the Undersea Cable Protection Act.

The reason I introduced this bill was to address a redundant process that is impeding the deployment of sub-sea cables. The Department of Homeland Security has designated the cables as critical infrastructure. And when you think about it, they are. We rely on these cables more than any of us realize, because they are the backbone of the Internet, and are critical for intercontinental communication and transactions that are necessary to support the increased data loads that are a product of the growth in AI, supercomputing, and everyday dependency on the Internet.

If you don't hear anything else I say, listen to this. It is estimated that in the financial sector alone, undersea cables carry $10 trillion of financial transfers daily, $10 trillion of financial transfers daily. Anybody who has read the news in the past 6 months knows our adversaries have been targeting these cables and cutting them in order to cripple the economic and national security of countries around the world. This underscores the importance of redundancy and resiliency on our own cables and the diversity of routes that are needed to ensure we limit our own vulnerability to such activity.

The permitting process for sub-sea cables is robust, and goes above and beyond to protect the marine habitat that is particularly near and dear to the hearts of members like me who are from the coast. I represent the entire coast of Georgia, so it is important to me.

The Army Corps of Engineers, NOAA, State coastal commissions, and local agencies are all involved in a process that requires route planning, coordination, multiple environmental reviews, and archeological assessments to ensure the seabed floor and surrounding habitats are preserved and protected. I understand the importance of this process, and my bill does absolutely nothing to change that. What I am looking to address is the additional Special Use Permit process that prompts the secondary NEPA request, additional environmental reviews, and the delays that come with such a bureaucratic process in the instances where a submarine cable is being laid in a marine sanctuary.

In some instances the marine sanctuary came after the cables were laid, and they have to seek permission just to stay. The SUPs issued by NOAA are limited to 5 years, which is in stark contrast to the 25-year license they get from the FCC. It takes longer than 5 years to plan the laying of these cables. And as soon as you get your SUP, it is already time to start another environmental review. And we already know what the review will say, which is what they always say: sub-sea cables do not cause environmental harm.

The investment to deploy these cables are significant, and certainly expect a greater return on that investment than 5 years. And they deserve more regulatory certainty than this black box process. I am told by folks in the sub-sea cable industry that marine sanctuaries are de facto no-go zones because of this regulatory uncertainty.

And these sanctuaries are not just as rare as you may think. Over 400 miles of the coast of California is designated as marine sanctuary. That is half the coast of the entire State, which also happens to be the most strategic place to lay sub-sea cables, given its position globally and its proximity to data centers.

Limiting the ability to lay cables to less than half the coast of California and outside of sanctuaries throughout the United States limits the resiliency and the redundancy of these cables. This limitation increases the risk of external events like landslides, a ship dragging an anchor, fishing operations. These things do happen, intentionally or not, would damage multiple cables at the same time, and imperil our communications which is detrimental to our national and economic security.

NOAA has said that they oppose any requirement for SUPs for these cables in marine sanctuaries for 2 years to determine a process going forward. However, the process will only address future marine sanctuaries, so the best-case scenario is a patchwork of inconsistent rules depending on the sanctuary and when it is designated.

My bill would provide regulatory certainty, businesses need that regulatory certainty now, without jeopardizing any environmental concerns or responsibilities that have to be addressed before receiving a permit. This is a balanced approach to protect the marine environment while ensuring our national and economic security, as well as our global leadership and technology.

Once again, I want to repeat what I said earlier because I think it is very, very important. It is estimated that in the financial sector alone, undersea cables carry $10 trillion worth of financial transfers daily. This is important.

Thank you very much for considering this, Madam Chair, and thank you for giving me the opportunity to address, and I yield back.

Thank you. Very interesting testimony. Very helpful.

And I assume, Ms. Toombs, that you will be reiterating some of the information he has provided and providing more detail about the importance of this bill. So would you please go ahead and begin your testimony for 5 minutes?

STATEMENT OF DENISE TOOMBS, ADVISOR, INTERNATIONAL CONNECTIVITY COALITION, SAN FRANCISCO, CALIFORNIA

Ms. TOOMBS. Thank you, and thank you for the opportunity to testify today on behalf of the International Connectivity Coalition, ICC, regarding H.R. 261, the Undersea Cable Protection Act of 2025.

This timely legislation is needed to address sub-sea cable permitting and national marine sanctuaries to ensure environmental concerns are addressed with direct consultation with NOAA, while providing regulatory certainty for cable network investment and development in the national interest.

I am Denise Toombs, Advisor to the ICC, with 25 years of experience permitting sub-sea cables in the U.S. and globally. The ICC represents companies that design and operate submarine fiber optic cable networks which are the backbone of global communications. These cables transmit 99 percent of intercontinental data, enabling essential global activities from commerce and financial transactions to secure government and military operations.

A CSIS study estimates the sub-sea cable industry's substantial investment in these global networks contributes nearly $650 billion annually to the global economy and supports our national security. With exponential growth in global Internet traffic and the demand from technologies like AI and super-computing, the need for sub-sea cables continues to rise. In order for the U.S. to maintain global leadership in technology, investment and deployment in sub-sea cables needs regulatory certainty.

The current framework for the permitting of sub-sea cables is already robust, requiring permits from multiple Federal, State, and local agencies. Required studies in general, this is not in marine sanctuaries, per se, include essential fish habitat assessments, biological assessments, cultural and archeological studies, and enforceable mitigation plans. Environmental impact studies and monitoring that are integral to these permitting processes and permit conditions continue to show that the environmental impact of cables is minimal and short term. Environmental protection is managed in part through intensive routing analyses and engagement with resource agencies and local marine users during the design phase, established industry guidance and best management practices during installation, and cooperation with resource agencies during and after installation. The current permitting process can take up to 3 years before moving on to installation.

The legislation being considered does not change or limit any of these requirements. What the bill is looking to address is the additional permitting framework for commercial sub-sea cables in national marine sanctuaries. Special Use Permits administered by NOAA add another layer of permitting, and substantially increases the regulatory uncertainty for cable projects.

NOAA's requirement for Special Use Permits is redundant to the existing robust permitting processes already overseen by Federal, State, and local authorities. Moreover, if an SUP is issued, it is only good for 5 years with uncertain prospects for renewal. A 5-year term is incompatible with critical infrastructure investment and expected operating life of these systems, and is in contrast

with the 25-year license issued by the FCC for these cables and the 20 to 25-year terms of most State seabed leases.

These restrictions discourage cable routes through sanctuaries, making them no-go zones, as mentioned. For example, approximately 400 of California's 800 miles of coastline is in areas designated as national marine sanctuaries. This matters because network resiliency and security require diverse cable routes. If networks are forced into more congested areas, they are more vulnerable to becoming a single point of failure during natural disasters or other events.

The Undersea Cable Protection Act would streamline the permitting process by eliminating the extra requirement of NOAA's Special Use Permits, while retaining NOAA's oversight role through a consultation process. This would have no effect on the existing Federal, State, and local regulatory requirements for subsea cables. The change would retain both the protection of sanctuary resources and the continued development of this critical infrastructure.

Sub-sea cables are essential to the U.S. economy and national security, and this legislation represents a balanced approach to safeguarding our marine environments while enabling investment in vital communications networks.

Thank you for the opportunity to testify. I look forward to your questions.

[The prepared statement of Ms. Toombs follows:]

PREPARED STATEMENT OF DENISE TOOMBS, ADVISOR TO THE INTERNATIONAL CONNECTIVITY COALITION

ON H.R. 261

Distinguished members of the Committee, thank you for the opportunity to testify today on behalf of the International Connectivity Coalition in support of H.R. 261, the "Undersea Cable Protection Act". We appreciate Congressman Buddy Carter for introducing this legislation to address subsea cable permitting in national marine sanctuaries.

I am Denise Toombs, Advisor to the ICC, and am appearing on behalf of the ICC to share my experience permitting subsea cables for nearly 25 years. I am recognized as a leading expert in environmental permitting and licensing for marine capital projects, particularly subsea cable projects in the U.S. and globally. I understand the complexities of the local, state, and federal permitting regimes for these types of projects and have a deep knowledge in applying these regulations to subsea cable systems. The ICC is a group of companies with substantial investments in subsea fiber optic cable networks that enable people, companies, governments, and institutions to communicate and transact business across oceans and between continents in near real time.

Subsea cables are essential to U.S. economic and national security. This is important legislation needed to address commercial subsea cable[1] permitting in national marine sanctuaries and is a balanced approach to safeguarding our marine environments, while enabling investment in vital communications networks.

Subsea Fiber-Optic Cables. Modern subsea cables use fiber-optic technology to facilitate the transmission of 99% of international data and communications across the world.[2] These cables are laid on the seabed between and around continents. Subsea cables are critical infrastructure and are pivotal in the functioning of governments, economies, and societies worldwide.[3] They underpin the digital economy,

[1] This testimony is limited to commercial subsea cable permitting, not subsea cables for research or military use.

[2] *See* https://www.subseacablemap.com/

[3] *See* Priorities for DHS Engagement on Subsea Security & Resilience; *see also* Securing Asia's Subsea Network: U.S. Interests and Strategic Options

supporting everything from global trade and financial transactions to the daily operations of businesses across borders. The Center for Strategic and International Studies estimates that the contribution of subsea cables to the U.S. economy in 2019 was nearly 649 billion, or approximately 3% of US GDP.[4] Subsea cables also support our national security communications, including secure military and intelligence operations. Any disruption to these systems poses a significant risk to U.S. economic and national security.

With the rise of digitalization, e-commerce, data-driven economies, and now artificial intelligence, the need for reliable, global internet connections continues to grow exponentially, and worldwide demand for bandwidth is now nearly doubling every two years.[5] This, in turn, has resulted in a year-over-year increase in the number of subsea cables at a rate of 4 percent annually,[6] making today's world of approximately 575 active subsea cables[7] starkly different than the world of approximately 100 cables that existed in 1999.[8]

Accommodating these essential lines of communication through geographically diverse ocean routes is necessary to ensure that disruption caused by an earthquake, maritime accident, or other incident does not cause widespread loss of connectivity for U.S. commerce, safety, and security interests. Subsea cable "route diversity" is one of the key considerations during the design of new cable systems to maintain resilience of digital communication infrastructure. Therefore, potential route diversity benefits from having fewer constraints during spatial planning. A principal policy goal set by DHS is to coordinate internationally to increase network resilience and route diversity.[9] Given the vital role subsea cables play in our digital communication infrastructure across the globe, it is imperative that the United States promote, not delay, investment in their installation and operation. The proposed legislation will help ensure the United States remains a leader in strengthening the resilience of cable networks through route diversity.

Subsea Cables in the Marine Environment. Subsea fiber optic cable systems have minimal environmental impact. Subsea fiber optic cables are typically less than 2 inches in diameter or about the size of a garden hose. Throughout the design and installation process, extreme care is taken to minimize its environmental footprint. The industry practices early-stage engineering and leverages modern technology to avoid or minimize environmental impacts while at the same time maximizing societal, economic, and national security benefits.

The industry also deploys intensive routing analyses and regularly engages with resource agencies and local marine users during the design phase. During installation, they follow well established industry guidance and best management practices and cooperate with resource agencies and stakeholders during and after installation.

There is significant data which demonstrate that subsea fiber optic cable installation and operation, including maintenance and repair, have minimal environmental impact.[10] For example, there are impact assessments, monitoring reports, and post-installation surveys prepared for U.S. subsea cable projects, including studies addressing cables in national marine sanctuaries that demonstrated, even for subsea cables within national marine sanctuaries, seafloor conditions return to pre-cable installation conditions following the cable lay activities, and biological communities along the cable route were found to be indistinguishable from those in control areas

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[4] *See* Securing Asia's Subsea Network: U.S. Interests and Strategic Options

[5] *See id.*

[6] *See Rising Bandwidth Demand and the Impact on Subsea Cables*, OCEANS & CABLES (Feb. 26, 2024), https://oceanscables.com/rising-bandwidth-demand-and-the-impact-on-subsea-cables/.

[7] *See id.*

[8] *See World Submarine Cables & International Bandwidth*, STACKSCALE (July 7, 2022), available at https://www.stackscale.com/blog/submarine-cables/.

[9] *See* Priorities for DHS Engagement on Subsea Security & Resilience.

[11] J. Lindholm, K. Roetcisoender, M. Seida, and T. Leggett, Final Report, Olympic Coast National Marine Sanctuary PCL Cable Seafloor Habitat Recovery at 10 (Mar. 2024). March 2024 report for seabed recovery survey completed involving telecommunications subsea cables installed in the Olympic Coast National Marine Sanctuary indicating that there was "no evidence of the cable (either exposed cable or remnant trench from the cable installation)"; and that (2) "there was no difference with respect to the density" of either sessile macrofaunal invertebrates on the benthos or of demersal fishes "between either cable and their unimpacted reference sites." *See also* NOAA Office of National Marine Sanctuaries, ONMS–18–01, Submarine Cables in Olympic Coast National Marine Sanctuary: History, Impact, and Management Lessons (2018), at 42–43. Report found that "[i]n general terms, the physical habitat within OCNMS had returned to pre-installation conditions within five years of cable installation." In addition, the report concluded that in terms of "impacts from undersea cables, benthic communities along the cable route in [OCNMS] were indistinguishable from those in control areas during the post-installation surveys."

away from the cable.[11,12] In addition, burial verification surveys conducted for permit compliance along the West Coast consistently show cables, once installed and buried, remain in place as recorded during installation.

In addition, publicly available reports, such as the 2009 UNEP-WCMC Report "Submarine Cables and the Oceans: Connecting the World" ("UNEP-WCMC milestone report") aimed to provide objective, factual descriptions of the subsea cable industry and the interaction of subsea telecommunications with the marine environment.[13] Since the UNEP-WCMC milestone report, approximately 25 other peer reviewed university and research institution studies have been completed on various aspects of subsea cables in the marine environment, including leaching studies, seabed recovery studies, marine mammal and shark studies, and EMF.[14] The cumulative result of these studies echoes the UNEP-WCMC Report that modern subsea fiber optic cables have short-term, minimal impacts on the marine environment.

Robust Permitting Regime. The installation and operation of subsea cables in the US are subject to a robust permitting regime, requiring permits and consultations from multiple federal, state, or local agencies. The planning and permitting for a trans-oceanic subsea cable can take two to three years before installation.

The resources in national marine sanctuary designations already receive protection under existing federal and state laws governing the installation, operation, maintenance, and ultimately, the retirement of subsea fiber optic cables. The U.S. Army Corps of Engineers (USACE) is typically the lead federal agency for subsea cable projects in the US. Most cable projects qualify for authorization under Nationwide Permit (NWP) 57 Electric Utility Line and Telecommunications Activities. NWP 57 authorizes the installation of the cable and requires, at a minimum, federal consultations with the National Marine Fisheries Service (e.g., NOAA Fisheries), U.S. Fish and Wildlife Service, and Tribes.

US states and territories also have permitting authority for installation and operation of subsea cables. States have robust and well-developed regulatory regimes in place to protect marine environments and cultural resources that may be affected by the installation of subsea fiber optic cables. State authorizations include conditions that encompass installation and/or the life of the cable. Seabed leases in state waters generally have terms of 20 to 25 years, with options for renewal, aligning with the investment and lifecycle of a subsea cable.

California provides a good case study of a robust state regulatory regime. The California agencies involved in reviewing a subsea cable rely on a robust environmental review under the California Environmental Quality Act (CEQA). The CEQA analysis addresses impacts for multiple resources. It is conducted as a public process and results in enforceable mitigations that are ultimately incorporated into permit and lease conditions by appropriate agencies, including the California State Lands Commission and the California Coastal Commission. The California State Lands Commission is typically the lead agency with the California Coastal Commission having a substantial role in the review and authorization of subsea cables off the California coast.

The California State Lands Commission issues a submerged lands lease authorizing the placement, occupancy, maintenance, and retirement a subsea cable on state submerged lands incorporating mitigations developed during the CEQA review. The California Coastal Commission, in turn, issues a coastal development permit and certification under the federal Coastal Zone Management Act that assure consistency between federal actions and the California Coastal Management Program. The submerged lands lease and the coastal development permit are two good

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[12] Monterey Bay Aquarium Research Institute, Potential Impacts of the Monterey Accelerated Research System (MARS) Cable on the Seabed and Benthic Faunal Assemblages (2020) at i-ii. available at https://sanctuarysimon.org/regional_docs/monitoring_projects/100391_MBARI_MARS_2020_report.pdf. Summarized four "comprehensive surveys" performed in 2008, 2010, 2015 and 2020 (13 years after the MARS cable's 2007 installation), on potential impacts on the Monterey Bay national Marine Sanctuary, finding (1) that "the MARS cable has had little detectable impact on seabed geomorphology, sediment qualities, or biological assemblages; (2) in terms of potential seabed effects, that with respect to the "cable trench" associated with the cable's installation on the seafloor, sediment had filled the cable trench in deeper areas, "which is now nearly imperceptible in most locations"; and (3) that there was virtually no detectable effects along the cable route with respect to benthic communities, including that (i) for the first three comprehensive surveys, "local-scale variation in benthic megafaunal communities" near the MARS cable "was minor or undetectable", and (ii) the 2020 survey actually found that "the density of megafauna . . . was significantly greater along the cable route than the undisturbed area just 50 m away."

[13] *See* https://resources.unep-wcmc.org/products/WCMC_RT059.

[14] *See* https://www.un.org/depts/los/biodiversity/prepcom_files/ICC_Submarine_Cables_&_BBNJ_August_2016.pdf.

examples of state authorizations issued under existing state permitting regimes that prioritize the avoidance, minimization, and mitigation of impacts to resources, including resources of importance in national marine sanctuaries.

California resource agencies have learned from the experience of past projects and have amended some permitting requirements after reviewing the body of information developed from earlier subsea cable projects. The subsea cable industry, in turn, is able to anticipate applicable requirements and incorporate them into project design. The outcome is a more predictable—but still rigorous—process. Other states have similar permitting regimes that ensure a predictable and rigorous state-level permitting process for subsea cables.

Together, the existing federal and state subsea permitting regime and review process address potential adverse impacts to marine resources by requiring, at a minimum, the following:

- Biological Assessments for review and concurrence by NOAA Protected Resources Division and the US Fish and Wildlife Service for potential effects on species listed under the Endangered Species Act and Marine Mammal Protection Act.
- Preparation of an Essential Fish Habitat Assessment for NOAA Fisheries review and concurrence as required by the Magnuson-Stevens Fishery Conservation and Management Act.
- Environmental assessments of all elements of the project, including a full air quality and greenhouse gas assessment.
- Marine archaeological assessment required to identify and avoid sensitive archaeological and cultural resources, including consultations under the National Historic Preservation Act with the state historic preservation offices for potential impacts on historic and cultural resources.
- State water quality standard certifications.
- Filing of "as-built" documentation with agencies for inclusion on nautical charts, as well as providing pre-construction and installation plans, engineering design drawings, and emergency and contingency plans.
- Provisions addressing notification and performance of cable repairs and maintenance.

In addition to the above, many states have additional information requirements as part of their review. For example, California requires marine habitat assessment to identify and avoid sensitive marine resources, such as hard bottom habitats, with required mitigation for crossing unavoidable hard bottom habitat. Oregon and California also impose mitigation requirements addressing cable burial, and a pre-construction seafloor survey and post-installation survey (both which are standard industry practice independent of regulatory requirements in connection with construction and installation verifications). A burial verification survey may be required at five or six years following installation, and one year prior to the end of the lease term, or if there is an event likely causing cable to become unburied (such as a seismic event). Another evolving requirement we see (at a state level and by NOAA) is the development of a marine wildlife avoidance plan and requirement to have marine wildlife observers on board cable installation and survey vessels.

Permitting Subsea Cables in National Marine Sanctuaries. Under NOAA's current regulatory framework within national marine sanctuaries, subsea cable operators are required to obtain a special use permit to install and operate subsea cable systems. A special use permit is limited to a five-year term, which can be renewed at NOAA's discretion. However, 5-year permit terms are unsuitable for an infrastructure investment that has a minimum 25-year useful life.

In addition, the special use permit application process requires an applicant to undergo a separate federal environmental review by NOAA, in addition to the federal and state processes described above. NOAA's review requires a subsea operator to include an environmental assessment and alternatives analysis that describes routes that were considered and eliminated, the basis for elimination, and a site plan and description of each alternative.

NOAA's current special use permit review process for subsea cables is generally untested, does not have predictable processing timeframes, and would result in permit terms too short to justify the enormous investment required. Unlike USACE and state agencies, NOAA historically has little experience permitting subsea cables and its special use permit regulations contain no requirements specific to subsea cable siting. Further, a special use permit for subsea cables requires a fair market value fee using a formula that is outdated and not based on actual, verifiable costs.

It is not predictable or easy to apply. Simply put, given the extensive review and protections guaranteed by existing local, state and federal procedures, there seems no reasonable need for NOAA to continue regulating subsea fiber optic cables with special use permits and the fair market value formula, when considering the various equities NOAA needs to balance.

It is evident that the existing NOAA regulations and permitting regime have created a de facto "no-go area" for subsea cables in national marine sanctuaries. According to NOAA's own data, only three commercial subsea cable systems have been installed in national marine sanctuaries, all between 1998 and 2000. Aside from these three cables, it appears no subsea cable have been installed in an existing national marine sanctuary since 2000. This is in comparison to, according to industry sources, some 50 or so new subsea cable systems installed in the United States since then (about 20 on the west coast and about 30 on the east coast).

The effect of NOAA's existing regulatory regime is clear. New sanctuary designations effectively prohibit new cables and could add new regulatory burden and significantly impact existing cables. This is illustrated in the attached map of California fiber optic subsea cables, overlaid by the boundaries of national marine sanctuaries off the coast of California. The map shows the extent to which commercial subsea cables landing in California and constructed since 2000, route around and avoid the national marine sanctuaries. This is a direct result of the special use permit process, and unrelated to market demand. In fact, the only commercial subsea cables installed in national marine sanctuaries in California were all installed *prior* to the sanctuary designation of the areas and have all since been retired.[15]

The effect of these regulations is real and increases risk to the subsea cable industry and has a direct, adverse impact on route diversity and subsea cable resiliency. The industry avoids sanctuaries because of the special use permit process, the special permit term, and associated fair market value fees imposed by NOAA under its special use permit regime. This in turn, especially on the west coast, diminishes the number of potential cable landings and forces new cables into more congested locations, especially when other maritime uses and physical constraints drive routing decisions must be considered. This forced routing could result in potential single points of failure that could disrupt the timely exchange of data and information.[16]

Streamlined Permitting for Subsea Cables. The proposed legislation would alleviate a significant regulatory burden on subsea cables by eliminating NOAA's duplicative environmental permitting for subsea cables and rely on existing, robust federal and state permitting regime. NOAA would retain an oversight role for any commercial subsea cable passing through a national marine sanctuary.

For subsea cables that might be installed in a national marine sanctuary, which, as noted above, would require a permit from the USACE, NOAA has explicit consultation authority under Section 304(d) of the National Marine Sanctuary Act, which requires the USACE to consult with NOAA on likely adverse impacts on a sanctuary resource. This authority ensures NOAA's engagement in the USACE review process and allows NOAA to recommend conditions of approval and even alternative actions to protect sanctuary resources. The proposed legislation also contains an agency cooperation provision that further ensures that NOAA would have a continued consultative role on the installation of a new cables in a sanctuary that could have adverse impacts on sanctuary resources, similar to that of NOAA and other federal agencies, related to essential fish habitat, marine mammal protection and endangered species. For subsea cables that cannot rely on another federal or state authorization, under the proposed legislation, NOAA would retain permitting jurisdiction for subsea cables in national marine sanctuaries.

NOAA itself is in the process of reconsidering its permitting regime for subsea cables in national marine sanctuaries. In August 2024, NOAA issued Notice of Modification to the Special Use Permit Category for the Continued Presence of Commercial Submarine Cables within the National Marine Sanctuary System in Docket

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[15] For the example, the cables, now retired, that land in Port Arena, CA and traverse what is now the northern portion of the Greater Farallones NMS, were installed prior to the 2016 expansion of the Greater Farallones NMS, which expanded the sanctuary footprint to cover the area traversed by the cables. Similarly, the cables, now retired, that traverse what is now the western Davidson Seamount expansion of the Monterey Bay NMS, were installed prior to the 2008 expansion of the sanctuary to Davidson Seamount, which expanded the sanctuary footprint to cover the area traversed by the cables.

[16] *See id.*; Curtis Heinzl, *Subway-Style Map Visualizes the Global Network of Submarine Cables*, BLOOMBERG (July 17, 2024), https://www.bloomberg.com/news/newsletters/2024-07-17/subway-style-map-visualizes-world-s-network-of-submarine-cables?srnd=homepage-uk.

No. 2024–18099.[17] During the pause, NOAA is taking comments and considering revisions to the 2011 Final Policy and Permit Guidance for Submarine Cable Projects[18] Members of the International Connectivity Coalition provided comments to NOAA and encourage NOAA to consider eliminating special use permit review in its entirety for subsea cables and instead rely on its authorization and consultation authorities instead.

Under the proposed legislation, NOAA will continue to have a role in reviewing subsea cables within national marine sanctuaries. With the proposed legislation, however, the review process will be more efficient, provide greater certainty to applicants, improve diversity of routes, and focus Sanctuary staff resources on the marine sciences and resource education at which they excel rather than diverting time to permit processing.

In closing, I wanted to express the ICC's deep appreciation for the Committee to the attention it is giving to this critically important matter and for allowing me to share my testimony with you today.

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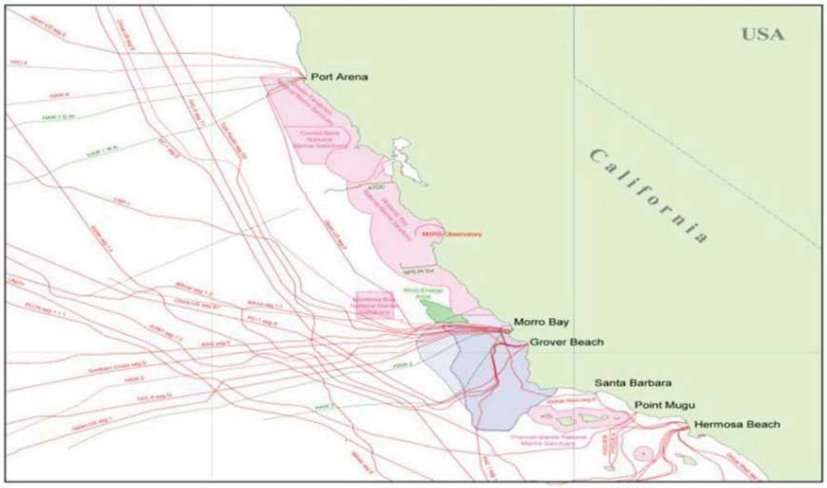
ATTACHMENT 1—California Coastline Map



Ms. HAGEMAN. Thank you, Mr. Toombs. I now recognize Mr. Witherspoon for 5 minutes.

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[17] https://www.federalregister.gov/documents/2024/08/16/2024-18099/notice-of-modification-to-the-special-use-permit-sup-category-for-the-continued-presence-of

[18] *See* https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/library/pdfs/subcable_final_guidance_2011.pdf

STATEMENT OF DWIGHT WITHERSPOON, WATER RIGHTS UNIT ATTORNEY, NAVAJO NATION DEPARTMENT OF JUSTICE, WINDOW ROCK, ARIZONA

Mr. WITHERSPOON. [Speaking Native language] Chairman Hageman, Ranking Member, members of the Subcommittee. Thank you for this opportunity to testify on the WaterSMART Access for Tribes Act. My name is Dwight Witherspoon, and I serve as an attorney for the Navajo Department of Justice. Today, I am here on behalf of Navajo Nation President, Dr. Buu Nygren, to express our strong support for this legislation which will make the WaterSMART grant program more accessible to Tribes by allowing the flexibility with the non-Federal cost share requirements.

While this bill does not address the full scope of the Navajo Nation's water needs, it provides a useful tool to help the nation and other Tribes address water infrastructure challenges and move towards a more sustainable future.

The Navajo Nation water needs are immense and urgent. Our nation spans over 27,000 square miles across Arizona, New Mexico, and Utah, and many of our citizens live in remote areas without access to clean drinking water. At a rate that is more than 60, roughly 30 percent of our Navajo households lack clean, reliable drinking water, a rate that is 67 times more than the national average. This stark statistic is not just a number. It represents thousands of families who are forced to haul water for drinking, cooking, and bathing.

The lack of access to clean water has led to a cascade of public health challenges, including higher rates of waterborne illnesses and other preventable diseases. It also places an undue burden on women, children, and elders, who are often asked to be able to haul the water for long distances.

Unlike States and municipalities, the Navajo Nation does not have a traditional tax base. Since tribal lands are held in trust, it restricts our ability to generate revenue through property taxes, and our community's remoteness limits other economic development opportunities. As a result, we must rely on Federal funding to build and maintain critical infrastructure. Programs like the WaterSMART are helpful, but the current and cost share requirements often put these funds out of reach for tribal nations who need them the most.

The WaterSMART program has an opportunity to fund impactful projects for the Navajo Nation. For example, the nation could apply for drinking funding, water system efficiency upgrades at the Alamo Chapter, a satellite reservation in central New Mexico. The nation in the past has struggled to successfully apply for these funds simply because they cannot meet the non-Federal matching requirements. The WaterSMART access for Tribes would address this hardship by allowing the Secretary of the Interior to waive the non-Federal cost share requirements, increasing the likelihood that Tribes like the Navajo Nation will be able to access the critical funding.

It is crucial to understand that, while this water WaterSMART Access for Tribes Act is a step forward, other larger investments in drinking water infrastructure are needed in Indian Country. For instance, the nation continues to advance several water rights

settlements before Congress. This would resolve the nation's outstanding water claims in Arizona and a majority of the claims in New Mexico, as well as address the massive infrastructure needs on the Navajo reservation.

Access to water is not just a matter of infrastructure, it is a matter of health and economic opportunity. It impacts our children. Our schools struggle with inadequate water supplies. It affects our ability to attract business, create jobs. It perpetuate cycles of poverty. And it undermines our efforts to build a sustainable future for the Navajo people.

We urge this WaterSMART Access for Tribes Act recognizes these realities and offers a practical and immediate solution to help address the barriers Tribes face in accessing Federal resources. By waiving and reducing the cost share requirements, this legislation would empower tribal nations to undertake projects to conserve water, improve efficiency, and enhance water delivery systems.

We urge the Subcommittee and Congress to support the WaterSMART Access for Tribes Act, who will—while continuing to prioritize tribal water rights settlements. Together with these efforts, we can help turn the tide of water insecurity in Indian Country while honoring the Federal Government's trust responsibility for tribal nations.

In closing, we want to thank the Subcommittee for its attention to our tribal needs. We look forward to you advancing this legislation. We thank you for the opportunity to testify, and happy to answer questions.

[The prepared statement of Mr. Witherspoon follows:]

PREPARED STATEMENT OF MR. DWIGHT WITHERSPOON, WATER RIGHTS UNIT ATTORNEY, NAVAJO NATION DEPARTMENT OF JUSTICE

ON H.R. ____, THE WATERSMART ACCESS FOR TRIBES ACT

Ya'at'eeh Chairman Hageman, Ranking Member, and Members of the Subcommittee:

Thank you for the opportunity to testify on the WaterSMART Access for Tribes Act. My name is Dwight Witherspoon, and I serve as an attorney for the Navajo Nation Department of Justice in the Water Rights Unit. Today, I am here on behalf of Navajo Nation President Dr. Buu Nygren to express our strong support for this legislation, which will make the WaterSMART grant program more accessible to Tribes by allowing flexibility with the non-federal cost-share requirements. While this bill does not address the full scope of the Navajo Nation's water needs, it provides a useful tool to help the Nation and other tribes address water infrastructure challenges and move toward a more sustainable future.

The Navajo Nation's water needs are immense and urgent. Our Nation spans over 27,000 square miles across Arizona, New Mexico, and Utah, and many of our citizens live in remote areas without access to running water or reliable infrastructure. Roughly 30% of Navajo households lack access to clean drinking water—a rate that is more than 67 times the national average. This stark statistic is not just a number; it represents thousands of families who are forced to haul water for drinking, cooking, and bathing. The lack of access to clean water has led to a cascade of public health challenges, including higher rates of waterborne illnesses and other preventable diseases. It also places an undue burden on women, children, and elders, who are often the ones tasked with hauling water over long distances.

These challenges are compounded by the unique legal and economic realities faced by Tribal Nations. Unlike states and municipalities, the Navajo Nation does not have a traditional tax base. Federal law restricts our ability to generate revenue through property taxes, and the remoteness of our communities limits other opportunities for economic development. As a result, we must rely heavily on federal funding to build and maintain critical infrastructure. Programs like WaterSMART

are helpful, but the current cost-share requirements often put these funds out of reach for Tribal Nations that need them most.

The WaterSMART program has the opportunity to fund impactful projects for the Navajo Nation. For example, the Nation could apply to fund drinking water system efficiency upgrades at the Alamo Chapter, a satellite reservation in rural central New Mexico, through the WaterSMART program if funding is available. The Nation in the past has struggled to successfully apply for these funds simply because we cannot meet the non-federal matching requirements. The WaterSMART Access for Tribes Act would address this hardship by allowing the Secretary of the Interior to reduce or waive the non-federal cost-share requirement, increasing the likelihood that Tribes like the Navajo Nation will be able to access this critical funding.

It is crucial to understand that while the WaterSMART Access for Tribes Act is a step forward, other larger investments in drinking water infrastructure in Indian Country are needed. For instance, the Nation continues to advance several water rights settlements before Congress, which would resolve the Nation's outstanding water claims in Arizona and the majority of its claims in New Mexico as well as address the massive water infrastructure needs on the Navajo Reservation.

Access to water is not just a matter of infrastructure; it is a matter of health, and economic opportunity. The inability to provide clean, reliable water to all of our citizens limits our ability to thrive as a Nation. It impacts our children's education, as schools struggle with inadequate water supplies. It affects our ability to attract businesses and create jobs, perpetuating cycles of poverty. And it undermines our efforts to build a sustainable future for the Navajo people.

The WaterSMART Access for Tribes Act recognizes these realities and offers a practical, immediate solution to help address the barriers that Tribes face in accessing federal resources. By waiving or reducing the cost-share requirements, this legislation would empower Tribal Nations to undertake projects that conserve water, improve efficiency, and enhance water delivery systems.

We urge this Subcommittee and Congress to support the WaterSMART Access for Tribes Act while continuing to prioritize the resolution of Tribal water rights settlements. Together, these efforts can help us turn the tide on water insecurity in Indian Country and honor the federal government's trust responsibility to Tribal Nations.

In closing, I want to thank this Subcommittee for its attention to the water needs of Tribal Nations. The Navajo Nation looks forward to working with you to advance this legislation, the Nation's water rights settlements, and other measures that support sustainable water access for Native communities. Your leadership and commitment to addressing these challenges will make a tangible difference in the lives of the Navajo people and all Native Americans.

Thank you for the opportunity to testify. I am happy to answer any questions you may have.

Ms. HAGEMAN. Thank you, Mr. Witherspoon. The Chair now recognizes Mr. Hipke for 5 minutes.

STATEMENT OF WESLEY HIPKE, WATER PROJECTS SECTION MANAGER, IDAHO DEPARTMENT OF WATER RESOURCES, BOISE, IDAHO

Mr. HIPKE. My name is Wesley Hipke, and I am the Water Projects Section Manager for the Idaho Department of Water Resources. I am here today testifying on behalf of the Idaho Water Resource Board.

The board is charged with formulating a comprehensive State water plan for conservation, development, management, and optimum use of Idaho's water resources, along with undertaking and financing projects and programs to help meet those needs.

Idaho is a headwater State with significant water resources, but also includes vast, semi-arid and arid regions where water supplies vary significantly from year to year. As with other Western States, water supply shortages and water use conflicts occur across the

State. Most notably is the eastern Snake River plain in the southern portion of the State, home of one-third of Idaho's population.

This plain is underlain by the Eastern Snake Plain Aquifer, or ESPA. This aquifer covers an area roughly the size of Lake Erie, and supports about one million acres of irrigated farmland, municipal water supplies, and thousands of domestic wells for drinking water. The ESPA discharges spring flows into the Snake River, supplying water to an additional 600,000 of irrigated acres, many municipalities, hydropower generation, and a multitude of other uses. The value of goods and services produced by the ESPA region exceeds $10 billion annually.

With the strong support of Governor Brad Little and the Idaho legislature, Idaho has made significant investments in water management, drought resiliency, expanding water supplies, and repairing and improving critical water resource infrastructure. Since 2019, more than $500 million has been appropriated by the legislature to the board for these water management improvements.

The water levels in the ESPA are declining at an unsustainable rate. The Idaho Water Resource Board was tasked with the development of the ESPA Comprehensive Aquifer Management Plan to stabilize and recover this crucial aquifer. A key component of the plan is the development of a State-sponsored aquifer recharge program. This program diverts excess surface water, including flood flows, in wet years to stabilize and recover this aquifer. To date, Idaho has invested approximately $60 million on recharge infrastructure. This does not include program operations or expenditures made by private parties.

Development of the aquifer recharge program includes the use of existing irrigation canals for the transportation and percolation of the water into the aquifer. A significant number of the irrigation canals cross lands owned by the U.S. Bureau of Land Management. These canals have existing right-of-ways with the BLM. Using this existing infrastructure is hugely beneficial for Idaho to reach its goals and stabilizing the aquifer.

To ensure flexibility in managing aquifer recharge over Federal lands, the 116th Congress enacted section 1105 of the Aquifer Recharge Flexibility Act. In part, the Act states the holder of a right-of-way, easement, permit, or other authorization to transport water across public land administered by the Bureau of Land Management may transport water for aquifer recharge purposes without requiring additional authorization from the Secretary where the use does not expand or modify the operation of the right-of-way, easement, permit, or other authorization across public land.

The Act was intended to allow the board to move and infiltrate water for recharge through existing irrigation canals that crossed BLM lands without obtaining additional right-of-ways. Despite the plain wording of the Act, the BLM has taken the position that the Act does not apply to third parties, only to the right-of-way owners of record. The interpretation requires the board to obtain new right-of-ways to conduct recharge in canals that already have existing right-of-ways.

The BLM right-of-way process can be onerous and will add significant time to the development of recharge projects. This could severely delay the board's ability to reach the goals of recovering and

stabilizing the ESPA. The BLM's insistence that the board obtain new right-of-ways to utilize existing irrigation canals for aquifer recharge is in contravention of the plain language of the Act, and we believe is contrary to the intent of Congress in passing the Act.

The amendments to the Act being sought in the legislature would address BLM's erroneous interpretation that the Act does not apply to third parties. The amendment will enable the board to more efficiently implement its managed aquifer recharge activities and reach its goals for the benefit of the citizens of the State of Idaho.

In conclusion, I want to thank this Subcommittee for considering this amendment to the Aquifer Recharge Flexibility Act, and for this opportunity to provide testimony. I would be happy to answer any questions the Subcommittee may have.

[The prepared statement of Mr. Hipke follows:]

PREPARED STATEMENT OF MR. WESLEY HIPKE, WATER PROJECTS SECTION MANAGER, IDAHO DEPARTMENT OF WATER RESOURCES

ON H.R. 331

My name is Wesley Hipke, and I am the Water Projects Section Manager for the Idaho Department of Water Resources. I am also here today testifying on behalf of the Idaho Water Resources Board (Board). The Board consists of eight governor-appointed members, knowledgeable in the field of water resources from across the State of Idaho and is required by law to be politically balanced. The Board was established by Idaho Constitution Article 15, Section 7, and is charged with formulating a comprehensive state water plan for conservation, development, management, and optimum use of Idaho's water resources, and undertaking and financing projects and programs to help meet those needs.

Idaho is a headwaters state with significant water resources, but also includes vast semi-arid and arid regions. Like all arid Western states, Idaho depends on snowpack for its water supplies, which varies from year to year. Water resource administration and management are therefore of critical interest to the State of Idaho and its residents.

As with other Western states, water supply shortages and water use conflicts occur across the various regions of the state. Idaho has an exceptional program to adjudicate water rights within the state, including the Snake River Basin Adjudication which was completed in 2014. The Northern Idaho Adjudications and the Bear River Basin Adjudication are currently underway. These adjudications, when completed, will allow the Idaho Department of Water Resources to administer water rights on a priority basis in times of shortage.

About one-third of Idaho's population resides on the Eastern Snake River Plain. The Eastern Snake River Plain is underlain by the Eastern Snake Plain Aquifer ("ESPA"), which is roughly the size of Lake Erie. The ESPA is a 10,000 square-mile aquifer that underlies much of southern and eastern Idaho, supports about 1 million acres of irrigated farmland, municipal water supplies for 18 cities, and thousands of individual domestic wells for drinking water. The aquifer discharges spring flows to the Snake River, supplying water to an additional 600,000 acres of downstream irrigated land, many municipalities, and flows for hydropower generation. The ESPA is the sole source of drinking water for both cities and most rural residents in eastern Idaho. The value of goods and services produced by the ESPA region exceeds $10 billion annually.

Idaho has been very proactive in its responses to drought and water supply shortages for all water uses, including drinking water, irrigation, hydropower, fish, wildlife, environmental needs, and others. With the strong support of Governor Brad Little and the Idaho Legislature, Idaho has made significant investments in water management, building drought resiliency, expanding water supplies, and repairing and improving critical water resource infrastructure to benefit water availability into the future. Since 2019, more than $500 million has been appropriated by the legislature to the Board for these water management improvement purposes.

The water levels in the ESPA are declining at an unsustainable rate. Because of its importance for the citizens of Idaho, the Idaho Legislature tasked the Idaho Water Resource Board with developing a plan to stabilize and recover the ESPA. In response, the Board developed the Eastern Snake Plain Comprehensive Aquifer Management Plan (ESPA CAMP) which was adopted as part of the State Water

Plan in 2009. The ESPA CAMP sets forth a suite of measures, the most prominent of which is the development of a state-sponsored aquifer recharge program. The aquifer recharge program diverts excess surface water (including flood flows) in wet years to stabilize and recover the declining aquifer.

Development of the managed aquifer recharge program includes the use of existing irrigation canals and ditches as the mechanism for seeping and percolating water into the aquifer. A significant number of the existing irrigation canals and ditches cross lands owned by the U.S. Bureau of Land Management (BLM). The irrigation canal owners already have existing rights of way with the BLM for their irrigation canals. Using existing irrigation infrastructure to divert, seep, and deliver managed aquifer recharge water is hugely beneficial in reaching Idaho's aquifer recharge goals. The program also includes other measures undertaken by water users, municipalities, and other partners in the effort. To date, Idaho has invested approximately $60 million on aquifer recharge infrastructure in addition to program operations and maintenance costs, not including the expenditures made by private parties.

To ensure flexibility in managing aquifer recharge over federal lands, the 116th Congress enacted Section 1105 of P.L. 116–260, the Aquifer Recharge Flexibility Act (introduced as S. 1570/H.R. 2871 in the 116th Congress). Section 1105 facilitates the use of existing irrigation canals for aquifer recharge purposes by allowing the canals to be used for the conveyance of aquifer recharge water without the need to seek additional authorization from the federal government. In part, the Act states:

> ***Conveyance for Aquifer Recharge Purposes*** *—The holder of a right-of-way, easement, permit, or other authorization to transport water across public land administered by the Bureau of Land Management may transport water for aquifer recharge purposes without requiring additional authorization from the Secretary where the use does not expand or modify the operation of the right-of-way, easement, permit or other authorization across public land.*

The Act was intended to allow the Board to move and infiltrate managed recharge water through existing irrigation canals that cross BLM lands without having to obtain additional rights of way from the BLM. Despite the plain wording of the Act, the BLM has taken the position that the Act does not apply to third parties, only to the right of way owners of record. This interpretation has led the BLM to deny the Board's use of those existing irrigation canals without first obtaining a new right of way. The BLM right of way process can be onerous and will add significant time to the development of recharge projects. Utilizing the right of way process may severely delay the Board's ability to reach its goal of recovering and stabilizing the ESPA.

The BLM's insistence that the Board obtains new rights of way to run aquifer recharge water through existing irrigation canals is in contravention of the plain language of the Act and we believe is contrary to the intent of Congress in passing the Act. The amendments to the Act being sought in the legislation would address BLM's erroneous interpretation that the Act does not apply to third parties. The amendment will enable the Board to more efficiently implement its managed aquifer recharge activities and reach its goal of recovering the ESPA for the benefit of the citizens of the State of Idaho.

In conclusion, I want to thank this subcommittee for considering this amendment to the Aquifer Recharge Flexibility Act and for this opportunity to provide testimony. I would be happy to answer any questions the Subcommittee may have.

Ms. HAGEMAN. Thank you, Mr. Hipke. I thank the witnesses for their testimony, and I will now recognize Members for 5 minutes each for questions, and I am going to begin with myself.

Mr. Thayn, in your testimony you talk about your own experience with the Upper Colorado River System Conservation Pilot Program. Given the current water challenges on that river and in that system, if this program were not to be reauthorized, how challenging would it be to access other Federal opportunities?

Mr. THAYN. Well, I don't know that I can speak to exactly what it would, it is challenging in the economic terms of being able to conserve water. The infrastructure you have is, we spend a lot of

money to put down to utilize the water and efficiently do it. But as far as conservation, it is difficult to see much incentive to do so.

I don't know that I can speak to how it would affect others. Certainly, others that are used for conservation seems kind of counter to me to what we are trying to do to conserve water sometimes, although using water efficiently is definitely what we need to do. Utilizing it and want to utilize it is the goal with the idea of they will find somebody else for it, or the scarcity, they will give it to somebody else who they feel is more, so I don't know that I can speak to how it would affect others' programs, but certainly conservation won't be as much on the table or any incentive to do it.

Ms. HAGEMAN. Well, this is definitely a program that has helped your operation.

Mr. THAYN. Oh, definitely. And there is a benefit to fallowing anyway, and that was known. But just the economic cost of following those conservation plans when there is such scarcity and such demand for it had little interest.

Ms. HAGEMAN. So at the end of your written testimony you discuss the idea of Congress working on a more long-term solution to eventually replace the pilot program. Can you expound upon what that program would look like, and how building more flexibility into a long-term solution would benefit farmers like you?

Mr. THAYN. Well, I think one thing that we are tied to is the State, each has the Colorado compact, how much they get. And having the States be able to show conservation and allow them to have that demand management protects their water share. I think this program allows you to hold that in place at the same time conserve water for downstream.

The second part of your question?

Ms. HAGEMAN. So what I was curious about is whether you had any other ideas of how to build flexibility into the system for a long-term solution to benefit our farmers.

Mr. THAYN. Yes, as long as it is measurable and accountable, and the water that we are using is efficient, I think it is going to be important that that is recognized in conjunction with the conservation efforts. I think everybody is worried they are going to take their water.

Ms. HAGEMAN. Right.

Mr. THAYN. I think there is a big concern that that is going to happen. So as long as farmers are doing their part, that they are offered protection and the flexibility to do it in a rotational program where you can see the benefits of it without the worry of the loss or the lack of access to it.

Ms. HAGEMAN. Well, thank you for that information.

And Ms. Toombs, in your testimony you mentioned that commercial undersea cables are important to national security. Could you please expand on how important these technologies are, both domestically and globally?

Ms. TOOMBS. Yes, certainly. As was mentioned——

Ms. HAGEMAN. Please turn on your microphone.

Ms. TOOMBS. I apologize for that. Yes, certainly. As was mentioned earlier, and I will just reiterate it, sub-marine cables really provide the backbone of the Internet. I find that when I talk to people they are surprised that that is actually where the Internet

comes from, if you want to call it that. They think it is satellite communications and it really isn't. This is a sub-marine cable, or a piece of a sub-marine cable, and they are just hiding in plain sight. And they do provide us with secure and fast communications domestically, intercontinentally, and globally.

Ms. HAGEMAN. So I am going to go on to Mr. Hipke real quickly here.

You state in your testimony that the BLM's implementation of the Aquifer Recharge Flexibility Act has made it harder to implement and manage aquifer activities in your area. How would Congressman Fulcher's legislation clarify existing law, and how would it help the Idaho Water Resources Board more effectively manage its resources?

Mr. HIPKE. Thank you, Madam Chairman, members of the Committee.

To give you an idea, to get an easement in the past it has taken me approximately 2 years to do that. And for those that don't know, if you happened to see the news last summer, the ESPA went through a potential curtailment last spring, which was obviously a really big deal, that would have, if we had to move forward with that, would have curtailed a large portion of farmland.

And the reason I bring that up is the recharge program is working, we just need to do more. And so every year that we don't have the capacity to do excess water, the aquifer is losing approximately to get it in balance we need to put in about 600,000 acre-feet. And so currently the program is only doing about 250. On a really dry year we can only do less than half of that. So we have to be prepared on those wet years to be able to put that water in the ground, and we don't know when those are going to happen. So every year we don't have that in place presents a problem.

Ms. HAGEMAN. OK. Thank you for your testimony. The Chair now recognizes Mr. Huffman for his 5 minutes of questioning.

Mr. HUFFMAN. Thank you, Madam Chair, and I would like to start with Mr. Witherspoon.

Mr. Witherspoon, thank you for your testimony. And you explained what I think is the heart of the question with Ms. Stansbury's bill, how the cost share requirements that we ask of State and local governments and other applicants may make a lot of sense in those contexts, but they are different for Tribes. It is a significant burden, and I appreciate you explaining that.

If we can get those cost share requirements waived so you can participate in the WaterSMART program, what are some of the specific things that you would be able to do? And I am interested in the way that it might help you enhance drought resiliency planning and improve water management for communities that really are struggling.

Mr. WITHERSPOON. Thank you for the question.

The Navajo Nation has 110 communities, and each of those communities has water projects. And being able to approach the Navajo Nation Council as just one chapter to try to match the dollars needed to participate in the program is sometimes a very challenging obstacle because you have all the other 109 chapters that also have projects. So the limited amount of resources the nation receives each year through its generation of revenue, its trust fund,

and the interest earned is generally directed a good portion of that every year. And so there is a limited amount that can be directed towards roads or water or power or sewer.

And so it is difficult to be able to do projects. The United States has 50 States, each State has water projects and would like to benefit from such. The Navajo Nation also has 110 chapters. And so just at $1 million, that is $110 million to come up with for water projects. And each chapter has water projects, so it is difficult to get funds from council to try to make use of these programs. Thank you.

Mr. HUFFMAN. And I know that that is going to be the same experience for a lot of the Tribes in my district, so I appreciate your testimony there.

I want to turn to you, Ms. Toombs, for your testimony, and I would like to better understand the goals of your coalition, the ICC, as you call it, with this legislation. And I certainly don't think that there is anything incompatible, as I said, with undersea telecommunication cables and national marine sanctuaries, but I do want to understand the context for this discussion.

And so do you know how many cables are present right now in national marine sanctuaries? NOAA tells me there are about 55. Does that sound about right to you?

Ms. TOOMBS. Thank you for your question, by the way.

Mr. HUFFMAN. Is that about——

Ms. TOOMBS. Fifty-five cables presently in the national marine sanctuaries?

Mr. HUFFMAN. Fifty-five cables, including many telecommunication fiber optic cables. But 55 total cables in national marine sanctuaries is what NOAA says. Does that sound about right?

Ms. TOOMBS. That sounds like more cables than I am aware of.

Mr. HUFFMAN. Well, that would probably be good for you and me both to know, but that is what NOAA——

Ms. TOOMBS. Yes.

Mr. HUFFMAN [continuing]. That is what NOAA confirms.

Ms. TOOMBS. Yes.

Mr. HUFFMAN. Do you know how many Special Use Permit applications for fiber optic cables, including renewals, NOAA has denied in the past 25 years?

Ms. TOOMBS. I do not know. I don't think there would be many, if any.

Mr. HUFFMAN. So few that it is zero.

Ms. TOOMBS. Yes.

Mr. HUFFMAN. According to NOAA.

Ms. TOOMBS. That sounds about right.

Mr. HUFFMAN. So no permit application has been denied by NOAA, and we are talking about something that is being called a no-go zone where there are 55 existing undersea cables, including many of these telecommunication cables.

So it seems that the act of obtaining a permit may not be the only issue at play here. Companies are apparently OK with going through all of the other State and Federal permit processes. You have to get permits from the Corps of Engineers——

Ms. TOOMBS. Absolutely.

Mr. HUFFMAN [continuing]. And the State of California and so forth, which brings me to what I think may be the underlying issue here, or objective, and that is fees and rent.

Would you agree that this legislation blocks NOAA from collecting a fair market return for the use of these publicly-owned resources?

Ms. TOOMBS. Before I comment on that——

Mr. HUFFMAN. Well, I would just ask you to, it is a yes-or-no question. Do you agree that that is what the bill does?

Ms. TOOMBS. One result would be to remove the fair market value requirement.

Mr. HUFFMAN. Right. And in fact, on——

Ms. TOOMBS. Associated with the——

Mr. HUFFMAN. And on page 10 of your presentation to this Committee dated January of this month, you state that that is one of your objectives, to avoid the imposition of annual fair market fees for a Special Use Permit in national marine sanctuaries, correct? That is one of your objectives.

Ms. TOOMBS. That would be one of the——

Mr. HUFFMAN. And yet you pay those fees for National Park Service rights-of-way and for BLM rights-of-way, right?

Ms. HAGEMAN. The gentleman's time has expired.

Mr. HUFFMAN. I yield back.

Ms. HAGEMAN. The Chair now recognizes Mr. Walberg for 5 minutes of questioning.

Mr. WALBERG. I thank Madam Chair, and thanks to the panel for being here, and I will restrict myself from regaling you all with fly fishing opportunities on the Snake and the Green. When you bring that up, all of a sudden my fly fishing hand starts to shake.

And then you mentioned Lake Erie, which is in my district. We could talk about walleye fishing, as well, but I won't do that. I want to focus. I want to focus my questions on the Undersea Cable Protection Act, introduced by my good friend from Georgia, Mr. Carter.

I think we all agree that it is important for us to balance the environmental interests and national security and economic equities and our leadership technology when considering the permitting of these cables. And so, Ms. Toombs, as we have discussed today, you have had a lot of experience working on the permitting process. And that is the key issue, the permitting process and siting process, lengthy siting process, for these undersea cables.

One specific example in your home State of California is the Grover Beach Cable Landing Station. Can you share any background on this project and how it relates to the issues we are discussing today related to undersea cables?

Ms. TOOMBS. Thank you for your question. Yes, at the Grover Beach Landing, I have actually permitted four cables, three in 2000, this was an earlier stage, and then one last year again, all at Grover Beach.

And I believe your question was just what is entailed in that, or how——

Mr. WALBERG. What has been your experience? Yes.

Ms. TOOMBS. My experience was that it is a very rigorous process, and the first round of cables, because this was early on, was

a bit more arduous than the later one. And the reason for that was that it was new, it was an unfamiliar type of project to agencies. So, we did a lot of studies, resulted in a lot of mitigations that have been carried through over the years.

And I would say the experience more currently or more recently has been that industry has learned a lot over that time. The agencies have learned a lot over that time. And so now it has become a more predictable process. And so it actually was a process that was a little easier than it was the first time. But now those cables are in a newly designated sanctuary, and perhaps that is what you were getting at, so they were permitted before the sanctuary was designated.

Mr. WALBERG. Yes, I guess in these studies have you seen any indication of sub-sea cables being harmful to the environment the way they are established?

Ms. TOOMBS. No, again, I have permitted cables, many in the United States, globally and we take a lot of care to put them in places that will not harm the environment. And there is a lot of monitoring and rigorous oversight. And we have not found, despite many, many follow-up surveys, many follow-up studies, that the sub-marine cables have caused any harm to the environment.

Mr. WALBERG. Who at NOAA or otherwise in the permitting process is ensuring the national security and economic interests and that technology needs are also considered when permitting cables? Who at NOAA does this?

Ms. TOOMBS. Pardon me?

Mr. WALBERG. Who at NOAA does this?

Ms. TOOMBS. In my interactions with NOAA for permitting, that is really not part of the permitting process to consider those factors. We really focus on environmental protection and the environment.

Mr. WALBERG. Which are important factors.

Ms. TOOMBS. They are.

Mr. WALBERG. And I think that the sponsor of the bill pointed that out, so it seems that there ought to be some consideration taken for that.

I guess my final question to you, Ms. Toombs, can you talk about the national security implications of route diversification rather than effectively funneling the cables through one location?

Ms. TOOMBS. Yes, I can. And one of the important factors about having diverse routes is so we don't have all the cables going into one location or congested into a location because of damage that could be caused, that could really make our global networks susceptible to or being vulnerable to losing our communications with the rest of the world, with financial——

Mr. WALBERG. Sabotage.

Ms. TOOMBS. Sabotage could be one, but there—it could be intentional, it could be unintentional. So yes.

Mr. WALBERG. Unintentional, yes.

Ms. TOOMBS. Either way, it is damaging to our security.

Mr. WALBERG. I appreciate it. I see my time has expired, and I thank the Chair and yield back.

Ms. HAGEMAN. Thank you. The Chair now recognizes Ms. Stansbury for 5 minutes of questioning.

Ms. STANSBURY. Thank you, Madam Chairwoman.

Mr. Witherspoon, thank you again for being here. I think one of the benefits of hearings like this is to help bring more information to us in Washington, D.C. and to those that may not be familiar with the context on the ground.

And I was born in San Juan County and grew up partly in Farmington, New Mexico, and my mother worked for the Navajo Nation for a while, and drove and helped. She worked for services for the blind and helped people in very rural communities go shopping and things like that.

And I think that one thing that is really difficult for people who are not familiar with places like the rural areas and communities of the Navajo Nation is to understand that in the United States in the year 2025 there are communities across the largest tribal nation in the United States, 27,000 square miles, it is the size of Massachusetts, Vermont, and New Hampshire combined, that still do not have electricity and running water, and that there are thousands of families, as you said, Mr. Witherspoon, that don't have piped water into their homes and they have to haul water.

And I wonder if you could share for us here today, because I think it would be helpful for people to understand what that looks like. What does it look like to have to haul water?

Mr. WITHERSPOON. Thank you for the question.

I have been able to do a number of presentations with my colleague and our chapters, as well as in a number of college institutions, and one of the pictures that we display is two elders that are using a wheelbarrow, and they have to go about a mile and a half, and they have jugs in their wheelbarrow to be able to haul water for themselves. And so for them to do that and certainly, they both have white hair, and it is certainly a challenge for them. I think it is Jean and Larry.

But there is also cost for those that use vehicles. I think the cost for municipalities for 100 gallons of water is 20 to $0.40, but it is about $13.30 for those that have to haul water. And so there is certainly an economic burden on certainly using the vehicles, and travel, and that type of cost. Thank you.

Ms. STANSBURY. And I think that it is not just the economic cost. It is a psychological cost. It is a physical cost. When you talk to families that have to haul water, and there are families even, like I was mentioning To'hajiilee, the people have to drive 20, 30, sometimes 100 miles to go fill up water tanks just to cook food, just to take a shower, just to have clean drinking water.

Like, this is the year 2025 and there are thousands of families in the Navajo Nation that don't have piped water in their homes. And to the extent that the Navajo Nation is willing to have members of this Committee visit, I think it would be very impactful, especially as we are working to try to get the water settlement that you all recently approved across the finish line.

So I want to just make sure that when Mr. Witherspoon says that the needs of the Navajo Nation are immense and urgent, like, these are fundamental human rights issues.

The fact that we have elderly members of these communities living in very rural areas that don't have piped water in their homes, it should not be a condition of modern life in the United States at

the Navajo Nation. The WaterSMART program, as you mentioned, Mr. Witherspoon, is just one small tool, but it is an important tool in the arsenal of addressing the immense water infrastructure needs of our tribal communities. And I am hopeful that not only this particular bill, which will waive cost sharing requirements for specific projects where there are high economic needs of communities, will pass, but that we can also advance the Navajo Nation's water settlement through Congress this year, as well as the other pueblo settlements that we are trying to get across the finish line because I think that, if the American people at large really understood what it looks like and what the psychological, spiritual, physical and just life stress it is to not have adequate water infrastructure, I think that people would really be shocked.

And so I am grateful that you traveled here today to share your testimony, and grateful that the Navajo Nation is supporting this bill. And I want to thank you and the president and also the staff who are behind you for being here today. Thank you.

Ms. HAGEMAN. Thank you. The Chair now recognizes Mr. Ezell for his 5 minutes of questioning.

Mr. EZELL. Thank you, Madam Chairman, and I am very excited to be here on the Committee, and working under your leadership, and being with everybody on the 119th Congress.

H.R. 261, the Undersea Cable Protection Act, is a crucially necessary bill. Our current undersea cable network connects every continent except Antarctica. These cables are imperative to maintaining our national security.

While I believe in protecting our marine environments, finding the balance of doing so and protecting our national interest is paramount. This is especially true since we know these regulations already exist at our State and local levels. Unfortunately, Special Use Permits and other burdensome requirements that are imposed on these cables have disrupted progress, which can ultimately lead to national security vulnerabilities. NOAA realized this and issued a notice to relieve some of these duplicative and costly regulations for 2 years.

H.R. 261 would make permanent NOAA's decision to no longer require Special Use Permits for telecommunications sub-marine cables in a marine sanctuary. It would also prohibit any other NOAA authorization for all existing and future cables within the boundaries of any marine sanctuary.

Ms. Toombs, in your testimony you note that the commercial undersea cables are subject to a robust permitting process. Could you expand on the number of agencies and permits at both the Federal and State level that are involved in permitting process for undersea cables?

Ms. TOOMBS. Thank you for your question. Yes, I can.

In terms of the types of permits we need to obtain and how many, and again, I am speaking of the U.S. at the Federal level there would be probably a minimum of six Federal agencies that would need to be part of that process, whether through permits or through consultations. At the State level, of course, that will vary from State to State. But I would say probably, at a minimum, four different resource agencies or land agencies would be involved in permitting these.

And because it is not all underwater, there would be local agencies, as well, the local communities or planning departments would get involved, and that could be a handful of agencies or more, depending on the complexity of the landing.

And if I may make a follow-up point to one of the earlier questions about NOAA not denying any SUPs, the reason for that is there probably haven't been any applications. And I can speak from experience that during the early phases of route development, site development for new projects, we have often advised that that pathway is too risky from a project standpoint or from a development standpoint. And so one of the reasons there haven't been any permit applications denied is that we haven't submitted any, based on the risk——

Mr. EZELL. And roughly how long does this take?

Ms. TOOMBS. It is unclear. We don't really know because we haven't actually gone through the process in several years. The point was made earlier that there haven't been any new cables permitted in the marine sanctuary for about 20 years.

Mr. EZELL. OK. What——

Ms. TOOMBS. So we don't honestly know how long——

Mr. EZELL. So we really don't know.

One criticism we might hear about H.R. 261 is that it somehow circumvents or undermines the existing permitting process. But you and I both know that this legislation simply removes one step, the Special Use Permit, in a process that involves several layers of review.

Can you talk about the difficulty the industry has faced in trying to navigate the Special Use Permit process?

And how would this legislation improve the permitting process for these projects?

Mr. EZELL. Yes. And as I mentioned, because we haven't been applying for Special Use Permits, it is hard to say how we would navigate it. That has been one of the reasons that we have avoided doing that, because it is an uncertain path. It adds uncertainty.

And I am sorry, the second half of your question?

Mr. EZELL. No, that is all right. Let's move on just a minute.

These projects can often be decades long and require extensive levels of investment. Would that be correct to say that?

Ms. TOOMBS. Yes, that would be correct.

Mr. EZELL. Thank you.

Madam Chairman, I yield back.

Ms. HAGEMAN. The Chair now recognizes Ms. Hoyle for 5 minutes of questioning.

Ms. HOYLE. Thank you.

First of all, I want to thank Mr. Thayn and your father for coming all the way out here. It really, really matters. I am sure, as a farmer, you have a lot of things to do at home. Coming to D.C. is quite a sacrifice, but it is important to hear about stewardship and conservation from people that are utilizing these practices on the ground, as opposed to people who hear about it or read about it from somewhere else. So I just wanted to thank you so much for being here.

Secondly, I want to thank all the witnesses.

And Mr. Witherspoon, for you, would you care to share any about the barriers the Navajo Nation has encountered when accessing or participating in WaterSMART programs, and how these challenges has impacted your water management efforts?

Mr. WITHERSPOON. One of the challenges that the nation faces is capacity. In the Department of Water Resources, we have four individuals, hydrologists, and we have 110 communities that each have water projects. And so being able to apply sometimes for the Federal water grant programs is a great undertaking. And so a lot of times they will look at large, regional projects to be able to address their time and capacity.

There are chapters. And certainly chapters at a particular level, they have difficulty getting the expertise, certainly, to apply, and then certainly trying to get that matching fund from the Navajo Nation Government.

So those are some of the challenges that are faced to be able to make access to these grant programs. Thank you.

Ms. HOYLE. Thank you. I think it is important that Congress take steps to address these challenges so that Tribes can fully access these programs as they were intended.

With that, Ms. Toombs, I want to thank you for your testimony, and then I would like you to address incidents where sub-sea fiber optic cable installations went poorly and did result in environmental harm.

Ms. TOOMBS. Thank you for your question.

I have been involved in many projects, as I mentioned in my testimony, and I have not had any projects where I would say it resulted in environmental harm.

Ms. HOYLE. OK. So clearly, you were not involved with the Facebook undersea fiber optic cable off the coast of Oregon, just north of my district, which——

Ms. TOOMBS. That is correct.

Ms. HOYLE. Yes. The Facebook subsidiary created a mess off the Oregon coast when a drill bit broke and left 1,100 feet of 6-inch steel pipe and 11-inch diameter drill tip, and 6,500 gallons of drilling fluid in the ocean. Two sinkholes later formed along the cables pathway, and then Facebook just left, did not tell anyone about it. It was found and now we are working on addressing that issue.

And so my question is, isn't it reasonable to ensure that companies continue to purchase general liability insurance, and if a disaster occurs, which again, did occur just a couple of years ago off the Oregon coast, that they pay for natural resource damages and cleanup? And this is the current policy of the Office of National Marine Sanctuaries. What is your position on that?

My concern is that this bill would remove that liability protection, and that is very concerning.

Ms. TOOMBS. Again, thank you for this question.

Ms. HOYLE. Sure.

Ms. TOOMBS. And I do understand your concern. I should also mention that the technique used is in itself considered a mitigation. It is a requirement to use that technique in Oregon, as well as California, because it is considered to be more environmentally safe.

Ms. HOYLE. So, sorry, Ms. Toombs, there is such a short time. But specifically to the——

Ms. TOOMBS. Oh, the liability——

Ms. HOYLE. Protection and responsibility——

Ms. TOOMBS. My understanding is that the National Marine Sanctuary Act still would retain the component or the section that has to do with liability for damages. My understanding is that is not part of the SUP.

Ms. HOYLE. OK. Thank you so much, and we will just need to clarify that with——

Ms. TOOMBS. I am happy to clarify it.

Ms. HOYLE [continuing]. And follow up.

Ms. TOOMBS. Yes.

Ms. HOYLE. Thank you so much.

Ms. TOOMBS. Of course.

Ms. HOYLE. I yield.

Ms. HAGEMAN. The Chair now recognizes Mr. Crank for 5 minutes of questioning.

Mr. CRANK. Thank you, Madam Chair.

I am very fortunate. I represent Colorado Springs, the home of United States Space Command. I also happen to serve on the House Armed Services Committee. And I will tell you I had a briefing the other day from the commander of U.S. Space Command, and pretty much all we talked about was how China is looking at ways, particularly in space, to disrupt the U.S. economy, that they see that as economic warfare, that they could literally shut this country down by using their assets in space against U.S. assets. And I think this is a similar situation here with the cables. As the sponsor of the bill noted, $10 trillion daily go through those cables.

I got to tell you, I think sometimes the Chinese Communist Party laughs at the debates probably that we have here, that we would not streamline a process here to make sure that our assets, our military assets particularly, or our economic assets aren't protected. This is a false choice that some people present, that it is either to protect our marine preserves or have national security. You don't have to choose between those two. We do both. We do it every single day. And I think that we will rue the day someday, looking back, if we ever do have the Chinese or another one of our adversaries use this against the United States. So I would suggest that.

Ms. Toombs, do you think that the current permitting timeline for undersea cables puts the U.S. in a vulnerable position?

Ms. TOOMBS. Thank you for your question. I would say it is less the permitting timeline itself, but rather the uncertainty of it.

Mr. CRANK. Yes.

Ms. TOOMBS. It is not predictable. And especially, as I mentioned and has been mentioned here, for critical infrastructure, a 5-year term on a permission is really not long enough for that type of investment. And so I would say that is really one of the deal killers on it. Not just the timeline, but not knowing whether you can proceed on that timeline and have any assurance that you will get a permit at the end.

Mr. CRANK. Is it so difficult right now that these marine preserves are there that if somebody is going to put cable, they don't

bother going through them so they go around them, therefore creating this pipeline where we have a have a vulnerability because they are all close together?

Ms. TOOMBS. Yes, that has been one of the consequences of it is that, again, because of the uncertainty, it is difficult to commit to any sort of an investment or capital project, infrastructure project for that duration of time. So to de-risk that you go elsewhere.

Mr. CRANK. Right.

Ms. TOOMBS. Yes.

Mr. CRANK. Thank you.

And Madam Chair, I was happy to see that Western water remains a priority for this Subcommittee. I knew it would be with your leadership in the authorization and oversight plan. It is no secret that Western States have been facing a historic drought that has affected the water availability in the Colorado River. Programs have been introduced at the Federal, State, and local levels to address these historic droughts and improve water conservation. And the Colorado River System Conservation Pilot Program, or SCPP, has funded numerous projects in Colorado to encourage voluntary water conservation. And I would just thank you, Madam Chair, for your continued focus on this. Thank you. I yield back.

Ms. HAGEMAN. Thank you. And the Chair now recognizes Ms. Elfreth for 5 minutes of questioning.

Ms. ELFRETH. Thank you very much, Madam Chair, and thank you to our panelists for being here today.

I think we can all appreciate the importance of, certainly, national security and our 21st century economy when it comes to these underwater cables. At the same time, government has gone through the trouble of designating these national marine sanctuaries for a number of reasons, including their fragility, their importance and impact on the broader ecosystem that surrounds them. Certainly, that is true in my home State of Maryland. And so I think this is a balance that we need to get right, and that is what I would like to hone in on today.

It is also my understanding that groups such as kayak outfitters and stand-up paddle board companies, when they are going into a national marine sanctuary now, certainly in Mallows Bay in my State, in Maryland, they have to apply for a Special Use Permit, and they have to pay a fee, recognizing the potential human impact on these sensitive and fragile areas.

And so I would like to hone in on where Ranking Member Huffman began, which is by circumventing the Special Use Permit this bill also circumvents the fee that goes to the direct management of these national marine sanctuaries. So can you tell me, Ms. Toombs, how much money the companies you represent would be saving by circumventing that fee process?

Ms. TOOMBS. Thank you for your question.

Really, the FMV, or the fair market value fee, is not part of what I do as part of this permitting process. And as I mentioned, we really haven't undertaken that. So I am not in a position to say how much that would be.

Ms. ELFRETH. OK. It is my understanding that, given a 20-mile route through a sanctuary, the fair market fee would be anywhere between $2.8 million and $7 million, again, that fee going back to

the management of that marine sanctuary because of its designated importance this government has established.

My second question is around the text of the bill as written. I have concerns about some ambiguity here, particularly the legislation, as written. Let's again take my home State of Maryland. I represent the coastline of the Chesapeake Bay. Pardon me. The bill, as written—I am concerned where it says any State or Federal agency—say if a company in North Carolina wanted to have an interest in—my goodness.

You are reminding me to have some water.

[Laughter.]

Ms. ELFRETH. Had an interest in undersea cables that went into Federal waters off the coast of Maryland.

Ms. HAGEMAN. If you would like to take a few minutes, we can go to someone else and——

Ms. ELFRETH. I will get there, I promise. One more question.

Say a North Carolina company has interest in undersea cables in Federal waters off the coast of Maryland through a national marine sanctuary. Could a State agency in North Carolina circumvent the regulatory powers of a State agency in Maryland if we had concerns under this bill in the text as written?

Ms. TOOMBS. No, I don't see a way for that to affect any State regulations.

Ms. ELFRETH. OK. I would like to see if we can find some clarity on that, Madam Chair, just the ambiguity of that particular line is concerning to me. To make sure that we respect States——

Ms. TOOMBS. And if I can—if it would be useful to have follow-up information I can provide you, I would be happy to do so.

Ms. ELFRETH. I would greatly appreciate working with you on that, just to make sure that the language is as tight as possible and, again, that we are balancing here——

Ms. TOOMBS. Yes.

Ms. ELFRETH [continuing]. National security interests, economic interests, but the interests——

Ms. TOOMBS. Right.

Ms. ELFRETH [continuing]. Of protecting these national marine sanctuaries.

Ms. TOOMBS. Yes, and on a personal note, if I may, I wouldn't have agreed to be here if I felt that this bill would in any way erode the protections we have on the environment, and particularly on the marine environment.

Ms. ELFRETH. And with my remaining time, and on that note, would you agree that there is an interest, if this bill were to pass, the Special Use Permit would not be needed, but still that fair market fee piece of this for the management of those national marines. Is it still important that the companies that you represent would still be paying their fair share towards the management of these sensitive areas?

Ms. TOOMBS. Again, I really can't speak to how the funding works at the sanctuaries, so I would prefer not to speculate on that.

Ms. ELFRETH. OK, thank you very much.

And Madam Chair, I yield my time.

Ms. HAGEMAN. Thank you. And there will be an opportunity to submit a written question if you have one, and then there is a procedure to provide responses. So you will have an opportunity to follow-up.

The Chair now recognizes Mrs. Radewagen for 5 minutes of questioning.

Mrs. RADEWAGEN. Thank you, Chairwoman Hageman and Ranking Member Hoyle for holding this hearing today. I also want to thank Representative Carter for his introduction of H.R. 261.

The territories are already very isolated, and we rely heavily on undersea cables to remain connected to the rest of the country and the outside world. I believe both sides of the aisle can agree we need to protect our marine environment, and I can proudly say that the United States has some of the highest standards in the world when it comes to environmental protections. Unfortunately, we sometimes prioritize preserving the bureaucratic machine over the actual communities who are supposed to benefit from these protections. My question is for you, Ms. Toombs.

In your testimony you mentioned the robust planning and permitting required to lay undersea cable in the first place, even outside of any plans to pass through a marine sanctuary. Can you please provide some more information on what is required and how safe the process is regarding protecting ocean life?

If H.R. 261 were to pass, do you believe the existing safeguards are enough to ensure that the local ecology of the sanctuaries won't be negatively impacted by any hypothetical future cables?

Ms. TOOMBS. Thank you for your question and for mentioning the territories, as well. I have permanent cables in Puerto Rico and islands like Hawaii, and resource protection there is very, very important, and the current regimes there are also very robust, even though there aren't national marine sanctuaries there.

I lost my train of thought. Repeat the last part of the question, please, I apologize.

Mrs. RADEWAGEN. If H.R. 261 would pass, do you believe the existing safeguards are enough to assure that the local ecologies——

Ms. TOOMBS. Ah, yes. OK, I understand the question. Thank you.

Yes, I would agree that there would not be, again, an erosion of protections or circumventing NOAA.

I would say that what this would do is help integrate NOAA, the sanctuary component of NOAA, into the overall permitting process because they would be essential to the consultation. They have specialized marine science or specialized expertise on their staff and with the sanctuary, so their input into the permitting process and assessing impacts would be essential.

Mrs. RADEWAGEN. Thank you, Madam Chairwoman. I yield back the balance of my time.

Ms. HAGEMAN. Thank you. The Chair now recognizes Congresswoman Maloy for 5 minutes of questioning.

Ms. MALOY. Thank you, Madam Chair.

Mr. Thayn, thanks for being here and thanks for bringing your parents. That is the most Utah thing I have seen all day.

[Laughter.]

Ms. MALOY. I have spent a little bit of time in your part of the State doing conservation work back when I was a soil conservationist with the NRCS, and I know how seriously the farmers in eastern Utah take their obligation to the Colorado River. And I know that a lot of times agriculture gets a bad rap when we talk about conservation, and people like to point the finger at you. But I know that agriculture has been part of the solution for a long time. The population of Utah has grown a lot in the last 200 years. Our water hasn't increased much, so thank you for being part of the solution.

Thank you for traveling all the way here. I did this once. I was in your seat once, and I was really disappointed when I saw how few people were sitting up here listening. So just know that we do appreciate you being here. We are usually double-booked.

Most of the things I wanted to ask you have already been asked, but I just want to put a fine point on it. What is the water year looking like this year for you?

Mr. THAYN. Well, south, where we are, is awful dusty, and around us is, I think the northern parts are doing a little better. Certainly, central-southern Utah, Arizona, New Mexico, obviously California. But it is not looking so good at the moment.

Ms. MALOY. And if I asked any of your neighbors what the water year is looking like, they would all know. And that is because your livelihood is really tied to water. And so you have a high incentive to try to conserve, to try to be a good steward of the resources, and to make sure that your farm lasts for another generation. And I just want to make sure that you know we see that and we appreciate it, and that everybody here recognizes that.

Mr. Witherspoon, really quickly, I just want to say WaterSMART is a good program, and I would like to see Tribes taking advantage of it. So I am going to have my team reach out to you and Ms. Stansbury and see if we can find a place where we can all get to some agreement on that. I don't have a question. I just wanted you to know that.

Mr. Hipke, you look a little lonely and neglected over here, so I want to ask you a question, actually, you and Ms. Toombs the same question, because I want to use my time really efficiently. But both of you are here talking about permitting processes that are longer and more onerous than they need to be, and so my question for both of you is, do you have confidence that we can make permitting decisions that were good for the environment, good for Idahoans, good for the ocean in less time and less expensively than we are doing it now?

Mr. HIPKE. I will go ahead and start off. Yes, I do.

Thank you for the question, and I will be brief about it. One of the things is my understanding, I am kind of the boots-on-the-ground type of person, but as far as with when we crafted this legislation it was actually BLM that asked for the NEPA waiver, which makes sense given there is already an easement there, we are not really doing anything new.

So yes, I think there is a way. The people who have worked in the field with these agencies have been fantastic, but they get somewhat tied around the legislation that is in place.

Ms. MALOY. Thank you. I agree. I think sometimes our processes become an end unto themselves and we forget the purpose of them.

Ms. Toombs?

Ms. TOOMBS. Yes, I would agree. I do think there is a way that we can balance environmental protection and resource protection with a predictable and reliable permitting process that could be, again, shortened, more clarified. And, yes, I believe it is possible.

Ms. MALOY. And you were asked earlier how many applications have been denied. But I want to know if you can tell us how many applications have been delayed and made unnecessarily more expensive.

Ms. TOOMBS. That is a good question. We are not privy to who may have submitted applications and withdrew them.

What I can say is it is more the opportunities lost, applications that were never submitted because the process was really too unclear and unpredictable. And that is a hard—there is not a number for that, but it is lost opportunity.

Ms. MALOY. Thank you. I just appreciate all of you being here. I know it is a sacrifice to come here and testify, but it really does help us come up with better outcomes.

Mr. Thayn, last question for you. Is it colder in Washington, D.C. right now or in Green River, Utah?

Mr. THAYN. It is about the same. I think it is a little bit more humid here, though. We have a drier cold.

Ms. MALOY. It is definitely more humid here, and the cold goes through your clothes in a way it doesn't in Utah. I apologize for that. We will get you home soon.

[Laughter.]

Ms. MALOY. Madam Chair, I yield back.

Ms. HAGEMAN. Thank you. I think the way to put it is oftentimes the process is the punishment. And that is what we need to change. As Representative Maloy so accurately stated, we sometimes lose sight of what the very purpose of these processes and permitting requirements are for, and they are actually to have an end. There is an end goal, and we need to make sure that this is working correctly.

The Chair now recognizes Representative Carter for 5 minutes of questioning.

Mr. CARTER. Thank you, Madam Chair, and thank you all for being here today.

Ms. Toombs, I want to speak to you. I spoke about H.R. 261, as you did. And it is looking to essentially omit the additional step of acquiring a Special Use Permit in a national marine sanctuary. But I think there are some concerns from people that it is going to cut NOAA out of the permitting process. Do you think that is the case, that by eliminating the SUP process we eliminate NOAA from the permitting process altogether?

Ms. TOOMBS. Thank you for your question, and also thank you for bringing the legislation here.

No, the intent is not to cut NOAA out of the process. In fact, the process already has two different consultations with NOAA for any sub-marine cable project, one under the Endangered Species Act, the Marine Mammal Protection Act, and the other under Magnuson-Stevens for essential fish habitat.

NOAA, for sanctuaries, would be consulted. So it would offer another opportunity for NOAA to have an input in that process. And really, it is useful for the project to get that expertise early on.

Mr. CARTER. Good, good. I just want to make sure everybody understands we are not trying to eliminate them. We value their input, and we would still have their input.

We have talked about the environmental studies that are required in the permitting of a sub-sea cable, regardless of where they are being deployed. Can you explain very briefly the purpose of the environmental reviews?

Ms. TOOMBS. Yes. The purpose of the environmental reviews is to help inform the agencies with permitting authority to make their decisions. So they can't make a decision until they have undergone these processes so they understand what the consequences of their decision might be. And so that is why we conduct multiple studies, because they go to different agencies for different decisions and different recommendations.

Mr. CARTER. So that is the additional information that is gained by doing the environmental reviews?

Ms. TOOMBS. Yes.

Mr. CARTER. Yes. So what is the purpose of SUP?

Ms. TOOMBS. The purpose of SUP? I mean, I did not write it, but the purpose of the SUP, I don't know.

[Laughter.]

Ms. TOOMBS. Well, I am——

Mr. CARTER. OK, thank you. No, no——

Ms. TOOMBS. I didn't mean that facetiously.

Mr. CARTER [continuing]. Great answer, great answer.

Ms. TOOMBS. OK.

Mr. CARTER. Do you believe that the existing permitting process outside of a sanctuary provides adequate protection for marine habitats?

Ms. TOOMBS. Yes, I do. As I explained, we have a number of studies, and all of them factor into decisions that the permitting agencies make.

Mr. CARTER. OK. Bear with me on this one, OK? In August 2024 NOAA issued a notice to modify the Special Use Permit, or the SUP, for commercial undersea cables, which includes a 2-year pause on the need for these projects to obtain a special use permit. While some may say that this solves this challenge in the permitting process, we have heard concerns in our office that the process doesn't fully solve the challenge.

Do you think NOAA's announcement last August fully solves this problem, or is additional action needed?

Ms. TOOMBS. Again, thank you for that.

Referring to the pause, what it does, and the ICC, I must say, appreciates NOAA's review or consideration of the regulations. But it also, my mantra has been uncertainty. So during that 2-year pause there is still some uncertainty as to what the outcome would be.

Mr. CARTER. Right.

Ms. TOOMBS. Yes.

Mr. CARTER. OK. All right. Well, thank you very much for your input and your expertise.

And Madam Chair, again, thank you for allowing me to waive on, and I yield back.

Ms. HAGEMAN. Thank you, Mr. Carter. And our final questioner today is Mr. McDowell.

I recognize you for 5 minutes.

Mr. MCDOWELL. Thank you, Madam Chair, and thank you to the witnesses for being here today to testify before our Committee.

Ms. Toombs, one theme that members of this Committee have talked about a lot is the multiple use and stewardship of our Nation's natural resources. And given your extensive involvement in permitting and licensing of undersea cable projects, could you talk about how these cables interact with the marine environment?

Ms. TOOMBS. Thank you for your question.

The interaction with the marine environment is really mostly during the installation phase, when the cables are being installed. But when we have done our job right, and I think we do it right because we have done this a lot, there really isn't interaction with the marine environment because most of these cables are buried for the purpose of not interacting with the marine environment or with marine users like commercial fishing.

Mr. MCDOWELL. Got you. You mentioned in your testimony that new technology has helped these cables avoid environmental impacts. Can you expand on the technological advancements or other best practices that have allowed for these cables to exist in a way that respects and protects our marine resources?

Ms. TOOMBS. Yes. Some of the practices and technological changes come at different points of the cable's lifetime. Probably some of the most important parts are right in the beginning, some of the analyses and surveys and data collection that take place so that we can put cables in places on the seabed that will be the least harmful and most protective to the cables, least harmful to the environment and most protective to the cables at the same time.

Some of this is pretty technical. It is really beyond me how some of the route engineers analyze data and come up with some of the routing that they do, but our input into it is the environmental piece of it. During installation the installation process has become better about being more precise, I guess about how the cables are installed, and what their conditions are as they are installed.

But then also more to the community level, we have a lot of best management practices that are undertaken during the installation process, especially at the shore and near shore having to do with public safety, and making sure that we try to disrupt beach use and beach goers and ocean recreation as little as possible.

So there are a lot of notifications and engagement with local communities, with commercial fishermen, of course, and the agencies to make sure that the installation goes as quickly as possible and as according to plan as possible.

Mr. MCDOWELL. Sure. Well, Mr. Thayn, I do just want to say that I think it is pretty neat that you have your dad here today. And your two sons are not here, is that correct?

Mr. THAYN. Correct.

Mr. MCDOWELL. Are they back home working on the farm?

Mr. THAYN. Yes. We left them home.

Mr. MCDOWELL. Well, I don't know what camera is on, but you all get back to work.

[Laughter.]

Mr. THAYN. Ma'am, I yield back.

Ms. HAGEMAN. Thank you, and I thank the witnesses for your valuable testimony and the members for all of your questions.

A very thoughtful discussion today, and I think helpful in terms of assessing the four bills that we are considering, and providing background, additional background information for us that will help us be better and do better at our jobs.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to those in writing if they are, in fact, received. Under Committee Rule 3, members of the Committee must submit questions to the Subcommittee Clerk by 5 p.m. Eastern Time on Tuesday, January 28, and the hearing record will be held open for 10 business days for such responses.

Without objection, the Subcommittee stands adjourned.

[Whereupon, at 11:49 a.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF THE HON. RUSS FULCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. Chairman, thank you for the opportunity to talk about my bill—H.R. 331. Mr. Hipke, good to see you, thank you for coming all this way from Idaho!

This legislation amends the Aquifer Recharge Flexibility Act, which was enacted into law in 2020, to ensure states, local governments, Tribes, and public entities can use existing Bureau of Land Management rights-of-way, easements, and permits for aquifer recharge without unnecessary federal delays.

The Eastern Snake Plain Aquifer is essential to Idaho's agricultural economy and the communities that rely on it. From ranchers in Owyhee County to orchardists in the Payette River Basin and dairy operations in the Treasure Valley, countless Idahoans depend on this resource to support their livelihoods. Towns like Emmett, Weiser, and Caldwell are just a few examples of communities sustained by its availability.

Unfortunately, misinterpretation of the original law by the BLM has created confusion and stalled critical recharge projects in Idaho. H.R. 331 provides a clear, efficient path forward, ensuring these projects can proceed without redundant bureaucracy.

This bill supports Idaho's agricultural future by ensuring stability for the families, farms, and businesses central to the state's economy. I urge my colleagues to support this important piece of legislation. Thank you, Mr. Chairman. I yield back.

Submissions for the Record by Rep. Hoyle

How Meta, Google and Amazon are quietly damaging the Pacific sea floor

San Francisco Chronicle, June 26, 2024 by Hayley Brazier
https://www.sfchronicle.com/opinion/openforum/article/fiber-optic-cable-ocean-19532211.php

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In 2020, Edge Cable Holdings, a Facebook subsidiary, was burying a new fiber-optic cable into the seabed near Tierra Del Mar, Ore. Working beneath a rugged mixture of basalt rock mounds, unconsolidated sands and sandstone bedrock, the company's drilling operation went awry. Stalled out, the company ditched its metal pipes, drilling fluids and other construction materials in the ocean: Out of sight, out of mind.

When Oregon's Department of State Lands learned of the abandonment, it ordered Edge Cable Holdings and Facebook (now Meta) to pay a fine. But the damage was done. Two sinkholes formed along the installation path and most of the materials will remain lodged in the seafloor forever. These items, and thousands of gallons of drilling fluid, pose a risk to the surrounding seafloor ecosystem. Despite public outrage, the company returned to complete the cable in 2021, with debris from the first attempt still lodged in the seabed.

The cable was not the first to slither into Oregon's stretch of the Pacific Ocean, and it's by no means the last. Big technology companies—including Amazon, China Mobile, and Google—are flocking to Oregon's coastline to land transpacific fiber-optic cables. Most recently in August 2023, the Department of State Lands approved a 9,500-mile fiber-optic cable connecting Singapore, Guam and the United States.

What has transformed Oregon into an undersea cable hotspot, and how is the installation process affecting a vibrant ocean ecosystem? The explanation resides in tax breaks, swift permitting processes, cheap energy, vast amounts of open land for data centers and a historical carelessness for the environment shared by the state and tech companies.

Fiber-optic cables transmit data with pulses of light through thin glass fibers. In 2022, they provided over 98% of the world's internet services and international phone calls. There are more than 745,000 miles of submarine fiber-optic cables in operation around the world—that's enough cable to wrap around the Earth's equator more than 29 times. It's the work of cables, not satellites, that connect us on a global scale.

The Pacific, a wider and deeper ocean basin and therefore more difficult to wire, received its first transoceanic cable in 1902. By the early 1900s, the global seafloor hosted around 200,000 miles of telegraph cables. By the 1950s, there were nearly 500,000 miles of telephone and telegraph cables, with fiber-optic cables joining the mix in the 1980s.

Back then, many transpacific cables landed in California, Washington and British Columbia, where they could link up with transportation hubs and industrial centers on land. That began to change in 1991 when Oregon landed its first transpacific fiber-optic cable. Called the North Pacific Cable, the privately owned line connected Oregon to Alaska and Japan. In the three decades since, the state has welcomed a new fiber-optic cable every four or five years, in tandem with new data centers—large, high-security buildings that store rows of servers. These servers host the internet's millions of websites.

There are significant onshore incentives for cable owners to land their lines in Oregon. The state's enterprise zones tax-exemption program allows individual towns to negotiate property tax breaks for big construction projects, saving companies millions of dollars each year. In exchange for the tax breaks, tech companies provide a small influx of jobs and tax revenue to small communities hurting from the decline of the timber industry. In 2015, Oregon lifted its cap on enterprise zones to attract even more data centers, just as more cables arrived along the shoreline.

Consider Meta, which owns a 4.6 million square foot data center complex in rural Prineville. Although it's far from the ocean in a former timber town, this data center connects to a network of underground fiber-optic cables, including the controversial undersea cable installed near Tierra del Mar. In 2015, the Oregonian newspaper reported that the data center complex received $30 million in tax breaks during the previous two years.

For Meta, as well as Amazon, Google and Apple, Oregon offers a win, win, win.

So who exactly is losing?

The coastal ecosystem. During installation, it's standard practice to bury cables multiple feet into the seabed to avoid snags by fishing vessels. The most common burial method is plowing, during which a remotely operated vehicle cuts a ditch into the seafloor and inserts the cable into the trough. Another method, jetting, uses high-pressure fluids to liquefy sediments on the seafloor, easily slicing a clean line into the seabed in which the cable can burrow. Companies also use directional drilling to bore diagonally into the seabed from the shore. All of these methods squish or displace any worms, crabs, sea stars, urchins, anemones, corals or sponges living within the trenching path.

Once installed, submarine cables settle into the seafloor ecosystem. In search of a hard substrate to call home, marine life will colonize the cable's exterior. After a few decades of service, cable owners have historically abandoned their lines in the ocean, a decision that is cheaper for companies and often results in less disturbance for colonizing species. Inert but not biodegradable, most dead cables will sit in the ocean indefinitely, hidden from the public who is usually none the wiser.

The 2020 Facebook/Edge Cable Holdings abandonment prompted Oregon to pass a law in 2021 that instituted firmer planning and decommissioning regulations for new undersea cable projects. Still, the increasing scrutiny doesn't appear to be slowing the big tech companies. As Amazon builds its recently approved line to Guam and Singapore, the tech giant is also building another data center in Umatilla, a small town on the Columbia River.

Data centers are no better for terrestrial environments than submarine cables are for marine. The buildings suck significant amounts of power from the grid. Oregon's renewable energies, like hydroelectric dams on the Columbia River, can't cover data centers' growing energy demands, meaning utility providers must tap into fossil fuels and increase their greenhouse gas emissions. Despite Oregon's efforts to decrease the state's carbon footprint, some regions are moving backward in the fight against climate change. Big tech companies, and their big buildings, are spurring that reversal.

Across Oregon, communities and ecosystems are confronting the physical impacts of a world that runs on the internet—impacts that our regulatory systems have yet to reckon with.

U.S. Department of the Interior
BUREAU OF LAND MANAGEMENT

Right-of-Way Costs

There are three different fees associated with obtaining a ROW on BLM-managed public land. Processing fees, Monitoring fees and Rents are adjusted annually based on inflation.

No processing fee, monitoring fee or rent is required for:

- state or local agencies or instrumentalities thereof (except municipal utilities and cooperatives whose principal source of revenue is customer charges) where the land will be used for governmental proposes and the land resources will continue to serve the public interest; or
- road use agreements or reciprocal road agreements.

Other exemptions, waivers or reductions of fees and/or rent may apply and can be explained during the pre-application meeting.

Processing Fee

Applicants are required to reimburse the United States in advance for the cost of processing an application. The fees are based on the amount of time the

BLM estimates it will take to process your application and issue a decision to grant or deny the application. We will determine the appropriate once you have submitted your complete application, and will notify you in writing of this fee. **You must submit the appropriate payment before we can begin processing your application.**

There are six Processing Fee categories. The Processing Fee Schedule is available at BLM offices. Categories 1 through 4 are one-time, non-refundable fees based on the number of federal work hours involved to process an application. Category 5 is for Master Agreements, which are negotiated with a single applicant for processing and monitoring multiple applications covering facilities within a specific geographic area. Any application that requires more than 50 hours to process is a Category 6, which requires the applicant to reimburse the BLM for the full cost of processing an application.

Monitoring Fee

The Monitoring fee reimburses the BLM for monitoring the construction, operation, maintenance and termination of the project, including protection and rehabilitation of the public lands involved. The fee is based on the estimated number of work hours necessary to monitor your grant.

The BLM will determine the category for your project and notify you in writing of the appropriate fee. **You must pay the Monitoring fee before we issue you a ROW grant.**

Rent

Rents are charged on an annual basis. The Linear Rent Schedule is adjusted annually based on changes to the Implicit Price Deflator Index (an inflation index), The Communication Uses Rental Schedule is adjusted annually based on changes to the Consumer Price Index, All Urban Consumers (CPI-U). Rents for linear and communication site ROWs on public land are established via two separate administrative schedules, based on land values in the project area and, in some cases, an appraisal. We will notify you of the initial rent amount due. **You must pay rent for the initial rent period before we issue you a ROW grant.**

NATIONAL PARK SERVICE

About Us

Right-of-Way Permit

A right of way (ROW) is a permit issued by the National Park Service (NPS) that allows a utility to pass over, under, or through NPS property. The permit may be issued only pursuant to specific statutory authority and generally if there is no practicable alternative to the use of NPS lands, regardless of whether the equipment is serving the NPS and its visitors or crossing the park to reach other communities. You need a ROW permit any time you want to build or install a utility on NPS lands. Projects could include electrical transmission lines, telephone lines, canals, and sewer lines. Broadband equipment, such as telecommunication sites, microwave, and fiber optic, requires a ROW permit as well.

If your request is approved, you will be issued a ROW permit. The permit does not give you an estate in fee, limited estate, or any property interest or ownership in the land. Your permit is not exclusive, and the park reserves the right to allow visitor use of the land where appropriate.

The authorities authorizing the use of NPS lands for rights of way are found at 54 USC 100902 and 36 CFR Parts 1 and 14. Note that the NPS does not have the general authority to issue permits for roads or oil or gas pipelines.

Costs

Application and processing fees: These charges reimburse the NPS for the administrative and other costs incurred in processing your request. Your application must be accompanied by the initial application charge. At that time you may request an estimate of further costs and a payment schedule. The park may decide to have an independent contractor conduct necessary environmental and historic compliance analysis. In that case you will be required to make payments directly to the contractor. Charges may also include the cost of monitoring the construction or installation of your utility should your request for a ROW permit be approved. These fees are non-refundable, since they reimburse the NPS for work performed.

Monitoring fee: If your request for a ROW permit is granted, you will be responsible for reimbursing the NPS for monitoring your compliance with the terms and conditions of the ROW permit. This fee is non-refundable and may be paid annually or as arranged with the park staff.

Use and occupancy fee: This charge is an annual rental based on the market value of the rights authorized and is generally established by an appraisal. The rent may be paid annually or on a schedule as specified in the permit.

Exemptions to the requirements to pay any of the above fees may apply and should be discussed with the park superintendent at the pre-application meeting.

OFFICE OF NATIONAL MARINE SANCTUARIES

Special Use Permits

Section 310 of the National Marine Sanctuaries Act (16 U.S.C. § 1441; NMSA) allows the Secretary of Commerce, delegated to the Office of National Marine Sanctuaries) to issue special use permits to authorize the conduct of specific activities in a sanctuary if such authorization is necessary (1) to establish conditions of access to and use of any sanctuary resource or (2) to promote public use and understanding of a sanctuary resource. Special use permits are generally issued for concessionaire-type activities and other commercial activities that require access to the sanctuary to achieve a desired goal.

Public notice

The NMSA requires, among other things, the ONMS to provide "appropriate public notice before identifying any category of activity subject to a special use permit" (see section 310(b) of the NMSA). To comply with this directive from Congress, the ONMS has issued Federal Register notices to describe the types of activities for which it can require the issuance of a special use permit (78 FR 25957(May 3, 2013); 82 FR 42298 (Sept.7, 2017); 89 FR 48272 (June 6, 2024)). To qualify for a special use permit, an activity must be among those listed in these notices. The notices list the following activities:

1. The placement and recovery of objects associated with public or private events on non-living substrate of the submerged lands of any national marine sanctuary.
2. The placement and recovery of objects related to commercial filming.
3. The continued presence of commercial submarine cables on or within the submerged lands of any national marine sanctuary (Note, 89 FR 66689 (https://www.federalregister.gov/documents/2024/08/16/2024-18099/notice-of-modification-to-the-special-use-permit-sup-category-for-the-continued-presence-of) [August 16, 2024] modified this SUP category so that, for a two-year period, this SUP category does not apply to commercial submarine cables in any new sanctuaries designated after August 16, 2024).
4. The disposal of cremated human remains within or into any national marine sanctuary.
5. Recreational diving near the USS Monitor.
6. Fireworks displays.
7. The operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries.
8. The continued presence of a pipeline transporting seawater to or from a desalination facility (applies only to Monterey Bay National Marine Sanctuary).
9. The operation of tethered underwater mobile systems at shipwreck sites within Lake Ontario National Marine Sanctuary

If a proposed activity does not fall within the description of one of the types of activities for which ONMS has provided public notice, ONMS would need to publish a new Federal Register notice and solicit public comments on the use of special use permits for the type of activity proposed prior to issuing a permit.

Terms of special use permits

The NMSA requires special use permits to contain four specific conditions. The NMSA requires that special use permits:

- Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;
- Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;
- Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and

- Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

As is the case with general permits, in addition to these statutorily-mandated conditions, the ONMS can place additional conditions on special use permits specific to the activity being permitted.

Permit fees

The NMSA allows the ONMS to assess and collect fees for the conduct of any activity under a special use permit. If it is assessed, the amount of the fee is calculated by adding all of the following.

- The costs incurred, or expected to be incurred, by the Secretary in issuing the permit;
- The costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and
- An amount that represents the fair market value of the use of the sanctuary resource.

Application requirements

Unless otherwise instructed, applicants for special use permits should submit a regular permit application form and comply with the "Instructions for Submitting Applications for NMS Permits and Authorizations." In addition, the NMSA requires the following for special use permits:

- **Comprehensive liability insurance:** Applicants will be required to purchase and maintain comprehensive general liability insurance, or to post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims. Applicants should show proof of such insurance with the rest of the application materials.
- **Annual financial report:** Most permits require some form of reporting. Special use permit recipients are also required to submit financial reports on or before December 31 of each year the permit is valid. These reports should detail the activities conducted under the permit during the reporting year and any revenues derived from those activities.

Northern Chumash Tribal Council
Los Osos, CA

January 21, 2025

Hon. Bruce Westerman, Chairman
Hon. Jared Huffman, Ranking Member
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman and Ranking Member Huffman:

We write to express our opposition to legislative efforts under consideration by the House Natural Resources Committee, to amend the National Marine Sanctuary Act to prohibit requiring an authorization for the installation, operation, maintenance, repair, or recovery of undersea fiber optic cables in a national marine sanctuary if such activities have previously been authorized by a Federal or State agency.

The National Marine Sanctuary Act exists to protect marine resources and the extraordinary scenic beauty, biodiversity, cultural and historical connections, and economic productivity of our most precious underwater treasures. It grants authority to the NOAA's Office of National Marine Sanctuaries to fulfill its mandate.

In waiving all NOAA requirements for undersea fiber optic cables, this bill would weaken the authority of the agency charged with protecting and conserving special areas of the ocean and Great Lakes through the management of a network of National Marine Sanctuaries—areas considered to be of irreplaceable national significance—from the permitting process.

The passage of this legislation would not only weaken the National Marine Sanctuary Act but also set a dangerous precedent to eliminate NOAA's role in evaluating the impact of an industrial activity within a National Marine Sanctuary, undermining the ability to ensure the proper care and management of sanctuary resources.

Keeping this authority within the hands of NOAA could also help each sanctuary continue educating the public about the marine environment and promoting responsible stewardship of these underwater treasures while allowing for compatible recreational and commercial activities.

In short, we believe NOAA's Office of National Marine Sanctuaries needs to maintain a role in authorizing industrial activities within the boundaries of a National Marine Sanctuary to ensure alignment with and maintenance of its conservation mission.

We appreciate your consideration.

Sincerely,

VIOLET SAGE WALKER,
Chairwoman

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