

**STATEMENT OF MOLLY McUSIC  
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**U.S. DEPARTMENT OF THE INTERIOR**

**BEFORE THE**

**SENATE ENERGY AND NATURAL RESOURCES COMMITTEE**

**SUBCOMMITTEE ON FORESTS AND PUBLIC LANDS**

**S. 2273, THE BLACK ROCK DESERT-HIGH ROCK CANYON  
EMIGRANT TRAILS NCA**

**April 26, 2000**

Thank you for the opportunity to testify regarding S. 2273, the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act. Senator Bryan's bill seeks to protect an important area, significant not only for its natural resources but for what it tells us about our history and who we are as Americans. This area deserves the protections which S. 2273 would prescribe, and if some important changes are made to the bill, the Administration will support Senator Bryan's legislation.

As introduced, S. 2273 would accord National Conservation Area (NCA) status to nearly 670,000 acres of BLM-managed public lands in northwestern Nevada. Additionally, this bill would designate substantial wilderness in the same region, though it is unclear at this time what acreage is intended to be included in such a designation.

The history of America's western migration is written, literally, in the sands of the Black Rock Desert-High Rock Canyon area. Prehistoric occupation of the region dates back 10,000 to 12,000 years ago. The first recorded western exploration of the area dates to a 1843-44 expedition by Captain John C. Fremont and the legendary Kit Carson. Fremont's notes and maps served as the guidepost for future trail blazing through the area:

On both sides, the mountains showed often stupendous and curious-looking rocks, which at several places so narrowed the valley, that scarcely a pass was left for the camp. It was a singular place to travel through-shut up in the earth, a sort of chasm, the little strip of grass under our feet, the rough walls of bare rock on either hand, and the narrow strip of sky above. The grass to-night was abundant, and we encamped in high spirits." (John C. Fremont, December 30, 1843)

Americans intent on reaching the promised lands of the California and Oregon territories focused attention on a hoped for shortcut to their destination through northern Nevada. The wagon ruts, historic carvings and axle grease paintings along the Applegate-Lassen Trail and Nobles Trail bear witness to the attempts, sometimes deadly, to cross this unforgiving land. Between 1846 through the 1850s, the Applegate-Lassen Trail served as the main alternate route to the Oregon Trail. The 49ers seeking gold in California also used it (perhaps as many as 15,000 to 20,000 people in the peak year of 1849). Unfortunately, the trail was not the promised shortcut and was never intended to handle the volume it received. The results were often dried up water holes, dead animal carcasses and abandoned wagons.

Senator Bryan's proposal captures about 120 miles of the trail from Rye Patch Reservoir north through the Black Rock Desert, Mud Meadows and then west through Fly Canyon and High Rock Canyon, ending near Vya, Nevada. The first section of the trail, from Rye Patch Reservoir to Black Rock, was undoubtedly the cruelest stretch. For 47 waterless miles the emigrants slogged through a rugged sage plain and the deep, soft sands of the Black Rock desert. Reading the journals of these pioneers, and crossing these same lands, brings the awful reality to life:

We started about six o'clock, with anxious hearts and sad forebodings on our perilous journey . . . As I walked on slowly and with effort, I encountered a great many animals, perishing for want of food and water, on the desert plain. Some would be gasping for breath, others unable to stand, would issue low moans as I came up . . . my sympathies were excited at their sufferings, yet, instead of affording them aid, I was a subject for relief myself . . . after covering nearly forty hours without food or water . . . we found this to be an oasis in the desert. A large hot spring [Black Rock Spring] . . . but we found the grass nearly consumed, and our cattle could barely pick enough to sustain life. (Alonzo Delano, August 16-17, 1849)

Another emigrant diary describes the entrance into Fly Canyon down the "wagon slide" which perhaps would have been better named the "wagon crash":

The road terminated as it were, at the edge of the very apex of this hill, and I looked down . . . the declivity and its base, retained vestiges of unfortunate traveling in the shape of broken wagons, wheels, hubs, tires, axels, and 3 dead oxen. (Goldsborough Bruff, September 25, 1849)

Many of these lands have been largely unaltered, and under the foresight of this legislation would remain so. We and our descendants may follow the same route as Alonzo Delano, Goldsborough Bruff, and so many others, and begin to understand the difficulties they endured.

However, the proposed NCA is more than just the Emigrant Trails. The Black Rock Desert Playa, which stretches for more than 160,000 acres, is the remnant of ancient Lake Lahontan which covered this area with 500 feet of water as recently as 60,000 years ago. With a silt base of as much as 10,000 feet, the area is so barren and so flat that it is possible to see the earth's curvature. Wave effects from ancient shorelines are still visible in places today.

Wildlife, including antelope, wild horses and burros, are visible at times along the edges of the playa. The region's many canyons, cliffs, mountains ranges and sagebrush flatlands provide a varied habitat for a dramatically diverse group of Great Basin fauna. Small shallow lakes provide seasonal habitat for resident and migrant waterfowl and shorebirds. The narrow canyons provide meadow and stream-side riparian habitats. The Calico Mountains and High Rock Canyon are home to a population of more than 150 California bighorn sheep. Significant numbers of the dwindling sage grouse populate the northwestern section of the conservation area.

As the Secretary has made clear in previous testimony, critical elements of an NCA include: a land, mining, mineral and geothermal withdrawal, OHV use limitations, and language which charges the Secretary to allow "only such uses" as further the purposes for which the NCA is established. Furthermore, legislation cannot diminish the protections that currently apply to the lands. I'd like to discuss briefly where S. 2273 meets these tests and those areas in which we would request amendments to the bill, and I would like to briefly discuss the wilderness provisions of the bill. Attached to this testimony is our full list of proposed amendments.

Section 6 of the bill includes a withdrawal, subject to valid existing rights, of the lands from new entry, location and disposal under the lands laws, mining laws, and mineral and geothermal leasing laws. This is an important step in protecting these lands. We have recommended one minor amendment which would add a withdrawal from the minerals materials act as well.

Additionally, the bill includes OHV language that would protect the lands by limiting OHV use to roads, trails and areas specifically designated for their use as part of the management plan. That management plan will be developed by the BLM with full participation of the public and will seek to ensure that the resources are protected from future degradation while allowing appropriate OHV use and other recreational uses.

Unfortunately, the bill does not include "only such uses" language which is a critical element of any legislation seeking Administration support. Such language states that "the Secretary shall allow only such uses of the conservation area as the Secretary finds will further the purposes for which the conservation area is established." We want to ensure that conservation areas are not just hollow shells but are truly worthy of the name "conservation."

We are also recommending some more minor amendments to clarify various provisions of the legislation, including manageability, grazing and access issues. Section 5(g) of the bill authorizes the Secretary to establish interpretive facilities. We firmly believe that any such facilities should be located, not within the NCA, but in surrounding communities. This is necessary both to preserve the important values for which the conservation area is established, and to provide opportunities for economic development in the local communities. Any development within the boundaries of the NCA should be very limited.

In general, we would like an opportunity to work with Senator Bryan and the committee on the maps for this legislation. In regard to the conservation area map, we would like to ensure that the boundaries, where possible, follow ridge lines, canyon rims, existing roads, washes, fences, utility lines or other identifiable features that will facilitate good management of the area.

On the subject of wilderness maps, and wilderness in general, we have a few comments. First, the Administration applauds Senator Bryan for his willingness to address the need for wilderness designations in Nevada. We would be delighted to provide whatever assistance may be necessary to construct the maps for the 11 wilderness areas designated in the bill. In our attached amendments we have also included language clarifying the water rights section of the bill.

We strongly urge the deletion of section 9(b)(2) of the bill regarding mining activities within the Calico Mountains Wilderness. The Wilderness Act of 1964 specifically withdraws lands designated as wilderness from location and entry under the mining laws, subject to valid existing rights. We strongly object to calling an area "wilderness" but exempting it from some of the most critical elements of the Wilderness Act. We would be happy to work with Senator Bryan and the Committee to determine how best to address his concerns about the Calico Mountain area. However, calling it "wilderness" but not treating it as wilderness is not an option the Administration can support.

Mr. Chairman, we look forward to working with Senator Bryan and the Committee to give these lands the important protections which they deserve. Future generations will thank us for preserving the historic and natural values of this incredible area.

#### **Proposed Amendments to S. 2273**

##### **page 5, line 5, new section 5(b) re-letter ensuing sections**

(b) Uses. - The Secretary shall allow only such uses of the conservation area as the Secretary finds will further the purposes for which the conservation area is established.

**page 5, line 10, section 5(b)(2)**

strike the words "public roads" and replace with "existing public access"

**page 5, line 14, section 5(c)(1)**

In the title strike "Off-Highway Vehicle" and replace with "Vehicular"

**page 5, line 28, section 5(d)**

after the period insert the following new sentence:

"The Secretary may, after consultation with the Nevada Division of Wildlife, issue regulations designating zones where and establishing periods when no hunting, trapping or fishing shall be permitted for reasons of public safety, administration, or public use and enjoyment."

**page 6, line 12, section 5(f)**

strike "to continue"

**page 6, line 20-21, section 6(a)**

strike "and except as provided in section 9(b)(2),"

**page 6, line 27, section 6(a)**

before the period insert:

"and from the minerals materials laws and all amendments thereto."

**page 7, line 8, section 8**

insert after the word "area" the following:

"and wilderness areas"

**page 10, lines 12-20, section 9(b)(2)**

strike lines 12-20 inclusive

**page 10, line 12, section 9(b)(2)**

insert a new section 9(b)(2) as follows:

(2) Management of Newly Acquired Lands. -- Any lands within the boundaries of a wilderness area designated under this Act which are acquired by the Federal government, shall become part of the wilderness area within which they are located and shall be managed in accordance with all provisions of this Act and other laws applicable to such wilderness areas.