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U.S. Senate Date: Wednesday, March 14, 2017

Committee on Environment
and Public Works Washington, D.C.

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HEARING TO EXHIBIT S. _____, THE AGRICULTURE CREATES REAL EMPLOYMENT (ACRE) ACT

Wednesday, March 14, 2018

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m. in room 406, Dirksen Senate Office Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Carper, Inhofe, Capito, Boozman, Wicker, Fischer, Rounds, Ernst, Cardin, Booker, and Van Hollen.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Good morning. I call this hearing to order

Today we will hold a legislative hearing on the Agriculture Creates Real Employment, or the ACRE, Act. This is bipartisan draft legislation to help farmers, ranchers, and the communities they depend on get their relief from burdensome Federal regulations and policies.

The Senate Environment and Public Works Committee has a unique role to play in the policies that impact agriculture. Just last month this Committee held a hearing on this important issue and we heard testimony from real farmers and ranchers representing a diverse group of States.

The message from our witnesses' testimony was clear: the negative impact of many Federal environmental regulations and policies on American farming and ranching communities is real and it needs to be addressed. The testimony we heard was not about the value of environmental regulations, but about how some Federal regulations can be inflexible, antiquated, duplicative, and ultimately harmful to American agriculture, a critical part of our Nation's economy.

The draft bill we are discussing today is designed to provide relief for hardworking people that put a shovel in the

ground every day, working to feed this Country. I believe the ACRE Act provides that relief.

My bill addresses many issues that are critical to ranchers and farmers. These include protecting farmers' and ranchers' privacy; eliminating duplicative environmental permitting for the use of pesticides; addressing unneeded and counterproductive reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act, the CERCLA Act; and doing away with the unfair punishment of farmers who are wrongly accused of baiting migratory game birds simply because they are following normal farming practices.

The ACRE Act also supports an efficient permitting process at the U.S. Fish and Wildlife Service for predator control. The change will allow ranchers and farmers to better protect their livestock from predator attacks.

Most of these provisions were introduced as individual bills and have bipartisan support. One such bill introduced by Senator Fischer, the Fair Agriculture Reporting Method Act, or the FARM Act, has 12 Democratic cosponsors, including our Ranking Member. This bill addresses new animal waste emission reporting requirements.

Over the past several months, farmers and ranchers struggled to comply with ambiguous agency directives following an April of 2017 decision in the D.C. Circuit Court. The ruling

meant up to 100,000 farmers and ranchers, who have never been required to report under these laws, would suddenly be required to comply. Even though they wanted to comply with the ruling, the process and implications of compliance were unclear. Because both CERCLA and EPCRA were not written with the intent of regulating these farm and ranches, the requirement to report emissions from animal waste came without context and largely without agency guidance.

Another bill is Senator Crapo's S. 340, the Sensible Environmental Protection Act, which was introduced along with Democrat Senators Donnelly, Heitkamp, and McCaskill. This bill amends the Federal Insecticide, Fungicide, and Rodenticide Act, or FIFRA, and the Clean Water Act to eliminate a duplicative permitting requirement.

The bill prohibits the Environmental Protection Agency from requiring a permit under the National Pollutant Discharge Elimination System for a pesticide application from a point source as long as the application is approved under FIFRA. In addition, the ACRE Act also has legislation sponsored by Independent Senator Angus King, S. 1206, which will ensure fair treatment and licensing requirements for the export of certain echinoderms.

Let us remember that farmers and ranchers are the original stewards; they understand that landscapes and watershed need to

be healthy to support native plants, wildlife, crops, and livestock. They are living proof that interacting with nature can be done in an environmentally sound way, often leaving the resources in better condition than they were found.

Washington policies do not always translate well in rural America. As I mentioned at our last agriculture hearing, in February, when I was home in Wyoming, I often hear about just how out of touch the environmental regulations have become. It has gotten to the point where ranchers and farmers are burdened by the thought that they will be fined thousands of dollars for simply putting a shovel in the ground.

I believe we should prioritize updating and revising policies that, while well-intentioned, were never designed to micromanage agriculture production. This is what the ACRE Act does.

Now, before we move to our witnesses today, I would like to turn to Ranking Member Carper for his remarks.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Thanks, Mr. Chairman. I have had a chance to personally welcome, as you have, each of our witnesses.

We are happy that you have joined us today. Welcome, with your presence and your testimony, your willingness to respond to some questions. I am going to have to leave here today at 11:00, so I will not be here for the entire hearing, but I very much want to make the next hour count, so thank you all.

Mr. Chairman, thanks a lot for bringing us in to cover this subject that is on our minds. It is something we have talked about a fair amount lately in another hearing actually right here in this room.

I think we all can agree on the title of the legislation that we are considering here today. There is no doubt that agriculture creates real employment; it does in our State, in Delaware, and I know it does in States that are represented in this Committee and the Senate.

As I have said in some of our previous hearings here, agriculture, believe it or not, is a critical economic driver in Delaware. Over 40 percent of our land is dedicated to farming and our State's agricultural sector employs some 30,000 Delawareans, while contributing nearly $8 billion a year to the State's economy. That is a lot of money for a little State.

As my colleagues have heard me say a time or two before, I believe that our Country's environmental laws and regulations have, by and large, served our entire Nation, including our farmers, well. It is possible to have clean air and clean water. It is possible to protect our land and conserve species and still have good jobs, plenty of jobs. It takes some work to find the right solutions to achieve that balance, but the hard work almost always pays off.

One such example is the FARM Act, which is included as one of the sections in the ACRE Act. Its prime sponsor is here with us today, the Senator from Nebraska.

But, Mr. Chairman, as you know, we worked hard to strike a careful compromise on that legislation. In my opinion, the FARM Act is an example of where we can do a good job balancing the needs of our farmers, while preserving access to information that can help protect public health.

Unfortunately, I do not believe that the ACRE Act in its entirety represents the same thoughtful approach. The legislation recognizes and attempts to address concerns raised by some of our farmers. As drafted, though, I don't believe that it adequately balances those interests with the interests of other natural resource-dependent industries.

For example, Delaware has a booming wildlife tourism industry. I know other States represented here do too. But

visitors come from all over the world to observe migratory birds in Delaware, including the federally-listed threatened Red Knot. A 2016 U.S. Fish and Wildlife Service study found that more than 45 million people, 45 million people enjoyed bird watching that year, enjoying other wildlife watchers and contributing more than $75 billion to the U.S. economy. The Endangered Species Act and Migratory Bird Treaty Act help ensure the long-term viability of that industry, too. In its current form, I fear that the ACRE Act could have harmful implications for these important laws.

Having said that, there may be ways to address farmers' concerns without unintended consequences. For example, our Federal agencies can work with stakeholders to explore administrative options that may resolve endangered species and migratory bird concerns. Or we in this Committee may be able to reach narrower, truly bipartisan compromises in some of the items contained in the ACRE Act. I hope so.

Further, there are stewardship success stories that this Committee and the Congress should examine that are examples of ways to improve collaboration and conservation outcomes in agriculture. For example, just last year, in the town of Blades, just south of Seaford, the world's first nylon plant was built some almost 80 years ago.

But in the town of Blades, located in the southwestern part

of our State, Perdue Farms worked with several communities to expand its multimillion dollar nutrient recycling investment on Delmarva. This investment and new composting operation increased the company's capacity to handle surplus poultry litter and allowed other agricultural byproducts to be recycled.

This actually started in my last term as governor, Mr. Chairman. We took some State money, added to that a lot of money from Perdue, and created this industry in the southwestern part of our State, so we are not just going to spread all those nutrients on farm fields, but actually turn some of them into -- I think it was the Scott lawn care people, the Scott people, they sell the stuff all over the Country as an organic fertilizer. But we have taken some important other steps in Delaware to help farmers become even better stewards of the land.

I have mentioned before, and I will do it again here briefly today, again, when I served as governor, the last year or two, we addressed high levels of agricultural runoff by forming the Nutrient Management Commission, farmer-led. The Commission brought together farmers and members of the environmental community to devise commonsense solutions, and that is basically three things: have farmers check the nutrient levels in their field, the ability of fields to absorb nutrients, phosphorous and nitrogen in particular; each of the

farmers are going to be using the nutrients to develop a plan that is appropriate for their farms at non-polluting levels; and then provide the training necessary to implement the plans.

Initiatives like those led by the Nutrient Management Commission and smart investments like those by Perdue in the State of Delaware are just two examples that this Committee can, and I think should, look at as we strive to protect our air, our water, while also creating economic opportunity in the agricultural industry.

So, we look forward to hearing from all of our colleagues, our witnesses today to advance current and future legislation that supports our farmers and protects our environment. I look forward to hearing from all of you. Thank you again so much for joining us today. Welcome.

[The prepared statement of Senator Carper follows:]

Senator Barrasso. Well, thank you very much, Senator Carper.

We are now going to turn to the witnesses, but I would like to first introduce Mr. Doug Miyamoto, who is joining us today and the first one to testify. He has served as the Director of the Wyoming Department of Agriculture since 2015. In his role as Director, Doug deals with issues that we will discuss here today on a daily basis: environmental reporting for Wyoming agriculture producers, predator management, liaising with Federal agencies to coordinate environmental resource issues, and many other issues that arise when getting our agriculture products to the end consumer.

Doug previously served as the Executive Director of the Wyoming Livestock Board, the Deputy Director of the Wyoming Department of Agriculture, and in several other positions at the Natural Resource Conservation Service, Wyoming State Engineer's Office, and the University of Wyoming.

Doug is uniquely qualified to speak to today's issues, both from his professional experience and because he received the highest quality education from the University of Wyoming.

Senator Carper. Shameless.

[Laughter.]

Senator Carper. Shameless pandering. What is their mascot? What is their mascot?

Senator Barrasso. My wife has three degrees from the University of Wyoming.

[Laughter.]

Senator Barrasso. I am going to get her down here and debate you, Mr. Ranking Member, and you don't stand a chance.

Senator Carper. I would lose.

Senator Barrasso. He is uniquely qualified because of his incredible education, background, and degree. He studied range management for his undergraduate degree and later earned a Masters in rangeland ecology. He serves Wyoming well by bringing his holistic approach to his leadership at the Wyoming Department of Agriculture, and I am pleased that he would join us here today.

In addition to Doug, we also have Mr. Ryan Yates, who is the Director of Congressional Relations for the American Farm Bureau Federation, and Mr. Jim Lyons, who is a Senior Fellow at the Center for American Progress.

So, I would like to welcome all three of you today. We would like to remind you that your full written testimony will be made part of the official hearing record, and please keep your statements to five minutes so that we may have time for questions.

Doug, please proceed.

STATEMENT OF DOUG MIYAMOTO, DIRECTOR, WYOMING DEPARTMENT OF AGRICULTURE

Mr. Miyamoto. Chairman Barrasso, thank you for that kind introduction. Ranking Member Carper, members of the Committee, thank you so much for the privilege of speaking to you today about the ACRE Act.

Again, Doug Miyamoto. I am the Director of the Wyoming Department of Agriculture, and I also currently serve as the Chairman of the Natural Resources and Environment Committee of the National Association of State Departments of Agriculture.

I am here today to talk about my support for the ACRE Act, and I will highlight a few of the reasons why in my testimony today. I am not an expert on all of the issues that are addressed by the ACRE Act, but there is a common theme of ensuring that the ag industry is subject to the correct and intended regulations for normal agricultural activities. I will emphasize individual sections of the ACRE Act on which the Wyoming Department of Agriculture and NASDA have concentrated on in recent years, as those are the ones with which I am most familiar.

Importantly, and I am sure you are all aware, Section 3 of the ACRE Act provides the exemptions from notice requirements and penalties revolving around CERCLA. I don't want to go into too much detail on this because I am sure you all have heard

about the issues surrounding CERCLA, so I would just like to point out some specifics regarding the impact of CERCLA and its affiliated reporting requirements to Wyoming.

Exempting farmers and ranchers not engaged in confined animal feeding operations is, in my opinion, simply the right thing to do. CERCLA was never intended to regulate the livestock industry, but, rather, to ensure cleanup of the Nation's most contaminated Superfund sites to protect the public.

I have been asked many questions from Wyoming's producers about how they are to estimate emissions and how they are supposed to report those emissions in a non-confined range cattle setting. Unconfined range cattle represents the majority of the operations in the State of Wyoming, and by one suggested measure this continuing estimating reporting requirement would apply to all livestock operations involving more than 206 head of cattle.

Obviously, this standard would incorporate the majority of the commercial livestock operations in Wyoming, and there is simply no way for the majority of Wyoming's cattle producers to know if their cattle are emitting more than 100 pounds of ammonia or hydrogen sulfide in any given day. Frankly, I don't know what to tell producers when they call me for technical assistance on how to comply with CERCLA at this point.

The exemptions proposed in this Act will provide producers some protection from liability, and it also will address Federal agencies of jurisdiction, the EPA and the Coast Guard, and eliminate them wasting their limited resources on administering a program that does nothing to protect public health and also does not ensure that the Nation's priority Superfund sites are addressed appropriately. Including livestock operations in the reporting and penalty provisions of CERCLA is counterproductive both for producers and for the agencies, and illustrates why this language has 29 bipartisan cosponsors.

Specific to Wyoming, another section I really wanted to highlight was Section 11 of the ACRE Act, and this simply reaffirms the authorities of the Fish and Wildlife Service to issue appropriate permits to address livestock depredation. As an example, I want to discuss eagle management and its challenges in Wyoming.

Wyoming is home to the largest population of Golden and Bald Eagles in the lower 48 States. Wyoming is also known as a destination for wildlife viewing, and we view eagles as a valuable component of a balanced ecosystem. We do not want to decimate eagle populations.

But in the instance of newborn livestock losses to eagle depredation, typically, additional newborn loss has already occurred before Fish and Wildlife Service can even pursue the

first step of an eagle take permit, which is eagle harassment. It is such a slow process that is a rarity for the next step, which would be live capture and removal, to ever even be pursued. Livestock producers have more frequently had to resort to much more surveillance of their young stock; they have had to move herds completely to entirely new locations; and they have had to build and purchase lambing sheds, calving sheds to conduct operations indoors to protect from these depredations.

We have seen a lot of sheep business leave entirely due to eagle depredation. In 2017 alone, Wyoming experienced 1,000 sheep and lamb losses to eagle depredation, according to the National Agricultural Statistic Service. This doesn't even mention the impact of ravens on sage grouse, which can be addressed also by this provision within the Act.

In conclusion, I would say, as a representative of government, I would assert to you that we have an obligation to ensure that our regulations are clear, consistent, and effective. I have made it a goal of the Wyoming Department of Agriculture to support commerce in the ag arena, even given the regulatory nature of our Department. One of my highest priorities is to lead the Department of Ag in a manner that emphasizes education before regulation and provides regulatory certainty for our producers.

Again, I sincerely appreciate specifically the work of my

Senator and Chairman Barrasso, Ranking Member Carper, and Senators Fischer and Donnelly on your specific work on CERCLA. That is very much appreciated. And I also appreciate the opportunity to present to the Committee today, and please know I am available for anything that you may need as a Committee. Thank you.

[The prepared statement of Mr. Miyamoto follows:]

Senator Barrasso. Well, thank you very much for your very thoughtful and thorough testimony. Appreciate it.

Mr. Yates.

STATEMENT OF RYAN YATES, DIRECTOR OF CONGRESSIONAL RELATIONS, AMERICAN FARM BUREAU FEDERATION

Mr. Yates. Chairman Barrasso, Ranking Member Carper, and members of the Committee, thank you for calling this important hearing on the ACRE Act and inviting me to testify on behalf of the American Farm Bureau Federation. Farm Bureau commends you for your leadership in advancing legislation which addresses a range of environmental policy issues which impose real costs and substantive burdens to our members. I will highlight our comments and support section by section.

Farmers and ranchers support the solution provided in Section 3 of the ACRE Act, which will protect their businesses from financial strain and burden of unnecessary reporting requirements. CERCLA was enacted to provide for cleanup of the worst industrial chemical and toxic waste dumps and spills.

CERCLA has two primary purposes: to give the Federal Government tools necessary for prompt response to problems resulting from hazardous waste disposal, and to hold polluters financially responsible for cleanup. Unfortunately, in April 2017, the D.C. Circuit Court of Appeals issued a decision vacating EPA's 2008 exemption for agricultural operations. I would like to point out the public safety concerns caused by these reporting requirements.

Up to nearly 200,000 farms may have to report to the

National Response Center, overwhelming that system and drawing resources from actual emergencies. Additionally, there are national security implications. By requiring reporting, we will be creating a roadmap for nearly our entire animal agriculture production system. Obviously, this creates an opportunity for mischief for those wanting to harm our very safe and abundant food supply. Lastly, requiring individual farmers and ranchers to disclose personal home addresses along with their farm information creates an opportunity for activists to harass farmers and ranchers where they live and work.

Section 5 would protect farmers from Federal penalties levied under the Migratory Bird Treaty Act if they are following best practices provided by their State Cooperative Extension Service. AFBF supports the Hunter and Farmer Protection Act, which would allow each State's Cooperative Extension Service to clarify the difference between what constitutes baiting and normal agricultural practices.

Section 6 of the ACRE Act is a proposal that has long enjoyed bipartisan support, and we strongly support its adoption. It simply states that when a pesticide is lawfully applied under FIFRA, it is not also regulated under the Clean Water Act. It has been the longstanding view of the law until it was thrown into question by decisions in the Ninth Circuit. We believe it is a sensible approach that reflects the will of

Congress and prevents overregulation.

AFBF supports Section 7, the Farmer Identity Protection Act, which would prohibit the EPA or an EPA contractor from disclosing information collected under Clean Water Act requirements from livestock operations. AFBF opposes the disclosure of personal and/or business information by an organization, business, or government agency about individual farmers and ranchers. The release of any information should only be allowed under specific written or electronic authorization of the individual or the private business entity.

Section 8 would prohibit the EPA from enforcement of the Clean Water Act for agricultural operations through aerial surveillance without the written expressed consent of the owner-operator of the land. Farm Bureau supports the use of unmanned aircraft systems, or UAS, as another tool for farmers and ranchers to use in managing their crops and livestock, and making important business decisions. While Farm Bureau supports this technology and the potential opportunities it offers for farmers and ranchers, we are also concerned about the data collected from UAS and the privacy and security of the data. It is critical that data collected via UAS remain under the ownership and control of the farmer and is not available to government agencies or others without the farmer's permission.

Section 9 would provide immediate relief to the aquaculture

industry by reinstating the force and effect of the U.S. Fish and Wildlife Services' statutory depredation order for the double-crested cormorant with respect to freshwater aquaculture facilities. In response to a legal challenge against the Service, the U.S. District Court for the District of Columbia remanded the 2014 Aquaculture Depredation Order for the cormorant. The cormorant is a large water bird that feeds mainly on fish. As you can imagine, commercial fish ponds that are stocked at high densities make them highly susceptible to bird predation particularly by the cormorant. Predator control is vital to the success of American aquaculture.

Thank you, Mr. Chairman. We look forward to continuing to work with the Committee in securing enactment of this critically important legislation. I would be happy to answer any questions that you or the Committee may have. Thank you.

[The prepared statement of Mr. Yates follows:]

Senator Barrasso. Thank you so very much, Mr. Yates. We appreciate your testimony.

Now, Mr. Lyons.

STATEMENT OF JIM LYONS, SENIOR FELLOW, CENTER FOR AMERICAN PROGRESS, LECTURER, YALE SCHOOL OF FORESTRY AND ENVIRONMENTAL STUDIES

Mr. Lyons. Mr. Chairman, members of the Committee, I am Jim Lyons. I am currently a Senior Fellow at the Center for American Progress and a lecturer at the Yale School of Forestry and Environmental Studies. Previously, I have served as Deputy Assistant Secretary for Land and Minerals Management in the Department of the Interior under President Obama and as USDA Under Secretary for Natural Resources and Environment under President Clinton. And from 1985 to 1993 I was a member of the House Committee on Agriculture staff, where I had the opportunity to help lead the effort to shape both the Conservation and Forestry Titles of the 1990 Farm Bill.

I bring up the 1990 Farm Bill because I believe it was a groundbreaking effort that expanded the scope of our conservation toolkit. Since then, through successive Farm Bills I believe we have demonstrated the important relationship between farmers, ranchers, and Federal conservation agencies and the power of their partnership.

Voluntary conservation made possible by the technical and financial assistance by Federal conservation agencies and their State and private partners have maintained and restored the health of millions of acres of farm and ranchlands, and

conserved fragile soils, wetlands, water quality, and wildlife habitat.

We continue to depend on the Nation's farmers and ranchers not only for our food and fiber, but also for the care of our lands and natural resources. As Conservationist Aldo Leopold described in 1939, "It is the American farmer who must weave the greater part of the rug on which America stands." Nearly fourscore years later, Leopold's comments remain very valid.

American farmers and ranchers remain conservation leaders, and we have an obligation to the American people to ensure that we protect and promote the public-private partnership that has helped protect our capacity to produce safe and affordable food and fiber, and conserve America's soil, water, air, and wildlife resources.

The ACRE Act is an interesting amalgam of bills. I will do my best to address them today, but I implore you to work together in a thoughtful, bipartisan approach to build on the foundation of prior Farm Bills to improve efforts to weave the rug of conservation of which Leopold has spoken.

Given the limited time, I will comment on just a few sections of the bill.

On Section 3, the exemption from certain notice requirements and penalties under CERCLA, I understand that this would simply codify an exemption from these requirements that

had been implemented since 2008. Minimizing the burden on farmers for collecting and reporting necessary data makes sense, and I strongly support that objective.

I hunt and have hunted waterfowl on Maryland's eastern shore, so I understand the intent of Section 5 to further clarify the definition of normal agricultural activities under the Migratory Bird Treaty Act. But I would suggest, Mr. Chairman, that it might be better to address this definitional issue administratively, rather than setting a one-size-fits-all standard and statute. This should be done in collaboration with the NRCS, the U.S. Fish and Wildlife Service, and relevant State Fish and Wildlife agencies.

With regard to Section 6, the Congress has made several attempts in recent years to find common ground in avoiding duplication, providing clarity, and reducing the burden associated with data collection and reporting under FIFRA and the Clean Water Act. Efficiency in data collection reporting is important, provided the intent of both FIFRA and the Clean Water Act are met.

In places like Maryland, where I currently reside, this can be particularly problematic given the potential for pesticide applications to inadvertently impact waterways and the Chesapeake Bay. Simply having a pesticide registered under FIFRA, in my opinion, does not obviate the need for ensuring the

Clean Water Act requirements are met where the potential for impacting water resources occurs.

While I understand the purpose of Section 7, the Farmer Identity Protection Act, and the concern of livestock producers, I think it is important the data related to these activities be collected in a manner that permits research and analysis to benefit producers, help reduce operator costs, improve the efficiency of livestock operations, as well as protect public safety and the environment.

Regarding Section 8, aerial photography and assessments by their very nature are intended to cover large landscapes, making it difficult, if not nearly impossible, to gather permission from all those owners and operators who may be in the area that is the focus of these aerial surveys. Aerial surveys are an important tool for wildlife managers and research scientists whose studies can improve management practices that can benefit farmers and ranchers, as well as wildlife and the environment.

Finally, reaffirming the respective authorities of the U.S. Fish and Wildlife Service and APHIS to work together to address animal damage issues can do no harm, but I would suggest that a change in the law is not warranted. The issue raised by Mr. Miyamoto with regard to eagles and sheep losses is a very serious concern, I am well aware of that, but it seems to be more of an issue of providing adequate resources to the Fish and

Wildlife Service to do its job, rather than reaffirming in statute that APHIS and the Service do their jobs.

Thank you, Chairman Barrasso and members of the Committee. Appreciate the opportunity to share my thoughts today.

I would close by emphasizing one thing, and that is data and information are important management tools that can improve farm and ranch operations, inform new and better approaches for achieving conservation goals, and ensure that taxpayer dollars are used efficiently and effectively. That is, data are an asset, not just a bludgeon. If we can focus on opportunities to work together, agriculture, fish and wildlife, public health and safety, and our environment will benefit.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Lyons follows:]

Senator Barrasso. Well, thank you very much for your testimony. Thank you all.

We will now have a round of five minutes of questions, and I will defer my time to Senator Inhofe.

Senator Inhofe. Well, thank you, Mr. Chairman.

I was listening, Mr. Miyamoto, to your opening statement. I chaired this Committee for a number of years, and the one thing, particularly during the last Administration, as a general rule, the Democrats want more regulation, and they want that regulation to come from Washington, not from locally or from the States. I remember going over the WOTUS rule. That was at a time when, and I think, Mr. Yates, you will remember this, that was the number one concern, I think, for the Farm Bureau at one time. This was the big issue.

Now, my State is an arid State, and we can just envision if the regulation that was put forth by the Obama Administration had become a reality. It wouldn't be long until our panhandle would be a wetland, and we were fully aware of that. There would be another army of bureaucrats crawling all over our farms and ranches in Oklahoma.

So, anyway, that is the overall thing. And, by the way, there was one really good program, it was called the Partnership Program that came from Fish and Wildlife, and this happened

actually in the last Administration, where they actually came out, in my case, before confirmation of the Fish and Wildlife Director, I said I want you to make two trips out to Oklahoma and talk about the partnership and the people who are the farmers and the ranchers on the ground; and they came back with the conclusion that they are just as concerned or more concerned than the bureaucracy here in Washington is on what they want to do with the land, and they were very impressed by the fact -- and it just stands to reason, but a lot of bureaucrats don't understand this, if you own a piece of property, you want it to be clean, you want it to conform. This is to your financial and to your benefit.

Mr. Miyamoto, when I look at the list of regulations, I come to the conclusion that there is the idea in Washington that you have to have someone here looking out after your property because you are not going to do a good job yourself. You, yourself, acknowledge that some of these regulations targeted in the bill were of no environmental benefit, so it is unclear as to why would the opposition be opposition to them, other than loss of control. Unfortunately, it is our State partners that are then forced to comply with Federal mandates coming with no financial support, so it comes back to unfunded mandates.

So, I ask you the question can you speak to the burdens that you and your fellow State agencies face when Washington or

the courts hand down unfunded mandates?

Mr. Miyamoto. Mr. Chairman, Senator, thank you for the question. The issue of unfunded mandates and delegated authority for State Departments of Agriculture is something that we have to think about frequently. We do carry out FIFRA regulations as a State Department of Agriculture in Wyoming, so this issue of pesticide regulation really does fall on the Department of Ag.

There are other examples of many other programs that we have delegated authority from the Federal Government to implement regulations in the State. As an example, within the Wyoming Department of Agriculture, we also undertake food safety measures from FDA and we have Federal Meat Inspection Act under the Food Safety Inspection Service, and we have to make sure that we can do a good job of carrying out our regulatory obligations.

So, when it comes to budgeting and unfunded mandates, we want to do a good job to carry out these Federal statutes in our State and uphold our end of the bargain, but it does become a challenge from time to time when there are so many of them. If they become duplicative, then it becomes impossible.

Senator Inhofe. And I really think that this bill addresses a long list of them, and I have taken the time, as other cosponsors have, of going over and analyzing each one.

I don't want to run out of time here. Mr. Yates, last week, in Senator Rounds' subcommittee hearing on the FARM Act, a colleague on the other side accused the Trump EPA of failing to provide farmers and ranchers with the guidance they need to comply with the recent court decisions that now requires ag industries to report to the EPA and the Coast Guard emissions from animal waste.

Your testimony states that there is no scientific consensus on how to measure these emissions, and it is worth noting that the Obama EPA believed that this information wasn't needed and defended the Bush era policy. So, since you believe there is not the scientific consensus, do you think the EPA would be able to develop the guidance that is really needed here?

Mr. Yates. Well, ultimately, that is something that livestock operators are going to need from the EPA and, to date, they have not been able to receive appropriate guidance that would give them the tools that they need to effectively measure those emissions on their livestock operation. I know there are a couple models that have been referenced. Texas A&M, I believe, and I believe there is another university that has developed a model.

Again, the application of those models to a particular livestock operation is inaccurate, at best, it is a guess, so I think if we are going to be requiring livestock operators to

report these emissions, they need to have the tools and the guidance to be able to effectively measure what it is that they are being required to report.

Senator Inhofe. I think it is interesting that back during the Obama Administration that is pretty much what their feeling was, too, at that time.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Inhofe.

Senator Carper.

Senator Carper. Before I ask a couple questions of our witnesses, I just want to note, if I could, Mr. Chairman and colleagues, for the record that during our hearing this morning, students across our Country are walking out of the classrooms for a brief while to mourn the loss of the victims of the Parkland shooting and to demand action to prevent gun violence in the future. I just want to acknowledge their efforts and to say that I share in solidarity with them.

First question I have for our witnesses, again, we appreciate you being here. Thank you very much for your testimony and for your willingness to stay on and answer some questions, and maybe even some questions for the record.

As you all know, and I think Mr. Lyons may have stated this, there is a longstanding tradition of bipartisan collaboration on Farm Bills and a lot of other agriculture

legislation. I hope that this Committee and I hope that this Congress can uphold that tradition this year.

With that said, based on what you just heard from your colleagues, what are the areas where you see agreement among the three of you? What are the areas where you see agreement among the three of you, please.

Mr. Lyons, do you want to lead us off?

Mr. Lyons. I think, first of all, Senator Carper, we agree that reducing the burden on agriculture producers of data collection and providing information is important, but we do need data and information, so gathering that in the most efficient and effective way possible is important.

I agree with the concern about harassment and the desire to make sure that the information is managed properly to help achieve its intended purpose; to help improve programs, to help improve the operations of producers, to help reduce costs both for them and to the taxpayer.

And I would like to think that we all agree that we need to meet not only the objectives of benefitting producers, but we also have an obligation as a community to protect public health and safety and the environment, and that is certainly an important part of why these statutes exist.

Senator Carper. All right, thank you.

Mr. Yates and Mr. Miyamoto, do you agree with anything he

said?

Mr. Yates. For the record?

Senator Carper. Yes.

Mr. Yates. For the record, Senator Carper, I am pleased to agree with Jim on the issues that he brought up. I think farmers and ranchers across the Country are the best stewards of our land and I think we want to work collectively within the regulatory fabric that we have to live and work in to produce the best results not only for farms and ranches, but for the environment. So, again, I would agree with Jim's comments on this.

Senator Carper. Good. Would you like to add any other thoughts of your own about what are some other areas you might see for agreement?

Mr. Yates. Well, I think, across the board, farmers and ranchers, when we go out to the field, I know President Duvall was in a couple weeks ago at your least hearing on environmental regulation.

Senator Carper. Zippy Duvall?

Mr. Yates. Zippy Duvall, yes, sir. He appreciated the commentary that you and he had at that hearing. But the number one thing that we hear from our farmers is concerns over red tape and regulations, in addition to a number of other issues that keep farmers up at night, and I think this bill represents

a good start at looking at identifying duplications of regulations and identifying opportunities to streamline those to ensure that the regulations are commonsense and they make the most sense for the folks that have to live and work under the guidance of those rules and regulations.

Senator Carper. I quote my parents almost every day of my life, something that they said, words of wisdom that they imparted to my sister and me when we were kids growing up. My dad was famous for saying, "Just use some common sense" to my sister and me, and he said it a lot. He did not say it so kindly.

All right, Mr. Miyamoto. Just come back to what Jim has said and Ryan has said. Anything that you agree with that they have said and anything you would like to add, other possible areas of agreement? Go ahead.

Mr. Miyamoto. Thank you, Senator. From what I heard today, there is a lot more agreement than there is disagreement. If there was one thing that I could certainly identify specifically, it would be the CERCLA piece and addressing that. So you are aware, I think that the aspects that are approached in this bill that addressed duplicative regulations and then sometimes regulations aimed in the wrong direction is a good start for us and would help me do a better job at home to not only regulate the agricultural community, but also to advocate

for it. Because I kind of have that dual role and take it very seriously.

Senator Carper. All right, thank you.

I have about 15 seconds left. I am going to have some questions for the record. I wish I could give them in person, but we will submit those for the record. Again, we appreciate very much your presence today and your contributions. Thank you.

Senator Barrasso. Thank you, Senator Carper.

Senator Ernst.

Senator Ernst. Thank you, Mr. Chair.

Thank you to our witnesses for being here today.

Mr. Miyamoto, I will start with you, Director. FIFRA established an effective and comprehensive regulatory --

Senator Carper. Could I interrupt?

Senator Ernst. Oh, yes.

Senator Carper. I apologize. I am going to go speak on the Floor on the banking bill right now. I apologize.

But could I just ask unanimous consent to submit for the record -- I have a unanimous consent request that somewhere in this pile right here, and I would ask permission to submit for the record.

And I apologize for interrupting you.

Senator Barrasso. Without objection. And had you attended

the University of Wyoming, you wouldn't have --

[Laughter.]

Senator Carper. Let the record show I was wait-listed there.

[Laughter.]

Senator Carper. As were our sons. They had to go to MIT and William & Mary.

[Laughter.]

Senator Carper. Thank you. I apologize.

Senator Ernst. No, you're fine, Senator Carper.

Okay, Director, we will start over again. As you know, FIFRA established an effective and comprehensive regulatory web to provide pesticide-related environmental and public health protections, and this regulatory system is pretty darn rigorous in examining environmental data and health exposure assessments for pesticide products.

Because this process specifically examines a product's potential impact on water, additional permitting requirements under the Clean Water Act are duplicative. We have talked a little bit about duplication of effort, and this will significantly increase the cost for State permitting authorities and pesticide users.

So, we have already discussed the duplication of effort, the unfunded mandates, but if you could, could you please

describe -- let's go a little bit further into the weeds -- the challenges that State Departments of Agriculture face when dealing with duplicative regulatory requirements, whether it is the costs associated with the paperwork shuffle, the timelines? Could you delve into that so that we know exactly what our State Departments of Ag go through?

Mr. Miyamoto. Mr. Chairman, Senator, thank you for the question. It is something that we struggle with. Initially, when the NPDES requirements for pesticide applications came to light, which was eight or nine years ago now, we had to do a series of workshops around the State with all of our certified pesticide applicators to inform them of this process, and it was quite an undertaking.

It was a good collaboration; we used our State Department of Environmental Quality, EPA Region 8 was also represented. But there was a lot of training that went into how our applicators would become compliant with NPDES permitting requirements that were never aimed in that direction.

So, initially there was a whole bunch of education, and even now, as people get recertified for pesticide application, we have training elements that are part of our training program that informs them of all of the steps that they have to take to get their NPDES permits and what the liabilities associated with those permits are.

I think you quoted or you stated very eloquently that FIFRA handles the regulation of pesticides. We do that as a State Department of Agriculture, and, really, both NPDES and our regulation of pesticide applications boil down to the approved label by EPA. And if you follow that label that is attached to that product, you will be in compliance. Other than that, you are just shuffling paper.

Senator Ernst. Very good. And that is a concern, too, the duplication of effort. The costs associated with that, what is a ballpark figure, to be qualified, and might be to the State Department as well?

Mr. Miyamoto. Mr. Chairman, Senator, if it is okay with you, I will have to research that a little bit. I am unsure of what DEQ spends on their NPDES program specific to pesticides. I know for us, the training and certification program that we, as a State, put into our program, not Federal funds, but State funds, is about half a million dollars.

Senator Ernst. Okay. And, bottom line, it boiled down to, you said, if they just follow the instructions on the label, correct?

Mr. Miyamoto. Correct.

Senator Ernst. Correct. Okay.

And Director and Mr. Yates, both of your testimonies made pretty compelling cases as to why the CERCLA reporting

requirement is unnecessary and why Congress never intended for emergency air emissions to apply to day-to-day practices on ag operations. Do you think the documentation and process under CERCLA for reporting routine low-level animal manure emissions on a farm to the Coast Guard's National Response Center is the best use of Federal, State, and local tax dollars?

Mr. Miyamoto. Mr. Chairman, Senator, again, thank you for the question. When I hear the term Superfund, that brings a lot to mind, and the expense associated with cleanup of Superfund undoubtedly is expensive. I have no idea what those expenses might be.

But when it comes to CERCLA, I am quite certain that both EPA and the Coast Guard have better things to do with limited resources to address those sites that really are hazardous and a threat to human health. I don't even know how to begin to tell producers how to estimate emissions from an individual head of livestock, so not only do I think that it is not, the regulation, aimed in the right direction; I don't have anything to tell my producers about how to accurately comply. I can't ethically give them a formula that I think that they could defend.

Senator Ernst. Thank you.

Mr. Yates?

Mr. Yates. Certainly, I would be in agreement. I think

EPA has recognized that low-level continuous emissions of ammonia and hydrogen sulfide from livestock are not releases that Congress intended to be regulated under CERCLA; and I think when you start looking at the numbers, the numbers that we have received over the last eight years, the annual phone calls to the National Response Center have averaged about 28,000 reports a year for the last eight years.

Looking at an additional 200,000 reports from farmers and ranchers, I don't think it is a great use of taxpayer dollars. Frankly, I think the NRC really should be focused on its true mission, and not receiving reports from farmers and ranchers trying to be in compliance with CERCLA.

Senator Ernst. Thank you very much. I struggle to understand how we would measure some of those emissions from the rancher and farmer standpoint, but also what exactly is the Coast Guard going to do when they respond? I don't think that is spelled out anywhere.

Anyway, thank you, Mr. Chairman.

Senator Barrasso. Thank you very much, Senator Ernst.

Senator Cardin.

Senator Cardin. Thank you, Mr. Chairman.

Mr. Lyons, welcome. It is always nice to have a Marylander here, so I am glad to see you.

Mr. Lyons. Thank you, Senator.

Senator Cardin. I appreciate your testimony. And I just really, first, want to underscore the point that you made about farmers and the importance to our environment that farmers understand, that has certainly been true in Maryland, recognizing that a clean environment is in their best interest and part of their responsibility, as they see it, is to leave the land in better shape for the next generation, which includes the environment and clean water, et cetera, so I thank you for making that point.

I want to sort of delve into the pesticide issue and insecticides, and the impact on the Chesapeake Bay, impact on clean water. We have made a real commitment to clean up the Chesapeake Bay, and all stakeholders are part of the process, including our farmers. They practice the best practices in order to minimize the concerns of pollution getting into the Bay. We very much appreciate all the work that they do.

I want to talk about the FIFRA statute and its regulations as to whether it is duplicative of what EPA would be doing in regards to protecting our environment from insecticides, and get your view as to whether in fact this is duplicative or whether there is a different concern in regards to water quality.

Mr. Lyons. Well, thank you, Senator, for the opportunity to address that, and I want to thank you for your leadership particularly in helping to protect the Chesapeake Bay, in spite

of efforts to cut funding for the important programs there, so really appreciate that.

I actually don't think that the duplication that is presented here between the Clean Water Act and FIFRA is completely accurate. FIFRA is designed to regulate the use and application of pesticides in general, and set standards, and certainly it sets standards for applications in relation to aqueous situations, in addition to land applications. But, really, the Clean Water Act serves a different purpose; it is really designed to protect our Nation's water quality by minimizing discharges of pesticides and other pollutants.

So, I think, particularly in a place like the Chesapeake Bay, where we have a high water table and much of the landscape is vulnerable to stormwater runoff and other impacts, that the provisions of the Clean Water Act and the requirements that are associated with it provide an added element of assurance that pesticides are not going to get into the waterways and have adverse impacts on those water bodies.

Senator Cardin. I thank you for that because the FIFRA statute deals with labeling, deals with other issues and the Clean Water Act deals with the quality of water in our Nation, so they have different standards to judge the regulatory activities. And we know that farming activities is the largest single source of pollutants entering the Bay. It is not the

largest increase that comes from runoff, but the largest single source is from farming, so, therefore, it is critically important we try to minimize the best that we can, and the Clean Water Act certainly has been important in doing that. Would you agree with that?

Mr. Lyons. Yes, I certainly do, Senator. I think it played an important role and I think we are seeing the benefits of that. I might mention, if I could actually put in the record, a recent Washington Post opinion by the editorial board, March 7th, that says why the Chesapeake Bay is the best in the world. It talks to the improvements that have been made over many years of effort to improving water quality and the health of the Chesapeake Bay, and I think it is a reflection of the fact that proper application of tools. I see the Clean Water Act as a tool for addressing water quality concerns as well as other standards, is important.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Cardin. Always appreciate the opportunity of including the Chesapeake Bay in our record.

Let me ask you one last question, which sometimes the reason for trying to get an exemption from the Clean Water Act deals with emergency situations where you have urgent issues that need to be dealt with quickly because of the health concerns that are brought about by some insects or invasions, things like that.

Do you see the Clean Water Act regulations and the current applications of the law inconsistent with emergency response?

Mr. Lyons. No, absolutely not, Senator. In fact, EPA developed a program to deal with emergency situations. I mean, zika would be a great example of that. Under those circumstances, an applicator can perform its pest control activities without having to wait for EPA approval for the application, so there is no inconsistency there.

Senator Cardin. Thank you.

Appreciate it, Mr. Chairman.

Senator Barrasso. Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman. I thank you for calling this hearing today and I appreciate all of the witnesses coming to share your time and your expertise with us on these important issues.

This bill encompasses a variety of priorities that I and many members of this Committee have labored over for, in some cases, many years, and I am glad to see the Committee recognizes that these commonsense solutions do need to move forward.

The ACRE Act represents relief for ag producers from burdensome regulations, relief from regulations that do not offer more environmental protection and relief from regulations that have become duplicative and unnecessarily tie the hands of our producers.

I am especially pleased to see included in this legislation policies that I have championed in this Committee for many years, and this includes addressing what I believe is a duplicative permitting of pesticides under FIFRA and the Clean Water Act. I would remind my colleagues that this is an issue I agreed with the Obama Administration's EPA on, and it continues to be a concern in farm country.

Additionally, the ACRE Act also includes my legislation to provide regulatory relief for farmers and ranchers with above-ground, on-farm fuel storage. Intended for major oil refineries, the Spill Prevention, Control, and Countermeasure, or the SPCC, Rule would affect the amount of fuel producers can store on their land. And I certainly appreciate that the last WRDA bill included flexibility for producers, but more does need to be done.

Finally, the ACRE Act includes the Fair Agricultural Reporting Method, or the FARM Act, which would provide greater certainty for ag producers by eliminating the burdensome reporting requirements for animal waste emissions under CERCLA.

As of this morning, there are 37 cosponsors, Democrats and Republicans, on this stand-alone legislation. Our farm and ranch communities are in tough economic climates, and this bill before us does cut through the cumbersome red tape and enables our ag producers to continue to support their families and also to feed this hungry world.

Director, it is my understanding that reporting animal waste emissions under CERCLA provides no environmental benefit. Do you agree with that?

Mr. Miyamoto. Mr. Chairman, Senator, I do. We have operated regulatory frameworks for agriculture for quite some time now. The Clean Air Act is available to address air quality concerns. CERCLA was never a part of this until very recently, and the simple act of reporting does nothing to address any environmental concern.

Senator Fischer. Thank you. Can you please explain to the Committee the current regulatory framework livestock producers must comply under, and specifically under the bill before us, the ACRE Act and, subsequently, the FARM Act, do certain providers still have to comply with EPCRA reporting

requirements?

Mr. Miyamoto. Mr. Chairman, Senator, they do. In confined animal feeding operations, they would still have a duty to report under EPCRA and comply with the regulatory requirements there.

Senator Fischer. So, just to be clear, producers and our large animal feeding operations, they still must comply with EPCRA, the Clean Water Act, and State regulations?

Mr. Miyamoto. Mr. Chairman, Senator, that is correct.

Senator Fischer. Thank you.

Director, in your testimony, you discuss the duplicative permitting process of pesticides under FIFRA and the Clean Water Act, and this process creates unnecessary resource burdens and challenges for pesticides, registrants, and users, including the agriculture community. This is why I have cosponsored legislation that would clarify the intent of the law and eliminate the Clean Water Act permit requirement. Can you please speak to the impact on farmers that are subjected to acquire a Clean Water Act permit?

Mr. Miyamoto. Mr. Chairman, Senator, again, thank you for the question. I can speak to that to a degree. We have been operating our pesticide application regulatory program in conjunction with NPDES since 2009 or 2010, and it has just required a whole bunch more training. In that entire amount of

time, I do not believe that our State partners at the Department of Environmental Quality have regulated pesticide applicators under NPDES permit requirements, meaning I don't think they have taken regulatory action against any of those applicators.

We, on the other hand, have taken regulatory action against applicators that are not following the appropriate label. So, in essence, what it has become for us is just an exercise that we go through; make sure that you have your certified pesticide applicator's license, make sure that you are in line with either your major or minor NPDES pesticide general permit, make sure you have everything in order, and then go out and do your work. But when it comes to the regulation, FIFRA and the Department of Ag is where that resides.

Senator Fischer. Thank you, sir.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Fischer.

I am going to ask unanimous consent to enter for the record a number of letters of support and written testimony from groups who support various elements of the ACRE Act, including the National Agriculture Aviation Association, Wyoming Stock Growers Association, Agriculture Retailers Association, American Mosquito Control Association, National Pest Management Association, which includes more than 7,000 member companies.

Without objection, they are admitted to the record.

[The referenced information follows:]

Senator Barrasso. Mr. Miyamoto, across the Country, farmers and ranchers acknowledge some of their yield of crops, fish, livestock are going to be lost to predators of many varieties, and you made comment about that in your testimony. Farmer and ranchers depend on management tools like permits to eliminate predators to keep their livestock safe and to prevent excessive losses.

In Wyoming, ranchers lose newborn calves, lambs to ravens, to eagles. Indiana residents grapple with damage to transportation infrastructure from beavers. In Delaware, the State Wildlife Service helps to prevent damage to coastal salt marsh habitat from geese, other migratory waterfowl.

Could you just talk a little bit about the important role that permits play in predator management and the need for the agency to process permit applications efficiently?

Mr. Miyamoto. Mr. Chairman, thank you. I think that what permits provide in this whole discussion of depredation and damage caused by it is balance. The permit process allows the regulating agencies to keep track of what is going on out in the landscape. It requires our producers to go in and seek permission for a certain action, to remove or relocate depredating what they would consider nuisance species. But the permitting process makes sure that that is all accounted for and

so that we can manage to an objective.

Senator Barrasso. I want to ask Mr. Yates if you have any additional thoughts on that and what you have seen in terms of getting the permits to deal with these issues.

Mr. Yates. Certainly, Senator. Thank you for the question. Controlling wildlife damage is obviously a critical factor in maintaining the success of American agriculture, and permits are important. One example that we cite is the issue of the double-crested cormorant. Many of our commercial fish ponds are stocked at very high densities, from 2,000 to, say, 60,000 catfish per acre, and for bait fish it is 50,000 to almost 200,000 bait fish per acre.

When it comes to the depredation issues with the cormorant, I know a 2014 estimate for the Mississippi Delta Region show that 18 million to 200 million fingerlings per winter are lost to bird depredation. A 1996 USDA survey shows that bird depredation were responsible for 37 percent of catfish losses in the aquaculture industry.

So, certainly, the issue of permitting for depredation for the cormorants is a critical issue that I know our folks in the aquaculture industry are looking for Congress to provide immediate input and oversight on this important issue.

Senator Barrasso. Mr. Miyamoto, we talked about trying to give relief for farmers and ranchers in weed and pest districts

and others who face duplicative permitting requirements. That has been part of the questioning we have had from both sides of the aisle here today.

These permitting requirements are imposed, specifically in weed and pest districts, by the National Pollutant Discharge Elimination System. It requires one permit under the Federal Insecticide, Fungicide and Rodenticide Act, the FIFRA Act, but another under the Clean Water Act to apply a pesticide, even if the pesticide is already approved by the one Act. It just seems that our effort is supported by aviation groups, agriculture producers, public officials like sanitary districts, mosquito control groups.

And I have a letter that I am going to introduce from the Coalition to talk about that specific thing.

Without objection, that will be submitted for the record.

[The referenced information follows:]

Senator Barrasso. The Department of Agriculture in Wyoming has the responsibility for predator and pest control, the Weed and Pest Council, and human health priorities. You oversee this. Can you talk about the importance of pest and invasive species control, especially in a State with so much public land?

Mr. Miyamoto. Mr. Chairman, I think that Wyoming has a big job when it comes to controlling invasive species and for predator control, both. We have so many ties to Endangered Species Act and other considerations that there is a lot to do. When it comes to our predator districts and our weed and pest districts out there in those local communities, they have more job than they have time. Anything that we can do to streamline the process, as long as we are not harming anything on the environmental side of the equation, I think we should pursue that.

This example that you bring up of FIFRA as opposed to the Clean Water Act, NPDES permitting for pesticide applicators, in our experience at home, simply isn't necessary. We do it because we have to, but it doesn't change the application on the ground.

Senator Barrasso. Mr. Yates, Section 7 and 8 of the ACRE Act deal with the issue of farmer safety and privacy. Could you please elaborate on why issues such as the disclosure of

sensitive information of the location of certain farming operations or the aerial surveillance of farms by the Federal Government, why these are important and relevant issues to the agriculture community?

Mr. Yates. Thanks, Senator. I think, like most Americans, farmers and ranchers are very sensitive about their privacy, sensitive and concerned about information about their operation. Many farmers, it is not just the mailing address of their business; many farmers and ranchers live in the location of their business. Having that information get out or having aggregate data about farmers in a region, a county, a State, is dangerous and concerning for farmers and ranchers. So, I think when we are looking at data, obviously, many of us have discussed the issues of how we can use data to be more effective in the work that we do.

I think we should be mindful of that data and how that data can be used and who can access that data; and I think it is important in terms of oversight for this Committee to look at protecting the use of that date and ensuring that, if data is being requested from farmers and ranchers, that it is being done with their permission.

Senator Barrasso. One last question, Mr. Yates, before I turn to Senator Boozman. The president of your organization, as we talked about, Mr. Zippy Duvall, was here and stated in his

written testimony to our Committee in February, he said, "Farm income is reduced about 50 percent compared to five years ago." And he went on to say, "But I assure you that regulatory costs have not gone down."

So, in your opinion, will the provisions in the ACRE Act help reduce some of this regulatory burden on farmers and ranchers, and improve their income, while at the same time protect the environment?

Mr. Yates. The short answer to that is yes, Senator, I do believe that, and I think the bottom line is, as Congress and as Federal agencies look at rules and regulations, I think they should be looked at through a lens of is this effective, is this the best way to conduct business. When we are looking at the issue of FIFRA and the Clean Water Act, the bottom line is, is additional duplicative regulatory requirements going to provide for increased environmental protections on the ground? If the answer to that is no, then I think the ACRE Act does a great job in providing for streamlining and ensuring that regulatory burdens on farmers and ranchers are minimized and are effective in providing for strong environmental compliance at the local level.

Senator Barrasso. Thank you.

Senator Boozman.

Senator Boozman. Thank you, Mr. Chairman. I apologize for

being late, late. I had a Veterans Affairs Committee hearing and then a Homeland Security, so I have good excuses. The problem is right now is there is just a lot going on up here, lots of stuff that is important, but positive stuff, so thank you all for being here and we do appreciate your testimony.

Mr. Miyamoto, the FIFRA established an effective and comprehensive regulatory web to provide pesticide-related environmental and public health protection. It is rigorous; it examines the environmental data, health exposure assessments for pesticide products. This process specifically examines the product's potential impact on water. Additional permit requirements under the Clean Water Act are duplicative and will entail significant costs for State permitting authorities and pesticide users.

Could you please highlight some of the challenges that your Department faces when regulating some of the regulatory requirements?

Mr. Miyamoto. Mr. Chairman, Senator, thank you for the question. Our experience in Wyoming has been that we have co-regulated under FIFRA and the Clean Water Act for eight or nine years now. In the beginning there was a whole bunch of education that we had to do with our certified pesticide applicators to make sure that they understood that they needed to hold not only their certified applicating license, but they

also needed to hold an NPDES permit.

I would argue that NPDES permits were designed for a completely different scenario, point source discharges, end-of-pipe type regulations, so it was difficult for us to come up with all of the right information that should be included in that application in order for them to get that permit.

Today, it is part of our standard operating and we do it, but I don't think that it gives us a corresponding increase in environmental benefit. It is one of those things that we do because we have to.

Senator Boozman. Very good. Thank you very much. Also, many feel that the Comprehensive Environmental Response, Compensation, and Liability Act, CERCLA, reporting is unnecessary and was never intended to regulate agriculture. Can you talk about some of the environmentally-based regulations that agriculture producers have to comply with and comment on CERCLA?

Mr. Miyamoto. Mr. Chairman, Senator, specifically, I think the aim behind CERCLA, or, you know, at least one of the considerations of CERCLA was to look at emissions; and, for agriculture, that would be probably most relevant to confined animal feeding operations. And when it comes to confined animal feeding operations, the major regulatory law that is in place to guard against environmental damage from confining animals and

feeding them would be the Clean Water Act.

I have worked extensively in trying to remediate those impacts, basically, relocating corrals and feeding areas to where we can write comprehensive nutrient management plans that allay a lot of the concern of concentrating all of these pollutants in one area and allowing them either to volatilize into the air or to get into the water. So I think there is a framework in place and Mr. Lyon mentioned NRCS, and they are a good partner of ours and they help us with implementing comprehensive nutrient management plans for all of these areas that address these concerns.

Senator Boozman. Very good. Thank you.

Mr. Yates, a criticism of the EPA under the previous Administration was the Agency's disconnect with rural America. Many hardworking Americans in rural States feel that they didn't and still really feel like their voice is marginalized. Time and again I heard from my constituents who described a "gotcha" attitude from Federal agencies. Instead of working with stakeholders and industry to develop and implement rules and regulations, the Federal Government would go it alone, without fully understanding how the rules would affect hardworking Americans.

Can you explain the importance of the Federal Government to work hand-in-hand with the stakeholders as we develop rules and

regulations? And then, also, do you believe that the current Administration has put an emphasis in cooperative federalism?

Mr. Yates. Senator Boozman, thank you for the question. I would suggest that it is critical, be it in our western States that have a large abundance of Federal lands, that proper coordination and consultation with Federal land management agencies is vital to ensuring that the proper decisions are made that make the most sense for the land. It certainly goes without saying that coordination between States, Federal Government, and end-users is ultimately going to provide for the best possible result moving forward in terms of complying with regulations.

Ultimately, I think the more interaction the Federal agencies have with folks at the local level, the better results you are going to have. Certainly, there have been criticisms from one Administration to another about do we have the best relationship, are they engaging with local stakeholders.

I would suggest that with this Administration, Administrator Pruitt, we have had a fantastic working relationship. I know they have a lot of work to do and I would like to certainly report that that relationship is a positive one and we continue to strive to identify more opportunities to work hand-in-hand with EPA to identify commonsense solutions to the issues that are facing American farmers and ranchers.

Senator Boozman. Good. Thank you, Mr. Yates.

Senator Barrasso. Thank you, Senator Boozman.

Senator Capito.

Senator Capito. Thank you, Mr. Chairman.

Thank all of you. I appreciate you coming in today. I think we share with all the witnesses, and really all of us on this Committee and in the Senate, that we realize how important our Nation's farmers and ranchers are, and we don't want to overburden with regulations. But we also want to ensure, as Americans, that they have the right to privacy like so many of us do.

When I was over in the House I introduced a bill called the Farmer's Privacy Act. This was in reaction to a situation that occurred in my State of West Virginia, where a poultry farmer was surveilled by the EPA -- we are not talking about giant operations here, we are talking two or three houses -- by the EPA and then fined accordingly, or investigated. It just struck me that the EPA, we found out later, had rented a small aircraft to surveil the small farms in the eastern portion of our States.

I raised the point, even though it is difficult to get from point A to point B sometimes because of the mountains that we have, that we were violating that farmer's rights, and it just felt too intrusive to me. So, part of what is included in this bill is that privacy provisions.

I am wondering if you, in Wyoming, have had any of these same kind of circumstances where you have had aerial surveillance without permission or if this is an issue in other parts of the Country. So, if you want to start, Mr. Miyamoto.

Mr. Miyamoto. Mr. Chairman, Senator, thank you for the question. We have experienced similar type of interest from mostly our special interest groups that have targeted individual ranchers and then would like to undermine their efforts to conduct successful business.

As a regulatory agency myself, I can tell you that we have been able to successfully regulate farms and ranchers in Wyoming without aerially surveilling them. We take that obligation fairly seriously, but I think it can be done, and probably should be done, face-to-face.

Senator Capito. Right. Right.

Does anybody else have any comments on that? I don't know if you heard anything at the Farm Bureau, Mr. Yates.

Mr. Yates. Senator, thank you. And thank you for your work on this important legislation. Again, as I mentioned in my testimony, the use of UAS in precision agriculture is a great tool. Many of our farmers are employing drones and drone technology.

Senator Capito. Right.

Mr. Yates. But, again, I think the broader concern for our

members is the use of those tools in providing for surveillance of farms and farm operations without the consent of the farmer or the landowner; and I think that ultimately, if those tools are going to be used, we need to make sure that we ensure that private property rights and privacy are taken into account and that farmers provide their permission for the use of that technology by a Federal agency or an outside organization.

Senator Capito. And that is the substance of my bill, and I want to thank the Chairman for including that in there.

I want to ask another question. We had two things happen, two visits I had most recently, one from a beef farmer in our State in conjunction with Trout Unlimited. And I think sometimes the misconception that our farmers want to be in opposition of environmental stewardship is just a misplaced concept, but they don't have the resources or the expertise to really move forward with what would be the best methods to go forward.

In this case, Trout Unlimited had partnered with the beef farmer to give him the resources to be able to clean up the stream and now it is a major trout stream in our area. So the landowner, obviously, has the benefit of that, along with others who want to recreate there. So it has a mutual benefit.

I would just ask, the partnerships that are developed, we also had the Wildlife Resources Foundation were just in our

State, wildlife folks were just in, same kind of partnerships that are occurring. Are you finding that is what is happening around in Wyoming, that the private sector and the recreational industry that revolves around using our land and fisheries is the same sort? Because, obviously, in Wyoming tourism is very important as well.

Mr. Miyamoto. Mr. Chairman, Senator, strangely enough, years ago I spent a good deal of the early part of my career doing nothing but watershed planning on a collaborative and community-based standpoint, and I think we developed over two dozen different non-point-source watershed-based plans to address 303(d) listed in paired segments, and we did it exactly in the manner that you are talking about.

What I learned through that experience is that local, voluntary, and incentive-based approaches for water quality improvement tend to work much, much better than any regulatory scheme that we could put in place to address those issues.

Senator Capito. Thank you.

And just a final comment, because I am out of time, but I know there is a portion of this bill that deals with predatory species. I would just mention that I hope -- I am not sure that it does because I haven't asked the question yet. But we have a problem with coyotes in our area and our livestock, and I would hope that resources would be available to help our agricultural

entities deal with this predator that is pretty sneaky and pretty tough to get. Thank you very much.

Senator Barrasso. Well, I want to thank all of the members for being here. I appreciate the testimony of the three witnesses.

Members may submit written questions. I know that Senator Carper has suggested he will be submitting some written questions, so I ask that you return those responses quickly.

The hearing record will remain open for two weeks.

I again want to thank you all for your testimony on this important issue.

The hearing is adjourned.

[Whereupon, at 11:29 a.m. the committee was adjourned.]