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The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

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Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Statement of Doug Miyamoto, Director, Wyoming Department of Agriculture

Chairman Barrasso and Senate Environment and Public Works Committee members:

Thank you for the privilege of speaking with you today regarding the Agriculture Creates Real Employment (ACRE) Act. I have spent my career working on agriculture and natural resources issues with the Natural Resources Conservation Service, the Western Governors' Association, the Wyoming Association of Conservation Districts and the State of Wyoming. I currently serve as the Chairman of the Natural Resources and Environment Committee of the National Association of State Departments of Agriculture. Through these experiences over the past couple of decades, hopefully I have gained some perspective that you may find beneficial as it relates to governance and regulation of the agriculture industry as contemplated by the ACRE Act.

Wyoming supports the ACRE Act and I will highlight a few of the reasons why in my testimony. I am not an expert on every issue addressed by the ACRE Act, but there is a common theme of ensuring that the agriculture industry is subject to the correct and intended regulations for normal agricultural activities. There are issues addressed by the ACRE Act that if left unaddressed, have potential to cause harm to agriculture with no corresponding environmental benefit. I will emphasize individual Sections of the ACRE Act on which the Wyoming Department of Agriculture and the Natural Resources Environment Committee of the National Association of Departments of Agriculture have concentrated in recent years as these are the issues with which I have familiarity.

Section three of the ACRE Act provides exemption from certain notice requirements, and associated penalties outlined by the Comprehensive Environmental Reporting, Compensation and Liability Act (CERCLA) of 1980. This would codify the Environmental Protection Agency's (EPA) own exemption for farms and ranches as implemented in 2008 and subsequently vacated by D.C. circuit court ruling in 2017. Exempting farmers and ranchers not engaged in confined animal feeding operations is 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 questions from Wyoming producers about how they should calculate emissions for non-confined range cattle which represent the majority of cattle operations in my State. There are no credible resources that we as a state department of agriculture, can ethically recommend for estimating emissions in a non-confined range cattle setting. By one suggested measure, this continuous reporting requirement would apply to all livestock operations involving two hundred six (206) or more head of cattle. This standard would incorporate the vast majority of commercial livestock operations in Wyoming. 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 per day. Without the reporting and penalty exemption

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proposed in this act, producers will have increased liability and the federal agencies of jurisdiction (EPA and the Coast Guard) will be wasting limited resources administering a program that does not protect the public and does not ensure that the nation's priority Superfund sites are addressed. Including livestock operations in the reporting and penalty provisions of CERCLA is counterproductive for both our producers and our federal agencies and illustrates why this stand-alone text has 29 bipartisan cosponsors.

Section six of the ACRE Act amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Clean Water Act (CWA) to eliminate duplicative permitting requirements and is important for not only agricultural producers but for pesticide applicators, state governments and local governments. As is the case with CERCLA reporting and penalty requirements, this section of the ACRE Act will address a Judicial Branch ruling in 2009 mandating CWA National Pollution Discharge Elimination System (NPDES) permits for pesticide applications already regulated for water quality by FIFRA. In fact, FIFRA requires EPA to conduct extensive research and pre-market approval processes for pesticide products focused on environmental and human health and safety impacts. There is a right way and a wrong way to regulate pesticides. After experiencing pesticide regulation under FIFRA alone compared to regulation under FIFRA with the additional requirements of the NPDES program, it is clear that the NPDES program adds nothing for environmental protection. The NPDES program was designed to regulate point source discharges into waterways. The definition of point source has been argued for decades, but regulating pesticide applications as a point source pollution discharge has proven to be burdensome and expensive. FIFRA, on the other hand, was designed to regulate pesticide product approval and use, and includes specific analysis of the impacts of pesticide products on water quality and aquatic species. FIFRA represents a clear, consistent and effective method of pesticide regulation as the regulations are printed as a label for each product. Label compliance alone ensures that environmental considerations, including water quality, have been addressed through the product approval process of EPA. Additionally, State Departments of Agriculture enforce labeling, distribution, storage and use of pesticide products. Pesticides are effectively regulated at every step from formulation to on-the-ground application by FIFRA. Section six of the ACRE Act maintains environmental protection while increasing governmental efficiency.

Section seven of the ACRE Act, which provides Identity Protection for farmers, is also important for Wyoming's producers. The aggregate reporting proposed by Section seven of the ACRE Act provides the necessary level of specificity to address environmental considerations of the EPA without compromising individual privacy of the nation's family farms and ranches. For example, in Wyoming, we have experienced targeting of ranchers by special interest groups hoping to eliminate federal grazing permits by identifying any missteps in permitting or data collection by federal agencies of jurisdiction or permittees. Providing some level of anonymity, while still submitting important resource data for environmental protection, but in aggregate form will help to protect individual farmers and ranchers from those that intend to cause them harm.

Section 11 of the ACRE Act simply reaffirms the authorities of the U.S. Fish and Wildlife Service (FWS) to issue appropriate permits to address livestock depredation by nuisance species. As an example, I will 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 obviously a big state, and due to these considerations, our

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wildlife and livestock managers find the current regulations for eagle management cumbersome, inefficient and ineffective. In the instance of newborn livestock loss, typically additional newborn loss has occurred before FWS can be informed and authorize even the first step which is eagle harassment. It is such a slow process that it is a rarity for the next step of eagle live trapping and removal to ever be used. Livestock producers resort to more surveillance of their young stock, moving of the herd to an entirely new location, or purchasing and building an enclosed facility that protects young animals from eagles. In many cases, we have seen livestock producers completely vacate the livestock business, especially sheep operations, due to predation from eagles. In 2017, Wyoming experienced 1,000 sheep and lamb losses to eagle depredation according to the National Agricultural Statistics Service (NASS). Any expedience provided by FWS regarding eagle management would be very welcome in Wyoming.

There are ever increasing regulatory demands on today's family farms and ranches. The agriculture industry is vital for food production, national security, open spaces, wildlife habitat, as well as American customs and heritage. I am not advocating for the complete de-regulation of the agriculture industry, but as a representative of government, I assert that we do 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 agricultural arena even given the regulatory nature of the Department. One of my highest priorities is to lead the Wyoming Department of Agriculture in a manner that emphasizes education before regulation and provides regulatory certainty for producers. I believe the ACRE Act addresses many important issues facing today's farming and ranching families and will support agricultural commerce and provide much-needed regulatory certainty. Again, I sincerely appreciate the opportunity to present to you today and am available for anything this committee might need.

Sincerely,

Doug Miyamoto
Director, Wyoming Department of Agriculture

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