

**WRITTEN STATEMENT OF
THE NATURE CONSERVANCY
TO THE
PUBLIC LANDS AND FORESTS SUBCOMMITTEE OF THE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE**

**Owyhee Initiative Implementation Act, S. 3794
September 27, 2006**

Introduction

The Nature Conservancy strongly supports congressional passage of the Owyhee Initiative Implementation Act, S. 3794. This proposal is the result of a remarkable, five-year collaborative effort by Owyhee County, local ranchers, recreationists, conservationists, and the Shoshone-Paiute Tribes. The Conservancy has been privileged to serve on the Owyhee Initiative Work Group since its inception.

The Nature Conservancy is dedicated to preserving the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The Conservancy has more than 1.1 million individual members. We currently have programs in all 50 states and in 30 other nations.

The Owyhee and Bruneau canyonlands in southwestern Idaho are among the most visually stunning and ecologically significant landscapes of the American West. The Owyhee Initiative legislation will designate the heart of these canyonlands as wilderness while protecting the livelihood of local ranching families – many of whom have been on the land for generations. Equally important are innovative provisions for better management of off-road vehicle use, cooperative law enforcement on public lands, protection of tribal cultural sites, and collaborative conservation and science projects. This legislation is a balanced solution that is good for the land and good for the people of Owyhee County.

The Owyhee Initiative Offers Collaborative, Pragmatic Solutions to Land Management Conflicts in Owyhee County.

Owyhee County was one of the most fought-over landscapes in the American West until the Owyhee County Board of Commissioners had the courage and foresight to launch the Owyhee Initiative in 2001. Ranchers, environmentalists, and the Bureau of Land Management (BLM) had been locked in a decades-long series of bitter struggles over proposals to designate a national monument, the future of more than 700,000 acres of wilderness study areas, grazing management, and recreational access. These conflicts effectively precluded any dialogue among the contending factions. Many of the Work Group members were told by their friends and colleagues that it was foolish to even try to reach agreement with “the other side.”

The Owyhee Initiative brought together groups that have traditionally opposed each other over public land management. The Work Group was launched with a membership including the Owyhee Cattle Association, Owyhee County, Bruneau Soil Conservation District, Idaho Outfitters and Guides Association, the Owyhee Borderlands Trust, The Nature Conservancy, Wilderness Society, People for the Owyhees, and the Idaho Conservation League. The Sierra Club was added to the Work Group after it expressed an interest in joining. The BLM, Idaho Department of Lands, and the U.S. Air Force participated as *ex officio* members of the Owyhee Initiative and provided valuable advice on the development of the package.

The Owyhee Initiative succeeded despite the odds because the Work Group members set aside their ideological differences and devoted themselves to finding pragmatic solutions. The resulting package of actions is a stronger, more balanced, and more sophisticated response to land management issues in Owyhee County than any of the original factions could have developed on their own.

By working together, the group was able to map justifiable boundaries around proposed wilderness areas, develop workable road access proposals, identify areas where access should be expanded, describe priorities for future conservation and research projects, and develop a sound science review process. After nearly three years of hard work, the Work Group announced that it had reached a draft framework agreement in the spring of 2004.

The Owyhee Initiative repeatedly opened up its proposals for public review and comment. In 2004, the Work Group released its draft framework agreement and Work Group members participated in a series of six community meetings – three in Owyhee County and three in Ada County. The meetings were all well attended by a broad mix of interest groups.

The Work Group incorporated the public's comments in several ways. The Work Group adjusted its road map and secured commitments from private landowners to convey eight new rights-of-way across private land in order to expand public access. As noted below, the Work Group decided to expand its membership. And, the science review and Board of Directors sections of the agreement were amended to clarify procedures and provide increased certainty.

Following the public review in 2004, the Owyhee Initiative Work Group voted on the framework agreement as amended following the public meetings. The final vote of the Owyhee Initiative Work Group on the amended agreement was eight in favor and none opposed. The Sierra Club and the People for the Owyhees abstained.

After the vote, the People for the Owyhees, a group composed of off-highway vehicle users and ranchers, voluntarily withdrew from the Work Group. The following year, the Work Group invited the Owyhee County Farm Bureau, Idaho Rivers United, Southern Idaho Desert Racing Association, Backcountry Horsemen, and Foundation for North American Wild Sheep to join the Work Group as well as the Owyhee Initiative Board of Directors to be established following the passage of the Owyhee Initiative legislation.

The Work Group again sought public involvement after the Owyhee Initiative Implementation Act was introduced. Open houses were held in Boise, Caldwell and Homedale in August 2006.

Despite the Work Group's efforts to find common ground, the reality of western public lands management makes it extremely challenging to gain universal approval of any significant proposal. It is clear that the Owyhee Initiative Implementation Act has opponents from both ends of the political spectrum. While we think that the Owyhee Initiative strikes the right balance, we will continue to listen to the concerns of opponents and seek to narrow our differences.

REVIEW OF S. 3794 BY TITLE AND SECTION

Title I Fosters Continued Collaborative Efforts in Owyhee County.

A. Section 101: The Owyhee Initiative Will Assist in Implementing the Legislation and Agreement.

The work of the Owyhee Initiative will not end with the passage of the Owyhee Initiative Implementation Act. The Work Group intends to stay together and formalize its structure. The Owyhee Initiative Agreement calls for the establishment of an on-going Owyhee Initiative Board of Directors to perform the following duties:

- Recommend priorities for projects and programs identified to implement the purposes of the Owyhee Initiative;
- Seek funding from private and public sources for such projects and programs;
- Recommend policy, procedure, and guidance on implementation of the projects and programs to BLM and other agencies having jurisdiction regarding natural resources management and use in Owyhee County; and
- Serve as institutional memory for the precise understandings that were made in developing the Owyhee Initiative Agreement.

The continued collaborative effort will provide a forum for breaking down the barriers that often separate conservationists, recreationists, ranchers, and other interest groups. By continuing to work together, we hope to provide a strong constituency for protection of the natural and human communities of Owyhee County.

The Owyhee Initiative will perform these functions as a private, voluntary organization operated pursuant to its own bylaws. The Owyhee Initiative will not be chartered, established or utilized by a federal agency or established by statute.

As a private organization, the Owyhee Initiative has no legal authority over the management of public lands, and S. 3794 confers none upon it. The Owyhee Initiative Agreement at Section V.D. provides: "The OI Board has no statutory powers to administer public lands or make regulatory decisions." The influence of the Owyhee Initiative will arise from its continued ability to draw diverse interests together and from the merits of its recommendations. While we anticipate that the federal agencies will work closely with the Owyhee Initiative and honor any commitments they make, the Initiative's suggestions will have no special legal weight or presumptive validity.

Both the Owyhee Initiative Agreement and the proposed legislation are clear that the existence of the Owyhee Initiative is not intended to outweigh the views of other stakeholders or to shortcut existing procedures for public involvement. Section 101(b) of S. 3794 provides: "Nothing in this Act diminishes or otherwise affects any applicable law or regulation relating to public participation."

The sole directive in Title I of the Owyhee Initiative Implementation Act is that the BLM "coordinate" with the Owyhee Initiative, its science review process, and the Conservation and Research Center. This provision reflects an expectation that the BLM will have open and timely communication with the Owyhee Initiative Board and the County regarding its activities associated with the Owyhee Initiative. This is a procedural obligation and does not command any particular outcome in BLM's decision making.

B. Section 102: The Proposed Science Review Will Assist in Resolving Disputes Over Grazing Management.

The proposed science review is a central element of the Owyhee Initiative Agreement. We are aware that concerns have been raised about this element of the Owyhee Initiative but believe that the procedures and safeguards developed by the Owyhee Initiative answer these criticisms.

The science review element of the agreement has its origins in the fact that ranchers and environmentalists have for many years clashed with the BLM over evaluations of range condition. Both sides have at times claimed the BLM's methods were biased or inadequate. These clashes have contributed to seemingly endless appeals that have absorbed a great deal of BLM's attention and resources. Ranchers participating in the Owyhee Initiative believed that bringing in qualified, outside scientists to provide comments *before* BLM reaches a final decision for selected grazing allotments would help resolve disputes and enhance the credibility of grazing management in Owyhee County.

The proposed science review process on grazing issues would occur no later than the "protest" process – a pre-decisional dispute resolution procedure that allows ranchers and other interested publics to request that BLM reconsider a proposed action. Protests are handled in a relatively informal manner by local BLM offices. If the protest is not resolved, the protestant may file a formal appeal with the Interior Board of Lands Appeals (IBLA), which then adjudicates the issues raised. Many ranchers felt that placing greater emphasis on resolving disputes before or

during the protest process would make appeals less likely. They view IBLA appeals as onerous, expensive, time consuming, and poorly suited to addressing the science issues often in question.

The conservation groups participating in the Owyhee Initiative supported science review because the Owyhee Initiative Agreement contains safeguards to ensure the process is workable, rigorous and fair.

Under the proposed process, the OI Board would identify a multi-disciplinary pool of qualified experts to provide additional analysis of selected proposed decisions. Members of the public, including conservationists, could request that an issue be referred for science review. Referrals involving BLM grazing decisions would be made at the earliest possible time and in no event later than the time for filing a protest. The Dean of the University of Idaho's College of Natural Resources would select three members from the pool to conduct an analysis. Upon completion of the review, the report of the three-person panel will be forwarded to the Owyhee Initiative Board, the requestor, Owyhee County, and the Bureau of Land Management. The University of Idaho would handle administrative matters.

The Nature Conservancy agreed with the proposed process because it contains the following safeguards:

- Reports are advisory, non-binding on the BLM;
- Reviews do not alter any BLM decision processes;
- Reviews focus on scientific and technical matters – not legal or policy issues;
- Reviews occur early in the decision making process, allowing BLM to incorporate the analysis into its own final decision as it sees fit;
- The process is designed to work within agency timeframes and avoid delaying action;
- The process is open and can be used equally by ranchers, environmentalists, or others to improve the quality of the scientific analysis and to resolve disputes;
- Reviews will be based on “best available science;”
- The University of Idaho is committed to a balanced and high quality review process; and
- The process is subject to the continuing oversight and supervision of the OI Board, with its diverse representation of many interests.

Overall, the Work Group expects that reviews will be applied selectively to BLM decisions in the Owyhee County. The Work Group believes that the timing of reviews allows BLM to consider the panel's analysis before it makes a final decision, improving dispute resolution.

C. Section 103: The Conservation and Research Center Will Bring Together the Community and Interest Groups to Support Restoration and Science Projects.

As part of its continuing collaborative efforts, the Owyhee Initiative intends to establish a Conservation and Research Center in Owyhee County. Disagreements over the condition of the public lands and appropriate approaches for protecting and restoring those lands lay at the heart of many of the current conflicts over land management. The Conservation and Research Center will provide a forum where all interests can work

together to increase our understanding of land health and how best to take care of the Owyhee landscape. The Center will have an office in Owyhee County and will be uniquely situated to involve the ranching community in its projects.

The Owyhee Initiative Agreement explains that the Center will work with government agencies, universities, citizen groups and individuals to increase the efficiencies, likelihood of success and benefits from conservation and research projects undertaken in Owyhee County. When appropriate, research will be designed to meet peer review scientific standards and be replicable in other areas. As a foundation for the Owyhee landscape-scale program the Center will identify:

1. The current state of scientific knowledge;
2. The scope and status of current ongoing research projects and programs.
3. Information and research gaps;
4. Successful management strategies, research and restoration projects.
5. Appropriate methods of disseminating existing and new research information to administrative agencies and the public.

A key function of the Center will be to assist, where possible, existing collaborative efforts in Owyhee County, including but not limited to the Owyhee County Sage Grouse Local Working Group and Jordan Valley Cooperative Weed Management Area. The Owyhee Initiative will assist citizen groups by providing them a forum to broaden the support for their project proposals and to coordinate with the multiple agencies and organizations active in the County. The Center will raise funds through grants, donations and appropriations from government agencies and non-government organizations

As with other aspects of the Owyhee Initiative, the Conservation and Research Center has no authority over public lands. Its project proposals must stand on their own merits and must undergo the processes and reviews normally used for restoration and science projects.

D. Section 104: The Authorization of Federal Funds Will Allow the Owyhee Initiative to Operate the Science Review and Propose Projects.

Section 104 provides a \$20 million authorization for activities related to the Owyhee Initiative. A portion of this authorization will permit the Owyhee Initiative to bring forward and justify appropriation requests for the science review and the Conservation and Research Center.

Title II, Section 201: The Proposed Wilderness Designations Will Help Protect Lands with Extraordinary Ecological Values.

A. Owyhee County Includes Nationally Significant Wildlife Habitat.

The Nature Conservancy has conducted assessments throughout the United States to evaluate and map biodiversity within ecoregions – landscapes that typically include several tens of millions of acres. Through these ecoregional assessments, the Conservancy identifies areas known as portfolio sites that have special value for the protection of biological diversity. These ecoregional portfolios represent the full distribution and diversity of native species, natural communities, and ecological systems within each ecoregion.

This analysis conducted for the 77-million acre Columbia Plateau Ecoregion showed that Owyhee County comprises a landscape of local, regional, and even national significance. The Owyhee Plateau is distinguished as the largest expanse of intact sagebrush steppe habitat in the Columbia Plateau Ecoregion and undoubtedly among the largest in the West. This is particularly significant because sagebrush and shrub steppe ecosystems are declining rapidly across their range. And as goes the sagebrush so go the many other plants and animals that depend on healthy sagebrush steppe ecosystems. The Owyhee country still contains large expanses of sagebrush and much of the accompanying flora and fauna.

Woven throughout the Owyhee Plateau is a network of rhyolite canyons and desert rivers, riparian areas and river terraces, springs and intermittent streams, vernal pools and playas, salt desert shrub communities, juniper woodlands, mountain mahogany communities, and aspen groves. A surprising diversity of wildlife depends on the interconnections of this landscape, including sage grouse, California bighorn sheep, redband trout, and a wide array of other birds, fish, reptiles, amphibians, and mammals large and small.

The sheer size of this intact landscape and the complexity of its parts make the Owyhee country a place of great value for the plants and animals that make up the diversity of life in the intermountain West. Key conservation features and values are described below.

1. *Sagebrush Steppe Habitat*

Healthy sagebrush steppe ecosystems once covered much of the West. But what once was the rule is now the exception. Neil West estimates that sagebrush steppe ecosystems are in a relatively intact state in only 1% of their historic range (West 1999). The Owyhee country stands out as a bright spot in an otherwise downward trend. In fact, the Owyhee Canyonlands comprise the single largest block of intact shrub steppe habitat in the entire 145 million-acre Columbia River Basin (Quigley et al. 1996). The Owyhee Plateau was identified as having high rangeland integrity, a rating met by only 6% of the Interior Columbia Basin rangelands. In the Columbia Plateau ecoregion, the Owyhee Canyonlands emerged as one of only three large-scale sites containing relatively high-

quality sagebrush steppe habitat. Since that time, large parts of the other sites – the Hanford Nuclear Reservation and the Idaho National Engineering and Environmental Laboratory – have been severely altered by fire (TNC 1997). For sagebrush steppe, the Owyhees are truly the best of what is left, anywhere.

The shrub steppe comprises more than thirty distinct sagebrush communities and several more salt desert shrub communities. The diversity of understory grasses and forbs is even richer, including numerous rare and endemic plant species. These plant communities provide food and shelter for thousands of animal species including pronghorn antelope (*Antilocapra americana*), spotted bat (*Euderma maculatum*), sagebrush obligate birds like the sage sparrow (*Amphispiza belli*), raptors such as the ferruginous hawk (*Buteo regalis*), reptiles like the Mojave black-collared lizard (*Crotaphytus bicinctores*), small mammals like the pygmy rabbit (*Brachylagus idahoensis*), and innumerable insects.

By conserving the shrub steppe in Owyhee County, we hope to conserve a wide range of species that depend on this ecosystem. Perhaps the best known of these is sage grouse (*Centrocercus urophasianus*), which has suffered population declines in Idaho and throughout western North America. These once-abundant game birds have a complex set of habitat requirements that only a large landscape can provide. The Owyhees again provide a ray of hope as the only landscape in the Interior Columbia Basin predicted to maintain viable populations of sage grouse over the next 100 years (Rich and Saab 2000).

2. *The Canyons*

One of the most noteworthy characteristics of the Owyhee country is the extensive system of canyons carved from volcanic rhyolite and basalt. Hundreds of miles of canyons with cliffs ranging from 400 to 1000 feet high, provide critical habitat for bats, raptors, reptiles, rare plants, and the largest population of California bighorn sheep (*Ovis canadensis californiana*) in the United States. The crevices, cracks, caves, and tunnels provide nesting and roosting habitat for bats and birds, while the rugged relief gives cover to bighorns. In addition to providing shelter, the canyonlands occupy a strategic place between sagebrush plateaus and riparian areas used for forage. They are also close to a most precious resource: water.

Owyhee County is an area of global importance for California bighorn sheep. California bighorns were reintroduced in the Owyhees in the 1960's after being eliminated by unregulated hunting, disease, and competition with domestic livestock for food. By 1991, the Owyhee-Bruneau Canyonlands supported 20% of the world's population of this subspecies (NWPPC 2001b). However, populations have declined by approximately 50% in the Owyhee subbasin since the early 1990's due to poor lamb survival. Studies of lamb survival are needed to determine why populations are declining and to develop sound recommendations for improving management of this important resource.

3. Aquatic and Riparian Systems

The aquatic and riparian systems of the Owyhees make up one of the area's most valuable biological resources. The landscape's rivers, streams, vernal pools, and springs provide lifeblood for a multitude of fish and wildlife species. Its riparian areas, wetlands, and playas provide habitat for a unique array of rare and endemic plants species, plant communities, migratory birds, and amphibians.

Redband trout (*Oncorhynchus mykiss gairdneri*) are the symbol of healthy streams and rivers in the Jacks Creek, Owyhee, Bruneau, and Jarbidge basins. It is believed that the redbands of Owyhee County are part of a distinct metapopulation genetically adapted to extremely harsh conditions (NWPPC 2001a). Redbands rely on healthy riparian areas to shade and cool streams, rivers, and spring creeks.

Riparian areas and wetlands are critical to many other aquatic and terrestrial species as well. The southernmost population of bull trout (*Salvenius confluentus*) in the world occurs in the Jarbidge River and relies on cool stream conditions provided by healthy riparian areas. Aquatic and riparian sites provide habitat for special status species such as the Columbia spotted frog (*Rana luteiventris*), the Bruneau hot spring snail (*Pyrgulopsis bruneauensis*), white-faced ibis (*Plegadis chihi*), great egret (*Ardea alba*), and spotted bat (*Euderma maculatum*) (USAF 1993). Healthy riparian areas also attract large numbers of resident and migratory waterfowl and neotropical migrant bird species.

River terraces, dominated by basin big sagebrush/basin wildrye communities, are an area of special concern. These community types are rare throughout their range and occur in landscape settings that have been converted to human uses or have been heavily grazed. Vernal pools or playas are another aquatic-related habitat type of biological interest. These intermittent pools or lakes are hotspots of plant diversity.

4. Woodlands and Forests

Higher elevations in the western part of Owyhee County support an array of forest and woodland communities which in turn provide habitat for a diversity of wildlife. Subalpine fir (*Abies lasiocarpa*) occupy the highest elevations transitioning to Douglas fir (*Pseudotsuga menzeii*) and aspen (*Populus* spp.), western juniper (*Juniperus occidentalis*), and mountain mahogany (*Cercocarpus montanus*) as we move through elevational gradients to the edge of the shrub steppe.

The Owyhees' extensive juniper woodlands provide habitat to over 95 wildlife species (ODFW 1994) and contain some of the oldest trees in Idaho. Redband trout, bats, neotropical birds, elk, mule deer, mountain lion, river otter, beaver, raptors, reptiles and amphibians call these woodlands and their associated streams and riparian areas home. However, reduced fire frequency caused by fire suppression and removal of fine fuel by grazing has allowed juniper to expand into former shrub steppe communities. This has decreased understory vegetation valuable for watershed protection, wildlife, and livestock (NWPPC 2001).

B. Section 201: The Proposed Wilderness Areas Include Important Wildlife Habitats.

The habitats and natural features discussed above are well represented within the 517,000 acres of wilderness proposed by the Owyhee Initiative Implementation Act. The wilderness proposal encompasses more than three hundred miles of river canyons, 230,000 acres of upland plateaus, and 224,000 acres of low to moderate hills.

Early in the Owyhee Initiative, The Nature Conservancy identified five landscapes in Owyhee County of special ecological significance: Big and Little Jacks Creeks, Birds of Prey/Sinker Creek, Bruneau and Jarbidge Rivers, Owyhee Canyonlands, and Succor Creek. The proposed wilderness areas are at the core of the three largest of these priority conservation areas. (No wilderness study areas are located in Birds of Prey/Sinker Creek and Succor Creek, and, hence, the wilderness proposal does not include these areas.)

C. Wilderness Designation Will Enhance the Certainty of Future Management.

Designation of the heart of the Owyhee Canyonlands as wilderness will increase the likelihood that these areas will remain as high quality ecological reserves. While wilderness designation does not remove threats from altered fire regimes and invasions of alien noxious weeds, wilderness status will help halt the rapid spread of new motorized routes in these areas. These routes and other human incursions can be significant sources of fire and weeds in an otherwise intact landscape. We also expect that wilderness designation will help increase the stewardship attention and care that these lands will receive through wilderness management planning and public involvement.

Virtually all of the lands proposed for wilderness already carry an administrative designation as wilderness study areas (WSAs). Although WSA status provides a measure of protection from development activity, it has not been sufficient to control the new motorized routes and trail incursions into the WSAs. In 2003, a partial county inventory by the Bureau of Land Management located 663 miles of new, user created routes, including some in WSAs.

The Conservancy believes that full congressional designation as wilderness will provide a level of protection and management certainty that is superior to wilderness study area status. The Act would strengthen this protection by: authorizing funds for wilderness management planning, closing about 200 miles of existing roads in the wilderness areas, barring cross-country motorized recreation travel, establishing an innovative cooperative enforcement program with Owyhee County, and developing transportation plans.

We recognize that the Owyhee Initiative provides that nearly 200,000 acres of wilderness study areas will be released from their current administrative protection. Agreeing to release some WSA lands was a difficult decision for us. But, after careful reflection, we concluded that the most ecologically important lands would receive the additional

An evaluation of the proximity of the proposed wilderness areas to primitive roads reveals that they will remain highly accessible to public use. Nearly all of the proposed wilderness acreage is within two miles of a road. This relatively easy road access underscores the importance of maintaining those few areas – such as Dickshooter Ridge – that are more remote from the nearest roads and provide a remote sanctuary for wildlife.

½ mile from a road:	135,410.3 acres
½ to 1 mile from a road:	147,602.1 acres
½ to 2 miles from a road:	181,322.7 acres
2 to 3 miles from a road:	30,868.2 acres
3 to 4 miles from a road:	14,448.7 acres
4 to 5 miles from a road:	2,076.4 acres

Sections 202 and 203: Wild and Scenic River Designations Will Encompass the Outstanding Canyon Rivers of the Owyhee Country

A. Section 203(m): Proposed Federal Reserved Water Rights Will Protect Instream Values.

Of all the contentious issues that the Owyhee Initiative was able to overcome, the issue of federal reserved water rights for wild and scenic rivers may have been the most difficult. After careful deliberation and consultation with the State of Idaho, the Owyhee Initiative resolved the issue by developing a basis for quantifying the federal reserved water rights for the 386 miles of wild and scenic rivers proposed in the legislation. This approach promises to avoid the expensive court battles that have followed from other federal water right claims in Idaho while at the same time providing clear and immediate protection for the instream values of the designated rivers.

Wild and scenic river designations in the West are difficult or infeasible without addressing federal reserved water rights under the Wild and Scenic Rivers Act (WSRA). The State of Idaho has opposed designation of wild and scenic rivers in Idaho in part because such designations create new federal reserved water rights. No wild and scenic river has been designated in Idaho since 1980 and no wild and scenic proposal for the state has even reached Congress in over ten years.

In Idaho, it is clearly established that new designations under WSRA give rise to federal reserved water rights. The Idaho Supreme Court has held that such water rights are for “the minimum amount necessary” to fulfill the purposes of WSRA. Potlatch Corp v. United States, 134 Idaho 912, 12 P.3d 1256 (2000). Rendered as part of a general adjudication of the Snake River Basin, this decision applies federal claims in accordance with the McCarran Amendment, 43 U.S.C. § 666.

Although the existence of federal reserved water rights under WSRA is no longer debated in Idaho, there has been significant conflict over the quantification of WSRA and other federal claims. The State of Idaho and the federal government have spent many millions of dollars litigating the extent of various types of federal reserved water rights in the

