

the drought areas of American ranching and farming.

I believe with my whole heart and soul that to keep America strong we need our farms and ranches providing the American consumers the safest and best products in the world.

It is very humbling to share this information. However, I am very proud to be a rancher and I am overwhelmed by not only the financial devastation but also the mental pressures of trying to save a viable family ranching operation from the ravages of an unforgiving drought.

The drought in Wyoming has been compared to the 1930's. It is heartbreaking to think that in America, commonly thought of as the land of opportunity, the only ones that will be left following the drought are the very wealthy and the hobby rancher.

Thank you for your dedicated and persistent efforts to help us in agriculture to survive the drought.

Sincerely,

NANCY TARVER.

SCHEDULE A.—ADDITIONAL COST OF DROUGHT  
2002

1. We normally produce 1200-2000 ton of hay per year. 2000, 2001, and 2002 we produced only 150 ton per year. We have been faced with purchasing hay because of very little hay produced. Hay prices have jumped because of the far-reaching drought conditions. The demand exceeds the supply. Cow alfalfa hay prices (depending on your location/freight) have ranged from \$110 to \$130 per ton for cow grass alfalfa hay. The cost for our operation to replace the hay we did not grow because of the drought is \$80.00 per ton. [Using purchased hay costing \$115 per ton-\$35 (cost to put up your own hay) = \$80 dollars per ton].

The drought mandates we feed hay for at least 5 months (150 days @ 20 pounds per day = 1½ ton per cow X \$80 dollars per ton = \$120.00 per cow.

2. Additional cattle cake is needed because of loss of natural grazing vegetation. Cattle cake is fed along with the hay to balance the nutritional needs of cattle. Because of the drought twice the amount of pounds of cake per cow are fed to meet the nutritional needs. We need wheat mids cake (14 %protein) normal ration 2 pounds. The increase in cake cost is 14 cents a day. The additional expense for cake for 150 days is \$21.00 per head.

3. To enhance the limited natural vegetation supplemental feeds (lick tubs or liquid feed) were used for 7 months this year. The additional expense was 14 cents per day per cow—210 dayX.14 cents = \$29.40 per cow.

4. Additional Pasture & freight we have not found additional pasture. The cost of moving is substantial: a. \$8.00 per head to freight about anywhere; b. \$18.00-\$25.00 per head to pasture cow calf pairs.

5. We pasture our heifer calves until they are yearlings, keeping some as replacements for our herd and selling the remainder as bred heifers and open yearlings. This year because of the drought the heifers calves will be sent a feed yard for the winter months. The cost to feed the calves a growth ration only is \$1.00 per day. If we had the feed we would do this cheaper at home. The additional cost to us will be at least 25 cents per day. 25cents X 150 = \$37.50 per heifer calf. For loss computation I have used 50% heifer calves in a herd so this loss would be \$18.75 for calculation purposes.

6. Less pounds have caused loss of income. We had to sell steer calves and the small heifer calves starting August 15, normally we sell calves the end of October. Our steer calves in August weighted an average of 420

pounds compared to 600 pounds last October. A 180-pound per steer calf loss is devastating. Unfortunately there was a 20% drop in calf prices, which compounded the pound loss. Steer calf income took a 31% drop in 2002 for our ranch operation—\$420 dollars compared to \$605 dollars the previous year. \$185 per cow loss in steer calf dollars produced.

7. Liquidation of the cowherd. Foundation stock cow sales are giving up a lifetime commitment and are so very costly. Herd genetics are a ranchers pride and also our profit. It takes years to build a quality herd of cattle that does well in our area and on our range. We would find buying back quality cows that fit our ranching operation near impossible and certainly cost prohibitive. The dollar value of this cannot be measured.

Mr. ENZI. Mr. President, I won't read the entire letter, but I would like to highlight a few points that Bob and Nancy make. They are very thankful for the assistance given through the Livestock Feed Assistance Program and the Livestock Compensation Program. These programs together provide about \$41 of assistance per cow. With this assistance, they have purchased additional feed to supply their needs for the winter. The Tarvers point out in their letter, however, that they have lost about \$374 per cow in 2002 due to drought. This loss has occurred primarily through reduced forage growth in pastures, increased hay costs and lower cattle weights. The drought assistance provided so far has been short term. If we are going to save our family ranchers, we must do more.

The Senate has consistently supported providing real relief to our producers. In September we voted on an emergency agricultural amendment I cosponsored. That amendment would have provided almost \$6 billion on both farmers and livestock producers endangered by the drought across America. After it was passed 79-16, the amendment was stalled along with the Interior Appropriations bill. This was not the first time the Senate has shown strong support for disaster relief only to have it snatched away. Senator BAUCUS and I successfully added an agricultural disaster assistance package to the farm bill with a steady 69-30 vote. The assistance package was removed from the conference report by the House.

We are not following through on our promises. The time has come to fulfill our words with action. If we have missed our final opportunity in this Congress, I urge my colleagues to pass emergency agricultural assistance as a top priority when we begin the 108th session. Thank you.

HELMS-LEAHY SMALL WEBCASTER  
SETTLEMENT ACT OF 2002

Mr. HELMS. Mr. President, last week, I introduced the Small Webcaster Settlement Act of 2002, along with the chairman of the Senate Judiciary Committee, Senator LEAHY. Having now been passed by both Houses of Congress, this bill is expected soon to be signed by the President.

The Helms-Leahy bill is the result of a sustained and arduous negotiating process involving numerous stakeholders. Its enactment enables small Internet radio services and the recording industry, if they both choose, to settle their longstanding disputes regarding the amount of royalties webcasters must pay in order to perform sound recordings over the Internet.

This consensus legislation will bring much-needed stability to the emerging webcasting industry by permitting small commercial webcasters to establish with final certainty their financial obligations, thereby enabling entrepreneurs to secure additional venture capital and to avoid bankruptcy in many cases.

Moreover, as enacted, this bill will ensure that privately negotiated settlements will not be enacted into positive law, thereby negatively impacting, either directly or indirectly, any industry or entity that does not or cannot yet settle their liabilities for these royalties.

Finally, this bill will require artists to be paid directly their congressionally mandated share of performance royalties, so that there will no longer be any risk that record companies with disproportionate bargaining leverage will, by contract, squeeze recording artists out of their fair share.

The Digital Millennium Copyright Act, DMCA, required, for the first time, users of music recordings to pay performance royalties to owners of copyrights in sound recordings. The creation of this new performance royalty represented a dramatic reversal of decades of U.S. public policy.

Prior precedent had established that performances of sound recordings on traditional broadcast radio were not deemed to result in liability for performance royalties to sound recording copyright owners because it was those very same performances that introduced songs to the listening public, thereby promoting sales of sound recordings and generating revenue for copyright owners and recording artists.

Notwithstanding this longstanding precedent, the DMCA required Internet radio services to pay sound recording performance royalties and determined that the royalties should be set by a panel or arbitrators, known as the Copyright Arbitration Royalty Panel or CARP.

Unfortunately, the arbitration process has become too lengthy, too technical, and too expensive for many stakeholders. As a result, thousands of small commercial webcasters, broadcasters, noncommercial webcasters, college radio stations and hobbyists have been effectively denied the opportunity to participate in the arbitration proceedings in any meaningful way. Perhaps it was because these smaller interests were not adequately represented in the CARP proceeding that the resultant royalty was so high and the rate structure so inflexible that the

majority of small webcasters feared that it would lead to their demise? As the distinguished chairman of the Senate Judiciary Committee stated at a May 2002 hearing on this subject, Congress did not intend to bankrupt small webcasters when it created this new royalty.

It would be a mistake for someone to construe the Helms-Leahy bill as a criticism of the arbitrators' decision. Rather, I consider this legislation to be an indictment of the process, with unintended consequences flowing from the framework that Congress set forth in the DMCA.

It is impossible for arbitrators to appreciate the full implications of their determinations if significant industry participants cannot afford to appear before them or if those with disproportionate control over the outcome refuse to deal in good faith. I understand that Senator LEAHY intends to pursue comprehensive CARP reform in the Judiciary Committee next Congress. Though I will no longer be serving in the U.S. Senate next year, I hope that the chairman and ranking members of both Judiciary Committees will follow through on this commitment, working constructively to quickly remedy the concerns expressed about the current CARP process.

There was not time to fully reform CARP this fall but I considered it essential that Congress move swiftly to ensure that small webcasters not be bankrupted by unfair arbitration outcomes. An equally important goal was to ensure that settlement agreements negotiated by recording companies and small webcasters facing bankruptcy not unfairly impact non-participating third parties—such as larger webcasters and broadcasters, or even the recording companies. Moreover, I consider it critically important to underline that nothing in this bill should be construed as affecting the outcome of any pending litigation.

I commend Chairman SENSENBRENNER for focusing attention on this issue and commencing the process that ultimately led to the passage of this critically-needed legislation. I respect that there was a difference of opinion on the precedential value of H.R. 5469, as originally passed by the House. Nevertheless, beyond dispute is the fact that numerous stakeholders had expressed serious reservations that the original House-passed bill could unintentionally and negatively influence future rate setting proceedings.

The Helms-Leahy bill removes that concern, helps ensure that small webcasters will not be forced into bankruptcy, provides non-commercial webcasters with additional flexibility, and accomplishes several other goals on which the stakeholders and the Judiciary Committee leadership could agree.

The deductibility provision contained in section 5(b) of the bill is one that was viewed as important to several parties. The final provision is in-

tended to encourage competition among agents designated to distribute royalties. While I ultimately agreed to this provision, I wish to make it clear that I would consider it unconscionable if the provision were used to justify higher royalty rates for users of sound recordings.

The ability to deduct these fees is premised on a balance of interests, owners of sound recordings should not be prejudiced by a process that precludes effective legal representation, designated agents should be incentivized to quickly and fairly conclude settlement agreements rather than engage in protracted and expensive legal and arbitration proceedings, and music services and other users of sound recordings should pay a fairly negotiated fee that is not impacted by the costs of litigation, arbitration, and legal expenses incurred by the designated agents.

Users already bear their own litigation, expert fee and legal representation costs for participating in the CARP process and the resources of the Copyright Office are taxed when fair settlements are not reached among the parties.

In my view, the public interest would not be well served if the deductibility provision were interpreted in a manner that had the effect of diluting the payout to copyright owners, reducing the incentives for negotiating settlements, and/or increasing the fees paid by consumers for the use of sound recordings. To avoid these clearly undesirable and unintended outcomes, I believe it would be unwise to take these costs into account in any arbitration or other proceeding to set royalty fees.

I expect this to be the final piece of legislation I author in my career as a United States Senator. I particularly wish to thank Senators LEAHY and HATCH and their superb staffs for their expertise and assistance in ensuring the quick approval of the U.S. Senate. Additionally, I want to recognize the substantial contributions of the Senate and House leadership as well as the leaders of the House Judiciary Committee, for their continued assistance and cooperation as we worked through these difficult issues over the past several weeks.

Finally, I also wish to thank David Whitney, Joe Lanier, Wayne Boyles and David Crotts of my staff, the leaders of the affected industry and artist organizations who assisted me so greatly in negotiating this compromise legislation and a young lady entrepreneur of whom I am extremely proud, Deb Proctor of WCPE-FM in Raleigh, NC who first brought this issue to my attention.

#### PERFORMANCE GOALS FOR THE MEDICAL DEVICE USER FEE AND MODERNIZATION ACT OF 2002

Mr. KENNEDY. Mr. President, on October 17, 2002, the Senate passed the Medical Device User Fee and Mod-

ernization Act of 2002, "MDUFMA". Included in Title I of this bill is the authorization of medical device user fees.

Performance goals, existing outside of the statute, accompany the authorization of medical device user fees. These goals represent a realistic projection of what the Food and Drug Administration's Center for Devices and Radiological Health and Center for Biologics Evaluation and Research can accomplish with industry cooperation. The Secretary of Health and Human Services forwarded these goals to the chairmen of the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate, in a document entitled "MDUFMA PERFORMANCE GOALS AND PROCEDURES." According to Section 101 of Title I of MDUFMA, "the fees authorized by this title will be dedicated to meeting the goals set forth in the CONGRESSIONAL RECORD."

Today I am submitting for the RECORD this document, which was forwarded to the Committee on Health, Education, Labor and Pensions on November 14, 2002, as well as the letter from Secretary Thompson that accompanied the transmittal of this document.

I ask unanimous consent to print those items.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### MDUFMA PERFORMANCE GOALS AND PROCEDURES

The performance goals and procedures of the FDA Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER), as agreed to under the medical device user fee program in the Medical Device User Fee and Modernization Act of 2002, are summarized as follows:

#### I. REVIEW PERFORMANCE GOALS—FISCAL YEAR 2003 THROUGH 2007

All references to "days" mean "FDA days."

#### A. ORIGINAL PREMARKET APPROVAL (PMA), PANEL-PMATRACK SUPPLEMENT, AND PREMARKET REPORT SUBMISSIONS

1. The following cycle goals apply to: 75% of submission received in fiscal year 2005; 80% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

(a) First action major deficiency letters will issue within 150 days.

(b) All other first action letters (approval, approvable, approvable pending good manufacturing practices (GMP) inspection, not approvable, or denial) will issue within 180 days.

(c) Second or later action major deficiency letters will issue within 120 days.

(d) Amendments containing a complete response to major deficiency or not approvable letters will be acted on within 180 days.

#### 2. Decision Goals:

(a) 80% of submissions received in fiscal year 2006 will have an FDA decision in 320 days.

(b) 90% of submissions received in fiscal year 2007 will have an FDA decision in 320 days.