

**H.R. 1629, H.R. 2424, AND  
H.R. 2966**

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**LEGISLATIVE HEARING**

BEFORE THE  
SUBCOMMITTEE ON NATIONAL PARKS, RECREATION,  
AND PUBLIC LANDS

OF THE  
COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

—————  
Tuesday, September 30, 2003  
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**Serial No. 108-63**

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Printed for the use of the Committee on Resources



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U.S. GOVERNMENT PRINTING OFFICE

89-584 PS

WASHINGTON : 2004

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**LEGISLATIVE HEARING ON H.R. 1629, TO CLARIFY THAT THE UPPER MISSOURI RIVER BREAKS NATIONAL MONUMENT DOES NOT INCLUDE WITHIN ITS BOUNDARIES ANY PRIVATELY OWNED PROPERTY, AND FOR OTHER PURPOSES; H.R. 2424, TO AUTHORIZE ASSISTANCE FOR THE NATIONAL GREAT BLACKS IN WAX MUSEUM AND JUSTICE LEARNING CENTER; AND H.R. 2966, TO PRESERVE THE USE AND ACCESS OF PACK AND SADDLE STOCK ANIMALS ON PUBLIC LANDS, INCLUDING WILDERNESS AREAS, NATIONAL MONUMENTS, AND OTHER SPECIFICALLY DESIGNATED AREAS, ADMINISTERED BY THE NATIONAL PARK SERVICE, THE BUREAU OF LAND MANAGEMENT, THE UNITED STATES FISH AND WILDLIFE SERVICE, OR THE FOREST SERVICE WHERE THERE IS A HISTORICAL TRADITION OF SUCH USE, AND FOR OTHER PURPOSES.**

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**Tuesday, September 30, 2003**

**U.S. House of Representatives**

**Subcommittee on National Parks, Recreation, and Public Lands**

**Committee on Resources**

**Washington, D.C.**

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The Subcommittee met, pursuant to notice, at 2:05 p.m., in Room 1334, Longworth House Office Building, Hon. George Radanovich [Chairman of the Subcommittee] presiding.

Present: Representatives Radanovich, Christensen, Tom Udall, Bordallo, Rehberg, and Cummings.

**STATEMENT OF HON. GEORGE RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. RADANOVICH. Good morning. The Subcommittee on National Parks, Recreation, and Public Lands hearing on H.R. 1629, H.R. 2424, and H.R. 2966 will come to order. Good afternoon, everybody.

Our first bill, H.R. 1629, is introduced by Congressman Denny Rehberg of Montana, which would clarify that the Upper Missouri River Breaks National Monument does not include within its boundaries any privately owned property.

Our second bill is H.R. 2424, introduced by Congressman Elijah Cummings of Maryland, which would authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center, located in Baltimore.

And our last bill is H.R. 2966, which I introduced, which would preserve the use and access of pack and saddle stock animals on public lands where there is a historical tradition of such use, including wilderness areas, National Monuments, and other specifically designated areas administered by the National Park Service, BLM, and the United States Fish and Wildlife Service and the Forest Service. While I introduced H.R. 2966 for a number of reasons, the driving force was to affirm my commitment to continued access of our public lands by ensuring trails, routes, and areas used by pack and saddle stock would remain open and accessible.

Before turning the time over to Mrs. Christensen, I would ask unanimous consent that Mr. Rehberg and Mr. Cummings be permitted to sit on the dais following their statements. Without objection, so ordered.

I now turn to the Ranking Member, Mrs. Christensen, for any opening statement she may have. Donna?

[The prepared statement of Mr. Radanovich follows:]

**Statement of The Honorable George P. Radanovich, Chairman, Subcommittee on National Parks, Recreation, and Public Lands, on H.R. 1629, H.R. 2424, and H.R. 2966**

Good afternoon. The hearing will come to order

This afternoon, the Subcommittee on National Parks, Recreation, and Public Lands will receive testimony on three bills—H.R. 1629, H.R. 2424 and H.R. 2966.

Our first bill, H.R. 1629, introduced by Congressman Dennis Rehberg of Montana, would clarify that the Upper Missouri River Breaks National Monument does not include within its boundaries any privately owned property.

Our second bill, H.R. 2424, introduced by Congressman Elijah Cummings of Maryland, would authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center, located in Baltimore, Maryland.

And our last bill, H.R. 2966, which I introduced, would preserve the use and access of pack and saddle stock animals on public lands, where there is a historical tradition of such use, including wilderness areas, National Monuments, and other specifically designated areas administered by the National Park Service, the Bureau of Land Management, the United States Fish and Wildlife Service, and the Forest Service.

While I introduced H.R. 2966 for a number of reasons, the driving force was to affirm my commitment to continued access of our public lands by ensuring trails, routes, and areas used by pack and saddle stock remain open and accessible.

Before turning the time over to Mrs. Christensen, I would ask unanimous consent that Mr. Rehberg and Mr. Cummings be permitted to sit on the dais following their statements. Without objection, so ordered.

I now turn to the Ranking Member, Mrs. Christensen for any opening statement she may have.



**STATEMENT OF HON. DONNA M. CHRISTENSEN, A DELEGATE  
IN CONGRESS FROM THE VIRGIN ISLANDS**

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. Today, as you have said, this Subcommittee will consider three unrelated bills.

The first, H.R. 1629, introduced by Mr. Rehberg, provides that the Upper Missouri Breaks National Monument shall not include within its exterior borders any privately owned properties. This is not a new subject for the Subcommittee. Last Congress, we considered identical legislation. At that time, there were some fundamental misconceptions regarding the impact of the National Monument proclamation, with perceptions holding more sway than the reality of the situation.

Two points need to be stressed today. The first is that including private land within the exterior boundary does not make that land part of the National Monument. On that point, both the Monument proclamation and the Antiquities Act are clear.

Second, neither the Monument proclamation or the Antiquities Act gives the BLM any authority to subject these lands to regulation and management as part of the Federal Monument unless, of course, those lands are acquired by the Federal Government. There has been a lot of focus on the Upper Missouri Breaks boundary map, which contains Federal, State, and private lands. This map reflects the fact that the public lands are intermingled with State and private lands in many sections and that Monument features bisect all these lands. This is not uncommon. Intermingled public and private lands are common in the West. Numerous, National Monuments and National Forests have such intermingled public and private lands.

Members will need to look closely at H.R. 1629. This legislation calls into question not only the exterior boundary of the Upper Missouri Breaks National Monument, but also the basis for the boundaries of numerous National Monuments and National Forests around the country.

Our second bill, H.R. 2424, sponsored by our colleague and our esteemed Chair of the Congressional Black Caucus, Representative Elijah Cummings, authorizes a \$15 million grant to The Great Blacks in Wax Museum in East Baltimore. While the funding contained in the bill would come from the Department of Justice, members of this Subcommittee are interested to learn more regarding this unique and important museum of African-American history and plans for expanding the Museum's existing facilities.

Our final bill is H.R. 2966, a measure which you introduced, Mr. Chairman, regarding the use and access of pack and other saddle stock animals on Federal lands. H.R. 2966 appears to raise a number of issues. By amending the organic statutes of the Federal land management agencies to enshrine such use, the bill appears to raise pack and saddle animal use above other public uses of Federal lands. Such public uses as hunting, fishing, and hiking have no similar right of access in these organic statutes. Furthermore, the legislation makes no provision for curtailment of a pack or saddle stock use for reasons of public health or safety or in an emergency, nor does the legislation address conflicts with other public uses or the management of natural and cultural resources. We

should be extremely wary in singling out one particular public use for special treatment.

Mr. Chairman, I appreciate the presence of our witnesses here this afternoon. I especially want to welcome our Chair, Elijah Cummings, and look forward to the insights on the legislation we are considering.

Mr. RADANOVICH. Thank you, Mrs. Christensen.

I will now move on to our first panel, which includes the Honorable Elijah Cummings, Representative from the 7th District of Maryland, who I believe stepped out. I know Mr. Cummings was stating that he had a bill to manage on the Floor. Can you check and see if he has stepped out? If not, we will move on to our other speaker for now. There are people and things coming in, but—  
[Laughter.]

Mr. RADANOVICH. OK. I think Mr. Cummings had to leave to manage a bill on the Floor. We will leave it open for a different time in the hearing for Mr. Cummings to make a presentation.

That being the case, I will refer to Mr. Dennis Rehberg, who is here to speak on H.R. 1629. Denny, welcome.

**STATEMENT OF HON. DENNIS REHBERG, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MONTANA**

Mr. REHBERG. Thank you, Mr. Chairman. I really appreciate the fact that you would take time out of your busy schedule to schedule this hearing for me. Mrs. Christensen and Ms. Bordallo, welcome, and thank you again for listening to an issue that is very specific to Montana. It is not precedent-setting for the rest of the country, but it is very important to the 127 landowners within the State of Montana.

It allows us to address and debate an issue as old as our republic—private property rights. In fact, the issues before us today deal very much with the same concerns that led our Founding Fathers to declare their independence from an overbearing monarchy almost 300 years ago. Those Founding Fathers clearly codified private property rights in the Constitution, yet those rights are currently being challenged in the form of a boundary to a National Monument located in the State of Montana.

In the late hours of January 17, 2001, President Clinton and Interior Secretary Bruce Babbitt created the Upper Missouri River Breaks National Monument, encompassing nearly 400,000 acres of federally owned land. With less than 90 hours remaining in his Presidency, the administration made this designation without consulting county officials, the Governor, the Congressional delegation, or the private property landowners whom the designation would indirectly affect.

In the rush to complete his Executive Order designating the Monument, President Clinton included more than 80,000 acres of private land in its boundaries. Ranchers and farmers that have worked the same land for generations woke up on January 18 of 2001 to find their family farms now part of an enormous new Federal Monument. Overnight, and despite their opposition, those 127 landowners found themselves and their land gobbled up by the Federal Government.

Let there be no mistake, Mr. Chairman. The Federal Government's decision to include more than 80,000 acres of private land in the Monument's boundary sends one clear and unmistakable message to the families involved: Washington wants your land.

They called on me as their voice in Washington to remedy the debacle that Washington had created in Montana, so I introduced legislation last year. It was favorably reported from this Committee, and I reintroduce it this year to do one thing, remove private property from within the boundary lines of the Upper Missouri River Breaks National Monument.

H.R. 1629, the Upper Missouri River Breaks Boundary Clarification Act, is carefully crafted, I repeat, carefully crafted to help Montana landowners while at the same time preserving Federal management of the Monument itself. Local support for this effort is great. In fact, on March 24, 2003, a citizen delegation presented me with a petition supporting my legislation, signed by more than 3,000 Montanans, most of whom live inside or near the Breaks boundary.

I would like to, with unanimous consent, include that petition in the hearing record, along with official letters of support from the majority of the Montana State House and State Senate; letters of support from the American Farm Bureau, who are in the audience; letters of support from the National Cattlemen's Beef Association, the Montana Stock Growers, and the Montana Farm Bureau; letters of support from the State Senator Ed Butcher—he represents the folks in the Monument area; letters of support from landowners Tom and Gladys Walling of Winifred, Montana—they own 320 acres in the Monument boundary; and letters from the county commissioners, who unanimously have opposed including private property and support this bill. I might add, in Montana, our counties are represented by three county commissioners each, Republicans, Democrats, and Independents alike, and they unanimously support this legislation.

Mr. RADANOVICH. There being no objection, so ordered.

Mr. REHBERG. Thank you, Mr. Chairman.

[NOTE: The petition and letters of support submitted for the record has been retained in the Committee's official files.]

[The prepared statement of Mr. Rehberg follows:]

**Statement of The Honorable Dennis R. Rehberg, a Representative in  
Congress from the State of Montana, on H.R. 1629**

Mr. Chairman, thank you for scheduling this hearing today. It allows us to address and debate an issue as old as our republic—private property rights. In fact, the issues before us today deal very much with the same concerns that led our Founding Fathers to declare their independence from an overbearing monarchy almost three hundred years ago.

Those Founding Fathers clearly codified private property rights in the Constitution. Yet those rights are currently being challenged in the form of a boundary to a National Monument located in the State of Montana.

In the late hours of January 17, 2001, President Clinton and Interior Secretary Bruce Babbitt created the Upper Missouri River Breaks National Monument—encompassing nearly 400,000 acres of federally owned land.

With less than ninety hours remaining in his presidency, the Administration made this designation without consulting county officials, the governor, the congressional delegation, or the private property landowners whom the designation would directly affect.

In the rush to complete his Executive Order designating the Monument, President Clinton included more than 80,000 acres of private land in its boundaries.

Ranchers and farmers that have worked the same land for generations woke up on January 18, 2001, to find their family farms now part of an enormous new federal Monument. Overnight—and despite their opposition—those 127 landowners found themselves—and their land—gobbled up by the federal government.

Let there be no mistake Mr. Chairman, the federal government's decision to include more than 80,000 acres of private land in the Monument's boundary sends one clear and unmistakable message to the families involved: "Washington Wants Your Land."

They called on me, as their voice of Montana in Washington, to remedy the debacle that Washington had created in Montana. So I introduced legislation last year—it was favorably reported from this Committee. And I re-introduced that this year to do one thing—remove private property from within the boundary of the Upper Missouri River Breaks National Monument.

H.R. 1629, the Upper Missouri River Breaks Boundary Clarification Act H.R. 1629 is carefully crafted to help Montana landowners, while at the same time preserving federal management of the Monument itself. Local support for this effort is great—in fact, on March 24, 2003, a citizen delegation presented me with a petition supporting my legislation signed by more than 3,000 Montanans, most of whom live inside or near the Breaks boundary.

In fact, I move to include this tremendous showing of local public support in the official hearing record.

President Clinton used the Antiquities Act of 1906 to create the Monument in the dark of night, but the Antiquities Act specifically mandates that lands included in a Monument, quote, "shall be confined to the smallest area compatible with the proper care and management of the object to be protected." In the case of this particular Monument, the Washington, D.C., powers-that-be deliberately ignored that provision of the Antiquities Act and extended the Monument boundary as they saw fit.

As you can clearly see from the map at the front of the room,—private property is indicated by the bright pink color—the boundary of the Monument was not confined to the smallest area compatible. It is difficult to understand how all that bright pink up there equals "the smallest area compatible"—it seems like there are enormous areas of bright pink on that map.

Mr. Chairman, private property was included not for proper care and management of the Monument, but for future acquisition and inclusion in the Monument. Officials at the BLM have stated as much publicly.

My point in bringing this to the Committee's attention is that the inclusion of more than 80,000 acres of private property represents blatant abuse of the Antiquities Act. And frankly, it ultimately brings into question the legality of the Monument.

But my point in coming before the Committee today with my legislation is not to question the legality of the Monument. Make no mistake, Mr. Chairman, I support the Monument. I support protection of this resource. My legislation, though, represents the landowners in my state who wish to be taken out of its boundaries.

As various lobbying organizations from Washington, D.C., and Montana have geared up for the debate over this legislation, one fact seems to have been tossed aside in the stampede: none of the folks opposed to my legislation are personally impacted by the Monument boundary. In fact, the opposition witness we will hear from today lives outside the Monument boundary.

H.R. 1629 has the unanimous support of locally elected county commissioners representing the Upper Missouri River Breaks National Monument. H.R. 1629 has the strong support of Governor Martz. The largest daily newspaper in the region, The Great Falls Tribune, long an advocate for the Monument, has editorialized in support of my legislation. Quoting now from the editorial: "In addition to a clear map they can hold up when a tourist wanders onto their land, what the landowners are seeking is anything that might give them more leverage down the road in the event the larger public interest doesn't square with their own...We don't see much of a downside to that, the original framers of the Monument shouldn't either."

But most importantly Mr. Chairman, this legislation has the strong support of the private landowners who are actually affected by the Monument designation and boundary. 3,300 local residents took the time to sign a petition supporting this legislation. 3,300 people. In the end, that should be all that matters to this Committee and the Congress.

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Mr. RADANOVICH. President Clinton used the Antiquities Act of 1906 to create the Monument in the dark of night, but the

Antiquities Act specifically mandates that lands included in the Monument, quote, “shall be confined to the smallest area compatible with the proper care and management of the object to be protected.” In the case of this particular Monument, the Washington, D.C., powers that deliberately ignored that provision of the Antiquities Act and extended the Monument boundary as they saw fit.

As you can clearly see from the map, and I believe you have one in your packet, the private property is indicated by the bright pink color. The boundary of the Monument was not confined to the smallest area compatible. It is difficult to understand how all the bright pink up there equals the smallest area compatible. It seems like there are enormous areas of pink on that map.

Mr. Chairman, private property was included not for proper care and management of the Monument, but for future acquisition and inclusion in the Monument. Officials at the BLM have stated as much publicly.

My point in bringing this to the Committee’s attention is that the inclusion of more than 80,000 acres of private property represents blatant abuse of the Antiquities Act, and frankly, it ultimately brings into question the legality of the Monument.

But my point in coming before the Committee today with this legislation is not to question the legality of the Monument. Make no mistake, Mr. Chairman. I support the Monument. I support protection of this resource. My legislation, though, represents the landowners in my State who wish to be taken out of its boundaries.

As various lobbying organizations from Washington, D.C., and Montana have geared up for the debate, one fact seems to have been tossed aside in the stampede. None of the folks opposed to my legislation are personally impacted by the Monument boundary. In fact, the opposition witness we will hear from today does not own property within the boundary.

H.R. 1629 has the unanimous support, as I said, of the local county commissioners, the Governor, the legislators. The largest daily newspaper in the region, The Great Falls Tribune, long an advocate for the Monument, has editorialized in support of my legislation. Quoting now from the editorial, “In addition to a clear map they can hold up when a tourist wanders onto their land, what the landowners are seeking is anything that might give them more leverage down the road in the event the larger public interest doesn’t square with their own. We don’t see much of a downside to that. The original framers of the Monument shouldn’t, either.”

But most importantly, Mr. Chairman, this legislation has the strong support of the private landowners who are actually affected by the Monument designation and boundary. Thirty-three-hundred local residents took the time to sign a petition supporting this legislation. Thirty-three-hundred people. In the end, that should be all that matters to this Committee and to Congress.

Thank you, and I ask unanimous consent to put this in the record.

Mr. RADANOVICH. Thank you, Mr. Rehberg. I appreciate your testimony.

Any questions of Mr. Rehberg?

[No response.]

Mr. RADANOVICH. All right. That concludes our first panel. Again, the Honorable Elijah Cummings had to leave for Floor duty, I believe, but is welcome to come back and make his statement for the Committee any time during the time that the Committee is doing business.

Next up is panel two, Mr. Chad Calvert, who is the Deputy Assistant Secretary of Land and Minerals Management, Department of the Interior in Washington, D.C., and former employee of the incredible George Radanovich.

Chad, welcome to the Committee. It is good to see you. Of course, Chad is here to speak on H.R. 1629, H.R. 2424, and H.R. 2966, all the bills that we will be hearing about. Chad, welcome to the Committee.

**STATEMENT OF CHAD CALVERT, DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.**

Mr. CALVERT. Thank you, Congressman. Thank you, members of the Committee. It is my honor and privilege to be here testifying before this Subcommittee, in particular, for my first hearing on the House side.

I would like to ask in advance that my statements be made part of the public record and I am going to summarize them.

Mr. RADANOVICH. There being no objection, so ordered.

Mr. CALVERT. With regard to H.R. 1629, I have to say that I think the Congressman has already made the compelling case for his bill and the Department supports the bill, particularly because it would provide additional certainty to private and State owners of land located within the boundaries and that the designation itself and the management plan should have no effect on their property rights.

The proclamation signed in January 2001 designed 377,000 acres as National Monument, running along 150 miles of the river. It included large blocks of the Wild and Scenic River Corridor and land management by the BLM, as well as land managed by the U.S. Fish and Wildlife Service. The Monument boundary also includes nearly 82,000 acres inside of it of private land and 39,000 acres of State land.

It is true, it is not uncommon for management units to encompass scattered private and State lands, but this Monument actually includes more private and State land acreage than any other. It is more scattered, and there are certainly more individual landowners than in any other National Monument.

So it presents a number of difficult management questions for the managing agency about how they work with local landowners, how they engage people to be cooperative in their management of the Monument, and how to move forward in a supportive manner with those people.

The language of the proclamation does state clearly that the Monument itself is established lands and interest in lands owned and controlled by the United States within the boundaries of the area described on the map, consisting of approximately 377,000 acres. On these Federal lands, the Monument proclamation imposed a number of restrictions. However, it is clear that these

restrictions are not meant to apply to private or State land within the Monument.

This legislation offered by Representative Rehberg would help reassure those who express concerns, notably 3,300-plus of them from the State of Montana, regarding this proclamation. It would reaffirm that private lands are not within the boundary—I am sorry, are not a part of the Monument, and it would direct the Department of Interior to provide a map for management planning purposes to reflect the actual Federal lands that make up the Monument itself.

The Department would urge the Committee to reflect on Section 2(a) and insert, in lieu of any privately owned property to include any land that is not owned by the Federal Government, which would allow for the State lands to receive the same treatment as the private lands under the bill.

With that, I would conclude my testimony on that bill and move just briefly to testimony on H.R. 2424, The Great Blacks in Wax Museum and Justice Learning Center.

[The prepared statement of Mr. Calvert follows:]

**Statement of Chad Calvert, Deputy Assistant Secretary, Land and Minerals Management, U.S. Department of the Interior, on H.R. 1629**

Thank you for giving me the opportunity to testify on behalf of the Department of the Interior on H.R. 1629, the Upper Missouri River Breaks Boundary Clarification Act. While we believe that the Presidential proclamation establishing the Monument makes it clear that the proclamation covers only Federally-owned lands within the Monument boundaries, the Department supports H.R. 1629 because it would provide additional comfort to the private and state owners of lands located within the Monument boundaries that the Monument designation will not impact management of their lands. This will also help us to engage some of our local partners in a more constructive fashion that we believe will result in a more broadly supported management plan for the Upper Missouri River Breaks National Monument.

President Clinton created the Upper Missouri River Breaks National Monument by Proclamation 7398 on January 17, 2001, under the Antiquities Act of 1906. The Antiquities Act allows the President in certain circumstances to create a Monument from land that is owned or controlled by the United States. The Proclamation stated clearly that the Monument consists of “all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ‘Upper Missouri River Breaks National Monument’ attached to and forming part of this proclamation.” The problem is that the map showed boundaries that enclosed private and state land as well—not just Federally-owned or controlled lands. It was undoubtedly intentional that the map boundaries enclosed private and state land as well, because the Proclamation also said “Lands and interests in land within the proposed Monument not owned by the United States shall be reserved as a part of the Monument upon acquisition of title thereto by the United States.” The Proclamation makes no claim to non-Federal property within the area that it identifies as the Monument. The legal uncertainty created by the Proclamation goes to the status of non-Federal land within this area that the Federal Government may later acquire, not to the scope of the Federal Government’s current interests or even to the reach of its existing acquisition authorities. Although the uncertainty created by the Proclamation does not affect the security of title held by private and state landowners, it may affect their interests. If land that the United States acquires within the Monument area automatically obtained Monument status, as the Proclamation asserts, the prospects for economic activity in the region could be altered. Accordingly, private and state landowners can benefit significantly from congressional reaffirmation of the status of these non-Federal lands. The Department of the Interior supports H.R. 1629 as a means of providing that reaffirmation to residents of the Upper Missouri Breaks area.

*Background*

The proclamation designated 377,346 acres of Federal lands as a National Monument, running along 149 miles of the Missouri River. It includes the Wild and

Scenic River corridor of the Upper Missouri River as well as large blocks of land managed by the Bureau of Land Management, and a small number of acres managed by the U.S. Fish & Wildlife Service. The Monument boundary also contains nearly 82,000 acres of private land and 39,000 acres of state land.

The language of the proclamation states clearly that the Monument itself is established on "all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map...consist[ing] of approximately 377,346 acres..." On these Federal lands, the Monument proclamation imposed a number of restrictions, including the withdrawal from entry, location, selection, sale or leasing under the public land laws, the mining laws and mineral leasing laws. It also prohibits off road motorized and mechanized vehicle use, except for emergency or administrative purposes. The proclamation does provide for continued livestock grazing and management of oil and gas development on existing leases.

The formal planning for the Monument began on April 24, 2002, with the publication of a notice in the Federal Register. During the 120-day scoping period in the summer of 2002, the BLM's Lewistown Field Office hosted a series of 11 open houses throughout north central Montana.

In July of 2003, the Lewistown Field Office again held public meetings in 11 north central Montana communities, this time to begin formulating alternatives for the Resource Management Plan (RMP). These meetings included a short formal presentation by the BLM, one-on-one discussions between the public and resource specialists, and an open forum moderated by a member of the Central Montana Resource Advisory Council. Approximately 350 members of the public attended the 11 meetings. The Field Office also received approximately 8,500 letters and emails regarding potential alternatives. Governor Martz established a task force that made recommendations concerning the Monument and its management. This input along with all other comments and recommendations are currently being reviewed and considered.

The draft RMP is scheduled for release in the summer of 2004. During the public comment period following release of the draft, the BLM will hold another 11 public meetings across north central Montana to review the document. Throughout the process, the Monument staff will continue to engage the public through regular updates on its website and through mailings as well as through local media outlets.

#### *The Status of Non-Federal Lands Within the Monument*

The Antiquities Act of June 8, 1906, authorizes the President to designate National Monuments on lands owned or controlled by the Federal Government at the time of the Monument proclamation. The Antiquities Act states, "The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government, and may reserve as part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected."

The proclamation of January 17, 2001, sets apart and reserves lands and interests in lands owned or controlled by the United States within the boundaries of the National Monument described on the map made part of the proclamation. The proclamation also recognizes the standing of all valid, existing rights and interests within the Monument boundaries. Although the proclamation makes clear that non-federal lands within the boundary of the Monument are not a part of the Monument, owners of private and state land within the Monument remain concerned about the Monument's implications for non-federal lands. On June 30, 2003, the BLM's Lewistown Field Office issued a report entitled, "The Upper Missouri Breaks National Monument—Analysis of the Management Situation." In that report, it states, "The BLM has no jurisdiction over State or private land contained within the Monument boundary." We believe H.R. 1629 adds legal finality to this statement.

#### *H.R. 1629*

The legislation offered by Representative Rehberg would help reassure those who have expressed concerns regarding the proclamation of January 17, 2001. It would reaffirm that private lands are not within the boundary of the Upper Missouri River Breaks National Monument and it would direct the Department of the Interior to provide a map for management planning purposes to reflect the actual federal lands that make up the Monument itself.

H.R. 1629 would give non-Federal landowners the assurance that their cooperation is voluntary and, hopefully, will improve their participation as partners with our Federal land managers. The Department notes that this in no way prevents



willing sellers from working with the Administration to add their lands to the Monument where all parties believe it is appropriate.

The Department urges the Committee to amend Section 2(a) of the act by striking "any privately owned property" and inserting in lieu thereof "any property not owned or controlled by the Federal Government at the time of issuance of that Proclamation." The legislation currently refers only to privately owned property, which leaves out the roughly 39,000 acres of state-owned lands. We believe that the same assurances provided to private landowners should also be given to the State of Montana and any other non-Federal landowner that might possess property within the proclamation boundary.

*Conclusion*

This concludes my statement. I will be happy to answer any questions the Committee may have for me.

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Mr. CALVERT. The Department actually has no, to our knowledge, sees no connection to the National Park Service program in this bill and the money would be a pass-through grant administered by the Department of Justice, and for that reason, we would defer in our testimony and our position on this bill to the Department of Justice.

I would be happy to pass along any questions on the bill to the Department of Justice, but unfortunately, I will not be able to answer any on this bill.

[The prepared statement of Mr. Calvert follows:]

**Statement of Chad Calvert, Deputy Assistant Secretary, Land and Minerals Management, U.S. Department of the Interior, on H.R. 2424**

Mr. Chairman, thank you for the opportunity to appear before your Committee to present the views of the Department of the Interior on H.R. 2424, a bill to authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center.

H.R. 2424 would authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center in Baltimore, Maryland, administered by a non-profit group, The Great Blacks in Wax Museum, Inc. The Museum features wax figures and related interactive educational exhibits that celebrate the history of Black Americans. The bill authorizes \$15 million from the Department of Justice to pay the federal share of the costs of expanding the Museum and creating the Justice Learning Center.

H.R. 2424 does not appear to provide any role for the Department of the Interior with the National Great Blacks in Wax Museum nor are we aware of any connection this museum has with any National Park programs. We therefore, defer to the Department of Justice for its position on this legislation.

Mr. Chairman, thank you for the opportunity to comment. This concludes my prepared remarks and I will be happy to answer any questions you or other Committee members might have.

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Mr. CALVERT. And on H.R. 2966, a bill offered by Mr. Radanovich, Mr. Nunez, Mr. Rehberg, and others, it is a bill to preserve the use and access of pack and saddle stock animals on public lands.

In my capacity, I will work directly only with the Bureau of Land Management, but it is my distinct pleasure today to speak on behalf of the other Interior agencies, notably the National Park Service and Fish and Wildlife Service.

The administration supports the goals of this bill. However, we would like to work with the Committee to clarify several points as you move forward in the process.

We do support continuing to provide access for pack and saddle stock animals on our public lands. Using these animals is often the

most appropriate way for visitors to enjoy many back-country landscapes that are otherwise inaccessible.

On BLM lands alone, 73,000 recreational visits in 2002 are attributed to horse and animal pack stock recreational use, and it is our intention to assure that opportunities for that type of use remain available on the public lands managed by the Department of Interior.

The Department believes two points, however, should be clarified in the legislation. The bill requires the Secretaries of Interior and Agriculture to provide for management of lands, to preserve or facilitate continued use and access where there is historical tradition of such use. It also allows reductions in the use of that access on lands only after complying with the full review process required under NEPA. I would like to address the NEPA issue first.

In my statement, I mentioned that the legislation, the Department feels that the legislation is unnecessary. We do so because it is our view that we already fully comply with NEPA whenever we make decisions about land uses. We do this in a number of ways. First, our land management plans, our park plans, comprehensive conservation plans for refuges, Monument plans, wilderness plans, and any other comprehensive land plans that we do are all subject to NEPA. These typically utilize Environment Impact Statements that include a full public comment period.

We also use in our management decisions, where appropriate, environmental analysis and FONZIs, categorical exclusions, and, where appropriate, full Environmental Impact Statements, and these decisionmaking processes all fully comply with NEPA.

Temporary closures and reductions are usually allowed for management plans, but on occasion may be conducted pursuant to a categorical exclusion or an EA FONZI. Depending on the Bureau, temporary closures include measures to protect wildlife habitat, the vegetation, as well as health and safety of the visitors. There are also different provisions for addressing closures relating to emergency reasons, such as fires and floods.

The other thing that we would like to point out is that this legislation potentially sets up a conflicting priority for recreational use for certain agencies. For example, permitted uses in the National Wildlife Refuges must be compatible for the purposes for which each refuge was established. They must also comply with the six wildlife-dependent priority public uses—hunting, fishing, wildlife observation and photography, and environmental education and interpretation—that Congress established in the 1997 National Wildlife Refuge System Improvement Act. The Fish and Wildlife Service embraces these six uses as the core of their mission. We are concerned that additional prescribed uses would alter the balance among competing recreational uses that are currently achieved through the land planning process.

That completes my statement, Mr. Chairman, and I would be happy to answer any questions.

Mr. RADANOVICH. Thank you, Mr. Calvert.

[The prepared statement of Mr. Calvert follows:]

**Statement of Chad Calvert, Deputy Assistant Secretary, Land and Minerals Management, U.S. Department of the Interior, on H.R. 2966**

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on H.R. 2966, to preserve the use and access of pack and saddle stock animals on public lands, including wilderness areas, National Monuments, and other specifically designated areas, administered by the National Park Service (NPS), the Bureau of Land Management (BLM), the United States Fish and Wildlife Service (FWS), and the Forest Service where there is a historical tradition of such use.

We share the goal of ensuring that the use and access of pack and saddle stock animals remains a viable recreational option on public lands where those activities are currently provided. However, this legislation is unnecessary because the Department already complies with the National Environmental Policy Act of 1969 (NEPA) when making decisions concerning recreation use, including the use of environmental assessments and categorical conclusions where appropriate. As described more fully below, the Department does have concerns with provisions in the bill that appear to give more weight to one recreational use than to others without consideration of the agency's mission.

Providing appropriate recreational opportunities on federal lands is an important priority for the Department. Traveling through the backcountry with pack and saddle stock animals is an enjoyable, practical, and meaningful way to experience some of the most magnificent landscapes our country has to offer. For example, it has long been a recreational attraction for visitors to our beautiful National Parks in the Sierra Nevada and Rocky Mountains, in particular. On BLM lands alone, 73,000 recreational visits in 2002 were attributed to horse or animal pack stock recreational use. It is our intention to ensure that opportunities for this type of recreational use remain available on the public lands managed by the Department.

H.R. 2966 would require the Secretaries of the Interior and Agriculture to provide for the management of lands under their respective jurisdictions to preserve and facilitate the continued use and access of pack and saddle stock animals on lands where there is a historical tradition of such use. It would allow the two Secretaries to implement a proposed reduction in the use and access of pack and saddle stock animals on such lands only after complying with the full review process required under NEPA.

The Department believes that the provisions that apply NEPA to any proposed changes in stock use are redundant. Under existing law, changes in recreational uses on public lands are made through public planning processes, such as proposed revisions to general management plans for units of the National Park System, land use plans or activity plans for BLM lands, and comprehensive conservation plans for National Wildlife Refuges administered by FWS. These planning processes are all subject to NEPA, and all offer ample opportunities for public participation in the decision-making process.

In addition to these plans, the Department also complies with NEPA when developing its wilderness management plans. For example, while BLM generally allows the recreational use of pack stock in wilderness areas, in some instances, the wilderness management plan prescribes certain limitations. In Aravipa Canyon Wilderness, horses and pack stock are limited to five per party, and stock use within the canyon itself is limited to day use. This policy is in place for the protection of sensitive riparian vegetation and as a result of conflicts with other recreation users in the narrow canyon corridor. In Paria Canyon-Vermillion Cliffs Wilderness, for safety reasons, the horses and pack stock are not allowed in the Coyote Butte Special Management Area, and commercial use is limited in the narrow upper two thirds of the Paria Canyon. The slick rock environment is not suitable for horse or pack stock travel and creates unsafe conditions for recreational users.

National parks with backcountry recreational stock use typically have a pack horse plan or equivalent plan supported by environmental analysis and public disclosure under NEPA. Sequoia and Kings Canyon National Parks have a very sophisticated program for managing pack and saddle use that provides for stock use when and where it is appropriate, while protecting park resources. Rocky Mountains National Park has a horse plan in effect that has resolved many longstanding controversies between stock users and hikers.

In addition to decisions made during the planning process, temporary closures to recreation uses made by the Department also meet NEPA requirements by qualifying for a categorical exclusion or undergoing a separate environmental assessment. Categorically excluded actions fully comply with NEPA under the implementing regulations of the Council on Environmental Quality, which allow agencies to exclude a category of actions from detailed NEPA analysis based on an agency

finding that such category of actions do not have a significant effect on the quality of the human environment. Temporary closures include measures to protect wildlife habitat, vegetation and, in some cases, the health and safety of visitors.

All recreational activities that occur on federal lands should be compatible with the respective agency's mission. By statute, for example, all uses of refuges must be compatible with the purposes for which each individual National Wildlife Refuge was established. The FWS has concerns that the legislation appears to be in conflict with the six wildlife-dependent priority public uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) that Congress established in the National Wildlife Refuge System Improvement Act of 1997. FWS views these six uses as consistent with its mission. For FWS and other agencies, we are concerned that this legislation would alter the balance among competing recreational uses currently achieved through their respective planning processes.

Mr. Chairman, this concludes my remarks. I would be happy to respond to any questions that you or the other members of the Subcommittee may have.

Mr. RADANOVICH. I have a couple questions regarding H.R. 2966, my bill. The questions are long, so I am going to read it out. If I have to read it twice, that is fine.

Mr. Calvert, in your testimony, you state that the U.S. Fish and Wildlife Service is concerned that my legislation is in conflict with the six wildlife-dependent priority public uses, namely hunting, fishing, wildlife observation, photography, and environmental education and interpretation. However, would you agree that all of those listed wildlife-dependent priority public uses can be accomplished on foot? In other words, how is a pack and saddle animal use a conflicting or competing interest, if you will, with those listed uses?

Mr. CALVERT. I would like to, if I may, respond more fully in writing in case I miss something the Fish and Wildlife Service would like to add. However, the response that I can give you is that the agency views those six statutory compatible uses as the priority uses that they have before them, and to add another use that potentially is higher in priority than those presents a conflict for them that they are not—it is not clear in the bill how you intend to reconcile the stock and saddle animal use with those uses if there is a conflict.

Mr. RADANOVICH. You don't view them as competing uses, rather a statement of priority, one over the other?

Mr. CALVERT. Not necessarily, but they could be.

Mr. RADANOVICH. Another long question. In your testimony, you state that the agency is attempting to implement temporary trail closures may qualify for a categorical exclusion in compliance with NEPA under the regulations of the Council on Environmental Quality and would then be allowed to forego a detailed NEPA analysis. Is it possible, then, that certain administrations may be afforded the ability to hide behind that categorical exclusion in an attempt to close the trail?

Mr. CALVERT. Well, categorical exclusions are only available where, first of all, they have been defined by the Department as an available categorical exclusion, but second and more importantly, if they meet any of the extraordinary—if circumstances meet any of the extraordinary circumstances provided in the law, then the categorical exclusion can't be used, and those extraordinary circumstances can be things as simple as heightened public controversy.

So, technically, categorical exclusions are used where you need to be fully compliant with NEPA but where you feel that your other NEPA documentation is already complete.

Mr. RADANOVICH. Thank you. Mrs. Christensen?

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

My questions are on H.R. 1629 particularly. Mr. Calvert, you said in your testimony that while the Monument proclamation doesn't affect the security of title held by private or State landholders, it might affect their interests. Can you explain what interests might be affected and how they would be affected?

Mr. CALVERT. I can't make the case for them. I understand that there are a number of concerns that they have. It is the Department's view as well as the Bureau of Land Management's stated view that we have no jurisdiction over those private and State lands. However, they have legitimate questions as to why, in a number of circumstances, the boundary lines were drawn through their private land as opposed to around only Federal land, and in order to try to provide a more cooperative spirit in the development of the management plan for the Monument, the Department feels it is important to give those people additional certainty. For whatever reason, they feel that their title could be affected in the future.

Mrs. CHRISTENSEN. Your testimony also says that by including private property in the exterior boundary, the Monument creates a legal uncertainty, and I guess that sort of must relate to the answer that you just gave me, but I am wondering, also, is it your assertion that all National Monuments that have private property in their exterior boundaries also have legal uncertainty? This is really important to me, because I have in-holdings in my own parks. Is that the Department's position?

Mr. CALVERT. No. It is important to distinguish, first of all, the difference between the park Monuments, those that have been set up to be administered by the National Park Service, and this new raft of Monuments that were designated that were handed over to the Bureau of Land Management. The Bureau of Land Management had no practices in place to respond to that and it was really dealing with these issues as sort of a first impression.

The question isn't about necessarily what the status is for the in-holdings. The question is, what is the purpose of the boundary where it crosses private land only, and there are a number of circumstances where that occurs in the Upper Missouri River Breaks Monument, where the boundary wasn't drawn the most narrowly, or as narrowly as it could have been. It was drawn instead across private land, and those people have, I think, a legitimate question in that what does this mean for me. Why is this boundary running across my Federal land?

Mrs. CHRISTENSEN. I would imagine, I know in our case, the boundaries were placed where they were placed for a particular reason, because of the need to protect certain resources. Is it possible that those boundaries were drawn in an arbitrary fashion rather than for a specific reason that can be justified to the landowners?

Mr. CALVERT. Well, anything is possible. I can't speak to what the motivations were specifically about drawing the boundary

where it was drawn. It is my assumption that they attempted to, particularly on the Western side of the Monument, to capture the natural geology that runs along the river and the features that accompany the Wild and Scenic River Corridor.

With regard to the Western side, I really can't—or, I am sorry, the Eastern side, where it sort of balloons there up above, I really can't speak to the motivations for drawing the boundaries in one place or another.

Mrs. CHRISTENSEN. Has the Federal Government threatened or otherwise adversely affected the private property rights on the 35,000-plus acres of private land in the Upper Missouri Wild and Scenic River that was designated in 1976 and which is also within the exterior boundary of the National Monument?

Mr. CALVERT. Not to my knowledge.

Mrs. CHRISTENSEN. Deputy Assistant Secretary Morrison testified last year that the Department was doing a study of private lands within National Monuments. What discussions have there been in the Department on the legal status of private lands within the National Monuments?

Mr. CALVERT. To the extent that the Solicitor's Office has attempted to analyze the questions that we discussed a moment ago about the effect of the boundary, those discussions have been internal to the Solicitor's Office. There are several divisions of the Solicitor's Office which each respond to different clients within the Department and the discussions have been between those offices. To my knowledge, there are no plans to issue an official opinion of the Solicitor's Office.

Mrs. CHRISTENSEN. So is the study ongoing?

Mr. CALVERT. There wasn't a study in a formal sense. There was an analysis that the Solicitor's Office and its individual divisions were attempting to first scope and identify what issues of controversy were out there and whether there were clear legal responses to those. But—

Mrs. CHRISTENSEN. Wouldn't it help to clarify for this and future Monuments this issue of boundaries and whatever interests would or would not be affected and whatever legal uncertainties might exist if a Solicitor's opinion was issued?

Mr. CALVERT. It would be helpful to provide guidance from the Department on issues where there isn't a clear answer. On the fact that the Federal Government is not going to assert jurisdiction over private or State lands, we are clear on that. But that doesn't get to the issue of why the boundary is where it is and whether there is any future effect on those lands.

Mrs. CHRISTENSEN. OK. Thank you. Thank you, Mr. Chairman.

Mr. RADANOVICH. The Chair recognizes Mr. Rehberg.

Mr. REHBERG. Thank you, Mr. Chairman.

Mr. Calvert, by changing the boundaries, does it in any way, shape, or form change the size of the Monument?

Mr. CALVERT. It changes the size encompassed inside the external boundary. If—

Mr. REHBERG. But not the Monument.

Mr. CALVERT. If you read the Antiquities Act and if you read the management analysis of the BLM, the Monument itself is the Federal land inside of the Monument and that would not change.

Mr. REHBERG. Wouldn't you agree perhaps that usually when these kinds of things are done in haste, mistakes are made, and from your perspective within a new administration, was this done in a hasty fashion at the last hour of the Presidential administration, or was it done with forethought, with adequate notice, public comment, a legal map that the landowners could see and knew that their land was going to be included?

Mr. CALVERT. To my knowledge, there were no public meetings. There were no maps provided in advance. There was no comment taken in developing the boundary. That doesn't mean that the boundary wasn't done with a lot of thought-provoking and searching analysis. But it was issued at the very end of the administration and it was done without public comment.

Mr. REHBERG. So if you were going to follow the spirit of the type of government we have in America, you would have made a map available to the landowners to specifically say, your land may be included in this Monument. What is your opinion? Are you for it or against it?

Mr. CALVERT. I can only speak as a member of Secretary Norton's administration, and from our perspective, I am sure you have heard it before, she ascribes to the four "C"s and would not have recommended making a Monument without working with the local landowners first.

Mr. REHBERG. When this Committee had the hearing last year, Mr. Chairman, I asked the question of the administration, had a map been put out yet, because it had not been done at the time that it was created and it had not been done at the time of the testimony by the administration. I ask you the same question, Mr. Calvert. Is there now a map that clearly defines legitimately or legally exactly what private lands are included along the periphery?

Mr. CALVERT. At the time of the hearing, the last time, there was the map that had been put into the Federal Register with the proclamation, which was a small map printed on black and white paper and not very easy to read. There is now a map in the Lewiston Field Office in Montana that provides fairly certain boundaries. If you are a property owner, you can go in and find out whether you are inside or outside without question. It also—

Mr. REHBERG. Has that map been provided to each of the landowners?

Mr. CALVERT. That, I can't answer, but I would be happy to find out.

Mr. REHBERG. Would you, please?

Mr. CALVERT. It is the planning map that is being used in the field office.

Mr. REHBERG. At the time of the hearing a year ago, I asked specifically the question, had the administration, the Clinton administration, ever communicated with the landowners the potentiality of their land being included. The answer was no, or we are not sure, we will check. Have you ever been able to identify any way, shape, or form that the landowners were told which acreage of their private land was going to be drawn inside the boundary?

Mr. CALVERT. No. It would be hard to confirm that. I know certain landowners were part of the discussion that led up to the

development of the Monument, but I can't tell you which ones. Certainly, not all.

Mr. REHBERG. Land owners that are currently included in the new Monument?

Mr. CALVERT. Yes.

Mr. REHBERG. I would like—

Mr. CALVERT. To the best of my knowledge.

Mr. REHBERG. OK. You have been involved in the public lands issue for a long time. One of the things I say on the stump back in my State is, just remember, there is no such thing as a promise in our form of government, that while we state that we are going to do something today, people kind of forget that 10 years from now. Can you look this Committee in the eye and tell us that under no way, shape, or form there will ever be any change in the management of that BLM land that will directly or indirectly affect the private property that are included in the in-holdings?

Mr. CALVERT. No. I can only give you certainty that there would be no change pushed forward by us.

Mr. REHBERG. So all the promises—

Mr. CALVERT. A lawsuit could change—judicial review could change the status of in-holdings. That is—beyond the four years that we have there, I can't provide any certainty.

Mr. REHBERG. So a different administration with a different philosophy could, in fact, because that private property is included inside the boundaries, affect the management of the Federal properties and indirectly affect the private property management?

Mr. CALVERT. They would have to change the current interpretation of the Antiquities Act, but yes, I mean, they could certainly argue that.

Mr. REHBERG. And one of the arguments is this is precedent-setting, that it somehow affects another State or another district or another park. Do you see anything in this bill that, in fact, affects any other State, any other Monument, any other park?

Mr. CALVERT. Not in this bill, no.

Mr. REHBERG. I think my time is about up. I will save it, if we get a chance for—

Mr. RADANOVICH. Thank you.

Mr. REHBERG. Thank you.

Mr. RADANOVICH. Ms. Bordallo?

Ms. BORDALLO. Thank you very much, Mr. Chairman. Land issues always catch my eye. I come from a very small territory named Guam and land is very precious to all of us.

I have a question on H.R. 1629 to you, Mr. Calvert. I want to understand this. So in what specific ways does inclusion of private property inside the exterior boundary of the National Monument affect their property? Does it impinge upon their access to the property or impact their use of their property, either positively or negatively? And if so, in what ways?

And then my second part of this question is, some examples that you could share would be most helpful for me to understand, and that is the implications of including or excluding these properties inside the exterior boundary. And maybe you could also enlighten us on the implications either way for the BLM's management of the Monument. In other words, what are the advantages or



disadvantages of including these private properties and do these people have any rights?

Mr. CALVERT. Well, they certainly have all of their valid existing rights. The proclamation makes that clear. The Antiquities Act also applies only to Federal lands, so arguably, there is no—in fact, the Department and the BLM have stated as such, that there is no Federal jurisdiction over the private and State lands by virtue of this Monument proclamation.

Ms. BORDALLO. So they can use their properties in any way they wish?

Mr. CALVERT. Well, consistent with nuisance laws and things like that, yes. They can use them for any use they could have used before the Monument. And I guess that answers your first question. I am not sure.

On the second question, you asked for examples of implications, and I am not sure exactly how to respond to that. The most notable implications for private landowners, or the questions that are raised are in places where the boundary crosses their property and doesn't simply include Federal land. It is common that you have in-holdings that are surrounded by Federal land inside of a specific management unit. That occurs all the time in parks and even within BLM conservation areas, et cetera.

But it is uncommon to have boundaries of something like a Monument, which is supposed to be drawn as narrowly as possible, to go across or even around private land and simply not—not just by the fact that it is surrounded by Federal land, but to actually include it inside of a boundary for no other purpose than drawing the boundary around it.

And that is what—given that the BLM asserts no jurisdiction over this land, the instant question that comes to mind is what effect does the boundary have? You are inside the boundary, but are you a part of the Monument? I think the answer to that is clearly no. But you are inside of the boundary. And so the question that naturally arises in landowners' minds is, why am I inside the boundary and what implication does this have for me?

I can't with a fortune ball be able to identify all of the potential implications that could occur in the future. There will be a management plan that manages the use of the Federal lands inside of the Monument. That management plan is ongoing. The scope and process is being completed. They are working—the BLM in Montana is working to put together a draft management plan that should be completed by next summer and we will go out for extensive public comment at that time.

Issues that could affect people's use of their land will be things that have to do with the rights-of-way, that have to do with any number of issues that relate to Federal and private management anywhere. This is—if you have to have a right-of-way where it crosses Federal land where it is not in a Monument, you have to go through the Title V process to get that right-of-way. That is not supposed to change. This Monument shouldn't change the Title V right-of-way permitting process. That is not to say that 10 years from now, it won't. I can't answer that.

Ms. BORDALLO. One other question, if I could, Mr. Chairman, and I don't know, maybe the author could answer this better than Mr.

Calvert, but has the Federal Government ever made any move to compensate property owners if they are interested, or has there been any request on the part of the private owners to compensate them for their property? I don't know, is this a good question or not?

Mr. REHBERG. It is a good question. Mr. Chairman, if the gentlelady yields, no, there has been no offer of compensation. See, therein lies the issue. When you asked the question, does it affect the private property, no. So why have it in the boundary? Well, there must be a direct effect, then, or an indirect effect or people wouldn't be working so hard not to change—

Ms. BORDALLO. To get it included.

Mr. REHBERG [continuing]. The way it was included. So yes, there is an indirect effect, and what the indirect effect is, the Federal Government wants to be the purchasers of that land in the future, and that puts a cloud on either the title or the land itself, because if the Federal Government has its fingers on or designs on that property, indirectly they are saying, we want to be the purchaser. Now, if the Federal Government really wanted that land, would they poke the landowners in the eye as they are doing? So when the argument is made, it doesn't affect the private property that is inside that boundary, well, obviously, it does, because people are working pretty hard to keep it in there.

Ms. BORDALLO. Thank you. Thank you, Mr. Chairman.

Mr. RADANOVICH. Thank you, Ms. Bordallo.

The Chair recognizes Mr. Bishop for any questions.

Mr. BISHOP. Thank you. Mr. Calvert, in the Antiquities Act that was used for this particular Monument, historically, that Act was used to designate a Monument where some kind of Federal resource, either historical or archaeological, was under an immediate threat. In the case of this particular Monument, could you tell me what created the urgency to create the boundaries as they are right now? What was the immediate threat to a resource within this particular area?

Mr. CALVERT. I can't answer what created the immediate and urgent need to establish it because I was not there when it was established. The BLM has put out in its management analysis the purposes of the Monument, which probably give us the best guide for why the Monument is there. There are certain geological natural features there that are arguably worth protecting, or from certain uses. But I can't tell you what the imminent or urgent need was to do the Monument the way it was done.

Mr. BISHOP. OK. That is sometimes helpful. I appreciate that.

Since I was a little bit late coming in here, let me get a couple of things that I think have been heard and I want to make sure that they are there. If you do have private lands and State lands and public lands within this particular designation, that will always present the potential for some kind of conflict. Am I correct in making the assumption that there will always be a potential legal cloud over this particular Monument that could frustrate both the private citizens as well as the Federal Government's design unless you do something to try and rectify the problem of having private lands within this Monument?

Mr. CALVERT. I don't want to say that there is a permanent legal cloud on their title because that would be incorrect from my understanding, for me to verify that, so to speak. But there is an ongoing conflict surrounding the development of the management plan for the Monument that directly relates to the 3,300-plus landowners who have communicated with Congressman Rehberg. They support this bill because they do not believe that their private lands should have been included in the Monument and the Department doesn't feel that there is any compelling reason to keep them inside of the boundary.

Mr. BISHOP. So that would simply solve that problem?

Mr. CALVERT. That is my understanding.

Mr. BISHOP. And the Department does support this bill?

Mr. CALVERT. Yes, sir.

Mr. BISHOP. Thank you.

Mr. RADANOVICH. Thank you. Mr. Udall?

Mr. TOM UDALL. Thank you, Mr. Calvert, for being with us today. Do the interim management guidelines for the National Monument threaten private property rights?

Mr. CALVERT. I don't believe they do, no, sir.

Mr. TOM UDALL. Will the final management plan for the National Monument threaten private property rights?

Mr. CALVERT. Well, I can't speak to what will be in the final management plan until it is issued, but I don't anticipate that it will, no, sir.

Mr. TOM UDALL. And are the historic and scientific resources of the Upper Missouri Breaks area confined solely to Federal lands?

Mr. CALVERT. I am sorry. Could you repeat the question?

Mr. TOM UDALL. Are the historic and scientific resources of the Upper Missouri Breaks area confined solely to Federal lands?

Mr. CALVERT. I can't answer that. I am not familiar with all of the scientific or historical resources that might be there.

Mr. TOM UDALL. Isn't it true that the Antiquities Act allows the Secretary of Interior to acquire property from willing sellers when historic and scientific resources of a National Monument are also located on private lands?

Mr. CALVERT. Yes, sir.

Mr. TOM UDALL. I don't have any further questions, Mr. Chairman.

Mr. RADANOVICH. Thank you, Mr. Udall.

Any other questions? Denny?

Mr. REHBERG. Yes, Mr. Chairman. Thank you. I just want to make a couple of points but ask you the question.

By including private land on the periphery within the boundary, do you believe the intended—the stated intent is to eventually have the Federal Government purchase that property?

Mr. CALVERT. I can't say what the intent was, but what the proclamation says is that, if private land inside the boundary is acquired at any time in the future, it will become a part of the Monument.

Mr. REHBERG. All right. We have already established the fact that the Federal Government did not follow normal procedures by having hearings, talking to the landowners, asking their opinion, so we have already circumvented one public process. If that land

inside those boundaries comes up for sale, if the boundaries were not on the outside of the private property, legislation would have to be crafted by the Bureau of Land Management asking permission of the Congress to purchase the land and an appropriation made.

Mr. CALVERT. Yes, sir.

Mr. REHBERG. But not under the designation of the Monument, because now the line is on the outside and once again it will circumvent the public process because the Bureau of Land Management will be able to buy the land directly without Congressional approval, is that correct?

Mr. CALVERT. Well, if money is made available by the appropriators, yes, the land could be acquired and it would become a part of the Monument without further action by Congress or the President as the proclamation—

Mr. REHBERG. So not only did we not have public input on the creation of the Monument in the first place and the addition of the public lands, the boundary, but if the land is purchased, we also won't have public input. So we are compounding a problem, I would suggest.

Mr. CALVERT. There would not be additional public input. There would be Congressional activity because it would require approval of the appropriations, but that is it.

Mr. REHBERG. If I might make a point to Mr. Udall, perhaps you weren't here when I was asking questions before, but I just would like to say that you used the word "final" guidelines. There is no such thing as final, and nobody can assure that what this administration establishes becomes the management of that National Monument for all eternity because that Monument is going to be around forever, but the next administration, whoever that might be, whether it is the Bush administration or someone else, can change those guidelines and the promise cannot be made, and that is what these landowners fear, because they never had an opportunity to suggest whether they wanted their land included or not. There is no such thing as finality in this form of government.

Mr. TOM UDALL. Will the gentleman yield?

Mr. REHBERG. I yield.

Mr. TOM UDALL. I think I was using those terms in terms of the legal term of art, that that is what they are titled in order to ask him.

Mr. REHBERG. Yes.

Mr. TOM UDALL. Isn't it true that, if I can go further, I would just like to clarify one of the questions you were asking, Mr. Rehberg. Your administration, if you had the intent to go out and purchase these lands through the appropriations process as has been outlined, you, of course, would involve the public and do whatever you could to make sure that the public was notified, the landowners were notified, and all of that, wouldn't you?

Mr. CALVERT. The Department abides by the four "C"s wherever it can and consults with the local population before making significant decisions, yes, sir.

Mr. REHBERG. Reclaiming my time, that makes my point of the difference between the last administration and this administration. The last administration did not fulfill its requirements of public

notification and actually involve the landowners. This administration is, but can you look me in the eye and say the next administration, if it is not yours, is going to do the same, and you just stated——

Mr. CALVERT. Of course not.

Mr. REHBERG. Therein lies the point. Thank you, Mr. Chairman.

Mr. RADANOVICH. Thank you, Mr. Rehberg.

Two questions for Mr. Calvert regarding the Missouri Breaks. Under the Monument designation for private property, if they are in-holders, are rights-of-way affected to the private property owner under that Monument designation?

Mr. CALVERT. To the extent that there are existing rights-of-way permits, there is no effect. And, in fact, although there isn't specific guidance on it in the management plan because it isn't completed yet, in the interim guidelines that Congressman Udall referenced, there is a specific mention of Title V permitting, which is how the BLM typically processes right-of-way applications and says that those decisions are not a part of the management of the Monument itself, that those decisions occur outside of that. And so processing, in theory, processing of rights-of-way permits should not be affected.

The actual access won't be affected. The location of it might. In order to protect certain geological features, the BLM might require that an access road go around or go this way or connect up to a different road somewhere else. The access itself shouldn't be affected, but the location of the road might be.

Mr. RADANOVICH. OK. Thank you very much.

Any other questions from members?

[No response.]

Mr. RADANOVICH. If not, Mr. Calvert, thank you for being here and speaking on these three bills.

Mr. CALVERT. Thank you, sir.

Mr. RADANOVICH. Next, I will call up our third panel, which includes Ms. Jennifer Roeser, who is the owner of McGee Creek Pack Station from Mammoth Lakes, California; Joanne Martin, Ph.D., President and CEO of The Great Blacks in Wax Museum in Baltimore, Maryland; Mr. Matt Knox, Chairman of the Missouri River Stewards from Winifred, Montana; and Mr. Hugo Tureck, who is the Vice Chairman of the Friends of the Missouri Breaks Monument, Coffee Creek, Montana.

Ladies and gentlemen, welcome to the Subcommittee. We will hear testimony from each of you. You have got five minutes. You can sum up your written statements, because as you know, written statements are included in the record anyway. Each will be speaking for five minutes. If you will mind the clock, that would be very helpful, and then we will go for questions from the panel afterwards.

Ms. Roeser, we will start with you, if you will begin your testimony, and welcome to the Subcommittee.

**STATEMENT OF JENNIFER ROESER, OWNER, MCGEE CREEK  
PACK STATION, MAMMOTH LAKES, CALIFORNIA**

Ms. ROESER. Thank you, Chairman Radanovich and members of the Subcommittee. I want to thank you for the opportunity to talk

with you today about the critical need and the importance of preserving the historic use and access of pack and saddle stock animals—horses and mules is what we are talking about—on our Federal lands. I am pleased to be with you and provide this testimony and to answer any questions you have.

As a member and a director of the High Sierra Packers Association, a second-generation owner of McGee Creek Pack Station on the Inyo National Forest in California, a member of the Back Country Horsemen of California, a nationally ranked endurance trail rider, the wife of a Forest Service packer who is also a second-generation pack station operator, and a lifelong stock user of the mountains in California, I come before you with testimony from my personal experience, my professional background and business experience, and more than anything, a heartfelt belief in the value and contribution that maintaining this historic use can have for this society and for future generations to come.

I hope to convey to you the long and frustrating struggle that the stock use community has been going through for over 20 years to hold on to the trails and areas that have been historically used by stock. This is a very important turning point with the proposed Right to Ride Livestock Act, to protect this legacy for the future. I hope to offer a brief history and perspective of why the use of pack and saddle stock on Federal lands is important to the public, to identify problems that stock users encounter as they use Federal lands, and to identify our perception as to the cause of the problem, and to emphasize the need for urgency in passing this legislation.

For those who use pack and saddle stock, leading the pack train is a way of reliving the pioneer era. It provides a link with the past and is something that cannot be done without a trail system, trail head access, and undeveloped areas for camping. Having a sense of discovery and exploration is what many users are seeking. They want and need to have a sense of getting away from it all.

We are seeing an increasing loss of access through trail restrictions, trail closures, and use restrictions. Stock users are being prohibited from using areas they have historically traveled through and they are being concentrated into ever-smaller areas. In our business, the cumulative impact of the restrictions placed on where we can travel and the trails we can use has resulted in significant loss of opportunities for families, persons with disabilities, school groups, church groups, and others who use stock. In designated wilderness areas, there is a management environment less tolerant of these traditional forms of use. Restrictions are being advocated by a minority group of users and agency personnel who personally do not want to see stock use in the mountains.

Time is of the essence in passing this legislation. Currently, there are numerous closures taking place that are affecting stock users' access to trails right now. Historic pack stations are being closed without any public notice. Agency plans have increasingly more stock use restrictions without any science or valid rationale to support the actions, and with the number of National Forests, National Park, and area management plan revisions due in the near future, time is critical to prevent the loss of trails and access for stock.

I just want to give you a quick, very quick history. Some of the conservation and preservation leaders of the past—it is sort of relevant, because this is the bicentennial of the Lewis and Clark expedition and that was sort of the beginning of where this came from. But Teddy Roosevelt, Gifford Pinchot, Aldo Leopold, Steven Mather, and Horace Albright were great leaders and had a vision for what was needed to protect America's lands.

Pack and saddle stock provided the principal means of transportation in the exploration and development of the mountainous regions of the United States. Explorers, such as Lewis and Clark, Jedediah Smith, John Fremont, Joseph Walker, dependent on horses and mules to take them over the rough terrain encountered on their travels. The U.S. Cavalry relied on horses and mules for transportation on their patrols of public lands prior to the formation of National Park and Forest Systems.

The richness of our Federal land system is due in part to our explorers' and conservation leaders' ability to conduct their duties using horses and mules. The extensive trail system that exists today in the Sierra Nevada Mountain range of California was built to facilitate the movement of pack animals through the high country.

Recreational use of the back country by horsemen began in the early 1800s as local residents traveled to the high country to escape the heat of California valleys. As road systems developed on each side of the Sierra in the early 1920s, the commercial packing business began in earnest, and by the mid-1930s, the packing business was in full swing, with many outfits providing services to those anxious to visit the High Sierra. Commercial packers played an important role in the emergencies and for suppression of wildfires in back country and wilderness areas.

Our link to the past is important as it provides us with an understanding of the processes that shaped our American history and culture. Many users of pack and saddle stock seek to find and experience the historic activities of an earlier time. To be able to view and live as early explorers did provides many users the opportunity to connect with history outside of a museum setting. Our link to the past is our ability to carry out this tradition and culture of the early day pioneer and to work to ensure that these traditional skills are not lost to future generations.

As we begin our journey into the 21st century, free and unrestricted wilderness travel is fast becoming an anachronism. Incremental restrictions and regulations threaten the very essence of the wilderness experience and the ability to continue historic patterns and types of travel in remote, unroaded back country is eroding year by year.

Some of the problems that I just want to quickly outline are loss of access, first of all. One of the most important issues facing those who use pack and saddle stock on public lands is the loss of access. This issue is identified by a report to this Committee by Dr. John Hughes, Chairman of the University of California at Davis. He mentioned closures and exclusions at the time, alarming condition of back country and wilderness trails, overregulation, and the need for legislative relief.

Loss of services to the public are being experienced. The general public who do not have their own stock still want to have the experience of exploration, discovery, and enjoyment, and getting away from it all. We sense an antagonism from agency personnel merely because we are commercial businesses and being in business means we need to make a profit.

The end result is the public who wishes to use our services is denied even further because of the additional constraints that are placed on commercial providers. We provide America's last chance for families to vacation together without the gadgets that are so much a part of our daily lives. No video games, no phones, no TVs means most families can interact with each other on a one-to-one basis. That is pretty important.

One of our perceived causes of the problem is that our history of pack and saddle stock is being eroded by the personal agendas of extreme environmental groups and aligned agency personnel. Additionally, we are losing the infrastructure of our trail system due to lack of annual maintenance and a downgrading of the trail system, which is due in part to lack of maintenance.

It appears the agencies are interpreting the Wilderness Act with a conspicuous bias toward extreme preservationism at the expense of the equally important responsibility of providing for the use and enjoyment of the American people. It is our belief that this is not what Congress intended when they passed the Wilderness Act of 1964.

The efforts of land managers to place higher emphasis on restoring pristine conditions are the result of misguided preservation and purity biases. In fact, the House report on the Endangered American Wilderness bill specifically directed the Forest Service to abandon its purity approach. Congress clearly expected that wilderness would accommodate a wide spectrum of Americans who desired a wilderness-type recreation.

Mr. RADANOVICH. Ms. Roeser?

Ms. ROESER. Yes?

Mr. RADANOVICH. If I can, I forgot to mention the five-minute clock. Would you like to sum up now?

Ms. ROESER. I will do that, yes. I am sorry. I saw three minutes over there.

I will just sum up by saying that the timing for this legislation is appropriate and that we have tried, not only as private stock users, but as commercial entities, every possible means to resolve a number of the issues prior to coming to Congress to ask for legislation. We pride ourselves on our stewardship of Federal lands that we have operated on collectively in my family for 80 years. We participated fully in planning processes. We provided input, attended literally hundreds of meetings, engaged in legal options, and we now seek a solution that will provide stability and assurance for the traditional and historic use of pack and saddle stock on our Federal lands.

I thank you for this opportunity.

[The prepared statement of Ms. Roeser follows:]



**Statement of Jennifer A. Roeser, Director, High Sierra Packers' Association, Eastern Sierra Unit, on H.R. 2966**

*INTRODUCTION*

Chairman Radanovich and members of the Subcommittee, I want to thank you for the opportunity to talk with you today about the critical need and the importance of preserving the historic use and access of pack and saddle stock animals on our federal lands. I am pleased to be with you to provide this testimony and to answer any questions you may have.

As a member and Director of the High Sierra Packers Association, a second generation owner of McGee Creek Pack Station (Inyo National Forest), a member of the Backcountry Horsemen of California, a nationally ranked endurance trail rider, the wife of a Forest Service packer (also a second generation pack station operator), and a lifelong stock user of the mountains in California—I come before you with my testimony from my personal experience, my professional and business experience, and more than anything—a heart felt belief in the value and contribution that maintaining this historic use can have for today's society and for generations to come.

I hope to convey to you the long and frustrating struggle that the stock use community has been going through for over 20 years to hold on to the trails and areas that have historically been used by stock. This is a very important turning point, with the proposed "Right-to-Ride Livestock on Federal Lands Act of 2003" to protect this legacy for the future.

I hope to offer a brief history and perspective of why the use of pack and saddle stock on federal lands is important to the public; to identify problems that stock users encounter as they use federal lands; to identify our perception as to the cause of the problem; and to emphasize the need for urgency in passing this legislation.

1. For those who use pack and saddle stock, leading the pack train is a way of reliving the pioneer era. It provides a link with the past, and is something that cannot be done without a trail system, trailhead access, and undeveloped areas for camping. Having a sense of discovery and exploration is what many users are seeking. They want—and need—to have a sense of getting away from it all.
2. We are seeing an increasing loss of access through trail restrictions, trail closures, and use restrictions. Stock users are being prohibited from using areas they have historically traveled through and they are being concentrated into smaller areas.  
In our business, the cumulative impact of the restrictions placed on where we can travel and the trails we can use have resulted in a significant loss of opportunities for families, persons with disabilities, school groups, church groups and others who use stock.
3. In designated wilderness areas, there is a management environment less tolerant of the traditional forms of use. Restrictions are being advocated by a minority group of users—and agency personnel—who personally do not want to see any stock use in the mountains.
4. Time is of the essence in passing this legislation. Currently there are numerous closures taking place that are affecting stock users' access to trails. Historic pack stations are being closed without any public notice. Agency plans have increasingly more stock use restrictions without any science or valid rationale to support the actions. And with the number of National Forest, National Park and area management plan revisions due in the near future, time is critical to prevent the loss of trails and access for pack and saddle stock use.

*1. HISTORY*

Let us reflect on some of our country's conservation and preservation leaders whose wisdom and foresight helped to provide us with an incredible network of public lands.

- Chief Joseph of the Nez Perce
- Teddy Roosevelt
- Gifford Pinchot
- Aldo Leopold
- Stephen T. Mather
- Horace M. Albright

These great leaders had a vision for what was needed to protect America's lands. Pack and saddle stock provided the principle means of transportation in the exploration and development of the mountainous regions of the United States. Early explorers such as Lewis and Clark, Jedediah Smith, John C. Fremont and Joseph Redeford Walker depended on horses and mules to take them over the rough terrain

encountered on their travels. The U.S. Army Cavalry relied on horses and mules for transportation on their patrols of public lands prior to the formation of the National Park and Forest systems. The richness of our federal land system is due in part to our explorers' and conservation leaders' ability to conduct their duties using horses and mules.

The extensive trail system that exists today in the Sierra Nevada mountain range in California was built to facilitate the movement of pack animals through the high country. Among the first trails built across the Sierra were the Hockett and Jordan Trails which were completed in 1864. The first Mt. Whitney Trail was completed in 1881. The famous John Muir Trail traversing over two hundred miles along the backbone of the Sierra was started in 1908.

Recreational use of the backcountry by horsemen began in the early 1800's as local residents traveled to the high country to escape the heat of the California valleys. Historically, the Sierra Club sponsored trips to Yosemite as early as 1902, with trips the following year to Sequoia Park and Mt. Whitney. These outings and subsequent trips relied heavily on pack stock to transport their extensive baggage and camp equipment.

As the road systems developed on each side of the Sierra in the early 1920's, the commercial packing business began in earnest, and by the mid-thirties the packing business was in full swing with many outfits providing services to those anxious to visit the High Sierra. Commercial packers also played an important role in emergencies and in the suppression of wildfires in backcountry and wilderness areas. Please see the attached "Previous and Present Day Packing Services in the Sierra Nevada" for a brief history of packing in the central Sierra region. The decline in the number of commercial operators is due in part to the excessive regulations, and agency decisions to close facilities.

Our link to the past is important as it provides us with an understanding of the processes that shaped our American history and culture. Many users of pack and saddle stock seek to find and experience the historic activities of an earlier time. To be able to view and live as our early explorers did provides many users the opportunity to connect with history outside of a museum setting. Our link to the past is our ability to carry out this tradition and culture of the early day pioneer and to work to insure that these traditional skills are not lost to future generations. As we begin our journey into the twenty first century, free and unrestricted wilderness travel is fast becoming an anachronism. Incremental restrictions and regulations threaten the very essence of a wilderness experience, and the ability to continue historic patterns and types of travel in remote, unroaded backcountry is eroding year by year.

Perhaps Aldo Leopold, a wilderness advocate and U.S. Forest Service Ranger in New Mexico in the early 1900's best expressed the concept of packing history as being an important value of wilderness when he wrote,

"The time is almost upon us when a pack train must wind its way up a graveled highway and turn its bell mare into the pasture of a summer hotel. When that day comes, the diamond hitch will be merely a rope; Kit Carson and Jim Bridger will be only names in a history lesson...If, once in a while man has a chance to throw the diamond hitch and travel back in time, he is just that much more civilized than he would have been without that opportunity."

## 2. PROBLEMS

Loss of Access. One of the most important issues facing those who use pack and saddle stock on public lands is the loss of access. This issue has been identified as one of the most critical aspects for nearly 20 years. Dr. John Hughes, Chairman at the University of California at Davis School of Veterinary Medicine, provided a report to the Presidential Commission on Americans Outdoors in 1986 and reported the following:

"Closures and Exclusions. Many areas where stock use occurred historically have been closed to overnight use by pack and saddle stock, and some have been placed 'off limits' to entry to horsemen. Often these closures were made on the basis of local bias without the benefit of public input or studies by qualified specialists. Excessive use by other use groups has led to the closing of trails that were built by and for the use of pack and saddle animals. The Mt. Whitney trail was closed to stock use to mitigate the possible conflict between pack stock and hikers.

Alarming Condition of Backcountry and Wilderness Trails. Trail maintenance has declined to the point that many of the trails, especially on the high mountain passes, may be lost completely for the use by pack and saddle stock. It has been many years since an adequate trail maintenance

program has been in place anywhere in the Sierra Nevada. A trail that becomes too dangerous for saddle and pack animals closes the areas served by the route to stock use as effectively as if each area were closed on an individual basis.

Over Regulation. Most of the national public lands administrators manage their forest and parks with an over abundance of rules and regulations. Thirty years ago stock use on public lands was near an all-time high. Now stock use is down by as much as 85% and the rules and regulations continue to increase with each summer season. Horsemen visiting those areas still open to their use are often faced with complex and confusing rules that are often inconsistent with those found in other regions. It is easy to demonstrate that many of the regulations imposed upon stock users were made due to personal bias of administrators rather than any proven need to protect the resources of a National Park or Forest.

Legislative Relief. Legislation should be enacted mandating the administrators of national public lands to recognize the significance of historic stock use and the rights of horsemen to use pack and saddle animals where such use has been historic and significant. Such a mandate would guide all future managers of the national public lands as they formulate future management plans, and would in effect create a consistent administrative policy in regards to pack and saddle stock use from one National Forest or Park to another. Such a guide would negate any personal bias on the part of administrators and would serve to help make necessary regulations more uniform and less confusing.”

It is disturbing that the very same issues that Dr. Hughes reported on in 1986 are still very much the same issues we are facing today. His call for legislative relief showed the foresight that is now so imperative to act upon.

Later, in 1999, Horse and Rider Magazine polled its readers regarding their “top problem or concern” and loss of riding trails was the number one concern, ranked first by 42% of the respondents.

On May 23, 2001, Alan T. Hill testified on behalf of the American Horse Council to the House Resources Committee regarding several key issues related to the loss of access. Alan’s testimony stated:

“We have become alarmed as we have witnessed during the last decade the continued decline in the condition and extent of our trail systems and a pervasive trend throughout the country of increasing restrictions directed specifically at pack and saddle stock use on our federal lands including wilderness areas, National Forests, National Parks, National Monuments, backcountry and front country”

National policy needs to reaffirm that recreational and historical uses—such as equestrian uses—be recognized as an appropriate and acceptable use on federal lands such as wilderness areas, National Forests, Parks and Monuments, and that management of our public lands is for the use and enjoyment of the American people. It has been our experience that special designations, i.e., Monuments, wilderness, road-less areas, seldom if ever expands recreational opportunities for horsemen. In practice these designations often result in a loss of access and recreational opportunities.

Restrictions and prohibitions imposed on recreational equine use and incidental grazing should be the exception rather than the rule and be determined by site-specific analysis based on use, land characteristics and science. It should not be subjective or based on the social preferences of other users.

The ability of the Forest Service or any other Federal land agency to unilaterally close a trail or trail head with no notice or public process must be stopped. De facto restrictions on access or the limitation through onerous regulations must be eliminated.”

Loss of Services to the Public. The general public who do not have their own stock still want to have the experience of the exploration, discovery and enjoyment of “getting away from it all.” Yet, as providers of service to the public, commercial pack stock operators are restricted beyond belief! We sense an antagonism from agency personnel merely because we are commercial businesses. And being in business means we need to make a profit. The end result is the public who wishes to use our services is denied even further because of the additional constraints that are placed on commercial providers. We provide America’s last chance for families to vacation together without the gadgets that are so much a part of our daily lives. No video games, no phones, and no television means families and groups interact with each other on a one-to-one basis. Spending quality time together is a very important

aspect of the backcountry experience our clients seek. We hope to continue to provide these opportunities for future generations.

The issues of access, restrictions and closures drive home the compelling need for protection of the historic uses of pack and saddle stock on our federal lands.

### 3. PERCEIVED CAUSE OF THE PROBLEM

Our history of using pack and saddle stock is being eroded away by the personal agendas of extreme environmental groups and aligned agency personnel. Additionally, we are losing the infrastructure of our trail system due to a lack of annual maintenance, and a downgrading of the trail system, which is also due in part to a lack of maintenance.

There has been a disturbing trend in agency management plans to reduce, restrict and eliminate stock use facilities and services. The list includes pack station closures, trail closures, camping restrictions, grazing restrictions and closures, cross-country travel restrictions and closures, group size restrictions, and higher fees to stock users for wilderness permits under the Recreation Fee Demonstration Program.

An overview of wilderness management plans shows a distinct and pervasive trend of restrictions aimed specifically at pack and saddle stock. These actions deprive stock users of the type and range of recreational opportunities intended in the Wilderness Act. For example:

- In the John Muir and Ansel Adams Wilderness Areas in California, encompassing more than 800,000 acres, we cannot take our guests more than 1/4 mile from a "system" trail. This has virtually eliminated approximately 70% of the area that our guests can no longer access by pack and saddle stock. Historically, visitors traveled to the famous lakes and streams throughout the wildernesses by way of game trails, fishermen trails, and routes marked only by way of rock markers. Now, that use is considered illegal. We now have to concentrate our guests into much smaller areas, and we have to continually re-use the same areas, thus increasing the chances for damage to the sites.
- In the Selway-Bitterroot Wilderness in Idaho, the trail system has decreased substantially over the last 50 years. Today, more than 98% of the Wilderness is unavailable to stock use because of an absence of trails. With the loss of trails, this results in use being confined to less than 1% of the wilderness.
- A recently approved plan for the Sawtooth Wilderness requires stock users to camp in the most heavily impacted 18% of the area and makes 82% or the wilderness unavailable to stock users, even if they use state of the art "leave no trace" methods. Managers acknowledged that stock use has not increased, and may have actually decreased since the area was designated as wilderness. Restrictions were imposed simply to "prevent" impact in the pristine portions and provide "stock free" opportunities for those who do not wish to encounter stock.

It appears the agencies are interpreting the Wilderness Act with a conspicuous bias toward extreme preservationism or wilderness purity at the expense of the equally important responsibility of providing for the use and enjoyment of the American people. It is our belief this is not what Congress intended when they passed the Wilderness Act of 1964. The Wilderness Act specifically states that wilderness will be "devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." (Sec. 4b, P.L. 88-577) This intent was affirmed in the 1998 court case of *Wilderness Watch v. Dale Robertson*, Civ. No. 92-740, August 31, 1998. In this decision the District Court for the District of Columbia concluded that the statute directs the Forest Service to administer the wilderness with an eye not only toward strict conservation, but also to "ensure the use and enjoyment of the American people."

The efforts of land managers to place a higher emphasis on restoring pristine conditions are the result of a misguided preservation/purity bias. In fact, the House Report on the Endangered American Wilderness Bill (Report 95-540, July 27, 1977) specifically directed the Forest Service to abandon its purity approach. Congress clearly expected that wilderness would accommodate a wide spectrum of Americans who desired wilderness-type recreation experiences of a nature that were established at the time the law was passed. The intent of Congress (emphasized throughout the Congressional Record) was to preserve existing conditions while providing for existing and future uses. However, at the field level—managers are still directing wilderness plans to the pristine end of the spectrum, and are instituting unrealistic and illogical constraints, particularly for commercial pack and saddle stock providers. It is our belief that our customers are being unjustly denied fair access to significant portions of the wilderness due to the personal biases of agency land managers. The agencies are also bowing to the pressure and threats of litigation from extreme anti-stock user groups.

Many of the commercial operators were in business well before the Wilderness Act became law. In fact my husband's family, and mine, worked diligently to lobby support for the creation of the original John Muir Wilderness. Our families have always had a strong conservation ethic, one which I am proud to also share today. It is in our best interest to care for the land as best we can to continue to provide the quality of experience our guests are seeking.

Other management plans that are affecting stock use include:

- The Southern Region Forest Plan Revisions for the National Forests in 11 southern states is proposing a standard that would block the use of many miles of historic foot travel trails that are currently open to riding and pack stock. Literally thousands of riders who access and enjoy Southern National Forest trails would find themselves trailering miles and miles just to reach approved trails and trailheads.
- One alternative in a Preliminary Draft Management Plan for Sequoia-Kings Canyon National Parks proposed "No Stock" in the Parks entirely. Even though pack and saddle stock have a well documented history in these Parks dating back more than 100 years, Park planners indicated they had to include this alternative because another user group had requested them to do so.

The planning documents do not contain substantive qualitative monitoring data, and the agencies have been unable to provide this when requested. These actions appear to be driven by the biases, preferences and values of the agency personnel.

The agencies are also using the trail system as a tool to achieve social and recreation objectives, rather than as a transportation system. Year after year, trails are disappearing from inventories, and are being taken off the main system. The maintenance backlog is not being eliminated, and it does not appear this loss of mileage is being reported to Congress. With a loss of system trails, pack and saddle stock use is curtailed even more. We are being confined into main travel corridors, which only increases the odds for user conflict, resource impact, and future restrictions.

We are seeing trails with a history of pack and saddle stock use dating back many years before wilderness designation, now being reserved for backpack use. This is being accomplished either through direct restrictions or by reducing the maintenance standards. Either way, it is an inappropriate means of eliminating stock use where it has historically existed. .

#### 4. URGENT NEED FOR LEGISLATION

Congressman Radanovich and Honored Members of this Subcommittee, we have tried every possible means to resolve every single one of these issues prior to coming to Congress to ask for legislation. My husband and I pride ourselves on our stewardship of the federal lands on which we have operated on for collectively more than 80 years. We have participated fully in planning processes; we have provided input; attended literally hundreds of meetings; engaged in legal options; and we now seek a solution that will provide stability and assurance for the traditional and historic use of pack and saddle stock on our federal lands. Every day that goes by without this legislation means these historic uses are endangered and vulnerable to changes. On behalf of the High Sierra Packers' Association, I thank you for this opportunity and look forward to providing any assistance or additional information you may need.

Thank you.

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Mr. RADANOVICH. Thank you very much for being here. I appreciate that.

Next is Dr. Joanne Martin, who is the President and CEO of The Great Blacks in Wax Museum in Baltimore, Maryland. Dr. Martin, welcome to the Subcommittee and you may begin your testimony. Again, the lights there, basically the rule is that you treat them just like a traffic light. Green is go, yellow means speed up, and red means stop.

[Laughter.]

Mr. RADANOVICH. Welcome, and please begin your testimony, Dr. Martin.

**STATEMENT OF JOANNE M. MARTIN, PRESIDENT AND CHIEF  
EXECUTIVE OFFICER, THE GREAT BLACKS IN WAX MUSEUM,  
BALTIMORE, MARYLAND**

Dr. MARTIN. Thank you. Mr. Chairman and members of the Subcommittee, I would like to thank you for the privilege of speaking before you on H.R. 2424, The Great Black Americans Commemoration Act, which passed the Senate as S. 1233. It was introduced by Congressman Elijah Cummings and Senator Barbara Mikulski.

I would like to spend the moments that I have remaining talking to you about the “why” of The Great Blacks in Wax Museum and the “why” of this legislation.

My late husband, Dr. Elmer Martin, and I founded The Great Blacks in Wax Museum in 1983, so July 9, 2003, represents or marks our 20th anniversary. We started as a traveling exhibit. We bought four wax figures with some money that we were saving to make a down payment on a house. We took these wax figures around to schools, churches, malls, libraries, and then at the end of the exhibit, we would throw them into the hatchback of my car and take them home to our two-bedroom apartment. And if you would come in at any given time, you would have found Mary McCloud Bethune’s head on the dresser and Frederick Douglass’ torso in a corner.

One of the most significant “why”s of The Great Blacks in Wax Museum had to do with my husband organizing a Little League baseball team. He had ID pictures taken of the kids, took them to a park to practice, and he saw a 6-year-old coming toward him distraught, crying, angry, demanding that my husband make the photographer take the picture over. My husband looked at the picture and declared, “Son, the picture looks just like you. Why should he take it over?” And the kid said, “Because it made it too dark. I don’t want to be this black.”

And he was talking to someone from a product of the 1960s, the black consciousness movement of the 1960s and 1970s, a generation that had declared that we were black and beautiful and black and proud, and we are going to be black and beautiful and black and proud forever. We already knew as college teachers, my husband and I, that we were dealing with a group of college students just moments away from that time who thought that career-wise, it was possible to be too black, that learning black history and culture would not get you a job or the American dream. And then to find that we were dealing with a 6-year-old, a generation from those college students, who thought that physically it was possible to be too black, that was very disconcerting for us.

So we started The Great Blacks in Wax Museum in a storefront in downtown Baltimore. We had the support of Senator Clarence Blount, who introduced a bill in the Maryland General Assembly. We went to the City of Baltimore for matching funds, and the only request that we made of the city was that they find the building for us in a low-income fragile community, because my husband and I were so convinced that we were going to create such a compelling museum that people would have to come, and in the process, we could help to bring a community back to life based on the philosophy that community development and cultural development go hand in hand.

A “why” for me of a wax museum is that when you are dealing with a history that is often denied and neglected, that it is often a history without faces. What the wax medium and what The Great Blacks in Wax has done is to put a face on that history. And so we have an ebony Marcus Garby and a caramel-colored Colin Powell and a sepia Bill Pickett, and hopefully a generation of black children who will never feel the need, because they see so much of themselves in all that those figures represent, to say, I don’t want to be that black.

And finally, the “why” for The Great Blacks in Wax Museum is around my husband’s belief that if we fail to make those important connections between the past and the present, none of what we do makes any difference.

A case in point, a group of young African American males came into the Museum one day. They were there under duress. They were told by their counselor that they had to come in order to get to ESPN Zone, which is where they wanted to go. They had to come to The Great Blacks in Wax Museum. I resisted the temptation to just let them through and get out of there, which is what they wanted, and I knew that if I hung in there long enough, I would be able to chip through that resistance.

And when I finally saw that I was, then I took the opportunity to make those connections that my husband talked about and I said to them, you are in the world today with the blood of an ancestor flowing through your body right now who was put on a slave ship but who did something unbelievable. They lived through that experience. And, therefore, flowing through your body right now is the blood of an ancestor who gave you God’s most precious gift, and that is life.

And all they might ever ask of you if they could is that you live that life as if you appreciated how precious life can be. To understand that your ancestors died by the millions, they would probably find it crazy the way we kill one another today. But your ancestors found education worth dying for. They want you to be able to live for it.

But your ancestors would know a slave ship if they saw one, but might be confused today by what we call the prison, the jail, the penitentiary because the similarities are frightening. In both cases, we are talking about people being taken away in chains. In both cases, we are talking about people being given a number and having their identity taken away. In both cases, we are talking about people being branded, physically branded with a hot branding iron as a slave, legally branded a criminal. In both cases, we are talking about people being made property, of the slave master, of the State. And in both cases, we are talking about people being confined.

Your ancestors would know a slave trader if they saw one, so they would know the one who sold them into an evil called slavery, but they might warn you to be on guard for the ones who through drugs sell us into a slavery just as evil. They might want you to know that there is still some work for you to do because the shark of hatred and bigotry and racism still lurks in the waters, and they might need you to know that even something that seems so minor as being able to go into a Burger King to have it your own way

did not come without sacrifice. Some of your ancestors had to die for that right.

And in the final analysis, they might ask only of you that you try to understand what your African ancestors meant when they said, "I am because we are, and because we are, I am." That is the "why" of The Great Blacks in Wax Museum. That is the "why" of this legislation. We ask you to give us the opportunity to continue to work for community and show that community development and cultural development can go hand in hand, and should, and to continue to tell our stories and tell them well. Thank you.

Mr. RADANOVICH. Thank you, Dr. Martin, for your testimony. I notice we have a couple of inconspicuous or very quiet guests in the room today. Mrs. Christianson's guest was maybe Harriet Tubman. Can you identify them for us?

Dr. MARTIN. We have Dr. Benjamin Hooks, who, of course, was in the Nixon Administration, a member of the FCC, and Mary Eliza Mahoney. She was the first professional black nurse in America.

Mr. RADANOVICH. Very good. Thank you for your testimony, Dr. Martin.

Dr. MARTIN. Thank you.

[The prepared statement of Dr. Martin follows:]

**Statement of Joanne M. Martin, Ph.D., Co-Founder, President and Chief Executive Officer, The Great Blacks in Wax Museum, Baltimore, Maryland, on H.R. 2424/S. 1233**

Chairman Radanovich, Ranking Member Christensen, and Members of the Subcommittee, I am Dr. Joanne Martin, co-founder with my late husband, Dr. Elmer Martin, of The Great Blacks in Wax Museum in Baltimore, Maryland. It is my honor and privilege to address you today regarding the proposed National Great Black Americans Commemoration Act of 2003, H.R. 2424/S. 1233.

As you know, this legislation proposed by Congressman Elijah Cummings and Senator Barbara Mikulski of Maryland, with broad bipartisan support, authorizes federal assistance in the expansion of our museum facility to establish the National Great Blacks in Wax Museum. This national museum initiative to help tell the story of great Black Americans began more than 20 years ago. Let me give you some background on the Museum's origins.

*Brief History of The Great Blacks in Wax Museum*

The Great Blacks In Wax Museum, America's first wax museum of African American history, was founded in 1983 by my late husband, Dr. Elmer Martin, and myself. However, our story really began in 1980 when, with money we were saving for a down payment on a house, we purchased four wax figures. We carried these to schools, churches, shopping malls, and festivals throughout the region, with the goal of testing public reaction to the idea of a black history wax museum. So positive was the public's response that in 1983, with personal loans, we opened the Museum in a small storefront in downtown Baltimore. The success of the Museum, especially among students on field trips, made it imperative that my husband and I find larger space. In 1985, we closed the Museum and organized an aggressive fundraising effort to secure new and expanded space and to purchase more wax figures. These efforts allowed us to purchase an abandoned fire station on East North Avenue. After extensive renovations, we re-opened the Museum in October 1988.

When the Museum moved to its East Baltimore location, away from the lucrative Inner Harbor tourist market and very much off the beaten track, many told us that few people would venture into a deteriorating community to see a wax museum. Yet, in 1989, the first full year of operation in its new location, 44,000 visitors ventured into the neighborhood to see the Museum. The museum's visitorship increased steadily in subsequent years. In 2002, more than 300,000 people from across the country and from other nations visited the unique cultural institution.



*Why a Wax Museum?*

Some of you may question why a wax museum would be appropriate to help teach the public about the history of great Black Americans. My husband and I felt strongly about the significance of the wax medium in bringing public attention to the faces of people who are deserving of recognition. We believed that of all artistic mediums, wax creates the closest likeness of the human face. Moreover, we felt that bringing the faces of great Black Americans into relief was one of the most important objectives of this museum, since historically great Black Americans' likenesses, as well as their stories, have not been well-known to the public.

Additionally, it is important to recognize that wax has historically been used in art and cultural institutions to depict significant people. The wax medium has long been recognized as a unique and artistic means to record human history through preservation of the faces and personages of people of prominence. Wax exhibits were used to commemorate noted figures in ancient Egypt, Babylon, Greece, and Rome, in medieval Europe, in the art of the Italian renaissance.

Approximately 200 wax figures and scenes, a 19th century slave ship re-creation, a special permanent exhibition on the role of Youth in the making and shaping of history, a Maryland room highlighting the contributions of outstanding Marylanders to African-American history, a gift shop, a mini auditorium for lectures and films are some of the major cultural features currently on display at The Great Blacks in Wax Museum. The public's reaction to this wax museum speaks for itself. The Afro American newspaper has declared The Great Blacks In Wax Museum a "National Treasure." In fact, The Museum does serve the entire nation. International visitors have come from France, Africa, Israel, Japan, and many other continents and nations. The Great Blacks In Wax Museum story has been heralded by news media around the world, including CNN, The Wall Street Journal, The Washington Post, The New York Times, The Chicago Sun Times, The Dallas Morning News, Kulturwelt, USA/Africa, The Los Angeles Times, USA Today, Crisis, Essence Magazine, Ebony Magazine, Good Morning America, ABC World News Tonight, BET, CBS Sunday Morning, National Public Radio, Maryland Public Television, To Tell the Truth, the CBS News Early Show, and The Amanda Lewis Show.

*Future Exhibits of the National Great Blacks in Wax Museum*

As is stated in the Findings section of the proposed legislation, our museum proposes to tell the story in wax exhibits and other appropriate media of the remarkable achievements made by Black Americans in the national service over the years. Under this legislation, Great Black Americans will be memorialized by wax figures and other exhibits at the National Great Blacks in Wax Museum. The Museum will showcase the 22 Black Americans who served in the U.S. House and Senate in the 1800s, and those from the 1900s such as Sen. Edward Brooke (R-MA), and Reps. Julian Dixon (D-CA), Louis Stokes (D-OH), and J.C. Watts, Jr. (R-OK).

The National Great Blacks in Wax Museum will focus on Black veterans of various military engagements, including the Buffalo Soldiers and Tuskegee Airmen, and the role of Blacks in the settlement of the western United States. It will also showcase Blacks who served in senior civilian Executive Branch positions, and in the judiciary and other significant legal positions, as well as others who have not received appropriate recognition.

*Funding Required for the Museum Expansion Project*

The current budget estimate to expand current museum facilities to create the National Great Blacks in Wax Museum totals \$60 million. This multi-year budget will cover demolition and removal of current dilapidated and unsafe structures, gutting and renovating an entire city block, rebuilding a five-story museum complex, architects, engineers, and related site development costs, and the costs of designing and constructing new museum exhibits.

Three-quarters of the funding for the museum expansion will be derived from non-federal sources. These include the State of Maryland, which has already obligated over \$3 million for the expansion project. Maryland Governor Robert Ehrlich is strongly supportive of this project and committed to our success.

Another important funding source is the City of Baltimore. Mayor Martin O'Malley has obligated \$2 million to date for the museum expansion, and is committed to using his municipal resources to assist with costs of the expansion. On September 3, the Mayor attended a groundbreaking ceremony at the Museum marking the demolition of 48 structures to the rear of the property to make way for museum parking facilities. Much of the balance of the funding for the museum expansion will be contributed by the private sector.

The Great Blacks in Wax Museum is in close dialogue with a large number of private sector grantmakers. These include major corporations such as AllFirst Bank,

Bank of America Coca-Cola, Pepsi-Cola, Mercedes-Benz, Hewlett-Packard, Tropicana, Target, K-Mart, General Mills, Marathon Oil, Hewlett Packard, Baltimore Gas and Electric, Advanta Corporation, Recording Industries Association of America, Heiniken, WalGreens, Wal-Mart, Sams Club and Sony.

The Museum is also under consideration by major philanthropic foundations. These include Associated Black Charities, St. Paul Companies Foundation, Annie E. Casey Foundation, Baltimore Community Foundation, Abel Foundation, MetLife Foundation, Freddie Mac Foundation, AT&T Foundation, Microsoft Foundation, and Enterprise Foundation.

*Community Support for our Initiative*

The Great Blacks in Wax Museum expansion program enjoys the strong support of the local community in East Baltimore, of allies throughout the State of Maryland, and of friends of the Museum throughout the nation. The many supporters and donors include the Prince Hall Masons, Links International, Zeta Phi Beta National Sorority, Kappa Alpha Psi National Fraternity, Delta Sigma Theta National Sorority, NAACP, Zion Baptist Church, ACTEX Foundation, the President's Round Table, The Baltimore Times, and the De'zert Club of Philadelphia.

On behalf of the Board of Directors of The Great Blacks in Wax Museum, as well as the Museum's many supporters, I want to express our great appreciation for the opportunity to testify before the Committee today. We are grateful to the Subcommittee Chairman, Congressman Radanovich, the full Committee Chairman, Congressman Pombo, as well as the Subcommittee's Ranking Member, Congresswoman Christensen and the full Committee Ranking Member, Congressman Rahall. We appreciate the consideration of every member of this Committee for our plans to establish a national museum addressing the legacy of great Black Americans.

I particularly want to express our appreciation to the sponsors of this legislation, Congressman Elijah Cummings and Senator Barbara Mikulski, as well as the bipartisan group of House and Senate cosponsors. We are convinced that this initiative will have a profound, positive impact on the ability to educate youth and the public about the contributions of great Black Americans and about American history.

Thank you for your consideration of this legislation. I would be pleased to answer any questions you may have.

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Mr. RADANOVICH. We are now joined by Mr. Matt Knox, who is Chairman of the Missouri River Stewards from Winifred, Montana. Mr. Knox, welcome to the Subcommittee. Please begin your testimony.

**STATEMENT OF MATTHEW O. KNOX, CHAIRMAN,  
MISSOURI RIVER STEWARDS, WINIFRED, MONTANA**

Mr. KNOX. Chairman Radanovich and members of the House Subcommittee, my name is Matt Knox and I am Chairman of the Missouri River Stewards. Our family ranch is in the Missouri Breaks northeast of Winifred, Montana. Our family does own deeded land within the Monument boundary as well as we have State lease and BLM lease within the Monument boundary.

I am grateful for this opportunity to give testimony before you to support H.R. 1629. Before I state my reasons for supporting this legislation, I would like to give you a little background on the issue.

The concept for a new designation for the Breaks first surfaced in early 1999 when former Secretary Babbitt floated the river and declared the area to be special and in need of additional protection. While we agreed with him that the area is, indeed, special, we felt strongly that the wild and scenic designation for the river, along with a myriad of wilderness study areas, ACECs, and National Historic Trails was ample protection. Holders of grazing allotments in the Breaks were already engaged with the BLM in watershed planning to ensure rangeland health was being maintained. The fact

that this area remains special is a testimony to the stewardship practices that have been in place here since early settlement days. We strongly felt, if it isn't broke, let us not fix it.

What followed, however, was a lengthy and, we believe, heavily manipulated public process that was conducted through the Central Montana RAC. We participated in this process in an effort to challenge the perceived need for additional designation. We were frustrated continually with the issue of boundaries. At no time were we shown a definitive map of the proposed designation. Land owners were never consulted about the prospect of having their lands included in the National Monument, and no one, including our elected officials, had any knowledge about the boundaries.

Our first look at boundaries was when a map of the Monument was published in a local newspaper the day after designation. Not even the RAC knew what the boundaries would be, and for discussion purposes developed an arbitrary administrative unit for which all the recommendations could or would apply. It should also be noted that the RAC did not establish this unit until after the public debate period had ended.

With that historical backdrop, I would like to address the most compelling question before this Subcommittee. Why should the private properties be removed from the Monument? Virtually every landowner having property in the Monument has signed a statement calling for their land to be removed. Over 3,300 members of the public across Montana have signed a petition calling for the same thing. The majority of our elected officials in Montana support this effort.

I think everyone understands when incidental private properties are included in a Federal designation, but when 81,000 acres are purposefully included, that is a matter that demands remedy, especially when private lands are functioning as a substantial part of the perimeter boundary of a National Monument.

The Constitution establishes Congress as the authority over public lands. We believe that Congress needs to be involved in deciding whether private property should be targeted for purchase and included in National Monuments. If Congress abdicates that responsibility, the decision falls solely to the current administration, whatever that might be.

The message from Central Montana is clear. We want the private properties removed from the Monument, and there are several underlying reasons for that judgment. For example, most of the ranches in our area are a mix of Federal, State and private lands. Management decisions have been typically made in a cooperative manner. If the private lands in the mix are targeted for acquisition, it would be very easy and perhaps irresistible for Federal land managers to impose greater land use restrictions and regulations on grazing allotments to the extent that a willing seller is created. This could also have the unintended consequence of compelling landowners into selling to land developers.

When private property becomes Federal, our school system suffers from the loss of the tax base. Payment in lieu of taxes represents minimal funding and the money goes to our county general fund and not to our local school districts.

There is a ranch in our area that is highly coveted by the BLM. That ranch was nearly purchased by BLM a few years ago. That ranch alone contributes \$15,000 a year, or close to \$15,000 a year in property taxes to our local school district. The local community would suffer gravely with just the loss of this one ranch.

In summary, removing the private property to clarify the Monument boundary is the right thing to do. If it is true that Monument rules do not apply to private lands, as Federal officials have stated, then one should not expect there to be any adverse impact on the remaining Federal lands and the Monument by their removal. Clearly, removing private land from the Monument will greatly reduce inadvertent trespass and conflicts between landowners and Monument visitors, facilitate management, and reduce the temptation for a Federal buyout.

I urge this Subcommittee's full support of H.R. 1629 and I thank you for the privilege to testify before you on this matter that is so important to us in Central Montana. Thank you.

Mr. RADANOVICH. Thank you, Mr. Knox. I appreciate your testimony.

[The prepared statement of Mr. Knox follows:]

**Statement of Matthew O. Knox, Chairman, Missouri River Stewards,  
Winifred, Montana, on H.R. 1629**

Chairman Radanovich, and members of the House Subcommittee on National Parks, Recreation and Public Lands, my name is Matt Knox and I am Chairman of the Missouri River Stewards. I am a landowner and operate part of the family ranch in the Missouri Breaks located 24 miles northeast of Winifred, Montana. I am grateful for this opportunity to give testimony before you in support of H.R. 1629.

Before I enumerate my reasons for supporting this legislation, I would like to give you a little background on this issue.

The concept for a new designation for the Missouri Breaks first surfaced in early 1999 when then Secretary of the Interior, Bruce Babbitt, floated the Upper Missouri River and declared the area to be special and in need of additional protection. While we agreed with him that the area is indeed special, we felt strongly that the Wild and Scenic designation for the river, along with a myriad of Wilderness Study Areas, ACEC's, and National Historic Trails, was ample protection for the area.

Those of us who own grazing allotments in the Breaks were already engaged with the BLM in watershed planning, which is a process to ensure range land health is being maintained and riparian standards are being met. The fact that this area remains special today is a testimony to the success of the resource management practices and the love of the land that has been in place here since early settlement days. Our opinion on the entire designation matter was that "if it ain't broke, let's not fix it."

What followed, however, was a lengthy, heavily manipulated public process that was conducted through the Central Montana Resource Advisory Council (RAC). Area landowners affected by the proposed designation actively participated in this public process in an effort to challenge the perceived need for additional protection for the area.

Throughout the public process, a source of constant frustration for us was the issue of boundaries. At no time were we shown a definitive map of the proposed designation. Landowners were never consulted about the prospect of having their lands included in a National Monument and no one, including our county commissioners, state legislators, governor and congressional delegation, had any knowledge about the boundaries. Our first preview of the boundary was when a map of the Monument was published in a local newspaper the day after the Monument proclamation was issued.

Not even the RAC knew what the boundaries would be. In the RAC report to the Secretary of the Interior on December 30, 1999, it was stated that throughout the December meeting there was discussion concerning the area in question. It was not until the December 8th meeting that the RAC decided upon a tentative administrative unit. The RAC referred to this unit as the Expanded Upper Missouri National Wild and Scenic River and all of the RAC's resolutions would apply to that area.

It should also be noted that the RAC did not establish this administrative unit until after the public debate period had ended.

Shortly after the RAC submitted its final report to the Secretary of the Interior, it became evident that the entire public process was more form than substance. On February 17, 2000, at the University of Denver Law School, then Secretary Babbitt announced his true intentions about land designations in the West. He stated: "It would be great to get these protective issues resolved in the Congressional, legislative process. But if that's not possible, I'm prepared to go back to the President, and not only ask, not only advise, but implore him to use his powers under the Antiquities Act and to say to him: Mr. President, if they don't and you do, you will be vindicated by history for generations to come."

In other words, the Secretary was committed to adding designated lands to former President Clinton's Land Legacy Initiative by whatever means necessary. The Missouri Breaks would have to be nominated by Montana's Congressional Delegation for some form of designation such as a National Conservation Area, as he favored, or the President would declare the area a National Monument. In the end, the President did declare the Monument in the Missouri Breaks.

With that historical backdrop, I would like to address the most compelling question before this Subcommittee: Why should the private property be removed from the Monument?

Virtually every landowner having private property in the Monument has signed a statement calling for their land to be removed from the Monument. Over 3,300 members of the public across Montana have signed the petition to Congress calling for removal of the private property. Our Congressional Representative, one of our U.S. Senators, the Governor of Montana, the majority of Montana's Legislators, and County Commissioners in the four-county area of the Monument support the removal of private property from the Monument.

I also believe that Congress, in passing the Antiquities Act of 1906, did not intend for the President to have indiscriminate powers to include virtually unlimited amounts of private lands in National Monuments. I believe the intent of Congress was clearly articulated in the Antiquities Act by the provision that states that Presidents may establish National Monuments to protect historic or scientific objects that are situated on lands owned or controlled by the Government of the United States.

I think everyone understands when incidental private property in-holdings are included in a designation. But when 81,000 acres of private property are purposefully included that is a matter that demands remedy, especially when private lands are being used to form substantial parts of the perimeter boundary of a National Monument.

We could not understand why the BLM went on a land-shopping spree to select private property for inclusion in the Monument, so we asked them. We were told that these were lands they wanted to acquire from willing sellers and if these lands were included up front in the Monument they could be reserved, upon purchase, as part of the Monument by the Secretary of the Interior. That way Congress would not have to be troubled to enact legislation to include these parcels as part of the Monument.

We respectfully disagree with the BLM's rationale in this matter. The United States Constitution establishes Congress as the sole authority over public lands and I firmly believe that Congress needs to be involved in deciding whether vast tracts of private property should be targeted for purchase and included in National Monuments. If Congress abdicates that responsibility, the private land decision falls solely to the President.

The message from central Montana is clear: We want the private property removed from the Monument. And there are several underlying reasons for that judgment.

For example, most of the ranches in our area are a mix of federal, state and private lands. Management decisions have in the past been typically made in a cooperative manner. If the private lands in the mix are targeted for acquisition, it would be very easy, and perhaps irresistible, for federal land managers to impose greater land use restrictions and overregulate grazing allotments to the extent that a "willing seller" is created. Heavy handed federal management could also have the unintended consequence of compelling landowners into subdividing and selling to the highest bidder such as land developers or business entrepreneurs.

Whenever private property transitions to federal ownership, the community and its school system suffers from the loss of the tax base. The federal compensation for loss of tax revenues, known as PILT, represents minimal funding and the money goes to our county general fund and not to school districts.

The PN ranch, located at the confluence of the Judith River and the Upper Missouri River, is a property highly coveted by the BLM that they nearly purchased

for over five million dollars. That ranch contributes approximately \$15,000 a year in property taxes to the local school district and spends many more thousands of dollars with local merchants and businesses. The local community would suffer gravely with the loss of just one ranch.

The boundaries established for the western reach of the Monument especially lacks justification and includes only the running river water that is owned by the State of Montana and property that is owned by ranchers. One can only speculate about the objects of antiquity that are being protected by the river flow and by the adjacent private land. To correct this matter, there seems to be only one solution—remove the private property from the Monument.

An observation conveyed to me by a colleague best sums up the need to remove the private property from the Monument. My colleague was camped on the Missouri River one evening when a number of people floating the river joined him at the campsite. He asked them what their impressions of the area were after their first day on the river. They replied that they found it rather strange to canoe all day on a river in a National Monument and everywhere they looked and everywhere they wanted to stop, they were surrounded by private property.

It is my firm belief that removing the private property to clarify the Monument boundary is the right thing to do. If it is true that Monument rules do not apply to private lands, as federal officials have stated, than one should not expect there to be any adverse impact on the federal land in the Monument by removal of the private land. Clearly, removing private land from the Monument will greatly reduce inadvertent trespasses and conflicts between landowners and Monument visitors and diminish the temptation for federal buyouts.

I urge this Subcommittee's full support of H.R. 1629 and I thank you for the privilege to testify before you on this matter that is so important to us in central Montana.

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Mr. RADANOVICH. Next up is Mr. Hugo Tureck, who is Vice Chairman of the Friends of the Missouri Breaks Monument, from Coffee Creek, Montana. Mr. Tureck, welcome to the Subcommittee, and you may begin your testimony.

**STATEMENT OF HUGO J. TURECK, VICE CHAIRMAN, FRIENDS OF THE MISSOURI BREAKS MONUMENT, COFFEE CREEK, MONTANA**

Mr. TURECK. Thank you. Mr. Chairman, Representative Rehberg, and members of the Subcommittee, my name is Hugo Tureck. I am a rancher and Vice Chairman of the Friends of the Missouri Breaks Monument. Our organization is made up of business people, hunters, farmers, and ranchers, and those who love the open spaces of Montana. As a coalition, we are committed to protecting and preserving the Upper Missouri Breaks in its present form.

I thank you for the opportunity today to testify in opposition to H.R. 1629. I have the privilege of being a public lands rancher not far from the Monument. We raise cattle and small grains on dry land operation that is suffering from an ongoing drought. Let me emphasize I reside outside of the Monument. However, I am a public lands rancher and I have had to deal with the BLM, as have those who oppose the Monument. However, I have never felt threatened by this agency, but rather felt that they have worked hard to build good working relationships.

The BLM testimony to date mirrors much of the testimony that Ms. Morrison gave a year ago on June 13 when this bill was first presented. I would like to quote from her testimony. "While we at the BLM believe that the Presidential proclamation establishing the Monument makes it clear that the proclamation covers only federally owned lands within the Monument boundaries, the Department does support this bill because it would provide additional

comfort for the landowners.” What Ms. Morrison has stated is that this legislation does not protect private property, that these rights are already protected.

I would like to argue that this legislation does not provide additional comfort, either, for those ranchers. Rather, it only reinforces people’s unfounded fears of being betrayed by their government.

Unlike the proclamation, H.R. 1629 does nothing to protect private property rights in the Monument. Private property rights are already protected by the proclamation. We live in a system of laws that protect private property rights. The Presidential proclamation provides another layer of protection by making clear that these rights are protected. The proclamation explains why private property was included in the boundaries of the Monument. The proclamation clearly states that if the property was significant, historical, cultural, wildlife, or landscape qualities or purchased by the United States from a willing seller, these lands will be reserved as a part of the Monument.

While this legislation does nothing to protect private property rights, it does threaten the integrity of the Missouri Breaks National Monument. Many of the historical and cultural sites, such as the Nez Perce Trail, the Kid Curry Hangout, and Bull Whacker Trail are on private lands. These and other sites are part of our national identity. Today, if a landowner chooses to sell his land to the government, it becomes a part of the Monument. If this legislation passes, it would take an Act of Congress to purchase lands and then add them back to the Monument. This becomes a problem because there are over 415 different parcels of land.

This is not what the public wants, whether they live in Montana or in Florida. As Chairman of the RAC, I heard from people across Montana who wanted this place protected. Since designation, there have been numerous opportunities for public input into the future of the Breaks. Efforts to dismantle the Monument shortly after its designation generated over 1,400 letters to our Governor, 1,100 of these asking her to keep the Monument as it is.

There have also been two public comment periods as the BLM develops this management plan for the protection of the Monument in its entirety. The first, there were over 5,700 letters, of which 5,602 supported the protection of the Monument in its entirety. Another comment period just closed and almost 7,000 people wrote the agency. It is clear that Montanans, like people across this country, want this place protected.

There are other troubling things about this proposed legislation. It sets a precedent that may be applied to the other 15 Monuments managed by the BLM. It also sets a precedent that may be applied to other special places managed by the Department of Interior. The National Park Service oversees 395 units. Private land is included in 242, or 61 percent of those sites, including Yellowstone, Valley Forge, and Gettysburg. How much proof do those opposed to the Monument need?

Twenty-six years ago, Congress, led by Senator Metcalf of Montana, created the Upper Missouri River Wild Scenic River. Forty-six percent, or 35,800 of these 81,000 acres that this bill would remove from the Monument are within the boundaries of the Wild and Scenic River designation. Just think, 26 years ago, Con-

gress knew that they could do this and private property rights would be protected and none would be violated. Twenty-six years later, you know Congress was right, that private property rights were not violated and that the river was better protected than before.

This Monument, with its inspiring landscape, celebrates Lewis and Clark and their role in the building of our nation. Let us not weaken this Monument by passing legislation such as this. Rather, it is time for us to work together to put in place a management plan for this new Monument that serves not just a few special interests, but all Americans now and for future generations. Thank you.

Mr. RADANOVICH. Thank you, Mr. Tureck, for your testimony.  
[The prepared statement of Mr. Tureck follows:]

**Statement of Hugo J. Tureck, Public Land Rancher, and Vice-Chairman,  
Friends of the Missouri Breaks Monument, on H.R. 1629**

Mr. Chairman, Representative Rehberg and Members of the Subcommittee, my name is Hugo Tureck. I am a rancher and Vice-Chairman of the Friends of the Missouri Breaks Monument. Our organization is made up of business people, hunters, farmers and ranchers and those who love the open spaces of Montana. As a coalition, we are committed to protecting and preserving the Upper Missouri River Breaks Monument in its present form.

I thank you for the opportunity today to testify in opposition to H.R. 1629. My family and I have the privilege of being public land ranchers not far from the Monument. We raise cattle and small grains on a dry land operation that is suffering from an ongoing drought.

I served on the Central Montana Resource Advisory Council (RAC) of the Bureau of Land Management (BLM) for six years. I was the Chairman during the entire public process that led to the designation of the Upper Missouri River Breaks National Monument in 2001. Our RAC is made up of 15 individuals representing many different points of view including ranchers, sportsmen, conservationists, elected officials and individuals representing oil and gas and timber interests. The RAC is a consensus council, that works to find common ground on natural resource issues affecting the public lands managed by the BLM.

As Chairman of the RAC, I oversaw the preparation for and development of the report to the Secretary of Interior that resulted in the designation of the Missouri Breaks as a National Monument. That report summarized an inclusive public process undertaken by the RAC, at the request of the Secretary, to determine how Montanans felt about the public lands—a vast and wondrous landscape—that we call the Missouri Breaks. Our charge was to find out what Montanans agreed upon, what kind of a future we wanted for these lands.

Before the RAC accepted this task, we held a public meeting in Lewistown, Montana, seeking public input on whether or not this project was something that the people of north central Montana wanted us to work on. The meeting room was packed with people, mostly ranchers and farmers, who asked the RAC to become involved, which we did.

To reach the greatest number of people living in the area around the Breaks, we conducted hearings in several communities in Central Montana. To facilitate maximum participation we met for two days in each of those communities and accepted testimony during the day as well as in the evening. Hundreds of Montanans from all walks of life felt this issue important enough that they took time from their busy lives to attend the meeting presenting statements and listening to others. We also received hundreds of letters.

As I listened to the testimony and read the many letters, I was moved by the passion that Montanans felt for this place. Rancher or floater, hiker or hunter, bird watcher or just a person seeking solitude; it made no difference. All felt a special love for this land we call the Missouri Breaks.

This is what the RAC reported to the Secretary of the Interior: Montanans wanted this enchanted place to remain as wild tomorrow as it is today. Montanans also wanted to see the cultural and historical artifacts that abound in this Monument protected and they consider it critical that wildlife habitat be enhanced. The people of my state also wanted to see traditional uses including hunting, fishing and grazing to continue. Finally, and of critical importance, Montanans wanted to make sure



that all private property rights were protected. While the RAC did not make a recommendation to the Secretary regarding Monument designation (and therefore did not address boundaries we were in full agreement that this special landscape needed and deserved special management to protect its unique resources.

It is important for you to know that the majority of Montanans that testified and wrote letters supported the idea of a Monument as the best way to protect this landscape. They were also adamant in voicing that public land belongs to all Montanans and to all Americans. It was a small minority that opposed the Monument.

When the President of the United States, using the powers given to him by Congress, through the Antiquities Act, created the Missouri Breaks Monument, he did so using the report from the Central Montana RAC to the Secretary. The Proclamation was written to reflect the values Montanans strongly agreed upon, such as continued hunting and grazing. It also reflects our recommendation to include specific and clear language to protect private property rights.

The Monument Proclamation states that: "establishment of this Monument is subject to valid existing rights". The Proclamation further states that "...there are hereby set apart and reserved as the Upper Missouri River Breaks National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States."

Unlike the Proclamation, H.R. 1629 does nothing to protect private property rights in the Monument. Private property rights are already protected by the Proclamation and within existing government law and policy. We live in a system of laws that protect private property rights. The Presidential Proclamation provides another layer of protection by making clear that private property rights are protected.

There are numerous rumors about how our government has cynically tried to force or intimidate individual landowners into selling, or how our government has attempted to restrict private property rights. As a public lands rancher I am naturally curious if any of these rumors can be substantiated. I have called upon those making these claims to give us evidence. I have yet to see any.

The Proclamation explains why private property was included within the boundaries of the Monument. The proclamation clearly states that if property with significant historical, cultural, wildlife or landscape qualities are purchased by the United States from a willing seller, these lands will be "reserved as part of the Monument."

Why is this important? There are a significant number of historical and cultural sites that are on private land, but are an integral part of the historic and wildlife landscape. Sites like the Nez Pearce Trail where in 1877 Chief Joseph led his band across the Missouri River and up Cow Creek toward his final battle with General Miles. Sites like the Kid Curry hangout where gunfighters and rustlers hid from the law. Sites like the Bull Whacker Trail where bull trains hauled supplies from Cow Island to Ft. Benton when the water levels were so low that river travel was impossible.

These and other sites are a part of our national identity. These are sites that help us define ourselves as Americans and deserve adequate protection for future generations to enjoy. Today, if a landowner chooses to sell his land that contains one of these sites to the government, it becomes a part of the Monument and is protected for all Americans. If this legislation passes, lands that the BLM might acquire through purchase, trade or donation could not be added to the Monument without additional legislation or another Presidential Proclamation. This would be the case for each acquisition—which means extra work for Congress or the President and additional costs to the American taxpayer, as legislation is expensive in both time and money.

If this bill passes it also means that if BLM does acquire land through purchase, trade or donation, that land would not be part of the Monument and would therefore not be given the same protection. Those newly acquired lands would be open to oil and gas development and a host of other potential threats, creating a formidable and expensive management challenge for the BLM which makes it very unlikely that the agency would seek to acquire, from willing sellers, any in-holdings in the Monument. Either way, the public loses and the future of the Monument and its abundant wildlife, historical, and ecological values now within the boundary will be jeopardized, and our ability to preserve a piece of history and wildness will be ultimately lost.

This is not what the public wants whether they live in Montana or in Florida. As chairman of the RAC I heard from people across Montana who wanted this place protected. Since designation there have been numerous opportunities for public input into the future of the Breaks. Efforts to dismantle the Monument shortly after its designation generated over 1400 letters to our governor, 1100 asking her to keep the Monument as it is. There have also been two public comment periods as the BLM develops a management plan for the Monument—the first generated about

5,700 public comments and 5,602 supported protection of the Monument in its entirety. Another comment period has just closed and almost 7,000 people wrote the agency and we are waiting for the analysis of those comments. It is clear that Montanans, like people across this country, in increasing numbers, want this land protected. The bill we are discussing today offers a facade of comfort to the few people who oppose the Monument while ignoring what the majority of Americans and Montanans want.

Last year, Representative Rehberg told the editorial board of the Montana *Havre Daily News* that “he wants to eliminate any worries the landowners may have that the federal government would somehow try to restrict the landowners use of their own property.” The *Havre Daily News* responded in their editorial as follows: “Rather than exacerbating people’s fears, Rehberg should be reassuring landowners that they have nothing to worry about.”

Representative Rehberg has also stated that including private land within the boundaries of the Monument will open that land up to vandalism and trespass. But in reality drawing a line on a map would be of little help. On our ranch, our private lands are checkerboarded with public lands. It is almost impossible for a person to tell where my private land ends and the public’s land begins. If I want to keep the public off of my property and on the public land, I would need to clearly mark my boundaries. This is already my right and my responsibility.

There are a few very troubling things about this proposed legislation. It sets a precedent that may be applied to the other fifteen Monuments managed by the BLM, thirteen of which also have private lands within their boundaries. It also sets a precedent that may be applied to other special places managed by agencies under the Department of Interior, such as other National Monuments and National Parks. The National Park Service (NPS) oversees 395 units that include many different designations such as National Parks, National Monuments and National Historic Parks. Private land is included in 242 or 61 percent of those sites, which include sites such as Yellowstone and the Grand Canyon as well as sites like Harper’s Ferry, Valley Forge, the C & O Canal, and Gettysburg.

It is also troubling that those asking for this legislation seem to have little trust in their government to treat its citizens fairly. It also seems those asking for this legislation have little faith in their fellow citizens, yet ask these citizens to trust them when they proclaim that they are the stewards of these public lands.

Twenty-six years ago, Congress led by Senator Metcalf of Montana created the Upper Missouri River Wild and Scenic River. Forty-six percent or 35,800 of the 81,000 acres that this bill would remove from the Monument are within the boundaries of the wild and scenic designation. Just think, twenty-six years ago Congress knew that they could do this and private property rights would not be violated. Twenty-six years later, we know Congress was right—that private property rights were not violated and that the river was better protected than before.

Twenty-six years later the President of the United States using the powers granted to him through the Antiquities Act created a Monument protecting a larger area for future generations. This Monument with its inspiring landscape celebrates Lewis and Clark and their role in the building of a nation. It celebrates so much of what they stood for. Let us not weaken this Monument by passing legislation such as this. Rather, let us work together to put in place a management plan for this new Monument that serves not just a few special interests but the interests of all Americans now and for future generations.

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Mr. RADANOVICH. We will begin with questions from my colleagues up here on the dais.

Ms. Roeser, I have got a couple of questions for you. Can you give us an example here in the Committee of how you have tried to work with the Federal agencies to resolve some of the access problems that you have had with the trails?

Ms. ROESER. Yes. We have been involved throughout any development of management plans, certainly from the scoping process, comment periods, and then comments on the final documents numerous times on numerous different units, from the John Muir-Ansel Adams Wilderness to Yosemite Park, Sequoia Park, on and on. Oftentimes, our comments were just given sort of a perfunctory review, so we would often take them to the next level, which would mean appeals to the Regional Forester in the case of the Forest

Service, appeals to the Chief of the Forest Service, and so on. So we have followed that route numerous times.

There has been dozens and dozens of public hearings, public comment periods, and we have even been forced with legal action actually a few times, so it has been numerous.

Mr. RADANOVICH. Thank you. In the prior panel, Mr. Calvert, representing the Department of Interior, stated that my legislation was not necessary because the current process of categorical exclusions is NEPA compliant. However, is it your feeling that if a normal NEPA process were required prior to the trail closures you mentioned and a public comment period was required, as would be under NEPA, having that process mandated, would that be helpful in addressing the problems that you mentioned?

Ms. ROESER. It would certainly be a huge start. Many times, decisions are made without the input of stock users and certainly without the input of people who do not own stock but wish to use stock, in other words, hiring a commercial outfitter. So that input is often not received, first of all.

And second of all, we believe that this simply reiterates what is already in the law that has been repeatedly ignored by the land agencies for many, many years.

Mr. RADANOVICH. Thank you very much.

We are now joined by Mr. Elijah Cummings, who could not attend earlier because of some Floor activity. Mr. Cummings, welcome back to the Subcommittee. If you would like to give your statement, and then we will go ahead and open up this entire panel then to questions from members of the dais.

**STATEMENT OF HON. ELIJAH CUMMINGS, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MARYLAND**

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I really appreciate your courtesy and thank the Committee.

Chairman Radanovich and Ranking Member Christensen and members of the Subcommittee, I want to thank you for the opportunity to appear before you today to discuss legislation which is of great importance to me, the National Great Black Americans Commemoration Act, H.R. 2424, S. 1233.

The legislation which I have introduced jointly with my good friend, Senator Barbara Mikulski of Maryland, would authorize Federal assistance in the establishment of an institution of great significance to this nation, the National Great Blacks in Wax Museum.

The National Great Black Americans Commemoration Act will help to bring long-overdue recognition to African Americans who have served our nation with distinction. But those names, faces, and records of achievement are not well-known by the public. This legislation, introduced in June, enjoys the bipartisan support and cosponsorship of more than 50 of our colleagues in the House. Senator Mikulski's companion bill, S. 1233, has already passed the Senate.

The Great Blacks in Wax Museum, America's first wax museum of black history, was founded in the early 1980s. The museum occupies part of a city block in East Baltimore and currently includes approximately 200 exhibits. Existing figures depict Colin Powell,

Harriet Tubman, Dr. Martin Luther King, Jr., Mary McCloud Bethune, and former Representatives Robert Smalls of South Carolina, Mickey Leland of Texas, Parren Mitchell and Kweisi Mfume of Maryland, and Shirley Chisholm and Adam Clayton Powell of New York. This legislation will help to present the faces and stories of black Americans who have reached some of the highest levels of national, and sometimes international, service, but who are generally unknown.

A priority in this museum expansion project will be the creation of new exhibits presenting black Americans who served in this Congress during the 1800s, some born in slavery and others born free. These great Americans proudly served their constituencies and this nation. The expanded museum will also focus on black military veterans, on black judges, lawmen, and prominent attorneys, and the role of blacks in discovery and settlement.

This legislation will help to showcase blacks who have served in senior civilian executive branch positions. These include Ralph Bunch, E. Frederick Morrow, Robert Weaver, William Coleman, Patricia Batt Harris, Louis Sullivan, and others who have not received appropriate recognition.

The State of Maryland and the City of Baltimore already have contributed over \$5 million toward this expansion project, which will occupy an entire city block in an empowerment zone area. The museum is conducting extensive outreach to major corporations and other private donors. This legislation authorizes a Federal share not to exceed 25 percent or \$15 million, whichever is less, of the expansion project dollars.

I am very pleased by the strong support that has been exhibited for this legislation on both sides of the aisle, in the Senate as well as the House. The Senate companion bill, S. 1233, passed the Senate by unanimous consent. It is a little more than a month after its introduction in June of this year. The House version, H.R. 2424, has attracted the support and cosponsorship of more than 50 of our colleagues, both Republicans and Democrats, as well as members of the two House committees of jurisdiction, the Committee on Resources and the Committee on the Judiciary.

This legislation is, indeed, a tribute to the people of my Congressional district who believe in the power of a cultural institution, such as a museum, to bring about positive change in a challenged community. It also very importantly constitutes the realization of a dream of two great Americans, the late Dr. Elmer Martin and Dr. Joanne Martin, who is with us today.

At great personal sacrifice, the Martins dedicated themselves to building a cultural institution of prominence in a part of our city where no other such institution would choose to locate. They passed up opportunities to establish their museum in far more lucrative, tourist-oriented sites in Baltimore, choosing instead to remain instead in a fragile community in East Baltimore.

I would also like to point out the phenomenal success of this initiative. The Great Blacks in Wax Museum draws more than a quarter-million visitors per year, including several members of Congress and their staff and I, I might add. More than 50 percent of those visitors are schoolchildren. On a typical day's visit to The Great Blacks in Wax Museum, you will find school buses lining the

block on East North Avenue, including buses from other States. A destination for scholars as well as students, receiving over one million hits annually on its website, The Great Blacks in Wax Museum truly deserves its reputation as a national treasure.

I urge the support of all members of the Committee for this legislation to assist with the establishment of the National Great Blacks in Wax Museum and I thank you for your consideration of this important preservation and community-building initiative and I look forward to working with the Committee in bringing it to fruition. And I thank you again, Mr. Chairman.

[The prepared statement of Mr. Cummings follows:]

**Statement of The Honorable Elijah E. Cummings, a Representative in Congress from the State of Maryland, on H.R. 2424**

Chairman Radanovich, Ranking Member Christensen and Members of the Subcommittee, I thank you for the opportunity to appear before you today to discuss legislation which is of great importance to me, the National Great Black Americans Commemoration Act (H.R. 2424/S. 1233). This legislation which I have introduced jointly with Senator Barbara Mikulski would authorize federal assistance in the establishment of an institution of great significance to this nation, the National Great Blacks in Wax Museum.

The National Great Black Americans Commemoration Act will help to bring long overdue recognition to African Americans who have served our nation with distinction, but whose names, faces, and records of achievements are not well-known by the public. This legislation, introduced in June, enjoys the bipartisan support and cosponsorship of more than 50 of our colleagues in the House. Senator Mikulski's companion bill (S. 1233) has already passed the Senate.

The Great Blacks in Wax Museum, America's first wax museum of Black history, was founded in the early 1980s. The museum occupies part of a city block in East Baltimore, and currently includes approximately 200 exhibits. Existing figures depict Colin Powell, Harriet Tubman, Dr. Martin Luther King, Jr., Mary McLeod Bethune and former Representatives Robert Smalls of South Carolina, Mickey Leland of Texas, Parren Mitchell and Kweisi Mfume of Maryland, and Shirley Chisholm and Adam Clayton Powell of New York.

This legislation will help to present the faces and stories of Black Americans who have reached some of the highest levels of national service, but who are generally unknown. A priority in this museum expansion project will be creation of new exhibits presenting Black Americans who served in Congress during the 1800s. Some born in slavery and others born free, these Americans proudly served their constituencies and the nation. The expanded museum will also focus on Black military veterans, on Black judges, lawmen and prominent attorneys, and the role of Blacks in discovery and settlement.

This legislation will help to showcase Blacks who served in senior civilian Executive Branch positions. These include Ralph Bunche (Franklin Delano Roosevelt Administration), E. Frederic Morrow (Eisenhower Administration), Robert Weaver (Johnson Administration), William Coleman (Ford Administration), Patricia Harris (Carter Administration), Louis Sullivan (George H.W. Bush Administration), and others who have not received appropriate recognition.

The State of Maryland and the City of Baltimore already have contributed over \$5 million toward this expansion project which will occupy an entire city block in an Empowerment Zone area. The museum is conducting extensive outreach to major corporations and other private donors. This legislation authorizes a federal share not to exceed 25%, or \$15 million (whichever is less) of the expansion project.

I am very pleased by the strong support that has been exhibited for this legislation on both sides of the aisle, in the Senate as well as the House. The Senate companion bill, S. 1233, passed the Senate by unanimous consent a little more than a month after its introduction in June of this year. The House version, H.R. 2424, has attracted the support and cosponsorship of more than 50 of our colleagues, both Republicans and Democrats as well as members of the two House committees of jurisdiction, the Committee on Resources and the Committee on the Judiciary.

This legislation is a tribute to the people of my congressional district who believe in the power of a cultural institution such as the Museum to bring about positive change in a challenged community. It also, very importantly, constitutes the realization of a dream of two great Americans, Drs. Elmer and Joanne Martin. At great

personal sacrifice, the Martins dedicated themselves to building a cultural institution of prominence in a part of our city where no other such institution would choose to locate. They passed up opportunities to establish their museum at far more lucrative, tourist-oriented sites in Baltimore, choosing instead to remain in a fragile community in East Baltimore.

I would also like to point out the phenomenal success of this initiative. The Great Blacks in Wax Museum draws more than a quarter million visitors per year, including several members of Congress and their staff I might add. More than 50 percent of those visitors are schoolchildren. On a typical day's visit to The Great Blacks in Wax Museum, you will find school buses lining the block on East North Avenue, including buses from other states. A destination for scholars as well as students, receiving over 1 million hits annually on its web site, The Great Blacks in Wax Museum truly deserves its reputation as a "national treasure".

I urge the support of all members of this Committee for this legislation to assist with establishment of the National Great Blacks in Wax Museum. Thank you for your consideration of this important preservation and community-building initiative and I look forward to working with the Committee on bringing it to fruition.

Mr. REHBERG. [Presiding.] At this time, we will go back to the questioning of the various witnesses. I would like to begin by asking Mr. Tureck, why do you think you love Montana's lands more than Mr. Knox?

Mr. TURECK. I didn't say that.

Mr. REHBERG. Well, Mr. Knox's property is included inside the boundary, his private property, and yours is not, and you are making a determination on his private property. What gives you the right as an American citizen to determine what he does with his private property?

Mr. TURECK. I am not in any way determining what he does with his property. His property rights are totally protected.

Mr. REHBERG. So why wouldn't you support legislation? If he requests to have his private property taken out of the boundaries, why can't he do that?

Mr. TURECK. What is the cost to him of having it in the boundaries? The advantage is that there is another potential buyer out there if he ever wants to sell his land.

Mr. REHBERG. Let me ask you this. In your testimony, you characterize oil and gas development among the threats to private land that might be possible, if not for the Monument designation. My question is two-fold. First, do you believe that you are the best decisionmaker for property that you do not own, and second, have you placed a perpetual easement on your property that would ensure that your property would never be susceptible to these types of threats?

Mr. TURECK. Let me start with the second question, if I may. We own land on Square Butte, which is a natural area. It is the world's largest laccolith. It has been visited since the 1880s by geologists from across the world. It is a very fragile area. I would like to announce that, yes, we have put a conservation easement up there that is probably the most restrictive easement you will ever see. OK. The only economic activity allowed on our land up there is grazing. There can never be a house built. There can be no mining. We will not allow power lines to go across it nor roads to be built.

Mr. REHBERG. How would you feel personally if Mr. Knox determined that the rest of your ranch ought to be included in that same easement and came to the government and said, without Mr. Tureck's knowledge, we are going to put that all in an easement

and we are going to affect his future ability to develop his property?

Mr. TURECK. There is nothing stopping Mr. Knox from developing his property now.

Mr. REHBERG. He has land in-holdings. He makes a determination he wants to develop a well. Are you going to be sitting before us supporting a pipeline being built across Federal properties to take the oil out of his in-holding?

Mr. TURECK. I doubt it, because I would protect the Federal lands, but he can put that well in. He can subdivide. He can do what he wants to do.

Mr. REHBERG. He just can't get it out.

Mr. TURECK. But that might be a problem otherwise.

Mr. REHBERG. But less of a problem if all he has to deal with is the Bureau of Land Management.

As former Chairman of the Central Montana Resource Advisory Council, on December 30, 1999, you submitted recommendations made by your council to then-Interior Secretary Babbitt. Section 6 of those recommendations, entitled "Issues Not Covered," lists both private property and boundary issues as issues that were not covered. However, in your testimony, you state that the President created the Missouri Breaks Monument using those recommendations.

It would seem clear to me that if private property rights and boundary issues, the two most central issues in today's discussions, were not covered, as your report clearly indicates, you would be in favor of my bill in an attempt to fully cover these issues.

Mr. TURECK. First of all, private property rights were addressed by the RAC. We recommended all private property rights be respected, and that is what the proclamation did. We did not talk about boundaries, because we did not talk about designation. We knew that there was no consensus on that. We are a consensus council.

Mr. REHBERG. As Chairman of the RAC—

Mr. TURECK. Let me finish if I may, sir.

Mr. REHBERG. You may.

Mr. TURECK. OK. As a consensus council—or the ranchers that oppose this Monument refuse to talk boundaries because they refuse to talk about designation. There was not going to be a designation. They fought that to the final end. That was their choice.

Mr. REHBERG. As Chairman of the Resource Advisory Council, you are pretty aware of probably who the membership of that committee was. Were any of the landowners who have land currently in the boundary on the President's Resource Advisory Committee? Now, the President has the ability through the Secretary of Interior to appoint anybody he wants, so he had the ability to appoint landowners who have land inside those boundaries. Were any of those members on that Advisory Council?

Mr. TURECK. At the time, no, but let me explain. Nobody applied from within where the boundaries now rest. Nobody had ever applied. I had asked people to apply. I said, this is somewhere you should get involved. They did not apply. But—

Mr. REHBERG. In your testimony—

Mr. TURECK. Let me finish.

Mr. REHBERG. In your testimony, you brought up a lot of peripheral issues, such as the potential impact or effect on other places, like Glacier or Yellowstone or Yosemite. Show me in the bill where this specifically deals with any other Monument other than the Missouri Breaks Monument.

Mr. TURECK. In all due respect, Representative Rehberg, this sets a precedent, and as you yourself pointed out today, this administration is going to be different from the next administration. Once this precedent is set, where does it go next? I anticipate—

Mr. REHBERG. I would put it to you, Mr. Tureck, that the Congress has, in fact, adjusted boundaries in the past. The precedent has been set long before this Congress. This just rights a wrong for one specific boundary in one specific Monument.

Mr. TURECK. This does much more than just the boundary. This also removes all private lands within the Monument.

Mr. REHBERG. My time is up. I will recognize Mrs. Christensen.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

Let me address a question to Dr. Martin, but first, I want to thank her on behalf of the Committee for her very compelling testimony and to commend you and your husband for not only preserving our past, but protecting our future.

I was wondering if, you know, we have a number of museums and monuments across the country, some of them are Federal but some are privately owned or locally or State-owned. Some are still being established. Is there any formal or informal collaboration planned so that that story can be told in a more—with more continuity and there be more coordination among all of our museums that tell the story of African Americans in the past.

Dr. MARTIN. Museums today clearly understand the need to collaborate when you look at the economic climate that we find ourselves in and the ways in which the tourism industry is affected by any number of issues and occurrences on the national scene, in the national scene. So more and more, museums are forming alliances. We are looking to the American Association of Museums, for example, or the Association of African American Museums. Within our individual States, we belong to tourism councils and so forth.

And as we begin to reach out to one another, then that brings us in touch with the kind of expertise that many of us simply cannot afford. It allows us to share resources, to share stories, experiences. So that is clearly on all of our agendas, to collaborate more and to understand that there is strength through unity.

Mrs. CHRISTENSEN. Thank you for your answer.

Mr. KNOX, are you aware that there are more than 35,000 acres of private land within the Upper Missouri Wild and Scenic River, which were designated in 1976 and which are part now of the current Monument?

Mr. KNOX. Yes, I am.

Mrs. CHRISTENSEN. And do you know of any situations where the BLM violated the private property rights of landowners within the Upper Missouri Wild and Scenic Rivers since that time, since 1976?

Mr. KNOX. Not specifically, no, but I can give you a little background on why we ended up grudgingly, I have to say, but we did end up cooperating with and get along fairly well with the Wild and Scenic designation.



First of all, it was done by Congress and we felt, whether we liked it or not, Congress did what they did.

Second, this Monument, or, I mean, excuse me, this designation was written with a multiple-use mandate. It is, to my knowledge, the only Wild and Scenic River Act that was created that way.

And what we are always concerned about with the mix of private and Federal lands, of course, is that the private lands are the base properties for grazing allotments. Almost all of these private lands that you see on this map are the base properties for grazing allotments. And everything that is done on Federal land that affects that grazing allotment affects that private property.

So when the Wild and Scenic River Act was passed with a multiple-use mandate by Congress, we felt we had to accept it and we did.

Mrs. CHRISTENSEN. I will probably come back to you with another question, but before my time runs out, I wanted to ask Mr. Tureck a question also. Do you recall how many hearings or public meetings the Resource Advisory Council which you chaired held on the Upper Missouri Breaks National Monument, and do you believe those meetings were a sham, as some of the people have claimed?

Mr. TURECK. No, I don't believe those meetings were a sham. First of all, we held the first meeting actually to consider whether we should even take this issue up as an RAC, and that meeting was well attended. A great number of the people were actually from Winifred and down on the river said they wanted the RAC to take it because that was their only hope. When we didn't come up, I guess, with the recommendation they wanted, then we were a failure.

But we traveled to three cities. We spent two days in each city to take testimony. Over 200 people testified. We took it during the day and at night both, so those people who felt importantly about this could come and talk. Then we also took written comments. Over 200 letters were also received. It was this that we turned around and dealt with in our recommendations.

And in our recommendations, let me point out, we recommended multiple use for the Monument. Grazing is grandfathered in. It is mentioned in the proclamation. So is hunting and fishing. I would argue that actually Mr. Knox's rights are better protected than mine, of grazing on public lands.

Also, I would like to point out that if any land is purchased by the Federal Government from a willing seller, that land would automatically be operated under tailored grazing and, therefore, be given back out to grazing.

Could I make one more comment, too—

Mrs. CHRISTENSEN. Sure—

Mr. TURECK [continuing]. And this has to do with the tax base that Mr. Knox alluded to being lost if you turned around and sold land to the Federal Government, that that would be lost. I pay on my rough break somewhere between 15 and 50 cents an acre, depending on the class of land. Per acre, that is what I pay in taxes. The government gives \$1.35 an acre, per acre, in PILT payments locally. Those payments go directly to the county.

The county—I think Congress in its infinite wisdom here and the BLM decided not to micromanage that money but rather let the

counties manage it. Fergus County has chosen to spend that money on roads. We, the taxpayers, will turn around, and those who elect these county commissioners, and say, spend that money on schools.

So I don't see that there is necessarily—and he mentioned the one ranch. I calculated the PILT payments versus the taxes they pay. It would be almost identical.

Mr. REHBERG. Mr. Bishop?

Mr. BISHOP. Thank you. First, Dr. Martin, I know this is not a question, but I couldn't pass you by without at least thanking you for the comments that you made orally here.

Dr. MARTIN. Thank you.

Mr. BISHOP. Your discussion on heritage, I think was beautiful. All of us are a byproduct of our ancestry. That is what creates us. And the future generations—this is the old history teacher in me coming out—will never understand themselves until they can go back and understand their heritage, and I just want you to know how much I appreciated the words you said and the efforts you are doing. I will raise my voice at the end so it sounds like a question, but it is not really there. But I just want to thank you for what you said.

Dr. MARTIN. Well, I am an English teacher, so that didn't work, but—

[Laughter.]

Dr. MARTIN. Thank you very much. I appreciate that.

Mr. BISHOP. Mr. Tureck, if I could ask you a question. In your testimony, one of the reasons you gave for continuing the status quo is the inclusion of private property in the Monument if at some future time it should be purchased, but it would automatically be included. And you characterized going the other direction, which is equally effective, of letting the land go and then buying it by Congressional action as burdensome and a waste of taxpayer money. In fact, the direct words were, it would mean extra work for Congress or the President and additional cost to the American taxpayers, as legislation is expensive in both time and money. I find that unique, because I think that we would define those terms differently. I think we would call that the democratic process.

I guess my question has to be, is it your honest feeling that the benefit of automatic inclusion outweighs the efforts of giving affected landowners their say in a Congressional approach.

Mr. TURECK. Since we are basically talking about only buying land from willing sellers, the landowners have the right to sell to who they want if they want to sell, but it is only to willing sellers. Why do we need a Congressional hearing? And Congress does have basically a veto on this because they—it is through appropriations. But it is not in condemnation. BLM has no rights to condemnation. It is to willing sellers.

Mr. BISHOP. Well, let me try this. Mr. Knox, you own land in this Monument, correct?

Mr. KNOX. Yes.

Mr. BISHOP. Are you presently a willing seller?

Mr. KNOX. No.

Mr. BISHOP. And I understand of the 127 owners, 125 of them want out of this Monument designation.

Mr. KNOX. Yes.

Mr. BISHOP. What would create you to be a willing seller in the future?

Mr. KNOX. Well, as I stated earlier, where we are very concerned, and we always will be as long as we are ranching in that area, and hopefully we will be ranching there—I would like to see my daughters have the same opportunity that my wife and I have had—but what we are always concerned about is the private lands attached to the Federal lands and the effect that management decisions made by BLM have on those private lands.

And when you institute or impose, in this case, a new Federal designation on an area, you know, these new designations always come with some kind of new management restrictions. We are still in the middle of the RMP process so we don't know what those will be. But those will have a direct bearing and a direct effect on not only how we use our private lands, but also the value of those private lands. So for people to think that somehow this doesn't have any effect, they are very wrong.

Mr. BISHOP. Mr. Knox, help me understand if I am going through this analysis in any way inaccurately. When Congress originally established the process for creating public lands, Monuments, et cetera, as they went through both a FLMPA and NEPA process, it was for the due process effort that was part of it. Many people have said that we need to trust our government because it hasn't let us down before. That bothers me once again, because the Founding Fathers, when they wrote our Constitution, said that no generation of America should so blindly say that they would trust the government.

In fact, the Bill of Rights is misstated. It actually should be called the "Bill of Wrongs." Things are wrong for the government to do no matter how many people or how many councils want to do them. And part of the Fifth Amendment was obviously the guarantee of due process, that no one could take away your property without due process.

Am I wrong in assuming that that is perhaps what has happened here, that if the government wants to buy that from a willing seller, they should do it before they include it in any kind of Federal project, not after? And tell me if I am wrong. To me, the analogy is, if I was in the private sector and I went out and built a building, I would build a building on the land and then see if I could coerce the owner of the land into selling it to me, as opposed to buying the land first and doing it the appropriate way.

Now, have I gone through that analysis in your mind in any way inaccurately?

Mr. KNOX. No, that is very accurate and it reflects the way we feel in the Missouri River Breaks area. When I say "we," I mean the landowners. At one point, Mr. Tureck is correct that we did oppose the Monument designation. But in December of 2000, when Secretary Babbitt announced to the media that he was going to recommend to the President that the area be designated a National Monument, if nothing else, at that time, they should have come to us and said, OK, here are the boundaries. We would like your input and your comments on what those boundaries will be, whether or not your private property is included, if there is a way we can draw your property out if you don't want it to be included in this

designation. That was never done, and that is a matter of public record. It just didn't happen.

Mr. BISHOP. And I am sorry that didn't happen. I apologize for that. My time has expired.

Mr. REHBERG. Thank you. Mr. Cummings?

Mr. CUMMINGS. I don't have any questions.

Mr. REHBERG. Mrs. Christensen, if I could just make a couple of points to answer some of your questions, and that is I think the answer you received, if you heard at all, was a good one on the Wild and Scenic designation because what he told you was the Wild and Scenic designation was an Act of Congress. It was authorized. It was appropriated and managed as such. So it went through the public process, and the only way you can establish a Wild and Scenic Corridor is either through an Act of Congress or through the State Legislature, so you have the public process. In this particular case, you did not.

The answer you heard from Mr. Tureck was incomplete on payment in lieu of taxes. I don't know you get your funds in your community, the Virgin Islands, for education, but in the State of Montana, being a former appropriator and a legislator, we get our money for education from property taxes. The problem is, payment in lieu of taxes doesn't go to schools, it goes back to counties for them to spend. So as the Federal Government purchases property that is deeded and takes it out of the taxpaying process, the schools lose the money. The counties are a beneficiary, not 100 percent, and that is part of the problem we have with payment in lieu and that is why we continue to beat up on every President since Washington, probably, to get them to fully fund payment in lieu, but there is not a transfer of 100 percent from schools back through the PILT to schools. It is lost to them. So I just wanted to clarify those points.

One more question of Mr. Tureck, then I would like to turn to Mr. Knox, and that is, Mr. Tureck, you mentioned all those letters and all those signatures you got on all those petitions. Did one single person sign your letters and petitions that owned property inside the Monument?

Mr. TURECK. I really can't tell you. I really can't tell you.

Mr. REHBERG. Again, therein lies the problem. It is easy for somebody to plow their neighbors' field. I would just love to graze your property without your permission. You probably wouldn't like that. But I guess, oh well, it is in the greater good of me because my cattle need your grass, and that is essentially what you are saying by saying, in spite of the fact that 127 people that own 81,000 acres inside the Monument don't want their property in there, for the greater good of the Federal Government, we are going to include your property.

Mr. TURECK. We have tried to find out the number of landowners inside the Monument. We have come up with 92, of which 20 percent live out of State. I am not sure that those have all been contacted. I would like to see all the letters of those who said, "I want out," and signed.

Mr. REHBERG. Well, Mr. Tureck, we are waiting to hear from one who wants to be included.

Mr. Knox, a question for you. You obviously don't love the land as much as Mr. Tureck because you don't want your land to be protected. Are you mismanaging the McClelland Farm?

Mr. KNOX. No, we are not.

Mr. REHBERG. Ironically, I will tell the Committee there is a conflict of interest. I did not know it. I didn't know Mr. Knox. He is the Chairman of the Land Stewards. But he actually farms my great-grandmother's homestead. It just is purely coincidental. I have no landownership up there, but if I ever find out you are mismanaging the McClelland Farm, you are in deep trouble. It is within the Wild and Scenic Corridor. It is now within the Missouri Breaks and it does deserve protection and, I assume, because you manage that property, you are managing it to the best of agricultural practices for the betterment of the Missouri Breaks. I hope that is true.

Let me follow up on Mr. Bishop's question, then. Do you feel in any way, shape, or form, after you have been poked in the nose or the eye by the Federal Government, that you deserve to cooperate or you should cooperate with them in becoming a willing buyer and seller? I mean, what has created a warm and fuzzy feeling in your mind after they did this in the 12th hour of the Clinton Administration to make you want to participate or cooperate with the Federal Government?

Mr. KNOX. Well, that is a good question. You know, one of the—there are basically three categories of land that, as ranchers, we are virtually all dealing with, and that is private, State, and Federal, and they are intermingled. The country is rough. You can't fence away any given parcel of land easily or economically feasibly.

And so what is required is cooperation, and when a kind of designation like this is imposed without a public process regarding boundaries and regarding private lands, and when the boundary is cutting through parcels of private land and constituting the perimeter boundary of a designation like this, it does create an atmosphere where cooperation is a little bit harder to come by. I would—

Mr. REHBERG. Go ahead.

Mr. KNOX. Excuse me. I would like to point out in response to something Mr. Tureck said about nobody put in for the RAC that would be directly affected by this. I myself did in 1995 during the Clinton Administration, and so did a neighbor of ours, Danny Boyce. The Boyce family is the second-largest landowner in the National Monument, and he and I both put in for the RAC. Our applications were turned down, but I believe that was 1995.

Mr. REHBERG. Begging the Committee's indulgence, I would like to ask one more question, because I do have a ranch. That is what I did for a living before I became a Congressman three years ago and I do have public lands intermingled in a checkerboard fashion.

As a result of public lands inside my property, I see a trespass problem, not because people don't respect private property, but because they think they have access to that public property even though it is wholly surrounded by private property. I assume—I will ask you the question. Do you have the same problem, and if you do, are the Federal agencies ever out there to help you with the trespass or do you end up being the cop confronting people,

trying to explain to them that they are accessing land that is not public? In what way has the BLM helped you ameliorate the difficulties with trespassing?

Mr. KNOX. The particular piece of property that we have within the Monument boundary is on the upper end of the land that you referred to, the McClelland Homestead, and typically, we let people have access to it. It is a good fishing area and people like to camp there.

So we, as the Knox Ranch, I can't say that that is a huge issue for us. But the Boyce family that I mentioned earlier, they own a large parcel in what is called Knox Ridge and there is a county road that runs through the middle of it. It is, of course, their summer range and it is a mixture of BLM and private, a large chunk of private land, and they have had a lot of problems.

People simply aren't good map readers. When you draw a designation boundary around something, that confuses the issue even more. People say, well, you know, it kind of looks like maybe it is private land here on this map, but yet it is within this boundary. So maybe I am within my rights to be on this property.

And so that is the reality of it. People just simply don't understand property rights issues in some cases, not all cases, but in some cases, and they don't understand the relationship between Federal and private and they can't read a map.

Mr. REHBERG. Thank you. Mrs. Christensen?

Mrs. CHRISTENSEN. Thank you. I guess I have one question. Hopefully, it won't lead to others. But it just seems to me that the reason both Federal and private lands are included in this is that there are historic and scientific resources on both, so protection is needed for both and I guess that is why the private properties are included.

What I don't understand is why the Congressional process is accepted, even though everything was not agreed to in a Congressional process, either, but the Presidential process, which has full authority under the Antiquities Act, just as much authority as the Congressional process had and which appeared to have had extensive public comment and a public process, the recommendations of which, as I understand it, are included in the Monument proclamation, why that is not accepted.

Both have authority to be done. Both had public processes. Both have things that maybe some of the private landowners agree with and don't agree with. I don't see the difference. I mean, I don't see why there is such a strong objection to this process, especially since the property rights of the private landholder is not infringed upon.

Mr. KNOX. To answer your question, I would simply go back to the lack of public process on the boundary issue. When the Wild and Scenic River was created, I was, I guess, a high school kid then, but I remember my father was involved in it. In my memory, and to my knowledge, they were looking at maps before Congress passed that legislation.

We weren't in this case, and it is maybe a little harder to swallow when it is done administratively. I am not saying that the Antiquities Act is wrong or inappropriate. I am just saying that for people on the ground, it is just a little harder to accept.

Here again, I would go back to a fundamental difference, and maybe this is only the Missouri Breaks Monument. Maybe they had boundary discussions and saw maps on all the other ones, I don't know. But in this particular case, we didn't, and that is why I think this legislation—and we have talked a lot about precedents today. I think the good precedent that this legislation would create is that in the future, administrations, before they create a large Federal designation through administrative authority with the use of the Antiquities Act, that they would consult with landowners and have a very, very intense, I guess is the word I would use, public process regarding boundaries and how they affect private landholders. And if we could create that precedent, I think that people would be more accepting of the use of this kind of administrative power.

Mrs. CHRISTENSEN. Do you think that a Monument would ever get designated under that kind of a process? We are assuming that Monuments are designated because there is a resource that is in need of protection.

Mr. KNOX. Yes. I—did you have more?

Mrs. CHRISTENSEN. No. I just wanted to allow Mr. Tureck to also answer both questions after you are finished.

Mr. KNOX. OK. Yes, I believe this one probably would have been created with that kind of public process.

Mrs. CHRISTENSEN. OK.

Mr. KNOX. Because if they had, for example, if they had come to us with some kind of give-and-take public process that said, you know, we are probably going to do this, but do you want your property drawn in or out, and, you know, there are a lot of different ways we could do this, at some point, we would have sat down with them.

Mrs. CHRISTENSEN. Can I—my time is running out. Can I allow Mr. Tureck to also answer?

Mr. TURECK. Yes. I would like to point out that I think this legislation really is indirectly an attack upon the Antiquities Act.

Mrs. CHRISTENSEN. Clearly.

Mr. TURECK. OK, and I do that in part of Representative Rehberg's introductory statement questioning the legality of this Monument alone. The Antiquities Act is 95 years old and we have struggled with it for 95 years and yet it is still in place and is still intact and Presidents use it. Only three out of all the Presidents over the 95 years have not created Monuments. If this legislation were to pass, it would destroy the Antiquities Act, and that is what I think the intention of it really is.

What was the other question you asked?

Mrs. CHRISTENSEN. The question was, what was the difference between—I thought that it was a public process that incorporated the public opinion before the proclamation of the Monument, as well.

Mr. TURECK. Yes. See, the first Monument created by the Clinton Administration, the one in Utah, was done much as people said, in the heat of the night, you know, late at night, the Staircase Escalante.

Mrs. CHRISTENSEN [continuing]. Escalante.

Mr. TURECK. After that, all of these other Monuments had extensive hearings, probably more extensive than the creation of any other Monument under the Antiquities Act by any President before. You remember the Grand Canyon was created as a Monument by Teddy Roosevelt. It was brought before the court, saying it was much too large, that it was not the smallest unit possible. It was thrown out of court. I mean, we have brought them before. Now, we are trying to legislate the Antiquities Act out.

Mr. REHBERG. Thank you. I am going to take the opportunity not to let Mr. Tureck put words in my mouth. I do not oppose the Antiquities Act. Mrs. Christensen, if you will read the Antiquities Act, you will see it very clearly says, take no more land than is absolutely necessary and in imminent danger, and the question becomes, what was the imminent danger? Did they take more land than was absolutely necessary? And therein lies the problem that Mr. Knox talks about, the fact that if they had been given the opportunity to talk about the boundaries and what should be in and out, they probably could have come to a consensus, and I so strongly believe in the consensus process.

Mrs. CHRISTENSEN. Will the gentleman yield?

Mr. REHBERG. I will yield.

Mrs. CHRISTENSEN. It is my understanding that the boundaries are, under the Wild and Scenic Rivers Act, the boundaries are drawn after—

Mr. REHBERG. That is correct, but the management is determined beforehand. In this case, it is catty-wampus. They put it into the later hours of the Clinton Administration, and you can't deny that the reason it was done was because they wanted to get it done before they left office, and they left not only the boundaries unanswered without public input, but they hadn't talked about the management, either. They would not have done that. They would have given the Department the opportunity to establish the management protocol. In Wild and Scenic, very clearly, they have to determine under which conditions it was going to be managed.

So again, you can see the reasonableness of Mr. Knox and his compatriots up on the Missouri River in being willing to go through the legislative process. They lost the issue. They accepted it. They don't have a particular heartache with the Wild and Scenic, but then you poked them again.

Mr. Bishop?

Mr. BISHOP. I think, Mr. Rehberg, you just took my statement away right there. That is OK.

[Laughter.]

Mr. BISHOP. Let me ask one question, Mr. Tureck. What were the three Presidents who used—which three Presidents used this Antiquities Act?

Mr. TURECK. No, I said three did not use it. President Bush, President Reagan, and I am not sure of the other President. All of the other Presidents have used the Antiquities Act.

Mr. BISHOP. Eisenhower?

Mr. TURECK. Yes.

Mr. BISHOP. And Franklin Roosevelt?

Mr. TURECK. Yes.

Mr. BISHOP. And Hoover?



Mr. TURECK. I think—

Mr. BISHOP. And Coolidge.

Mr. TURECK. Yes.

Mr. BISHOP. And Harding.

Mr. TURECK. And yes.

Mr. BISHOP. And if you say Taft, you will be accurate.

Mr. TURECK. It has been used by Republicans.

Mr. BISHOP. In a uniquely different process, let me go through, and also to Mrs. Christensen, there is a difference in what you were talking about. In the one process, you asked if something could take place without the Antiquities Act. The Congressional process established in those situations does work and it has worked. In my State, there were four that had been done since 1950 that had been created in that process.

The difference in the Antiquities Act is it has some specific guidelines that have to be in there to allow it to be an administrative process. The first one has to be the endangerment, the imminent danger, which, as the Department testified, they have no recollection of what that imminent danger was.

The second one needs to be in the smallest area possible, which means there has to be the concept of a large area and then you come down to a smallest area. And once again as I am listening to the testimony of the Department again, you have reversed that process. You have started with the largest area and you have done nothing else. You haven't found the smallest area possible, the smallest footprint.

And the final one, the Antiquities has to be done on land controlled by the Federal Government, not private property. That is an abuse of the Antiquities Act power that is there, which is why frequently, especially the last time was with President Truman, what he created in the Antiquities Act was uncreated by the next session of Congress because it violated those processes and procedures, and that is what I think you are talking about in this particular Monument in Montana. There are specific processes that are integral to the Antiquities Act that, at least from the testimony from the Department, were not there.

Mr. REHBERG. Let me conclude by thanking the two other witnesses for patiently sitting through a battle within the State of Montana. Perhaps you have a better understanding of the kinds of issues that we have confronting us in natural resources. You both have very worthy causes and thank you for appearing before our Committee. And to the two gentlemen from Montana, thank you for taking time out of your busy schedules to be here with us, as well.

Without further comment, this meeting is now adjourned.

[Whereupon, at 4:10 p.m., the Subcommittee was adjourned.]

