

# **PUBLIC LANDS AND NATIONAL FORESTS LOCKOUT**

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## **OVERSIGHT HEARING BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS COMMITTEE ON NATURAL RESOURCES HOUSE OF REPRESENTATIVES**

**ONE HUNDRED THIRD CONGRESS**

**FIRST SESSION**

**ON**

**PUBLIC LANDS AND NATIONAL FORESTS LOCKOUT: OBSTACLES TO  
ADEQUATE PUBLIC ACCESS**

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**HEARING HELD IN WASHINGTON, DC  
NOVEMBER 9, 1993**

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**Serial No. 103-61**

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# **PUBLIC LANDS AND NATIONAL FORESTS LOCKOUT: OBSTACLES TO ADEQUATE PUBLIC ACCESS**

**TUESDAY, NOVEMBER 9, 1993**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON NATURAL RESOURCES,  
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS  
AND PUBLIC LANDS,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10 a.m., in room 1324, Longworth House Office Building, Hon. Bruce F. Vento (chairman of the subcommittee) presiding.

## **STATEMENT OF HON. BRUCE F. VENTO**

Mr. VENTO. The Subcommittee on National Parks, Forests and Public Lands will come to order. Today we are here to hear testimony on how the American people are being restricted and locked out of their own lands, lands that have been put in trust for the use and enjoyment of present and future generations of Americans.

At an alarming rate, private landowners are placing locked gates on the roads that lead to our national forests and public lands. Hunters, fishermen, hikers and campers are discovering that they can no longer visit their favorite spots for recreation. I might also say that those that have a legitimate claim in terms of mining, harvesting timber and grazing, also could face—and are facing in some instances—restrictions in terms of the access to these public lands.

In some cases, even the Forest Service and the BLM's own managers are unable to reach the national lands to perform their legal duties as land managers, such as the inspection and transmission sites in Los Padres National Forest. Furthermore, some landowners have blocked access in order to turn portions of our national lands into private preserves for their exclusive use or for the use of their paying guests. We, as a people, of course, own these lands and have a right to use them.

It is not a small problem. The U.S. General Accounting Office, at the request of the committee, identified 50.4 million acres that have inadequate access and both the Forest Service and Bureau of Land Management agree with this figure. This is approximately the size of the entire State of Minnesota—50 million acres.

It is important that the Forest Service and BLM make every effort to acquire the easements necessary to access these vast tracts. The purpose of this hearing, of course, is to explore the ideas, the problem, and how the two agencies can correct and deal with this dilemma and assure that the American people can use and enjoy the public lands and national forests that they own.

[Background information on the subject of Federal lands lockout follows:]

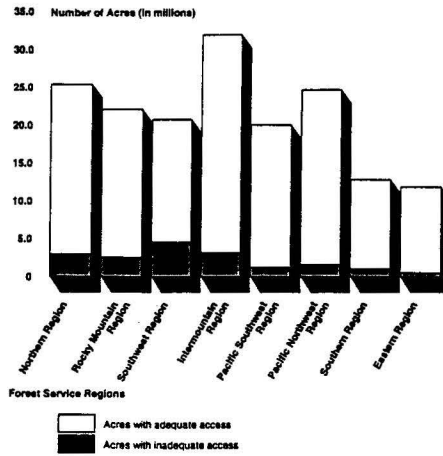
#### BACKGROUND

The Forest Service and Bureau of Land Management (BLM) together manage approximately 465 million acres of land. In an April 1992 report entitled "Federal Lands: Reasons for and Effects of Inadequate Public Access" (GAO/RCED-92-116BR), the U.S. General Accounting Office (GAO) identified 50.4 million acres of these lands as having inadequate access for the public to use these lands and for managers to administer them. Of the 191 million acres managed by the Forest Service, 17.3 million acres or approximately 10% were found to have inadequate access. Of the 274 million acres managed by the BLM, 33.1 million or approximately 12% were found to have inadequate access. The Forest Service and the BLM have concurred with these figures.

The Forest Service estimates that it needs to acquire approximately 28,000 easements to provide adequate access to all national forest lands. The BLM estimates that it needs to acquire 13,000 easements. Currently, the two agencies have approximately 3,300 easement actions pending. The Forest Service annual budget for acquiring easements is approximately \$4.5 million to \$6.3 million. The BLM's is \$1.4 million.

The GAO reported that the inadequate access problem has worsened over the past decade. In recent years, private landowners have become more reluctant to allow the public to cross their lands to reach the national forests and public lands. The activities most affected by inadequate access are hunting, off-road vehicle recreation, hiking and camping. The ability of Forest Service and BLM managers to manage these lands also has been impaired.

**Figure 2.1: Forest Service Acres, by Region, With Inadequate Public Access**

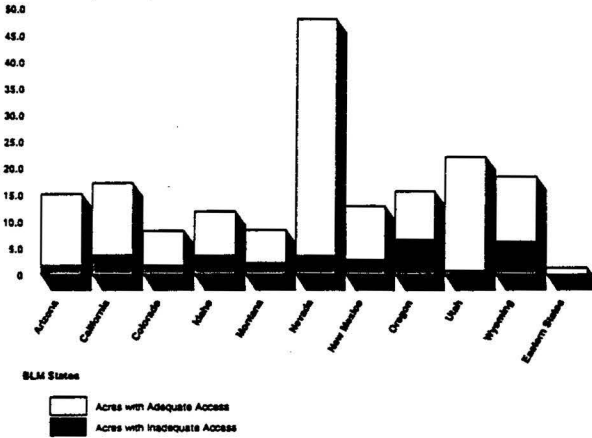


Source: Basic data provided by the Forest Services



**Figure 2.2: BLM Acres, by State, With Inadequate Public Access**

Number of Acres (in millions)



Eastern State Offices reported no inaccessible acres.

Source: Basic data provided by BLM.

Mr. VENTO. So without objection, all Members' opening statements and the statements of all the witnesses today will be made part of the record in their entirety.

Supposedly, we will have some summary in terms of the oral presentation at the committee.

Mr. Hansen?

#### STATEMENT OF HON. JAMES V. HANSEN

Mr. HANSEN. Thank you, Mr. Chairman.

I, too, am concerned about public access to our public lands. I believe this should not be an issue that pits sportsmen against private landowners. This is an issue with legitimate concerns on both sides that will be difficult to resolve.

As a sportsman from a public lands State, I know there are some landowners who have closed off access to public lands. However, a bigger problem in my State is where Federal land management agencies, particularly the Forest Service, have closed off numerous roads through our public lands. I receive many letters from Utahans complaining that many roads they have used for decades for hunting, camping and fishing, have been closed by the agencies without notice. Generally, the local managers blame budget constraints for restricting access.

Mr. Chairman, I have got a hold of Craig Reynolds, who is the head district ranger in that area, and asked him in detail, would you tell me all the roads you closed. It took him six months to compile a list of all the roads that they closed. This was a great concern of mine. Perhaps we should first concentrate on keeping open existing access routes before we expend massive resources to open new routes. Hopefully, the subcommittee can someday hold a hearing on that.

Before all private landowners get a bum rap today because of the unreasonable tactics of a small group of them, I hope Members will have an opportunity to listen to the witnesses from Arizona and New Mexico, who are private landowners. These gentlemen have legitimate concerns about potential liability, fire, vandalism, theft, and noxious weeds that increase as the public crosses their lands.

These problems were witnessed by GAO which personally observed a ranch in Montana where signs had been shot and trespassers were cutting down standing trees for firewood. Clearly, enforcement groups and Federal agencies need to improve the behavior of recreationalists so private landowners can have a higher comfort level over allowing the public to cross their land.

Finally, I would like to point out that much of the public land access to the West today has been acquired through administrative easements to access timber sales, mining claims, sand and gravel sites and grazing lots. As the Federal agency is phasing out the commodity use in favor of recreation, we are losing the cost-effective way of providing access to our public lands.

Mr. Chairman, many times in the West, I have been stopped myself on public lands by landowners wanting to kick you off. And so before going on, I have gone to the county recorder; you almost have to be a surveyor to go in the West somewhere and find the answer because you don't know whether the guy is being truthful or not. At one time, I was doing some work with the LDS church

on looking at a ranch and somebody had taken the whole area off. But it was open, public land.

It works both ways. We get that all over the place so the poor guy that walks in to do a little camping, hunting, or fishing, the next thing he knows, somebody is stopping him and he doesn't know if he is right or wrong. That goes to the thing that Governor Matheson used to talk about, the checkerboard of the West.

If we put a map up here of Utah, Arizona, the whole darn thing, all you see is a little checkerboard. Here is private; here is an inholding; here is BLM; here is State; here is Federal; here is military; here is Indian. Who knows what you are looking at?

I really thank and commend you for holding this hearing, because I really think if anything can be resolved as some way to start moving this out so the poor guy knows where he is going—access, in my humble opinion, is one of the things that counts to people when they go on public lands.

Thank you, Mr. Chairman.

Mr. VENTO. I don't want to comment after every Member's statements, and don't normally, but just to agree or concur with the idea of access. This is an issue that cuts both ways, I think, in terms of the landowner, in terms of public access. And I won't add anything more to it. Through the hearing I will address some of the public access issues that you talked about. But, clearly, the focus here today is a little different, but I would be happy to try and resolve it. We have a lot of other issues with access, including R.S. 2477, and what they call the "restoration of roads," which is an euphemism for "the closure of roads," and some of the timber roads in the West, restoration of roads. And there is a reason for that—I would just tell my colleagues—and that is, of course, the maintenance and the liability and other expenses that are associated with these roads that have been put in for a specific purpose such as timber harvest. So I need not elaborate, but recognize others that may have opening statements this morning.

Mr. Thomas.

#### STATEMENT OF HON. CRAIG THOMAS

Mr. THOMAS. Thank you, Mr. Chairman.

I am pleased that both of my colleagues have mentioned the fact that this is a difficult problem. It is a balancing problem. It is easy just to conclude that access is a problem and there must be bad guys out there that aren't allowing access. That is not necessarily the issue. Much of this, of course, is a matter of cooperation between the agencies and the private landowners.

Much of it is a result of land patterns, particularly in the checkerboard lands where this is just the nature of the development of these lands. I am afraid some actions of the agency have caused people to close their lands. And I presume some of the private actions have aggravated the agency as well.

I have been disappointed, frankly, that in the agencies there hasn't been more of an effort to do something about the land patterns, that there hasn't been more of an effort to dispose of isolated tracts, for example. And frankly, I have talked a lot about it in my home State, with the Forest Service and with the BLM, and there



is great talk about it and there is great agreement, but nothing ever happens.

Frankly, there has been damn little change in terms of doing something about isolated tracts, and one of the solutions, at least, to the problem, is to be able to put some of these ownerships together. Trades, trades don't take place. They talk about them; everybody cheers about it. And I have, frankly, taken the position of no net gain on public lands, and trying to force some changes in that we get rid of some of these lands that are isolated tracts that have no particular value to the government or, frankly, to the public, and put them together with some others where you can have access.

I think this really highlights a basic problem of land patterns and landownership, among other things. There are a number of problems here. So I am pleased, too, and I hope we can go into it.

Mr. VENTO. There is a temptation to add to my colleague's remarks, but he is right, he has been very concerned, repeatedly raising this issue.

Congressman Duncan.

Mr. DUNCAN. I have no statement at this time.

Mr. VENTO. Congressman Calvert.

#### STATEMENT OF HON. KEN CALVERT

Mr. CALVERT. Yes, thank you, Mr. Chairman. Thank you for conducting this hearing.

I would like to express my sincere gratitude to the Forest Service representatives for all their efforts in fighting the recent wildfires, not only in my district, but throughout southern California.

Mr. Chairman, I feel very strongly that we need to continue to allow for adequate public access to our public lands. In my district, many of my constituents utilize the many trails and campgrounds of the Cleveland National Forest. However, there are serious questions and issues that need to be addressed regarding the rights of private landowners versus public access. I hope this hearing will assist us in formulating a policy that not only expands public access so that outdoor enthusiasts can continue to use our national treasures, but to seek and protect the rights of private landowners.

So again, thank you, Mr. Chairman, for conducting this hearing.

Mr. VENTO. Thank you, thank you, Congressman.

I am pleased to recognize that Congressman Williams is here. I know he has time conflicts this morning, but he has been foremost in pushing this issue and I think it is because of the serious problems that they have run into in terms of his home State of Montana. So I want to thank him for his leadership in picking up on the GAO study and his attention to this particular matter.

Congressman Williams?

#### STATEMENT OF HON. PAT WILLIAMS

Mr. WILLIAMS. Thank you, Mr. Chairman, and I very much appreciate your willingness to accept my request, and those of my other colleagues, to hold this hearing. You have heard that song, "Don't Fence Me In." That was written by a Montanan a lot of years ago. If he was rewriting it today, he'd probably change the words to "Don't Fence Me Out."

It is hunting season out our way, throughout the West, in Montana as well. And for many of us, that means getting out the Forest Service and BLM travel plans and using every bit of memory and wit and insight we have about big game, where they will be and where all the hunters won't be. And then we make the best guess about where we want to be planted at 4 o'clock tomorrow morning. It is like baseball out our way: it is very important.

You know, scholars of natural resource and public land issues have predicted that the contention and sheer difficulty of gaining appropriate public access to the public's own land may well be the number one issue that faces land managers after the turn of the century, in just a few years. And there is nothing easy about it. It is difficult, contentious, and technical work for the agencies, and it is also an issue where progress is sometimes hard to detect.

In Montana, we have circumstances where people owning just several hundred acres can, with a little help from topography, gain literally exclusive access to tens of thousands of acres of the public's land. For these landowners, their favorable situation can be worth hundreds of thousands of dollars in premium fees from hunters who will pay top dollar to hunt on the public's land. And that might be the issue that is before us. And that is whether or not the right to the public land is a fundamental right of American citizenship and should not carry with it advantage to the rich. Seems to me that is an important American issue.

Doesn't the public have the right to go on land it owns, managed by the agencies the public pays for? But that is not to say this isn't an extraordinarily contentious, as well as difficult, issue. It is a conflict which all of us appreciate and none of us enjoy. On the one hand, we have that basic public right, the right to go on and use the public domain.

On the other hand, we have the right of private ownership. There are private landowners who, I must say, have great respect for the land and the adjacent public land, and of course private owners are concerned about the public traversing their property where no tradition of access exists. So the conflict is fundamental. And I am hopeful that our witnesses today can help us to try to find a way and help our public land agencies to find a way through it.

Thank you.

Mr. VENTO. Thank you, Pat.

Congressman Smith, did you have any comments this morning?

#### STATEMENT OF HON. ROBERT F. (BOB) SMITH

Mr. SMITH. Thank you, Mr. Chairman.

Certainly, one story is that there are a few people, I suppose, that have private lands depriving the public of crossing them to open to public lands. Most of the situations I know about in the West are scattered land patterns, unfenced, with denial of access almost impossible over private lands. However, it seems to me with those scattered land patterns, there ought to be an aggressive effort to exchange lands. Many people in the West want to do that. Most that I know would love to block up private land and public land, thus reducing the problem to a great extent.

But the exchange program is so lengthy and so difficult and so expensive that it almost creates an impossible barrier for some kind of answer to this issue. Certainly, blocking lands would be the way to go. And the agencies I think should be more aggressive in asserting themselves with landowners to make this a simpler process.

For instance, it can go on two to three years on a simple land exchange, and after two or three years, the appraisals are outdated. The government has an appraiser, the private landowner has an appraiser, and then the process starts over again. So one answer to this difficult land pattern problem is exchanges. And I would hope that we could aggressively go forward, because in the long run that will satisfy a lot of these problems.

Thank you.

Mr. VENTO. I thank you.

I have got more comments on that, but I think if we get to the agencies we would probably have more dialogue, if you are available. Hopefully, we will have a good discussion on it.

We have quite a list of witnesses this morning. I want to just recognize the GAO for the outstanding report. I think the work of the GAO really put this access issue in a format that brought it, I think dramatically, to the attention of the committee members and to the general public.

Their survey work and efforts in this behalf and the cooperation of the agencies and departments in terms of responding has been helpful in terms of pointing out the magnitude of this problem. And so it is with real pride that I introduce John Anderson, Associate Director, Natural Resources of the GAO, and Jim Hunt, who appears before the committee on a variety of issues dealing with natural resources, and William Temmler, the senior evaluator.

Your statement, Mr. Anderson, has been made part of the record. And you may proceed and yield to your colleagues as you wish.

Thank you very much for being here and for your work.

**STATEMENT OF JOHN H. ANDERSON, JR., ASSOCIATE DIRECTOR, NATURAL RESOURCES MANAGEMENT ISSUES, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JIM HUNT, ASSISTANT DIRECTOR, NATURAL RESOURCES MANAGEMENT ISSUES, AND WILLIAM TEMMLER, SENIOR EVALUATOR, DENVER, CO**

Mr. ANDERSON. Thank you for the kind words, Mr. Chairman. I am pleased to be here today to discuss our April 1992 report to you on the adequacy of public access to land managed by the Forest Service and Interior's Bureau of Land Management, or BLM. And I will summarize my statement.

Mr. Chairman, you asked us to report on the extent of inadequate public access to Federal lands, the reasons for inadequate access, and the methods used by the agencies to resolve access problems. We defined "inadequate access" to mean the Federal Government has not acquired the permanent, legal right for the public to enter Federal land where needed.

Permission from landowners to cross their land is not considered adequate access because such permission can be withdrawn or revoked at any time. Because neither agency centrally maintained

the information you requested, we sent questionnaires to all of their field offices. Before discussing our findings in more detail, I will just provide some background information.

Of the nearly 700 million total acres of Federal land, about 465 million are managed by the Forest Service and BLM. This land provides valuable resources, including timber, water, minerals, energy reserves, and livestock forage. And valuable uses, including wildlife habitats, wilderness experiences, and recreational opportunities.

Intermingled with the Federal land, however, is land owned by State and local governments, corporations, Native-American tribes and private individuals. This checkerboard pattern of ownership, as several of you have referred to it this morning, particularly in the western States, can make it difficult for the public to get to Federal land without crossing non-Federal land. According to agency managers, private landowners' unwillingness to grant public access across their land has increased over the past decade as the public's use of Federal land has increased.

We found that about 50.4 million acres or about 14 percent of the land managed by the Forest Service and BLM in the contiguous 48 States, lack adequate public access. As Appendices 1 and 2 to our statement show, the Forest Service's Southwest, Intermountain, Northern, and Rocky Mountain Regions have the largest amount of acreage with inadequate access. BLM lands in Oregon, Wyoming, California, Nevada, and Idaho, had the most acres with access problems.

Private landowners' major reasons for not granting the public access were concerns about vandalism and potential liability and desire for privacy or exclusive personal use. Other reasons included disagreements over the value of the conveyance for crossing their land and concerns about lost profits.

Given such concerns, private landowners sometimes physically block access routes, erect warning signs, and threaten trespassers with guns or attack dogs. Inadequate access to Federal land reduces the public's recreational opportunities. However, we found that the extent of access problems is not the same nationwide and varies depending upon the recreational activities that are affected.

The recreational opportunities most reduced by inadequate access are hunting, off-road vehicle use, hiking and camping. Inadequate access also interferes with the agency's management activities, such as construction, trail and road maintenance, and wildlife habitat. In some cases, this interference is extreme, in other cases, it is merely a nuisance.

The Forest Service and BLM have two basic tools for acquiring public access. They can acquire all rights and interest associated with the lands, called "fee simple acquisition," or "perpetual easement," which are limited rights to enter and use the land for access which are binding on succeeding owners.

Fee simple acquisitions and perpetual easements can be acquired through purchase, donation, exchange or condemnation. During fiscal years 1989 to 1991, the Forest Service and BLM successfully completed about 2,600 access actions, thereby obtaining public access to 4.5 million acres of land.

Perpetual easements were used by the Forest Service and BLM in 53 percent and 70 percent of the cases respectfully, and fee simple land acquisitions were used in 27 percent and 25 percent of the cases respectively. Condemnation was used in only about 3 percent of the Forest Service and in less than 1 percent of the BLM cases, because the process is time-consuming, expensive, and can be politically sensitive.

As of October 1991, the Forest Service and BLM had about 3,300 access actions pending. If successfully completed, these actions will result in another 9.3 million acres being opened to public access. Agency officials estimated that about 540 of the pending actions, involving 2.3 million acres, would require condemnation.

Mr. Chairman, this concludes my summary statement.

We will be happy to answer any questions.

[Prepared statement of Mr. Anderson follows:]

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United States General Accounting Office

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GAO

## Testimony

Before the Subcommittee on National Parks, Forests  
and Public Lands, Committee on Natural Resources  
House of Representatives

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For Release on Delivery  
Expected at  
10:00 a.m., EST  
Tuesday  
November 9, 1993

## FEDERAL LANDS

### Public Land Access

Statement of John H. Anderson, Jr., Associate Director,  
Natural Resources Management Issues,  
Resources, Community, and Economic  
Development Division



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GAO/T-RCED-94-72

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the concerns raised by you on the lack of public access to federal land. My testimony will focus on our April 1992 report<sup>1</sup> to you on the adequacy of public access to land managed by the Department of Agriculture's Forest Service and the Department of the Interior's Bureau of Land Management (BLM). The report provides information on the extent, reasons for, and effects of inadequate access and the methods used by the two agencies to resolve access problems.

Inadequate access, as we defined it through discussions with Forest Service and BLM officials, means that the federal government has not acquired the permanent, legal right for the public to enter federal land at the point(s) needed to use the land as intended by the managing agency. Under this definition, permission from nonfederal landowners to cross their land is not considered adequate access because such permission can be revoked at any time. Because neither of the agencies maintained information centrally on access problems, we sent questionnaires to all of their field office managers and visited 16 field locations. At the completion of our review all questionnaire data was made available to the agencies for their use.

In summary, the questionnaires indicated that access to about 50.4 million acres, or about 14 percent, of Forest Service and BLM land in the contiguous United States was considered inadequate by agency managers.<sup>2</sup> According to the managers, private landowners' unwillingness to grant public access across their land has

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<sup>1</sup>Federal Lands: Reasons for and Effects of Inadequate Public Access (GAO/RCED-92-116BR, Apr. 14, 1992).

<sup>2</sup>Public access to federal land in Alaska is ensured under the Alaska Native Claims Settlement Act of 1971. The state of Hawaii does not have any Forest Service or BLM land.

increased over the past decade as the public's use of federal land has increased. Private landowners' concerns about vandalism and potential liability and their desire for privacy or exclusive personal use were the major reasons cited for inadequate access. Inadequate access to federal land can reduce the public's recreational opportunities and can also interfere with the agencies' land management activities. However, the extent of these effects varies by activity and geographic location.

To resolve public access problems, the Forest Service and BLM can acquire either all rights and interests associated with the land (called fee simple acquisition) or perpetual easements (limited rights to enter and use the land for access which are binding on succeeding owners). Fee simple acquisitions and perpetual easements can be acquired through purchase, donation, exchange, or condemnation. In fiscal years 1989 through 1991 (the years covered by our questionnaire), the Forest Service and BLM acquired permanent, legal public access to about 4.5 million acres of federal land. As of October 1991, the two agencies had actions pending to open another 9.3 million acres of federal land to the public.

#### BACKGROUND

Of the nearly 700 million acres of federal land, about 465 million acres are managed by the Forest Service and BLM. This land provides valuable resources--including timber, water, minerals, energy reserves, and livestock forage--and valuable uses--including wildlife habitats, wilderness experiences, and recreational opportunities. Intermingled with the federal land is state and local government land, as well as land owned by corporations, Native American tribes, and private individuals. This checkerboard pattern of ownership, particularly in the western states, can make it difficult for the public to gain access to federal land without crossing nonfederal land. Unless the federal government obtains



permanent, legal public access, nonfederal landowners can control or deny access to federal land.

EXTENT OF AND REASONS  
FOR INADEQUATE ACCESS

According to the questionnaire respondents, about 50.4 million acres, or about 14 percent, of the land managed by the Forest Service and BLM in the contiguous 48 states lack adequate public access. The Forest Service's Southwest, Intermountain, Northern, and Rocky Mountain Regions had the largest amounts of acreage with inadequate public access. BLM offices in California, Idaho, Nevada, Oregon, and Wyoming had the most acres with access problems. (See apps. I and II.)

Private landowners' major reasons for not granting the public access to cross their land were concerns about vandalism and potential liability and desire for privacy or exclusive personal use. For example, a Montana landowner we talked with told us that allowing public access disrupts his cattle-ranching operation because the public disturbs grazing cattle, and the animals move to other areas. The rancher is then forced to spend time collecting the cattle and returning them to the pasture. While on this ranch, we also observed that some of the rancher's signs had been shot, and we actually saw some trespassers cutting down trees on his property for firewood.

Another rancher in Montana we also talked with said he did not want hunting parties to cross his land because he feared that they would introduce noxious weeds. According to the rancher, seeds of weeds such as leafy spurge and spotted knapweed, which crowd out pasture grasses, can be carried onto the land in tire treads, horses' hooves, or hikers' clothing.

Given such concerns, private landowners use various means of restricting the public's access to federal land. According to agency officials we talked with, some private landowners physically block access routes, others erect warning signs and still others have threatened trespassers with guns or attack dogs.

#### EFFECTS OF INADEQUATE ACCESS

Inadequate access to federal land reduces the public's recreational opportunities. The recreational opportunities most reduced by inadequate access are hunting, off-road vehicle use (e.g., dune buggies and dirt bikes), hiking, and camping. However, according to the questionnaire respondents, the extent of access problems is not the same nationwide and the extent to which recreational opportunities are affected differs by type of activity and by geographic location.

What is a problem in one part of the country is not necessarily a problem in another. For example, hunting was reported by BLM managers as being greatly or extremely reduced in California, Colorado, Idaho, Montana, Oregon, Utah, and Wyoming but not in Arizona, Nevada, New Mexico, or the eastern states. According to Forest Service supervisors, hunting was greatly or extremely reduced everywhere but in the Eastern Region. Camping, according to BLM managers was reduced in Idaho but not in Oregon, whereas mountain biking was reduced in Oregon but not in Idaho. According to Forest Service supervisors, fishing was reduced in the Rocky Mountain Region but not in the Northern Region, whereas wilderness use was reduced in the Northern Region but not in the Rocky Mountain Region.

Inadequate access also interferes with the agencies' land management activities. In some cases, this interference is extreme, in other cases, it is merely a nuisance. According to the questionnaire respondents, the management activities most

interfered with by inadequate access are construction, trail and road maintenance, and wildlife habitat. Other management activities interfered with, but to a lesser extent, include law enforcement, fire protection, and search and rescue.

Extreme interference in agency work was reported at a site in the Los Padres National Forest in southern California. At this site, the Forest Service does not have free access to a mountaintop containing communications equipment--some owned by the Forest Service and some by other federal agencies or private corporations holding Forest Service permits. Part of the road leading to the mountaintop crosses private land, and the private landowners charge the Forest Service and the permittees an access fee to cross their land for equipment maintenance purposes. The private landowners' refusal to allow free access interferes with both the Forest Service's and the permittees' work at this site. Because the Forest Service had not been able to obtain legal access to cross the private land, agency officials were considering building a road to reach the site from the other side of the mountain.

In other cases, inadequate access is perceived as more of a nuisance than an interference in agency management activities, and its effect is slight. According to a BLM official we talked with in Oregon, BLM personnel occasionally encounter locked gates on private land they are crossing to reach fires on federal land. In such a situation, according to this official, BLM personnel simply cut the lock and proceed to the fire. While such an instance of blocked access is a nuisance, the effect on the agency's management ability is slight.

#### AGENCY METHODS OF ACQUIRING PUBLIC ACCESS

The Forest Service and BLM can use fee simple acquisitions or perpetual easements to acquire public access. Either of these can

be accomplished through purchase, donation, exchange, or condemnation. Condemnation, simply put, is the federal government's legal right to take private property for public use, without the owner's consent, upon payment of just compensation.<sup>3</sup>

During fiscal years 1989 through 1991, according to the questionnaire respondents, the Forest Service and BLM successfully completed about 2,600 "access actions,"<sup>4</sup> thereby obtaining public access to 4.5 million acres of federal land. Perpetual easements were used by the Forest Service and BLM in 53 percent and 70 percent of the cases, respectively, and fee simple land acquisition was used in 27 percent and 25 percent of the cases, respectively. The Forest Service used condemnation actions in only about 3 percent of the cases, and BLM used them in less than 1 percent of the cases. According to agency officials, they use condemnation rarely because the process is time-consuming, expensive, and can be politically sensitive.

Our questionnaire asked the Forest Service and BLM managers to report their pending access actions as of October 1991. The Forest Service and BLM reported that they had about 3,300 access actions pending--some work had been done, but access had not yet been obtained. If all of these actions were successfully completed, another 9.3 million acres would be open to public access--about 18 percent of the 50.4 million acres reported by the agencies as having inadequate access. Of the 3,300 access actions pending, however, the agencies had identified 540, involving 2.3 million acres, which they believed would require condemnation action.

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<sup>3</sup>Condemnation is authorized under the Federal Land Policy and Management Act of 1976.

<sup>4</sup>For purposes of our questionnaire, we asked the respondents to count the number of cases completed over the 3 fiscal years, counting each separate conveyance of land or easement as an individual case. These access cases are referred to as access actions.

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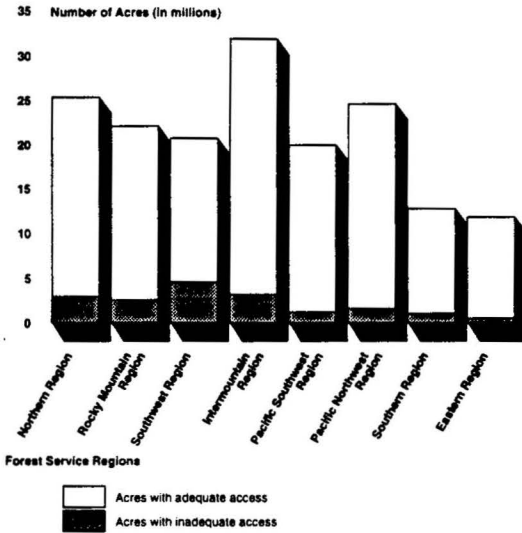
Mr. Chairman, this concludes my statement. We will be happy to answer any questions that you or other members of the Subcommittee may have.

(140786)

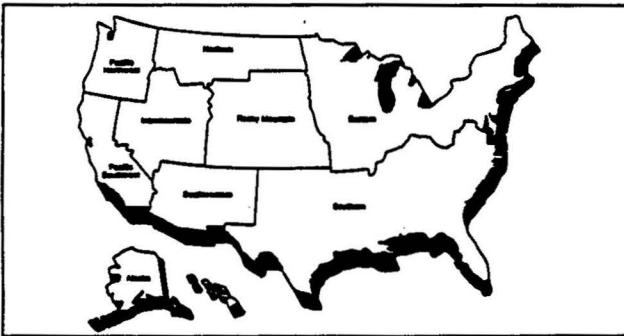
## APPENDIX I

## APPENDIX I

FOREST SERVICE ACRES, BY REGION,  
WITH INADEQUATE PUBLIC ACCESS



Source: Basic data provided by the Forest Service.



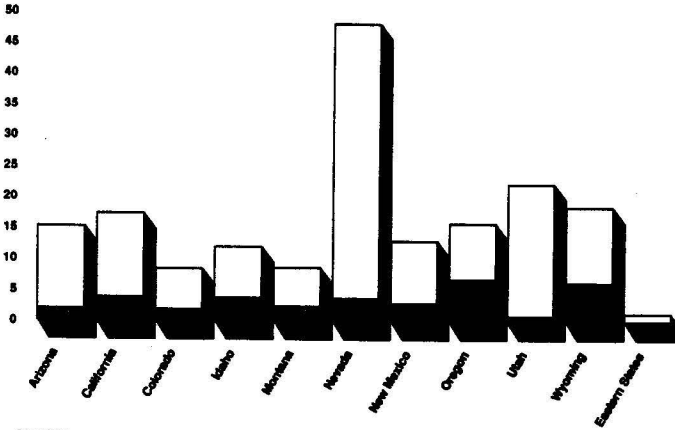
## APPENDIX II

## APPENDIX II

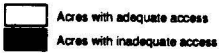
**BLM ACRES, BY STATE, WITH  
INADEQUATE PUBLIC ACCESS**

**BLM Acres, by State, with Inadequate Access**

Number of Acres (in millions)



BLM States



Eastern States office reported no inaccessible acres.

Source: Basic data provided by BLM.

Mr. VENTO. Appreciate your summary.

I was just pointing out to my colleagues on pages 4 and 5, where you discuss inadequate access and interference with agencies land management activities not just for the hikers or the hunters, but for the managers for construction of trail, road maintenance, wildlife habitat maintenance, including law enforcement, fire protection, search and rescue—down in the next paragraph, for example. I don't know if all of you picked up on my comments on the mountain top problem in Los Padres, where we have a transmission site where they won't permit the Forest Service to use the road across private land to go up and look at the transmission site. I think that the examples here obviously depict the broad nature of the problem.

You know, Mr. Anderson, I don't know if you were able to pick this up from the survey work that you did, but is this a growing problem in the States and for the landowners that you surveyed?

Mr. ANDERSON. Yes. All indications are, Mr. Chairman, this is a growing problem. Everyone that we talked to indicated that it was a problem that has gotten worse over the years. In fact, there was some information that we got out of the agency's file, some memos and studies that were done back in 1988, that indicated that the problem was a little less severe then, and is more severe now.

Mr. VENTO. I guess the real question that arises from that, if it is a growing problem, I mean, I probably have some anecdotal or some subjective guesses why, I don't know, Mr. Anderson, were you able to identify any reasons why or some possible reasons why?

Mr. ANDERSON. Yes. I have gotten some indications. In fact, I think the agencies have identified some of these themselves. One, of course, is the number of recreation users of the land is increasing. And I think that increasingly for legitimate reasons, some of the landowners are unwilling to let the users of the Federal land cross their land because of concerns about vandalism and that sort of thing.

Another indication in the files that we saw at the agencies was that many of the large ranches are being subdivided into much smaller ranches, which makes the problem more complicated. You have got more parties to deal with. There is an indication that there are many more nonresident landowners, which complicates the situation because you have got people that aren't familiar with one another that typically might go and talk things out.

I think other possible problems are strained county and State budgets where there are problems with maintaining roads that lead to Federal land. If the country or State abandons the road, the land reverts to the landowners.

And I think a real big problem, which nearly all the Members up there this morning have mentioned, is the checkerboard pattern of the ownership of the land out there.

Mr. VENTO. Yes, and I might comment on that just briefly, because I think that, if it were easy to resolve that, it would be resolved. I think we tried to look for solutions in a number of instances. There have been some pretty significant efforts by some very talented policymakers that have not worked. So I don't think we quit trying, but I think we have to get pragmatic and this is



the way it is right now, and hopefully, if we could change it, that would be fine.

We hear other comments from the demographers that some of the western States, are some of the areas where this problem would be most acute. Not that it doesn't occur in my own State, I guess, because it does, but that I guess we are right in between, we are considered an eastern State. I was born on the wrong side of the Mississippi River, you know; however, the point is that these areas are becoming urbanized and not as many people actually are living in some of the areas adjacent to and around public lands. Yet the problem is increasing because what we characterize "recreational use," hunting and other types of uses, exist, there. It is becoming urbanized, yet there is more conflict.

I know members may not have had the time to read this testimony over completely, but didn't you make an estimate of how long would it be before the land management agencies resolved all of the inadequate or no access problem for the public lands, if they proceed at the rate they are going?

Mr. ANDERSON. I think it is very difficult to estimate that. I think the 3,300 actions that they had in process were going to account for about 18 percent of the acreage that was in question at the time that we gathered our questionnaire data. These things can take several years to resolve, so I think it could be years.

Mr. VENTO. Well, there is one estimate I saw here, it was 40 years; 40 years to resolve the existing conflicts. And the question is, of course, we don't know, but are we producing more access or inadequate access problems faster than we are resolving them? Were you able to ascertain that, Mr. Anderson?

Mr. ANDERSON. No, we couldn't, but I think that is an excellent point. I think that might point in a direction of where we need to go from here. One of the things I think that should be considered, quite frankly, is to get some updated information. The information in our report, you know, is as of October of 1991.

I would be very curious to know whether or not the situation has gotten worse. And I think the agencies are in a position to get this information from their field offices. And then depending upon what they find, I think ultimately what you are going to have to do is do some sort of prioritization. I don't think there is any way you can tackle the entire problem all at once. And the priorities might differ depending upon the regions of the country, in terms of what you would place higher priority on. I think this needs to be done.

Mr. VENTO. The point is in terms of this 50.4 million acres—and I agree with trying to update this information. Based on what the Forest Service and the BLM might comment today in terms of how to format those questions would also be important, so I think that is something we will request. But I was trying to look at the number of access points that we didn't have.

The Forest Service estimates it needs to acquire approximately 28,000 easements to provide adequate access to all national forest lands. The BLM estimates that it needs to acquire only 13,000 easements; so that is 41,000 easements.

Currently, the two agencies have approximately 3,300 easement actions pending. The Forest Service's annual budget for acquiring these, of course, is \$4.5–6.3, million because some of these access

are related to timber roads and receipts, and the BLM budget is only \$1.4 million. That, again, is a limitation in terms of what they can do. And 41,000 easements outstanding they think is inadequate—and that information, I think, comes from the Forest Service, or the GAO study. After reading it all, I don't know which area I drew from. But, Mr. Anderson, that agrees with your October 1991 information; is that right?

Mr. ANDERSON. Yes.

Mr. VENTO. That is where I got it from. Okay.

In other words, it is possible, I suppose, that going down the road we could find more than 50.4 acres right now that have inadequate access?

Mr. ANDERSON. I think it is possible.

Mr. VENTO. I also want to put in the record this article, I had copies of it, I don't know if the Members wanted to see it or remember seeing it, out of the October 8 *Wall Street Journal* here, "Trouble in Cowboy Heaven." And it isn't about the size of the boots or anything. So I put that in the record.

[The information follows:]

THE WALL STREET JOURNAL FRIDAY, OCTOBER 8, 1993

## Wild West

### Gunfire and Lawsuits Greet City Slickers Who Block Old Trails

#### New Owners Seek Privacy, But Neighbors Say They Tread on Historic Rights Trouble in Cowboy Heaven

By JIM CARLTON

Staff Reporter of THE WALL STREET JOURNAL  
LANES CREEK, Idaho—This used to be God's country. Now it belongs to Salvatore A. Scaffide.

Four years ago, Mr. Scaffide and a partner blocked a road leading across their newly bought ranch and into the mountains. Locals, who used to reach the mountains by driving half an hour, now face a three-hour ordeal on horseback instead.

Lin Whitworth is one of the few who still braves the trip. Cursing as he spurs his steed through dense underbrush, he eventually reaches a meadow with sweeping vistas of snowcapped peaks. Except for rough riders such as Mr. Whitworth, the grandson of a homesteader, this spectacular country now is off-limits to all but Mr. Scaffide and his guests.

"What they're saying is," Mr. Whitworth draws, "it's my little kingdom and you can't go in."

#### This Land Is My Land

Fenced-in fiefs are popping up across the American West as wide open spaces are closed off by rich and famous greenhorns. This has sparked a modern-day range war over access to public lands that has erupted in courtroom showdowns and even Old West-style gunplay.

Until recent years, it was relatively easy to reach the remotest corners of the West by traversing old roads and trails across private ranches. Most ranchers asked only that visitors close gates so livestock wouldn't escape. Westerners came to regard these roads as historic rights-of-way for all.

But in the New West, city slickers are gobbling up land from New Mexico to Montana and padlocking gates that lead into wild lands. Seeing newcomers get away with it, local ranchers are blocking roads, too.

An estimated 60.4 million acres, or 14% of the land managed by the Forest Service and Bureau of Land Management in the contiguous U.S., now has inadequate access. That is a land mass roughly equal to the state of Minnesota. And as the nation's population and appetite for outdoor sport grow, so too does the pressure on land that remains accessible.

"There is so much public ground that you can't get to," gripes Michael Springman, a Utah industrial-supply salesman and avid outdoorsman, "that the ground you can get to is swamped with human beings."

#### Poachers and Litterbugs

Privacy from such crowds is the main reason that ranchers block roads. Landowners say that unwanted visitors dump garbage and shoot cattle or wildlife. Ranchers also risk lawsuits if interlopers are injured on their land.

"If a man owns a piece of property and he wants to go out there and not have anybody bother him, that's his right," contends Edmund W. Dumke, a Las Vegas investor who has blocked access across his Idaho ranch.

Moreover, environmentalists often appeal the road closures. Says Michael Scott, Northern Rockies regional director for the Wilderness Society: "It is not bad to have some public lands that are more difficult to get to than others."

But road closures have become so epidemic that Rep. Pat Williams, a Democrat from Montana, has requested congressional hearings on the access issue. Ranchers and ramblers, meanwhile, are slugging it out among themselves, often in a very nasty fashion.

When Tracy Baxter, a Wyoming transplant, bought a ranch in southeastern Idaho three years ago, he quickly cabled off a road used by hunters and cattlemen. Soon after, he found four of his cows shot dead and an ominous note tacked to the cable: "Keep being a horse's ass about it and you'll probably lose."

Mr. Baxter also has found bullet holes in his stock tanks and has had bullets whiz by his ranch house. "We thought we would find our own little paradise when we came here," he says. "We just want to be left alone." The local county is suing to reopen the road, which Mr. Baxter says he closed to prevent vandalism.

#### There Goes the Neighborhood

Spats over access also have a cultural dimension, exposing the gulf between country and city notions about neighborliness. Mr. Dumke, the Las Vegas investor, sealed off roads across his Idaho ranch, forcing outdoorsmen to hike 10 hours to reach a trout-filled lake that they used to be able to drive to in an hour. Then Mr. Dumke bought a vacant lot beside a neighboring cafe and put up boulders to prevent customers from parking there.

"I think it's a slap in the face to the community as a whole, because most everybody tries to get along with everybody," says Carol Weston, the cafe's co-owner. Someone has since spray painted the boulders with D-U-M-B-K-E-E, and in July a group of townsfolk held a camp-out on the Weston spread to celebrate their defiance.

Responds the Las Vegas investor: "They hate people like me, because I'm an

Please Turn to Page A10, Column 1

# Wild West: Gunfire, Lawsuits Greet City Slickers Who Seek Privacy by Blocking Wilderness Trails

Continued From First Page

consider . . . and especially if they think you're rich outsiders."

"Nor do locals take kindly to newcomers who resort to guerrilla tactics. San Diego developer Richard Tuthill laid a spiked board across a road on his Idaho ranch, blocking a hunting route. His wife, Marie, says trespassers were taking water during a severe drought.

"But one of the Tuthills' neighbors, Dee Maynard, who had used the road for decades, wasn't pleased when he drove his pickup over the spikes and punctured two tires.

"That's a hell of a thing, setting a trap for your fellow man," growls the 36-year-old Mr. Maynard, who now has to drive 35 miles on back roads to reach the same place he used to reach by crossing a mile and a half of the Tuthills' ranch.

## The Last Frontier

"Such conflicts are flaring all across Idaho and Montana, two states that have become a sort of last frontier for rich and famous homesteaders. In the Big Sky State, retired forest supervisor Lewis "Gene" Hawkes became so fed up with closures that he helped organize a group called Public Lands Access Association to take on the newcomers.

"The group persuaded a state judge to keep open a trail that New York export-import tycoon Robert M. Lee had posted as closed when he bought a ranch in 1986 at the base of the Madison Range. Mr. Lee, an avid hunter, argued that he wanted to protect local elk herds.

"The closing would have blocked a key access trail into a scenic domain called Cowboy Heaven. Big game is so abundant there that elk and moose are clearly visible from a small plane flying overhead.

"Cowboy Heaven, like other wilderness areas in the West, is so remote that one padlock can virtually seal it off from view.

"If you control the trails and roads, you control this country," says Bill Fairhurst, an access-group member and former fighter pilot, as his plane soars above steep canyons and dense forests of fir and pine.

## One Man's Paradise

"Nearby is media magnate Ted Turner's Flying D ranch, which contains a road that Mr. Fairhurst says he once used for hunting around Cowboy Heaven. Although that road was closed—at gunpoint—by previous owners 25 years ago, the access group threatens to sue unless Mr. Turner reopens it.

ranch along the Salmon River and, seeking seclusion, closed off an 11-mile loop road that runs for all but one mile on federal land. Neighbors protested and county officials sued to reopen the road. Idaho's Supreme Court upheld the closing.

Another big-name court battle broke out in Idaho's Caribou Range after South Carolina shopping-center manager John P. Floyd and some partners blocked a hunting road. Mr. Floyd complained of trespassers and poachers on his ranch.

Local county officials, contending the road is public because they maintained it, are suing to reopen it. Mr. Floyd believes the county abandoned the road years ago and is now trying to take it back. "I just don't believe in this country you ought to take something because you want it," Mr. Floyd says.

Adding political clout to his legal guns, Mr. Floyd got his stepbrother, South Carolina Gov. Carroll A. Campbell Jr., to intervene. In a 1991 letter to Idaho Gov. Cecil D. Andrus that began "Dear Cec," Gov. Campbell pleaded his kin's case, asking that "the proper people look into this."

Gov. Campbell identified Mr. Floyd in the letter only as "a citizen of my state." Through a spokesman, the governor said he didn't cite the relationship "so as to

avoid appearance of seeking special assistance." Responds Gov. Andrus: "I basically told my colleague, the good governor, that we in Idaho didn't appreciate out-of-state people coming in and attempting to take over our resources."

But out-of-state settlers aren't the only culprits. Longtime landowners have aggravated the access problem by mimicking urban newcomers. In the Lanes Creek area of southeastern Idaho, for instance, ranchers locked gates up and down a 15-mile-long valley after Mr. Scaffide and his partner bought a ranch, closing a road to the forest where Mr. Whitworth was riding recently.

"All I want to do is have a beautiful place to get out of this cement jungle I'm in right now," Mr. Scaffide, a labeling executive, says by car phone as he travels near his office in Industry, Calif. Mr. Scaffide says he kept the gate open until litter forced him to close it.

In a valley steeped in Western lore—a cutoff of the Oregon Trail runs nearby, and there are ruins of a 19th-century cabin with rifle slits—the closure drew an Old West response. The lock and gate were shot up and Mr. Scaffide heard of threats on his life.

Now, he says: "We carry a gun with us when we are on the ranch."

Mr. Turner, who bought the ranch in 1968, declines to comment. Addressing the public-access issue in a 1993 speech, Mr. Turner said that one way to gain access to the wilderness near his ranch would be to travel on a still-open county road. "The other way to get [access] is to do it like I did and work . . . and make \$22 million and go buy it yourselves," Mr. Turner said, according to the *Bozeman (Mont.) Daily Chronicle*.

Outdoorsmen aren't the only ones hit by road closures. In the Tobacco Root Mountains of Montana, retirees Hal and Virginia Dale say they face being cut off from their own home and gold-mining claim. California developer V. Mark Ralston bought a ranch with a road that the Dales and dozens of others say they have used to reach the Beal Canyon. He locked the gate, giving the Dales a key.

Mr. Dale protested, worried that permission to cross the ranch could be revoked at any time. One day, finding the lock changed, he cut it. In response, Mr. Ralston has asked a state court to deny Mr. Dale any legal right to cross the ranch—even though the lifelong Montana says he has done so, on and off, for nearly 34 years.

Mr. Ralston says he isn't trying to shut out Mr. Dale. But only when he wants to punish the couple for the access case. Mr. Dale went to court to get the gate open. He said Mr. Ralston added that pending the trial, Mr. Ralston adds that he wants to limit access in Beal Canyon, in part, to protect a herd of mountain goats.

**Only Cow**  
Landowners often cite protection of wildlife—or of their own livestock—to justify road closures. But Ted Ransom, an Idaho real-estate agent who leads a group fighting for access, believes such claims are exaggerated. "I don't think there's one cow shot for every dozen people saying it," says 62-year-old Mr. Ransom. "That's a standard excuse."

Last year, Mr. Ransom helped organize State Our Access and Rights of Way, which has held rallies and a pig roast to amass a legal war chest of more than \$5,000. So far, the group has helped win passage of Idaho legislation making it somewhat tougher to close roads.

But such victories are rare. Singer-songwriter Carole King bought a small

Mr. VENTO. Plus, I also have a few other things. I want put in the record. First, a pamphlet called, "Locked Out," that was done by the *Times Mirror*, we will put a copy of that in the record.

Second, the GAO report, which I am sure most Members have had copies of.

And finally, section 1323 of Public Law 96-487.

[The documents and information follow:]

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United States General Accounting Office

GAO

Briefing Report to the Chairman,  
Subcommittee on National Parks and  
Public Lands, Committee on Interior and  
Insular Affairs, House of Representatives

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April 1992

## FEDERAL LANDS

### Reasons for and Effects of Inadequate Public Access



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GAO/RCED-92-116BR



United States  
General Accounting Office  
Washington, D.C. 20548

Resources, Community, and  
Economic Development Division

B-247341

April 14, 1992

The Honorable Bruce F. Vento  
Chairman, Subcommittee on National  
Parks and Public Lands  
Committee on Interior and Insular Affairs  
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we review the adequacy of public access to land managed by the Department of Agriculture's Forest Service and the Department of the Interior's Bureau of Land Management (BLM). Specifically, you asked us to provide information on the extent and effects of, as well as the reasons for, inadequate public access and on the methods used by the Forest Service and BLM to resolve access problems. On January 7, 1992, we briefed your staff on the results of our work. As requested, this briefing report presents our findings and observations.

Inadequate access, as we have defined it through discussions with Forest Service and BLM officials, means that the federal government has not acquired the permanent, legal right for the public to enter federal land at the point(s) needed to use the federal land as intended by the managing agency. Because neither agency maintains information at a central location on access problems, our findings and observations are based primarily on responses to questionnaires we sent to Forest Service and BLM field offices. (Sec. 1 contains the details of our audit scope and methodology.)

In summary, the questionnaires indicated that access to about 50.4 million acres, or about 14 percent, of Forest Service and BLM land in the contiguous United States is considered inadequate by agency managers.<sup>1</sup> According to questionnaire respondents, private landowners' unwillingness to grant public access across their land has increased over the past decade as the public's use of federal land has increased. Factors contributing to inadequate access were private landowners' concerns about vandalism and potential liability, and landowners' desire for privacy or exclusive personal use.

<sup>1</sup>Public access to federal land in Alaska is assured under the Alaska Native Claims Settlement Act of 1971. The state of Hawaii does not have any Forest Service or BLM lands.

B-947941

To resolve public access problems, the Forest Service and BLM can acquire either all rights and interests associated with the land (called fee simple acquisition) or perpetual easements (limited controls over the land that are binding on succeeding owners). Fee simple acquisitions and perpetual easements can be acquired through purchase, donation, exchange, or condemnation. In fiscal years 1989-1991, the Forest Service and BLM acquired permanent, legal public access to about 4.5 million acres of federal land. As of October 1991, the two agencies had about 3,300 actions pending to open another 9.3 million acres of Forest Service and BLM land to the public.

## Background

Of the nearly 700 million total acres of federal land, about 465 million are managed by the Forest Service and BLM. This land provides valuable resources—including timber, water, minerals, energy reserves, and livestock forage—and valuable uses—including wildlife habitats, wilderness experiences, and recreational opportunities. Both Forest Service and BLM land is managed under the principles of multiple use and sustained yield. That is, the land is to be managed to achieve in perpetuity an output of renewable resources such that all the diverse resources are used in a combination that best meets the needs of the American people.

## Extent Of, Effects Of, and Reasons for Inadequate Access

According to the questionnaire respondents, about 50.4 million acres, or about 14 percent, of the land managed by the Forest Service and BLM in the contiguous 48 states lack adequate public access. As used in this report, inadequate access does not necessarily mean that the public is physically prevented from entering federal land, but only that the federal government has not acquired the permanent, legal right for the public to enter federal land at the point(s) needed to use the land as intended by the managing agency. Under this definition, permission from nonfederal landowners to cross their land is not considered adequate access because such permission can be revoked at any time.

According to the questionnaire results, private landowners have many reasons for not granting the public access to cross their land. In addition to concerns about vandalism and potential liability, and desire for privacy or exclusive personal use, disagreements over the value of the land and concerns about lost profits were identified as additional reasons for not granting access. (See sec. 2 for further details on the extent of and reasons for inadequate access.)



B-247341

While inadequate access can reduce the public's recreational opportunities, it can also create management problems relating to the land's multiple uses. The questionnaire respondents believed that hunting, off-road vehicle use, hiking, and camping are the recreational opportunities most affected. Management activities most affected include construction, trail and road maintenance, wildlife habitat management, and law enforcement. The severity of the public access problem, according to the questionnaire respondents, is not the same nationwide; rather, it varies by activity and geographic location. (Sec. 3 provides additional details on the effects of inadequate access.)

### How the Agencies Resolve Access Problems

The Forest Service and BLM have several ways of acquiring public access. The primary way, according to the questionnaire respondents, is by acquiring perpetual easements. In some cases, nonfederal landowners are willing to donate perpetual easements to the government; in other cases, the government purchases the easements. Also, the Forest Service and BLM can acquire public access by outright fee simple purchases of nonfederal land, by getting nonfederal landowners to donate their land to the agency, or by exchanging federal land for nonfederal land. For both the Forest Service and BLM, the method of last resort is condemnation. Condemnation, however, is infrequently used because of the time, expense, and sensitivity involved.

The Forest Service and BLM issued guidance to their field offices in 1991 and 1987, respectively, to improve access planning efforts. This guidance required that each forest and resource area plan include a transportation plan that would identify the access rights needed to support the resource objectives of the respective forest or resource area plan. Each forest is required by law to prepare a plan and update it every 15 years. BLM policy states that resource area plans should be updated every 20 years. As the plans are updated, access needs are to be highlighted in the transportation plans and used to monitor access problems. (Sec. 4 addresses methods for acquiring public access.)

We conducted our work between April 1991 and January 1992 in accordance with generally accepted government auditing standards. We discussed the facts contained in this briefing report with Forest Service and BLM headquarters officials. These officials agreed with the facts as presented. As you requested, we did not obtain written agency comments on a draft of this report.

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B-247341

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As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this briefing report until 2 days from the date of this letter. At that time, we will send copies to the Secretaries of the Interior and Agriculture and make copies available to others upon request.

Please contact me at (202) 275-7766 if you or your staff have any questions. Major contributors to this briefing report are listed in appendix III.

Sincerely yours,

A handwritten signature in cursive script, reading "James Duffus III". The signature is written in dark ink and includes a horizontal line at the end.

James Duffus III  
Director, Natural Resources  
Management Issues

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**Abbreviations**

BLM      Bureau of Land Management

## Section 1

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## Introduction

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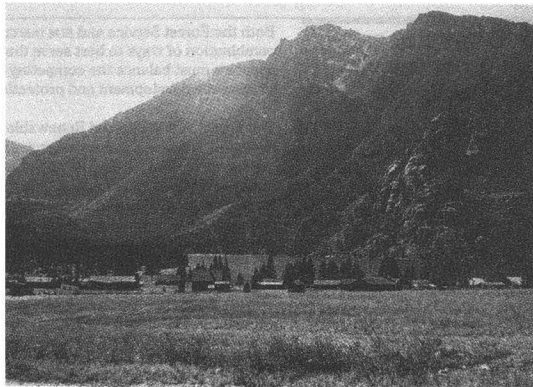
The total land area of the United States is 2.3 billion acres. Approximately one-third of this total, or about 700 million acres, is owned by the federal government. The Department of Agriculture's Forest Service and the Department of the Interior's Bureau of Land Management (BLM) manage about 466 million acres. This land contains many resources, including minerals, timber, rangeland, fish and wildlife habitats, recreation areas, and cultural and historic sites.

Intermingled with the federal land, however, is state and local government land as well as land owned by corporations, Native American tribes, and private individuals. This checkerboard pattern of ownership, particularly in the western states, can make it difficult for the public to get to federal land without traversing nonfederal land. Unless the federal government obtains permanent, legal public access, nonfederal landowners can control or deny the public's ability to reach federal land.

Figures 1.1 and 1.2 show private land blocking access to federal land.

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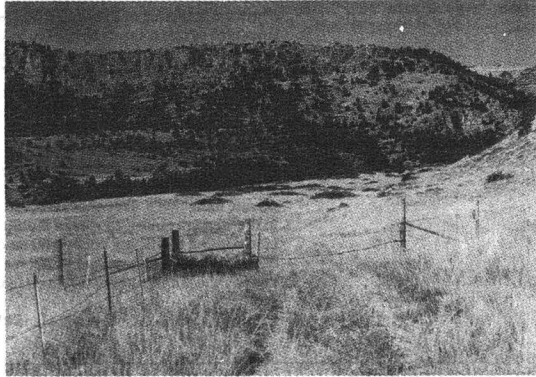
**Figure 1.1: Private Land Blocking Public Access to Rosebud Lake, Custer National Forest, Montana**



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Section 1  
Introduction

**Figure 1.2: Private Land Blocking  
Public Access to Custer National  
Forest, Montana**



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### **Forest Service and BLM Management Responsibilities**

Both the Forest Service and BLM manage federal land and resources in a combination of ways to best serve the needs of the public. That is, the agencies must balance the competing and sometimes conflicting demands of resource development and protection.

The Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, requires the Forest Service to prepare a land and resource management plan for each of its forest units. Similarly, the Federal Land Policy and Management Act of 1976 requires BLM to prepare land-use plans for its public land areas. In both agencies, these plans set forth management objectives and strategies in various categories such as recreation, wildlife, grazing, and timber.

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### **Evolution of the Access Issue**

Only over the past few decades has the issue of public access to federal land arisen. Up until the 1940s, the land management agencies concentrated on building the roads needed to access federal land for commercial purposes, such as timber harvests and mineral development, as well as administrative purposes, such as fire fighting and trail maintenance. Use of these roads for public recreational purposes was

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**Section 1**  
**Introduction**

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secondary. After the end of World War II, however, the public demand for recreational opportunities on federal land increased, and people began to seek more remote areas in which to hunt and fish. Because public access routes to such areas had not been built, the public had to cross nonfederal land to reach many federally owned areas. But many nonfederal landowners did not want the public crossing their land. Accordingly, some nonfederal landowners blocked passage, while others began charging fees for the privilege of crossing their land.

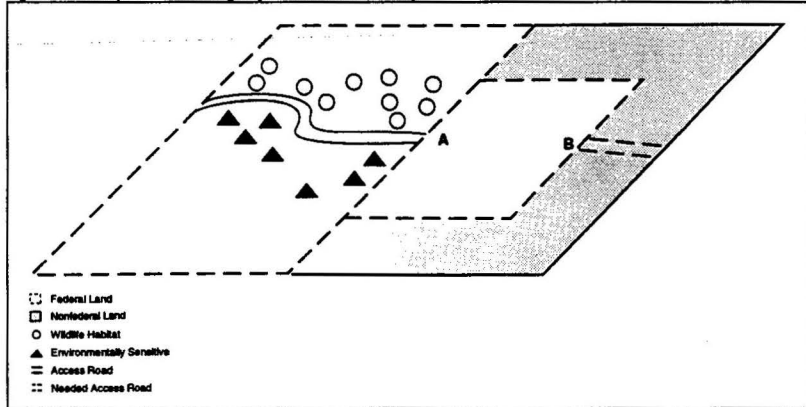
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**Definition of  
Inadequate Access**

Inadequate access does not necessarily mean that the public is physically prevented from entering federal land. Inadequate access, as we have defined it through discussions with Forest Service and BLM officials, means that the federal government does not have the permanent, legal right for the public to enter federal land at the point(s) needed to use the land as intended by the managing agency. For example, assume that the public can legally enter a parcel of federal land at point A, but that the managing agency has determined, for land-use purposes, that point B is a more appropriate point of entry. (Such a determination could be based on various factors; point A could be a wildlife habitat or an environmentally sensitive area, for example.) If the managing agency did not have the permanent, legal right for the public to enter that federal parcel at point B, then access to that parcel would be considered inadequate. Figure 1.3 illustrates such a case.

Section 1  
Introduction

Figure 1.3: Inadequate Access at Agency-Preferred Point of Entry



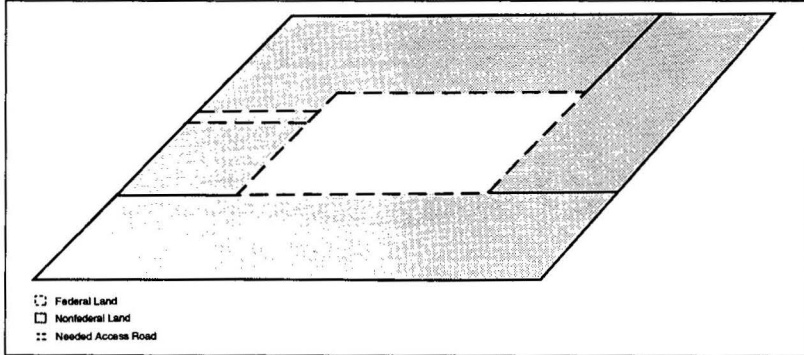
GAO Presentation Derived From Agency Information

In other cases, access to federal land is blocked at all points. For example, if a parcel of federal land were totally surrounded by nonfederal land, and the government did not have the legal right for the public to cross any portion of the nonfederal land, then access to the federal land would be inadequate, as illustrated in figure 1.4.



Section 1  
Introduction

Figure 1.4: Inadequate Access Posed by Surrounding Nonfederal Land



## Access Acquisition Methods and Funding

The land management agencies have several ways to obtain public access. For example, the Forest Service and BLM can acquire either all rights and interests associated with the land (called fee simple acquisition) or perpetual access easements (limited rights to enter and use the land for access that are binding on succeeding owners). Fee simple acquisitions and perpetual easements can be acquired through purchase, donation, exchange, or condemnation. Additionally, land acquired for purposes such as wildlife conservation (e.g., through the Land and Water Conservation Fund) sometimes provides access as a secondary benefit.

In fiscal year 1991, direct funding for easement acquisitions amounted to \$6.3 million for the Forest Service and \$1.4 million for BLM, a total of \$7.7 million. Data were not available to determine how much of the money spent under other programs for fee simple land acquisitions resulted in access as a secondary benefit.

## Objectives, Scope, and Methodology

The Chairman, Subcommittee on National Parks and Public Lands, House Committee on Interior and Insular Affairs, asked us to determine (1) the extent of and reasons for inadequate access to public land managed by the

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Section 1  
Introduction

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Forest Service and BLM, (2) the effects of inadequate access, and (3) how the agencies resolve access problems.

Because the Forest Service and BLM are decentralized, most data on and knowledge of access problems exist at the individual forests and resource areas. Accordingly, we developed a questionnaire to obtain current information on access issues from forest and resource area officials. The questionnaire requested information on (1) the federal acreage that has inadequate public access, (2) the reasons for inadequate access and the extent to which these reasons have changed over the past decade, (3) the types of public recreational and agency management activities that are restricted by inadequate access and the severity of those restrictions, and (4) how the agencies deal with access problems.

We pretested the questionnaire at 9 national forest supervisor offices in 4 regions and at 10 BLM resource area offices in 5 states. After modifying the questionnaire based on pre-test results, we distributed it to forest supervisors of all 122 national forest administrative units, to managers of all 140 BLM resource area offices, and to the 8 BLM district offices that have no resource area offices under their jurisdiction.

We received responses from 119 (98 percent) of the 122 forest supervisors and 143 (97 percent) of the 148 BLM managers. All statistical data reported are based on the total number of forest supervisors and BLM land managers surveyed. However, responses from the five BLM district offices and four Forest Service administrative units in Alaska are excluded from this report because public access to federal land in that state is assured under the Alaska Native Claims Settlement Act of 1971 (Public Law 92-203). The two agencies manage about 115 million acres in Alaska.

On a number of questions, we asked agency officials to rate, on a scale, the extent to which selected factors contributed to an effect. For example, we asked them to indicate the extent to which certain factors contributed to private landowners' unwillingness to grant permanent, legal public access across their land, using the scale: (1) little or no extent, (2) some extent, (3) moderate extent, (4) great extent, and (5) extreme extent. We also asked agency officials to quantify the amount of reduction in certain recreational opportunities and the amount of interference in agency management activities caused by inadequate access.

In addition to obtaining data from the questionnaire respondents, we interviewed Forest Service and BLM officials at the agencies' headquarters.

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Section 1  
Introduction

Based on discussions with headquarters and field officials, we selected and visited 16 field locations in the forests and resource areas to obtain information on various access problems. At each field office visited, we interviewed agency officials knowledgeable about access issues, and we reviewed pertinent documents and records. Table 1.1 shows the field offices we visited. Copies of the questionnaires, with response frequencies, are available upon request.

**Table 1.1: Forest Service and BLM  
Field Offices Visited**

Office visited	Location
<b>Forest Service</b>	
Northern Region Headquarters	Missoula, Mont.
Flathead National Forest	Kalispell, Mont.
Custer National Forest	Billings, Mont.
<b>Pacific Southwest Region</b>	
Headquarters	San Francisco, Calif.
Angeles National Forest	Arcadia, Calif.
Los Padres National Forest	Goleta, Calif.
Eldorado National Forest	Placerville, Calif.
<b>BLM</b>	
California State Office	Sacramento, Calif.
California Desert District	Riverside, Calif.
Redding Resource Area	Redding, Calif.
Montana State Office	Billings, Mont.
Billings Resource Area	Billings, Mont.
Big Dry Resource Area	Miles City, Mont.
Oregon State Office	Portland, Oreg.
Three Rivers Resource Area	Burns, Oreg.
Vale District	Vale, Oreg.

To obtain varying perspectives on the public access issue, we also met with private landowners, representatives of a hunting and fishing association, representatives of an outfitters and guides association, and representatives of national organizations interested in access. We also reviewed related reports issued by the Congressional Research Service, the Forest Service, BLM, and two national conferences on public access issues. To understand the various ways available to the agencies to resolve access issues, we interviewed agency officials and reviewed pertinent laws and agency policies and regulations.

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**Section 1**  
**Introduction**

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We conducted our work between April 1991 and January 1992 in accordance with generally accepted government auditing standards. We discussed the factual information in this report with Forest Service and BLM headquarters officials responsible for resolving access problems. The officials agreed with the facts contained in this report. However, as requested, we did not obtain written agency comments on a draft of the report.

## Section 2

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## Extent of and Reasons for Inadequate Access

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Based on our review, public access to millions of acres of federal land is inadequate. Over the past decade, private landowners' unwillingness to grant public access across their land has increased. Factors contributing to this unwillingness include concerns about vandalism and potential liability, and desire for privacy.

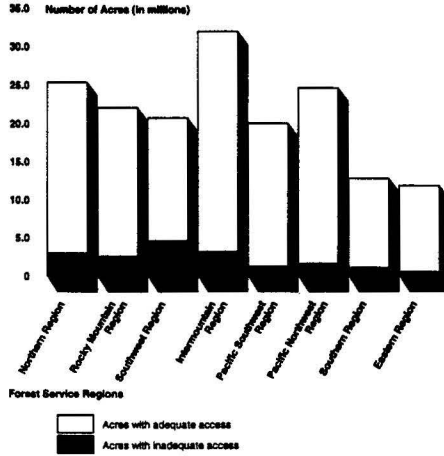
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### Extent of Inadequate Access

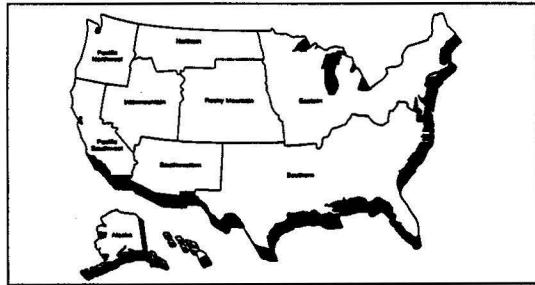
According to questionnaire respondents, access to 50.4 million federal acres, primarily in the western states, is inadequate. Of these acres, 17.3 million are managed by the Forest Service, and 33.1 million by BLM. Figure 2.1 shows, by region, the Forest Service acres with inadequate access; figure 2.2 shows, by state, the BLM acres with inadequate access. In the case of BLM, "eastern states" include all states other than the 10 listed in figure 2.2. Alaska is excluded because public access to federal land in that state is assured under the Alaska Native Claims Settlement Act of 1971 and Hawaii is excluded because it does not have any Forest Service or BLM land.

Section 2  
Extent of and Reasons for Inadequate  
Access

Figure 2.1: Forest Service Acres, by  
Region, With Inadequate Public  
Access



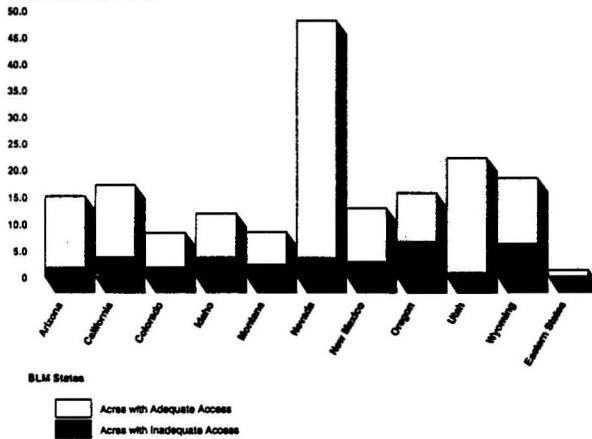
Source: Basic data provided by the Forest Services



Section 2  
Extent of and Reasons for Inadequate  
Access

Figure 2.2: BLM Acres, by State, With Inadequate Public Access

Number of Acres (in millions)



Eastern State Offices reported no inaccessible acres.

Source: Basic data provided by BLM.

## Reasons for Inadequate Access

Private landowners' unwillingness to grant public access is based on several factors. These factors, according to questionnaire respondents, are concerns about vandalism and potential liability, and desire for privacy. These concerns, according to the respondents, have increased over the past decade, as has private landowners' unwillingness to let the public cross their land.

Table 2.1 shows the percent of Forest Service supervisors and BLM managers who indicated that certain factors contributed, to a great or

**Section 2**  
**Extent of and Reasons for Inadequate Access**

extreme extent, to private landowners' unwillingness to let the public cross their land.

**Table 2.1: Respondents Indicating Factors Contributing, to a Great or Extreme Extent, to Private Landowners' Unwillingness to Grant Public Access**

Factor	Percent of supervisors/land managers	
	Forest Service	BLM
Concern with vandalism	52.5	62.9
Desire for exclusive personal use of their own property	55.1	41.3
Desire for privacy	51.7	37.1
Concern with liability	24.6	35.0
Noneconomic desire for exclusive personal use of agency-managed lands adjacent to or intermingled with private lands	32.2	25.9
Disagreement with the agency over the value of the conveyance	11.0	11.2
Potential loss of profits from renting private fishing and/or hunting rights on lands adjacent to or intermingled with agency-managed lands	8.5	12.6
Potential loss of profits from charging access fees to the public	6.8	13.3
Potential loss of profits from outfitter/guide operations	5.9	14.0
Potential loss of profits from operation of dude ranches on lands adjacent to or intermingled with agency-managed lands	1.7	8.4
Other reasons	3.4	3.5

As an example of private landowners' concerns, a Montana landowner we interviewed told us that allowing public access disrupts his cattle-ranching operation, because the public disturbs grazing cattle and the animals move to other areas. The rancher is then forced to spend time collecting the cattle and returning them to the pasture. On this ranch we also observed signs that had been shot, and trespassers cutting down trees for firewood.

Another rancher we interviewed said he did not want hunting parties to cross his land because he feared they would introduce noxious weeds. Seeds of weeds such as leafy spurge and spotted knapweed, which crowd out pasture grasses, could be carried onto the land in tire treads, horses' hooves, or hikers' clothing. As another example, some private landowners in southern California do not want the public to cross their property because they fear the introduction of the root rot fungus to their avocado trees.



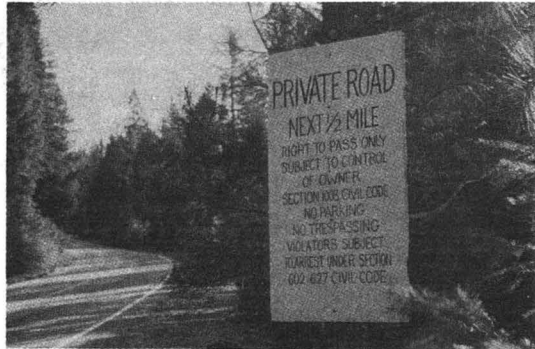
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Section 3  
Extent of and Reasons for Inadequate  
Access

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Given such concerns, private landowners use various means of restricting the public's access. According to agency officials we interviewed, some private landowners physically block the access routes; others erect warning signs; and still others threaten trespassers with guns or attack dogs. Figures 2.3 and 2.4 show public access restrictions imposed by private landowners.

**Figure 2.3: Warning Sign Erected by Private Landowner to Restrict Public Access in the Eldorado National Forest, California**



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**Section 2**  
**Extent of and Reasons for Inadequate**  
**Access**

**Figure 2.4: Gate on Privately Owned Land Blocking Public Access to a Trail in the Angeles National Forest, California**



## Section 3

## Effects of Inadequate Access

Inadequate access to federal land reduces the public's opportunities to use the land. However, according to the questionnaire respondents, the extent of access problems is not the same nationwide. Rather, the extent to which recreational activities are affected differs by type of activity and by geographic location. In other words, what is a problem in one part of the country is not necessarily a problem in another.

Inadequate access also interferes with the agencies' land management activities. In some cases, this interference is extreme; in other cases, it is merely a nuisance.

### Reduced Public Recreational Opportunities

According to the questionnaire respondents, the recreational opportunities most reduced by inadequate access are hunting and off-road vehicle use (e.g., dune buggies and dirt bikes). Table 3.1 shows the types of recreational activities that Forest Service and BLM questionnaire respondents said were either greatly or extremely reduced by inadequate access. In addition, appendix II shows the full range of responses given by both Forest Service and BLM managers for this question.

**Table 3.1: Respondents Indicating Great or Extreme Reduction in Public Recreational Opportunities Due to Inadequate Access**

Recreational activity	Percent of supervisors/land managers	
	Forest Service	BLM
Hunting	12.7	14.7
Off-road-vehicle use	10.2	8.4
Hiking	7.6	7.0
Camping	4.2	8.4
Viewing scenery and wildlife	5.9	6.3
Driving for pleasure	5.1	4.9
Horseback riding	4.2	4.2
Fishing	3.4	4.9
Wilderness area uses	3.4	4.9
Mountain biking	4.2	3.5
Rafting, canoeing, and other water sports	1.7	4.2
Cross-country skiing and snowmobile use	1.7	2.1
Recreational mining	1.7	2.1
Developed Recreation Site use	0.8	1.4
Commercial uses (e.g. outfitting/guiding, providing access to ski areas, etc.)	0.8	0.7

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**Section 3**  
**Effects of Inadequate Access**

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Such restrictions are a concern to recreationists. According to representatives of various sporting groups we interviewed, private landowners who block access are in effect "privatizing" federal land for their own personal use or gain. The sportsmen fear that they will lose not only their hunting and fishing opportunities, but also other recreational opportunities available to the public. This concern is illustrated by an excerpt from an outfitter/guide brochure to federal land. "Our hunting territory comprises 25,000+ acres of private property and private access National Forest land. Our clientele enjoys exclusive run of this carefully preserved remnant of North America's wilderness and representative wildlife."

Although inadequate access reduces the public's recreational opportunities, the problem is not equally extreme nationwide, but varies by activity and geographic area. For example, hunting was reported by BLM managers as being greatly or extremely reduced in California, Colorado, Idaho, Montana, Oregon, Utah, and Wyoming, but not in Arizona, Nevada, New Mexico, or the eastern states. Hunting was reported by Forest Service supervisors as being greatly or extremely reduced everywhere but in the Eastern Region.

The extent of reduction of other recreational opportunities also varied from place to place. For example, according to BLM respondents, camping was reduced in Idaho but not in Oregon, whereas mountain biking was reduced in Oregon but not in Idaho. According to Forest Service respondents, fishing was reduced in the Rocky Mountain Region, but not in the Northern Region, whereas wilderness use was reduced in the Northern Region, but not in the Rocky Mountain Region.

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**Interference in  
Agency Management  
Activities**

According to questionnaire respondents, the management activities most interfered with by inadequate access are construction, trail and road maintenance, and wildlife habitat. Table 3.2 shows the type of management activities that inadequate access interfered with to either a great or extreme degree. Additionally, appendix III shows the full range of responses given by Forest Service and BLM managers for this question.

Section 2  
Effects of Inadequate Access

**Table 3.2: Respondents Indicating Great or Extreme Interference to Management Activities Due to Inadequate Access**

Management Activity	Percent of supervisors/land managers	
	Forest Service	BLM
Construction, reconstruction, and/or improvements	6.8	4.9
Maintenance of existing trails, roads, etc.	2.5	9.1
Habitat or biological/vegetative diversity management	4.2	3.5
Law enforcement	3.4	3.5
Inventory work (e.g., tree counting, archaeology, etc.)	1.7	2.8
Fire protection	4.2	0.0
Contract or permit administration	3.4	0.7
Ability of contractors and permittees to reach areas for authorized activities (e.g., grazing permittees, outfitter/guides, service contractors, etc.)	3.4	0.0
Search and rescue	0.8	1.4
Work at administrative or communications sites	1.7	0.0
Toxic waste cleanup	0.8	0.7
Other	0.8	0.7

Extreme interference in agency and permittees' work, for example, was reported at a site in southern California. At this site, the Forest Service does not have access to a mountaintop containing communications equipment—some owned by the Forest Service, and some by other federal agencies or private corporations holding Forest Service permits. Part of the road leading to the mountaintop crosses private land, and the private landowners charge the Forest Service and the permittees an access fee to cross their land for equipment maintenance purposes. The private landowners' refusal to allow access interferes to an extreme extent, according to the questionnaire respondent, with both the Forest Service's and the permittees' work at this site. Because the Forest Service has not been able to obtain the access easements needed to cross the private land, it is considering building a road to reach the site from the other side of the mountain, according to a Forest Service official we interviewed. No cost estimates for construction of this road were available.

In other cases, inadequate access is perceived as more of a nuisance than an interference in agency management activities, and its effect is slight. According to a BLM official we interviewed in Oregon, BLM personnel occasionally encounter locked gates on private land they are crossing to reach a fire on federal land. In such a situation, according to this official,

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**Section 3**  
**Effects of Inadequate Access**

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BLM personnel simply cut the lock and proceed to the fire. While such an instance of blocked access was a nuisance, its effect on the agency's management ability was slight.

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## Agency Methods of Acquiring Public Access

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The Forest Service and BLM have various tools for acquiring public access. They can acquire all rights and interests associated with the land (called fee simple acquisition) or perpetual easements (limited rights to enter and use the land for access which are binding on succeeding owners). Fee simple acquisitions and perpetual easements can be acquired through purchase, donation, exchange, or condemnation. Condemnation, simply put, is the federal government's right to take private property for public use, without the owner's consent, upon payment of just compensation. Although both the Forest Service and BLM are authorized by law to condemn nonfederal land to obtain access for public recreational purposes,<sup>1</sup> they rarely do so. According to agency officials, the condemnation process is time consuming, expensive, and can be politically sensitive.

During the past 3 fiscal years, according to questionnaire respondents, the Forest Service and BLM have successfully completed about 2,600 access actions,<sup>2</sup> thereby obtaining public access to 4.5 million acres of land. The methods most frequently used were perpetual easement acquisition and fee simple land acquisition.

Figure 4.1 shows the methods the Forest Service used in obtaining public access to about 2.6 million acres of federal land.

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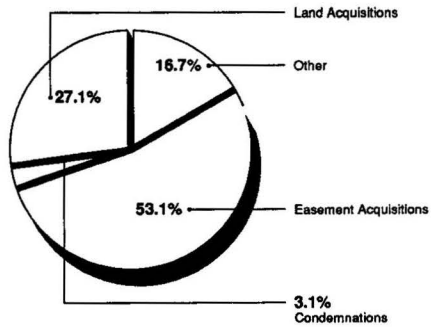
<sup>1</sup>Condemnation is authorized under the Federal Land Policy and Management Act of 1976.

<sup>2</sup>For purposes of our questionnaire, we asked the respondents to count the number of cases completed over the past 3 fiscal years, counting each separate conveyance of land or easement as an individual case. These access cases are referred to as "access actions" in the text.

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Section 4  
Agency Methods of Acquiring Public Access

Figure 4.1: Methods Used by the Forest Service, Over the Past 3 Fiscal Years, to Obtain Public Access



\*Other\* category includes cooperative agreements with other agencies or private entities, as well as other methods not listed in the questionnaire.

Source: Basic data provided by the Forest Service.

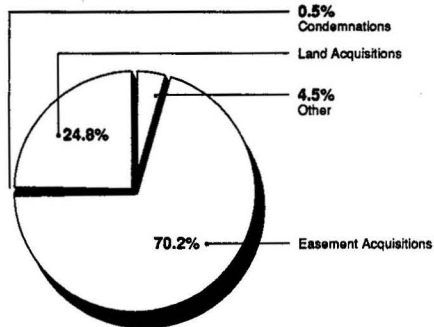
Figure 4.2 shows the methods BLM used in obtaining public access to about 1.9 million acres of federal land.



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Section 4  
Agency Methods of Acquiring Public Access

Figure 4.2: Methods Used by BLM,  
Over the Past 3 Fiscal Years, to Obtain  
Public Access



\*"Other" category includes cooperative agreements with other agencies or private entities, as well as other methods not listed in the questionnaire.

Source: Basic data provided by BLM.

As of October 1991, the Forest Service and BLM had about 3,300 access actions pending—some work had been done, but access had not yet been obtained. If all these actions are successfully completed, another 9.3 million acres will be open to public access—about 18 percent of the 50.4 million acres reported by the agencies as having inadequate access. Of the 3,300 access actions pending, however, the agencies have identified 540, involving 2.3 million acres, which they believe will require condemnation action.

## Appendix I

# Percent of Forest Service Supervisors and BLM Managers Indicating Reduction in Recreational and Other Opportunities Due to Inadequate Access

Overall, how reduced, if at all, is the public's opportunity to engage in each of the following activities in your forest because of inadequate permanent legal public access to the areas you identified in Q. 14?

	Hardly or Not at All Reduced	Somewhat Reduced	Moderately Reduced	Greatly Reduced	Extremely Reduced	Resource Not Present
	(1)	(2)	(3)	(4)	(5)	(6)
<b>Dispersed Recreation</b>						
1. Hunting	31.4	34.8	18.6	10.2	2.5	0
2. Fishing	47.5	33.9	11.9	2.5	0.8	0
3. Driving for pleasure	60.2	20.3	10.2	3.4	1.7	1.7
4. Viewing scenery and wildlife	60.2	22.0	9.3	4.2	1.7	0
5. Hiking	39.8	32.2	17.0	5.1	2.5	0.8
6. Camping	53.4	26.3	11.9	2.5	1.7	0.8
7. Horseback riding	50.9	28.0	13.6	1.7	2.5	0.8
8. Cross-country skiing and snowmobile use	54.2	21.2	6.8	0.8	0.8	12.7
9. Mountain biking	54.2	21.2	11.9	1.7	2.5	4.2
10. Off-road vehicle use	44.9	28.0	11.9	6.8	3.4	2.5
11. Recreational mining	57.6	11.0	7.6	1.7	0	18.6
12. Rafting, canoeing, and other water sports	66.1	17.0	5.9	1.7	0	6.8
<b>Other Uses</b>						
13. Wilderness Area uses	55.1	24.6	8.5	2.5	0.8	5.9
14. Developed Recreation Site uses	87.3	4.2	0.8	0.8	0	3.4
15. Research	83.1	6.8	0	0	0	6.8
16. Commercial uses (e.g., outfitting/guiding, providing access to ski areas, etc.)	72.0	14.4	5.1	0	0.8	5.1
17. Consumption/use of resources such as timber, grasslands, etc.	37.3	36.4	20.3	1.7	1.7	0
18. Other (specify):						
	0	0	0.8	0.8	0	0

**Appendix I**  
**Forecast of Forest Service Supervisors and**  
**BLM Managers Indicating Reduction in**  
**Recreational and Other Opportunities Due**  
**to Inadequate Access**

Overall, how reduced, if at all, is the public's opportunity to engage in each of the following activities in your resource area because of inadequate permanent legal public access to the BLM-managed lands you identified in Q.14?

	Hazy or Not at All Reduced	Slightly Reduced	Moderately Reduced	Greatly Reduced	Extremely Reduced	Resource Not Present
	(1)	(2)	(3)	(4)	(5)	(6)
<b>Dispersed Recreation</b>						
1. Hunting	23.1	29.4	29.4	11.2	3.5	0
2. Fishing	40.6	24.5	15.4	4.2	0.7	11.2
3. Driving for pleasure	46.2	25.9	18.9	4.2	0.7	0.7
4. Viewing scenery and wildlife	43.4	28.7	18.2	4.9	1.4	0
5. Hiking	47.6	25.2	16.8	5.6	1.4	0
6. Camping	39.2	30.8	18.2	7.0	1.4	0
7. Horseback riding	48.3	31.5	11.9	4.2	0	0
8. Cross-country skiing and snowmobile use	46.9	21.7	6.3	2.1	0	19.6
9. Mountain biking	49.7	25.9	13.3	2.8	0.7	4.2
10. Off-road vehicle use	37.1	30.1	19.6	7.7	0.7	0.7
11. Recreational mining	53.9	21.0	6.3	2.1	0	11.9
12. Rafting, canoing, and other water sports	48.3	18.9	7.7	4.2	0	15.4
<b>Other Uses</b>						
13. Wilderness Area uses	41.3	14.0	11.2	4.2	0.7	23.1
14. Developed Recreation Site uses	76.2	7.7	0	1.4	0	9.8
15. Research	69.9	14.7	4.9	0.7	0.7	2.8
16. Commercial uses (e.g., outfitting/guiding, providing access to ski areas, etc.)	51.8	24.5	9.1	0.7	0	8.4
17. Consumption/use of resources such as timber, grasslands, etc.	46.9	27.3	16.1	4.2	0	1.4
18. Other (specify):	0	2.1	0	2.8	0	0

## Appendix II

# Percent of Forest Service Supervisors and BLM Managers Indicating Management Activities Having Interference Due to Inadequate Access

How much, if at all, does the lack of adequate permanent legal public access to areas in your forest interfere with each of the following activities?

	Interferes, Hardly or Not At All	Interferes Slightly	Interferes Moderately	Interferes Greatly	Interferes Extremely
	(1)	(2)	(3)	(4)	(5)
1. Fire protection	70.3	19.5	2.5	4.2	0
2. Contract or permit administration	64.4	22.0	7.6	2.5	0.8
3. Habitat or biological/vegetative diversity management	53.4	27.1	11.9	1.7	2.5
4. Maintenance of existing trails, roads, etc.	37.3	41.5	16.1	1.7	0.8
5. Construction, reconstruction, and/or improvements	45.8	31.4	13.6	5.1	1.7
6. Inventory work (e.g., tree counting, archaeology, etc.)	60.2	31.4	4.2	0.8	0.8
7. Law enforcement	61.9	25.4	5.9	1.7	1.7
8. Search and rescue	79.7	15.3	1.7	0.8	0
9. Toxic waste cleanup	90.7	4.2	0	0	0.8
10. Work at administrative or communication sites	83.9	9.3	1.7	0.8	0.8
11. Ability of contractors and permittees to reach areas for authorized activities (e.g., grazing permittees, outfitter/guides, service contractors, etc.)	55.9	31.4	5.1	1.7	1.7
12. Other (specify):	0	0.8	0.8	0.8	0

**Appendix II**  
**Percent of Forest Service Supervisors and**  
**BLM Managers Indicating Management**  
**Activities Having Interference Due to**  
**Inadequate Access**

How much, if at all, does the lack of adequate permanent legal public access to BLM-managed public lands in your resource area interfere with each of the following activities?

	Interference Heavy or Not At All	Interference Somewhat	Interference Moderately	Interference Greatly	Interference Extremely
	(1)	(2)	(3)	(4)	(5)
1. Fire protection	67.1	23.8	5.6	0	0
2. Contract or permit administration	53.9	32.2	9.8	0.7	0
3. Habitat or biological/vegetative diversity management	37.1	39.9	14.0	3.5	0
4. Maintenance of existing trails, roads, etc.	48.3	26.6	11.9	7.7	1.4
5. Construction, reconstruction, and/or improvements	48.3	32.2	10.5	3.5	1.4
6. Inventory work (e.g., tree counting, archaeology, etc.)	49.7	30.1	14.0	2.8	0
7. Law enforcement	60.8	23.1	9.1	3.5	0
8. Search and rescue	81.1	8.4	5.6	1.4	0
9. Toxic waste cleanup	81.8	9.8	2.8	0.7	0
10. Work at administrative or communication sites	74.8	15.4	5.6	0	0
11. Ability of contractors and permittees to reach areas for authorized activities (e.g., grazing permittees, outfitter/guides, service contractors, etc.)	49.7	30.8	16.1	0	0
12. Other (specify):					
	0	0.7	0.7	0.7	0

## Appendix III

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## Major Contributors to This Briefing Report

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**Resources,  
Community, and  
Economic  
Development Division,  
Washington, D.C.**

James R. Hunt, Assistant Director  
John S. Kalmar Jr., Assignment Manager  
Nancy A. Boardman, Evaluator  
Carolyn M. Boyce, Senior Social Science Analyst

---

**Denver Regional  
Office**

William J. Temmler, Evaluator-in-Charge  
Stephen P. Gaty, Evaluator  
Felicia A. Turner, Systems Analyst  
Pamela K. Tumler, Reports Analyst



# LOCKED OUT

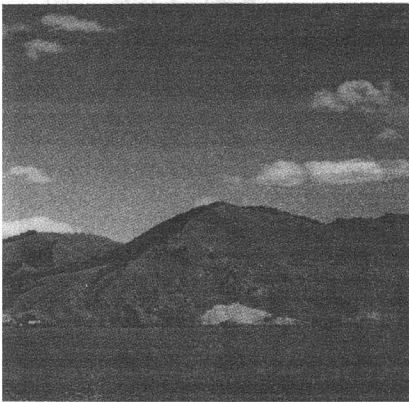
**How private owners are turning public lands – your lands, your constituents' lands – into their own private property by seizing control of access roads and locking the gates.**

**Here's the whole story: The enormity of the problem, what you can do about it today, and what the American people and the President think.**

**You're returning from a trip. You make the usual turn into your driveway and stop dead in your tracks. While you were gone, someone put up a locked gate and a sign that calls you a trespasser for wanting to enter your own property.**

**Your driveway has always passed through about three feet of your neighbor's yard. It's never been a problem before, but someone new just bought the property and doesn't believe in sharing.**

**You can see your house, but you can't get there anymore.**



### **Blocked lands**

A preposterous scenario? Yes. But something very much like it is occurring with alarming frequency throughout the Great American West. Vast tracts of public lands are cut off from their rightful owners – the American people – by owners of neighboring private property who simply gate access roads and lock you, the people, and officers of the Forest Service and Bureau of Land Management (BLM) out.

One result is that every American citizen loses the potential opportunity to use the lands that belong to each of us. Another is that the land and access roads cannot be properly managed or maintained by BLM or Forest Service.

There's another result, as well. The private landowners who happen to own the access routes wind up with de facto ownership and exclusive use of your public lands.





## **Twenty-two Yellowstone National Parks: Off Limits**

About a third of our nation is public land - over 700 million acres. Most of this land is managed by the Forest Service and BLM, 465 million acres in total.

The General Accounting Office (GAO), at the request of Congressman Bruce Vento, the Chairman of the Sub-committee on National Parks and Public Lands, has released a study of the extent and effects of blocked public access to public lands. The GAO found that 50.4 million acres, or about 14 percent, of Forest Service and BLM land in the contiguous United States has blocked public access. This area is about the size of Virginia, Maryland, New Jersey, Delaware, Massachusetts, New Hampshire and Vermont added together. Imagine 22 Yellowstone National Parks being off-limits to the public, and you can understand the consequences of 50.4 million acres of blocked public access.

Opportunities to use public lands are lost due to blocked access. The main activities that are affected are hunting and off-road vehicle use. But, the GAO has also documented losses of fishing, hiking, mountain biking, camping and pleasure-driving opportunities. Construction, trail and road maintenance and wildlife habitat management by the public agencies are also severely impacted. Not only is use blocked, but public natural resources deteriorate due to an inability of the public agencies to manage the lands.

The biggest problems are in Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Utah and Wyoming due to the checkerboard ownership created when the West was settled.

But the problem is not just something for Westerners to worry about. Anyone who has traveled to the West for outdoor recreation is impacted. And with outdoor recreation the \$300 billion industry it is, jobs are affected everywhere.



## The Private Landowner Perspective

Blocked access has been increasing over the past decade as the use of public land has been growing. In some cases the closed roads are public roads, bought and paid for with public dollars. However, without continued investment in upkeep and careful documentation of the existence of the road, a private landowner can put a gate up and close off access to adjacent public lands.

Private landowners are increasingly blocking access to public land for a number of reasons. In some cases, the landowners have legitimate gripes. Vandalism, trespassing, poaching, liability and the desire for privacy are all factors in landowners "locking the gates." Outdoorsmen who cross private land to access public land have a special responsibility to ensure that private landowners' rights are respected.

However, nefarious reasons also exist for blocking access, including obtaining exclusive personal use of vast tracts of public land and the ability to maintain guiding operations for hunting or fishing with exclusive use of public land. For example, a guided hunt operation in Montana boasted of its exclusive use of 25,000 acres of National Forest in a brochure because it was able to block the only access to these public lands.

## Solutions

The key to solving the access dilemma is to elevate the level of concern about the issue among the Administration and the Congress. The agencies have the needed authority and tools to solve the problems, but they need to be directed to use them and given the resources to carry out the programs. Three primary solutions exist:

- 1) Document where legal access already exists. According to the Public Lands Access Association, Inc., 80 percent of all blocked lands are situations where legal access already exists. Legal resources devoted to documenting existing access would have a large payback to the public.

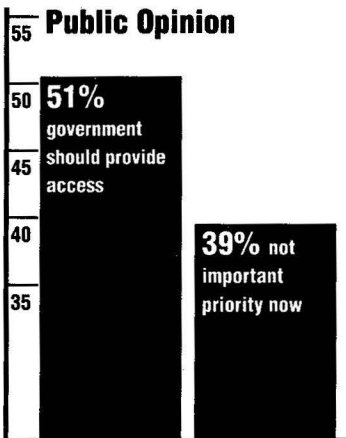
## **"I would work to ensure appropriate access to public lands"**

**—President Clinton**

2) Presently, the primary method agencies use to enhance access is to purchase easements, a preferable alternative to condemnation. Such acquisitions should be made a separate line-item in the Forest Service and BLM budgets, and additional funds should be allocated to purchase easements in areas such as Montana where problems are particularly severe.

3) Some private land passes through public ownership when there are defaults on federal loans such as those through the Farmers Home Administration. Rarely does the lending agency place easements on the land for public access prior to resale. This solution, without a direct cost to the U.S. Treasury, should become standard operating procedure as an easy-to-implement approach to increasing the public's ability to use its land.

To implement these and other solutions, Congress needs to focus on this problem. Oversight hearings on the GAO report is a good first step to emphasize that the BLM and Forest Service maintain an innovative public access program to acquire and defend public rights, while mitigating private landowner concerns through improved public education about responsible outdoor behavior.



Source: Roper Organization for Times Mirror Magazines

## **What the People Want**

The public wants the government to focus on the access problem now. In a recent public opinion survey by The Roper Organization for Times Mirror Magazines, Americans were asked: "Do you think the Federal Government should find a way to provide access to public land at this time, or isn't this an important priority now?" Over half, 51%, responded that the government should provide access, while 39% felt this was not an important priority now.

President Clinton feels this is an important issue. In a pre-election interview that appeared in all the Times Mirror magazines and newspapers, reaching 40 million people, he stated, "I would work to ensure appropriate access to public lands."

The time for action to improve public access has arrived. Can Congress and the Administration respond to this need?

## For More Information:

Lands Staff  
USDA Forest Service  
PO Box 96090  
Washington, DC 20090-6090

Lands Office  
Bureau of Land Management  
1849 C St., N.W.  
Washington, DC 20240

Public Lands Access Association, Inc.  
Box 3902  
Bozeman, MT 59715

Southeastern Montana Sportsman Association  
3708 Harry Cooper Place  
Billings, MT 59106-1025



## Times Mirror Magazines, Inc.

1705 DeSales St., N.W., Suite 801,  
Washington, D.C. 20036 (202) 467-4949

Field & Stream	Ski Magazine
Golf Magazine	Skiing
Home Mechanix	Skiing Trade News
Outdoor Life	Sporting Goods Dealer
Popular Science	Tournament Digest
Salt Water Sportsman	Yachting

## ACCESS

Nonfederally  
owned lands.  
16 USC 3210.

SEC. 1323. (a) Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: *Provided*, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.

(b) Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of the Interior may prescribe, the Secretary shall provide such access to nonfederally owned land surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-82) as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: *Provided*, That such owner comply with rules and regulations applicable to access across public lands.

## YUKON FLATS NATIONAL WILDLIFE REFUGE AGRICULTURAL USE

16 USC 3211.

SEC. 1324. Nothing in this Act or other existing law shall be construed as necessarily prohibiting or mandating the development of agricultural potential within the Yukon Flats National Wildlife Refuge pursuant to existing law. The permissibility of such development shall be determined by the Secretary on a case-by-case basis under existing law. Any such development permitted within the Yukon Flats National Wildlife Refuge shall be designed and conducted in such a manner as to minimize to the maximum extent possible any adverse effects of the natural values of the unit.

## TERROR LAKE HYDROELECTRIC PROJECT IN KODIAK NATIONAL WILDLIFE REFUGE

16 USC 3212.

SEC. 1325. Nothing in this Act or the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd) shall be construed as necessarily prohibiting or mandating the construction of the Terror Lake Hydroelectric Project within the Kodiak National Wildlife Refuge. The permissibility of such development shall be determined by the Secretary on a case-by-case basis under existing law.

## FUTURE EXECUTIVE ACTIONS

16 USC 3213.

Publication in  
Federal  
Register;  
notification of  
Congress.

SEC. 1326. (a) No future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska shall be effective except by compliance with this subsection. To the extent authorized by existing law, the President or the Secretary may withdraw public lands in the State of Alaska exceeding five thousand acres in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress.

(b) No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.

Mr. VENTO. I just wanted to turn this around a little bit on the access question with regard to public lands. Some may raise questions since we do have a law that deals with public land access that was passed in 1980, which ensures that you can cross national lands to get to your private lands. Now the issue here, not to be lost and hasn't been lost on me, that I heard loud and clear from some of the Members at the meeting today, was that there are road restoration or closures on Forest Service and BLM lands. But the point is that there are—and that may cause some difficulty with regards to the time treatment, and so forth, for public lands. Of course, we are involved in a big debate ourselves in the committee on R.S. 2477, which is the rights-of-way.

Let me yield at this time, because I know my colleagues are anxious to ask the GAO some questions.

Mr. Hansen?

Mr. HANSEN. Thank you, Mr. Chairman.

I don't know of a bigger problem that I have ever seen on this committee. I think that people who live in the public land States realize the mixture that we have all talked about, and you talk about in your report. It is truly a checkerboard. And you can find a little piece in the middle of some mountain chain, where some private inholder has got 10 acres and can block everything in there. As strong as I believe in private ownership of ground, I still think that some of our folks, a relatively minor group that I found in my home State of Utah, Wyoming and Idaho, where I spend a lot of time, most of them are pretty reasonable and let people go through, and for various reasons.

In the 1970's, when I was in the State legislature, our governor was Governor Scott Matheson. Scott was a very interesting man with a lot of vision, and he suggested something called "Project Bold." Project Bold, we spent a lot of time on it. It was basically that the State would block up their ground, and the State had little pieces of it all over the map; the Federal agencies would block theirs up. They would then sit down and say, let's make an exchange if there is a way to do it, where maybe it is a win/win proposition, where you get ground that fits the needs of the Forest Service and/or BLM, we will exchange our ground for ground that fits the needs of the State of Utah.

I think you would have to do it that way or else maybe we would do it on a retail basis, and we are talking acre for acre, and 40 years isn't even close. One hundred and forty years probably isn't close, because of all the problems, the value and inventories and appraisals and all that type of thing.

But it is either "eat the elephant," I guess, or "take a bite at a time." I personally think that some bold people around here, maybe, someday, Mr. Chairman, we can take a bold shot at it like the late Governor Matheson intended to do it.

I can give you horror stories on both sides of this thing. And I appreciate your report. It seems to get right to the issue. But to those of us who live in the West, "access," that word "access" comes up every time we look at a wilderness, a buffer zone, opening up ground, whatever it is. It is how do we provide access and should we provide access. The Forest Service out our way, who used to be looked at as one of the finer organizations, is becoming a hiss and

a byword because they closed so many things up. And they rightfully say we can't afford it, we can't keep the thing up.

The public is saying, forget keeping it up, it wasn't kept up when the pioneers came in here, we were still able to do it. We don't need culverts; we don't need patrols; we don't need all this stuff; why do you care?

Of course, that is not quite the way we do it. On the other side of the coin—and I am sure you found this in your study—I could give you numerous places where some private landowner, knowing that the vast majority of us have no knowledge at all of what is private and what is public, posts "Public Land."

I have pictures of public land that has been posted by private landowners. And that always concerns me. I don't know why they would do that, but obviously there is a reason.

There is a group right up in northern Utah that has a whole mountain and they bring people in and advertise in national magazines about shooting of bear, moose, elk, deer and antelope, and forest grouse in that area, and they hardly own any of it. They just happen to own the way in. And that is how they take advantage of that.

So this thing cuts every which way. And you have empathy for both sides of this thing.

I don't really have a question because I think you have covered it well. But I did want to make those statements and those comments. And I have never seen a tough thing to get involved in like the environmental groups; they don't want anybody in for any reason. You know, take only pictures, leave only footprints, and save it for two guys out of New York or something. I don't know what their plan is. But we get a little concerned about their extreme attitude on these things.

So when it gets right down to it, I personally feel that the responsibility of this committee is to take care of the majority of the public and give them access where it can be done in an environmentally safe way and can be done in a way that they can enjoy the public land which should be there for the enjoyment of all people.

And excuse me for not asking a question, but I just wanted to make that comment.

Mr. VENTO. I am glad you had the last comment on environmental safety, because restoration of roads if they are left unmaintained can result in a lot of questions about damage to the environment in terms of streams and creeks and slumps, and so forth, as you know. So it isn't just a matter of no one took care of it when we came in here.

But Congressman Williams, I am sure, has a question or two.

Mr. WILLIAMS. Thank you, Mr. Chairman.

This is a difficult, contentious, complex issue, but I think one that can be resolved, perhaps not to everyone's satisfaction, but it isn't as though there is no way around it. And I commend Mr. Mike Penfold, BLM in Montana, and his testimony to you today. Many of you have seen the movie a "River Runs Through It." That movie runs through part of Montana, and BLM has done wonderful work in creating a recreation corridor, as well as setting aside a walk-in

hunting area of about 40,000-plus acres near the river that runs through it, the Blackfoot River.

Mr. Penfold's testimony will, I think, demonstrate fairly significantly that there are cooperative ways to help resolve this, but it won't be easy. And as our current witness has indicated, more than 50 million acres of public land is virtually shut off. And this comes at a time when public demand for the land is increasing, and increasing at a fairly significant rate. So we clearly have a very real problem on our hands and it is in fact going to require some innovation. And more than that, some genuine neighborliness.

We can't do this from here by passing laws. You mentioned a "Cowboy's Heaven." Cowboy's Heaven is not only the States of Wyoming and Montana, but it is an actual place in Montana. There is a place called "Cowboy's Heaven." Access to that place was shut off 25 years ago at gunpoint. Well, there is not a hell of a lot of neighborliness in that act. With aggressive management techniques, maybe with new laws and new regulations, above all, we need neighborliness by both those who would use the land as well as those who own the private land that blocks them from their own land.

Mr. Anderson, would you tell the committee more about your testimony on pages 3 and 4, in which you describe the genuine difficulties that private landowners have?

You cite a couple of examples out in Montana. One of them strikes me, because I have got a couple of landowner friends out there who have shut off access or at least they contain it pretty significantly, simply because of the weed problem. You know, leafy spurge and spotted knapweed are funny sounding weeds, but deadly serious problems.

Could you give us a little better sense of what some of the ranchers have told you with regard to the very real problems they have in allowing many, many people through their land?

Mr. ANDERSON. Yes. And I will call on my colleagues to help me on this, too. One of the examples that we had in our testimony was a real life situation that the staff saw when they were actually out there. They were on a ranch, I believe, in Montana, and talking to the rancher. And he was concerned primarily about vandalism and litter and that sort of thing. One of the things that actually happened when they were on the land was there were some people that weren't authorized to be there cutting down timber. I think maybe looking back at it in 20/20 hindsight, the GAO auditors went out to go try to find them. I think if they had to do over again, they might not want to have done that. But in any event, that is a classic example.

I think several people have mentioned this morning what a difficult problem this is because you have landowners who have legitimate rights and needs, too. In some cases their property is being misused by visitors to get on to the Federal land. So that is something you have to deal with.

I don't know whether, Jim, or Bill, you want to cite some examples.

Mr. WILLIAMS. Perhaps your colleagues could give us other examples of difficulties that private landowners have cited.



Mr. TEMMLER. Speaking to some of the ranchers, they indicated that the weed problem was very significant, especially around the Gallatin area, around Bozeman. This could be a perennial problem by the importation of some of these noxious weeds that can be carried in either through the hooves on horses and as well as hikers and on truck tires. We saw a similar problem out in the Los Padres, in California, where there is another problem caused with avocado root disease that hikers bring in on their boots. So there is a reluctance for some of the avocado growers to allow hikers to cross their land.

Mr. VENTO. Would the gentleman yield, please, for a minute on that?

I had somewhere back some botany or something. I am just wondering if, these were the reports that individuals were taking to you in terms of dissemination of weed seed and other types of disease, but I guess from a scientific standpoint, is that—did you actually try and go back and check to see whether or not that was the principal carrier? I was just wondering whether human impact is one of the principal causes; I am just wondering how serious an aspect?

They certainly have a right to their views on it. But I was wondering if we checked it out really to determine whether or not that was the dissemination path that was accurate?

Mr. TEMMLER. No, Mr. Chairman, we did not.

Mr. VENTO. Well, I just think it is useful. I am certain that it does contribute something; it could be the primary thing. A lot of things have been moved in the country. I don't want to take anything away from the report in terms of that, but I think we need to nail it down. I think they have got to in terms of these issues.

Thank you.

Mr. WILLIAMS. Your report summary notes that, according to Forest Service supervisors, hunting is greatly or extremely reduced everywhere, except in the eastern region of the United States. Quantify "reduced." I see where you say it is somewhat reduced in seven of the western States, but can you tell us what you mean by "greatly reduced"?

Mr. TEMMLER. By greatly reduced, about 12.7 percent of the Forest Service supervisors indicated that this was a great problem on their forests. For the BLM, about 14.7 percent of the BLM managers reported that this was a great problem on their resources.

Mr. WILLIAMS. Are they basing those comments on the number of complaints they get or of actual closures?

Mr. TEMMLER. Responses to the question we asked was based on their knowledge of the area.

Mr. ANDERSON. I think it is really a judgment factor. In our questionnaire, we gave them five choices, ranging from "greatly," to "no problem at all. And I think they exercised their judgment, looking back anecdotally over time, and answered the question that way.

Mr. WILLIAMS. Well, finally, Mr. Chairman, in Montana at least, this hunting season, it is a greater problem than ever before in our State's history because hundreds of thousands of acres have been posted by private landowners who disagree with some new State regulations with regard to access. And I personally believe that

without some innovative approaches such as the BLM and Forest Service, as well, have applied in Montana, combined with neighborliness, unless those things happen, this problem is going to become a shootout at the OK Corral in the West in future years.

Mr. VENTO. Well, I thank the gentleman. Hopefully, by trying to participate here and get abreast of it, we can begin to set in place some policy that will temper what is obviously a very serious problem.

I agree with you, I don't think it is just passing more laws to say you ought to get along, you know. So we have got a problem.

Congressman Smith, do you have any questions for Mr. Anderson?

Mr. SMITH. Thank you.

I just want to put this discussion in some kind of perspective. This is all about private property rights and, where the public interest overrides public property rights, private property rights for access. So that is the debate. And I can just see this committee making sure that we can trespass over every private property owner; I would like to see that bill. I am sure it would be interesting and likely.

But, you know, I am surprised that there are only 14 percent of the public lands in BLM that are impacted. In my district alone, the Federal Government owns 75 percent of the public lands. About 79,000 square miles. And I note that the Oregon problem is slight, about 3 percent, 3.1 percent, I believe.

I understand that the Federal Government has the right to demand access to extract minerals and timber. Should they be denied access over private lands, they can condemn access. So this issue basically is about recreation and hunting and fishing, I assume. In your determination of 14 percent that have been denied access to public lands, what percentage of that is recreation, what percentage of it is for other reasons?

Mr. HUNT. I believe, Mr. Smith, as far as the figure goes, that it included all lands where there was not adequate access. There was no distinction made between whether it was recreation or whether it was for mining purposes.

In the report itself, the principal areas that were discussed, most of it relates to the recreation aspect, hunting, fishing, camping, hiking, that type of thing.

Mr. SMITH. So that is what we are talking about, basically. Now, I was just in Oregon, I was on a ranch of 45,000 acres, privately owned. Right in the middle of it there is a section of BLM land. And, this fellow has this place blocked up. Now that section would be included, of course, in the total number, I assume. And I reverse the issues. If you forced access across this man's property to that section, I am sure that hunters, like me, would never take advantage of driving across private lands and killing a deer or an elk while getting to that section of public land. I know that wouldn't happen myself.

There is another angle to this problem, and that is these isolated tracts. And I assume all the isolated tracts are included in your report of the 14 percent. Did you in your study determine that there were aggravated problems where a person owned 160 acres and de-

prived the public of using thousands of acres of public lands? Did you break down your analysis at all?

Mr. ANDERSON. I don't think we gathered the information that would enable us to do it that way.

Mr. SMITH. So I know there are aggravated problems. The other side of it is there are situations in which anybody, any reasonable person, would justify locking up a piece of public land if it were surrounded by private land. And that brings us back to this question of either exchanging lands or the Federal Government actively selling at public auction or whatever, or to the landowner, those isolated tracts which would eliminate part of this problem. I am surprised that there are not more than 14 percent, frankly; are you?

Mr. ANDERSON. Well, I don't think we really had an idea at all, other than what we had seen in the agency's files. And, you know, it depends on where you sit whether or not it is a big problem. If you are one that wants to use the land, you could consider it a major problem if you can't get access to it. But 14 percent, you know, is not a large percent.

Mr. SMITH. Right. Like Utah, I assume, the State of Oregon has been actively trying to block and exchange lands, with the BLM primarily, because most of the area is controlled by the Bureau of Land Management, and done it very successfully. As you know, when we came into the Nation, Sections 16 and 36 were retained by the State. So we have this checkerboard pattern, not only private and public, but State lands and Federal lands.

And we have done a good job in the last 20 years in blocking State lands with the Federal Government. That ought to be some sort of clue as to how to proceed, it would seem to me. And by the numbers, Oregon has less of a problem than many States.

So I wonder if this blocking program might reduce the access. And, of course, it does. Maybe that is one reason Oregon has less of a problem. You didn't take a look at that at all?

Mr. ANDERSON. No, we didn't.

Mr. SMITH. And the reasons that Montana and Wyoming have larger problems than others, have you a comment on that?

Mr. ANDERSON. I don't think we know. All we found was that there was a wide variance in the problems among the States. But in terms of why the problems, I don't think we have got a good handle on that.

Mr. SMITH. All right, thank you very much.

Mr. WILLIAMS. Would the gentleman yield?

Mr. SMITH. I would be happy.

Mr. WILLIAMS. I appreciate the gentleman yielding.

I join the gentleman in his concern about private property rights and I don't think we are going to see a bill from this subcommittee, but if we could, like you, I would be eager to see what it did.

Mr. VENTO. If I could just comment on the gentleman's comments, not on the bill that you will see on private property rights. You know this is an area that cuts both ways, as I indicated before, and I recognize that. I was looking in the Pacific Northwest Region, I can't tell the number, but it indicates that there are about 25 million. This is just Washington and Oregon, 25 million acres of land

between the two States that were indexed here with parks, and so forth, so it is probably larger than that. But the point is if you—

Mr. SMITH. Excuse me, Mr. Chairman. My number is 3 percent.

Mr. VENTO. I didn't know, I was just looking at the chart. Maybe it is smaller than that.

Can you, Mr. Anderson, for the benefit of Mr. Smith and myself, interpret your chart, put some numbers to it here? I didn't do it quickly enough on appendix one, the Northwest Region. Is that supposed to be just 3 percent of those lands that are affected there? It is page 8—had you attached this to your statement? And I just wanted to get some numbers on that particular instance for the benefit of my colleagues and I for—

Mr. ANDERSON. I think we have it by State for the BLM lands. And we have it by region for the Forest Service lands.

Mr. VENTO. But it looks to me about 1 or 2 million, and so it looks like about 4 or 5 percent, for the Pacific Northwest. Can you give it to us for Oregon and Washington?

Mr. ANDERSON. Well, Oregon for the BLM lands only, it is 6.6 million acres with inadequate access. And that was about 42 percent of the Federal land in Oregon.

Mr. VENTO. Inadequate, and "inadequate" means it is too far around or some other problem with it?

Mr. ANDERSON. That the government didn't have the permanent legal right to get to the land.

Mr. VENTO. So some of this is stating they don't have permanent right: Where they may have it today, they don't have it on a permanent basis?

Mr. ANDERSON. That is right. The Pacific Northwest region was 1.6 million acres with inadequate access, that comprised 7 percent.

Mr. VENTO. So you are below us a little bit, but you have got enough of a problem so things aren't always as rosy as the gentleman—

Mr. SMITH. Mr. Chairman?

Mr. VENTO. I yield to you.

Mr. SMITH. Thank you.

I have my numbers here that indicate 3.1 percent of the Forest Service as inadequate access. Is that according to—

Mr. VENTO. He was giving us BLM numbers?

Mr. SMITH. This is Forest Service.

Mr. ANDERSON. Right. The Forest Service. We only have the data by region; we don't have it by State.

Mr. SMITH. We have it by State here. Old numbers; June 1988, from the Forest Service.

Mr. VENTO. This survey was done, I think, Mr. Anderson said in 1991. You probably need to update it. That is the reason I asked the question to begin with, whether this was a growing problem. I was curious as to the area that you were visiting where you had 45,000 acres with a section which would be 660 acres.

Mr. SMITH. Six hundred and forty, Mr. Chairman.

Mr. VENTO. Six hundred and forty, pardon me. And the point being that there are two things: One, they didn't have access to that particular land in this instance?

Mr. SMITH. No. The man has it blocked up, but he has got a section that he would like to exchange. He would like to trade; he would like to buy. It is sitting in there as a thorn in the side.

Mr. VENTO. I was wondering if you actually knew that he didn't have it. Two is, when you get 50.4 million acres, I don't have to remind you that 640 acres is a pretty small portion of that, so that if there are a lot of isolated tracts, there may be a significant number.

Mr. SMITH. If the gentleman will yield?

There are significant numbers surrounded by private lands that add up to, we don't know, we haven't analyzed it this far, but it is not an insignificant number.

Mr. VENTO. My point I was going to try and make is that the problem, obviously, goes well beyond that particular——

Mr. WILLIAMS. If the Chair would yield?

Mr. VENTO. Sure, I would yield.

Mr. WILLIAMS. We are coming to a different phase in the problem of private ownership. The gentleman from Oregon and I think all of us concerned about private property rights are usually referring to folks who have lived along with their families on this land for many years. They are permanent residents. But there is a new private property problem being created in the West.

It is being created because of the lifestyle of the rich and famous greenhorns who are coming to the West, not to live on the land, but to visit the best of the wild places occasionally, and public places, and have those as their own. We have got a new neighbor, relatively new neighbor out in Montana who, by the way, is trying to be a real good neighbor in Montana, Ted Turner.

Ted bought a lot of land around this area, Mr. Chairman, called Cowboy's Heaven. And when asked about how the public was going to continue to get access to it, he suggested they do it the old-fashioned way, make \$22 million and buy it the way he did. I am not denigrating Mr. Turner with regard to that, but that was a colorful statement that has often been quoted in Montana. And if I am not mistaken, it is quoted in the article which the Chairman passed around.

Mr. VENTO. Yes, it is. I put it in the record.

Mr. WILLIAMS. So that is the other phase of this problem, and that is growing.

And in my judgment, we are very quickly going to go over 14 percent of public land that is being shut off, simply because of the rich and famous coming in and buying up huge portions of the land. At least Mr. Turner comes out and works the land and lives on it quite a bit. A number of other people who own the same amounts of land as Turner, do not come out and work it or don't ranch it. They really just use it for their own access.

Mr. VENTO. I would suggest to the gentleman, I appreciate his insight, but it is akin to what happened where most of our ancestors came from in Europe, where these reserves and areas were left for a slight group of people and excluded the rest of us that might have had a lower social rank.

Mr. WILLIAMS. Sure, and that is my point about how the public should have right of access to its land without regard to wealth, not begin to move away from that in the West.

Mr. VENTO. Mr. Turner and others obviously don't intend that. They have some questions, private property owners have some legitimate questions. Often the dispersal of weeds, other damage.

One question, Mr. Anderson, before I recess because we have to vote. It is a question we are concerned with because one of the issues is going to come up later. I wanted to point out to my colleague from Oregon, too, the issue of the tools that the Forest Service and BLM have available. For instance, Congressman Smith suggested that the forest access roads and others were not important because they have condemnation. But the condemnation, later it will be testified to, is something that has to go before the Appropriations Committee. And we have to sometimes wait two and three years because of some particular provision they put in law, ostensibly, I am sure, thinking to safeguard against precipitous action by an agency, but it is interfering, stretching out, causing expense, causing difficulty even for clouded title matters with regards to this particular matter. And so did you find that the Forest Service and BLM tools in this case were, in your survey, not functioning effectively in terms of doing the job?

Mr. ANDERSON. Well, specifically with regard to condemnation, the Forest Service and BLM managers readily admitted that they were very reluctant to use this as a tool. It is a tool available, but it is time-consuming. It can be politically difficult to do and has some administrative burdens associated with it, too.

Mr. VENTO. Well, I think, you know, it is just another area where if we want to clear up these matters, we have to.

I appreciate, Mr. Anderson, Mr. Hunt, Mr. Temmler, your testimony. Can you wait there, we will be back momentarily.

We stand in recess.

[Recess.]

Mr. VENTO. Let's resume our sitting now, and our efforts will, at this point—Congressman Smith, we have a long list. You said you had an additional question of the panel, a question.

Mr. SMITH. I won't take long. Thanks, Mr. Chairman.

Mr. VENTO. Okay, good.

Mr. SMITH. Mr. Anderson, did you at all analyze the question of using Federal lands by building roads to access public lands that were denied access because of a particular spot of private land denial?

Mr. ANDERSON. No, I don't believe we did anything down to that specific parcel level or anything like that, no, sir.

Mr. SMITH. I think you would agree that if we had a large road construction budget, we would go around a lot of that stuff on public lands, the isolated tract issue, merely build a road around it. That is true in the West. But of course, then that gets you into the question of building more roads.

We don't build any more roads around here, as you well know. We build less roads. And we would run into an immediate problem, I am sure, with the environmentalists if we tried to do that. So there are some trade-offs.

I have some numbers here that there are 134 million acres of public lands within grazing districts, and 128 million outside grazing districts. Did you determine whether or not public access was



denied within or without grazing districts as they are organized in the West, especially on BLM land?

Mr. ANDERSON. I don't know. Bill, did we?

Mr. TEMMLER. No, we did not.

Mr. SMITH. Okay. Well, it is obvious a lot of these isolated tracts are outside grazing districts, almost an equivalent number, and I wondered if you had done any study like that. That is the only questions I had.

Mr. VENTO. Okay, fine, thank you. We appreciate your being brief so we could go on to the other witnesses.

And thank you, Mr. Anderson, Mr. Hunt, Mr. Temmler. We appreciate the effort here and we are probably going to redraft some questions to you on this topic after we get a better insight into the scope from the hearing today and the questions of Members.

Thank you very much.

Mr. ANDERSON. Thank you.

Mr. VENTO. We are pleased to welcome the first panel. Jim Overbay, Deputy Chief of the Forest Service, Department of Agriculture, and Mr. Mike Penfold, the Assistant Director of Land and Renewable Resources, the Bureau of Land Management, Department of the Interior.

Pleased to see Mr. Overbay back. He was explaining that he had some surgery and had been ill for some time. We wish him well and hope he has a good recovery from his health concern.

Jim, welcome back.

Your statements have both been made part of the record, incidentally, so you only need to summarize. I note they are long and good statements and we appreciate again your cooperation with the GAO and the work that they did.

Welcome, Jim.

**PANEL CONSISTING OF JAMES OVERBAY, DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE, AND MICHAEL J. PENFOLD, ASSISTANT DIRECTOR, LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR**

#### **STATEMENT OF JAMES OVERBAY**

Mr. OVERBAY. Okay. Thank you, Mr. Chairman.

It is good to be back, and I have a clean bill of health now, so you will probably see some more of me.

I do appreciate the opportunity to testify today on this very important but also very controversial issue. I do want to assure you that the Administration recognizes that access to the national forests is a significant problem and that we are committed to taking responsible action whenever necessary to correct this. You have already heard from the GAO witness and a number of the statistics and items in my testimony repeat what you have heard, so I will skip through that. I might just add a little bit based on some of the questions that you were asking the other witnesses.

You asked if this was a growing problem? It is a growing problem. Principally because early in the history of the Forest Service, our adjacent landowners generally did not object to people crossing their lands to access the Federal lands, but as those land patterns

have changed, as ownership has changed, it has become much more of a problem.

We are finding existing roads and trails being closed that people have used for years. A lot of the reasons for that you have already heard about—concerns about vandalism, concerns over liability—but a lot of it is because some of these new owners just want to have exclusive use and they really don't want the public having access across their lands.

At present, 17.3 million acres or about 9 percent of the National Forest System does not have an adequate access. And we estimate that it would require about 28,000 easements involving about 7,500 miles of rights-of-way to provide adequate access to all the national forest lands. I might add that the information on our needs has come from our forest planning process. It is based on the forest supervisors' best estimates of what would be needed to implement the forest plans. So those particular figures on actual needs probably aren't going to change an awful lot in the future.

I think it is a pretty good overall picture of what our access needs are. I think you are aware that the principal funding source for our access program has been construction dollars, mainly in the road program but we also use some trail construction money for this. That program has been decreasing dramatically in the past few years.

We estimated from our current funding levels that we can acquire about 375 road and trail right-of-way easements and that we would eliminate the need for about another 275 on an annual basis through exchange and fee acquisitions. But at that particular rate of right-of-way acquisition, it is going to take 40 years to acquire all the needed access to the national forest land.

One of the problems that we are encountering is an increasing reluctance on the part of county and State road agencies to defend the status of historic roads that are being gated and closed. We have entered into cooperative agreements that allows the Forest Service to maintain these important means of access, but this has not been a comprehensive approach.

We want to work more with the National Association of State and Local Governments in developing incentives to encourage them to maintain legal rights. In addition, we are going to review the adequacy of our own authorities to defend, maintain and perfect historic rights-of-way that provide access to Federal lands that might otherwise be abandoned. As I mentioned earlier, liability considerations are one of the reasons many private landowners do not want to allow public access.

We are working to develop cooperative agreements with private landowners, user groups and State and local governments to meet the need for reduced tort liability and enhanced law enforcement. I think this is an area that could probably help solve a number of those problems.

We are also going to continue to urge both the Department of Justice and the USDA Office of the General Counsel to continue to defend aggressively U.S. interests in protection of existing rights. We feel we need to set the example.

We will emphasize more the public access program through updates of our RPA program, our annual budgeting process, and we



are also going to include resolution of identified access problems as a specific item in our management attainment report so we can specifically track accomplishments on each of our national forests. But I think overall what we really have to do is become more diligent in completing our right-of-way acquisitions.

As an agency, we strive to maintain good relations with all adjacent landowners, whether it is local government, private parties, or other government entities. And we are going to continue to do that, but at the same time, we must give equal weight to the rights and expectation of the general public.

Congress has given us a number of authorities to satisfy those needs. Our challenge in using these authorities is to find ways to use these authorities in ways that best serve the needs of all of the users of the National Forest System.

And with that, I will conclude my statement and be happy to answer questions.

Mr. VENTO. Thank you, Mr. Overbay. And we will have questions for you. But we are going to ask Mr. Penfold, of course, to testify first before we do that.

[Prepared statement of Mr. Overbay follows:]

STATEMENT OF  
JAMES OVERBAY, DEPUTY CHIEF  
FOREST SERVICE  
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the  
Subcommittee on National Parks, Forest and Public Lands  
Committee on Natural Resources  
United States House of Representatives

Concerning Problems with Access to Public Lands.

November 11, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for your interest in the issue of inadequate access to National Forest Systems lands and for providing to us the opportunity to offer our views on this matter. This Administration recognizes that access to our National Forests is a significant problem that prevents the American public from fully utilizing and enjoying these lands. We are committed to taking responsible action wherever necessary to correct this problem.

Much of the information we are presenting today comes directly from, or was a consequence of, a report entitled "Federal Lands - Reasons for and Effects of Inadequate Public Access." The report was prepared in 1992 by the General Accounting Office at your request. This subcommittee's continuing support will be invaluable as we continue our efforts to address this issue.

### **Extent of the Access Problem**

During the early history of the Forest Service, little thought was given to public right of access. With some exceptions, adjacent landowners did not object to people crossing their lands to use the National Forests. Unfortunately, the willingness of private landowners to accommodate the public has diminished. Over the past few decades, the situation has changed dramatically with landowners increasingly closing historic routes of access. Existing roads and trails that have long provided public access across private lands are being closed by landowners at an increasing rate. Some of the reasons for this change in behavior include a fear of vandalism, growing concern over liability, and general incompatibility between the owner's use and public access.

At present, 17.3 million acres, or approximately 9 percent of the 191 million acres of National Forest System lands, does not have adequate access. Inadequate access, as defined by the General Accounting Office in its report, means "that the federal government does not have the permanent, legal right for the public to enter federal land at the point(s) needed to use the land as intended by the managing agency." To provide adequate access to these lands, approximately 28,000 easements are needed involving an estimated 7,500 miles of rights-of-way. The majority of needed easements are located in

the western regions where most of the inaccessible land is located.

The most immediately identifiable effect of inadequate access is seen in the reduction of the general public's ability to recreate on National Forests. For example, over 10 percent of managers surveyed for the GAO report stated that hunting and off-road-vehicle use were greatly or extremely reduced due to the lack of adequate access. Other activities, such as hiking and camping, also have been significantly affected. To a lesser extent, important management activities, such as habitat improvement in support of biological diversity, have been hampered by inadequate access.

#### **Current Program**

With increased emphasis on recreation and wildlife resources and opportunities to promote rural economic development, many individuals and interest groups are demanding that we improve accessibility to National Forest System lands. Access needs are identified through the forest planning process mandated by the National Forest Management Act. This process allows for substantial public involvement and is an important tool in identifying those areas where the public feels a need for better access to the National Forests. We maintain an ongoing program to resolve access issues using a variety of authorities to accomplish program objectives. We can acquire all rights

and interests associated with the land needed for access, called fee simple acquisition, or we can obtain perpetual access easements which are irrevocable rights granted by private landowners for access across their property. Either type of access can be acquired through purchase, donation, exchange, or condemnation.

The GAO report shows that the Forest Service acquired public access to about 2.6 million acres during fiscal years 1989 through 1991. Of these acquisition actions, approximately half were through perpetual easements, a quarter through fee simple land acquisition and another 17 percent through other methods such as cooperative agreements with other agencies or private entities. Only three percent were a result of condemnations, many of which were used to perfect title or to establish an equitable value for the property involved. In other words, the overwhelming majority of acquisitions were a result of an amicable transaction, beneficial to both parties.

The principal funding source for the access program has been construction dollars, both road and trail. Historically, the road rights-of-way acquisition activities have been largely associated with our timber sale program. The program, with funding of \$4.5 to \$6.0 million in annual appropriations, has been declining, however, at current funding levels, we are able to acquire about 375 road and trail right-of-way easements and

eliminate the need for about 275 more on an annual basis through land exchanges, acquisitions and other means.

Acquisition of needed rights-of-way has also been hampered by changing public preferences. The increased number of closures of historic access facilities, a declining willingness of owners to sell their land or interest in land, escalating land values, and ownership fragmentation all serve to complicate acquisition efforts. At the current rate of acquisition, adequate access to all National Forest Systems lands will not be guaranteed in the next 40 years.

#### Initiatives to improve access

With limited exception, we do not envision the need for new authorities to carry out this program. This does not mean that we do not need to improve our performance in this area.

One of the major obstacles in providing access to public lands is a growing reluctance on the part of county and state road agencies to defend the status of historic roads that are being gated and closed. Limited resources are the prime reason for this trend. On a case-by-case basis, we enter into cooperative agreements with local governments that allow the Forest Service to maintain these important means of access. However, this is not a comprehensive approach. In the future, we will work with national associations of state and local governments in

developing incentives that will encourage them to maintain legal rights, services and travel-way facilities to and on National Forest Systems lands. In addition to these actions, we are reviewing the adequacy of our authority to defend, perfect, and maintain historic public rights-of-way that provide access to Federal lands that might otherwise be abandoned.

As stated earlier, liability considerations detract from the willingness of many private landowners to allow the public access across their property. In addressing this problem, we are working to develop cooperative agreements with private landowners, user groups, and state and local governments to meet the need for reduced tort liability and enhanced law enforcement.

Additionally, we will urge the Department of Justice and the Department's Office of General Counsel, to continue to defend aggressively United States interests in protection of existing rights. We believe we must lead by example if we are going to ask state and local governments to take a more proactive role in this area.

We are also emphasizing the public access program through Forest Service internal activities such as Renewable Resources Planning Act updates, the annual budgeting process, and the Annual Report of the Forest Service. Recently, we have also

decided to include resolution of identified access problems as a specific item in our management attainment report. This will allow us to better monitor our progress in eliminating access problems.

Finally, and perhaps most importantly, we must be more diligent in completing right-of-way acquisitions. As an agency, we strive to maintain a good relationship with all adjacent landowners, be they local governments, private parties, or other government entities. We must continue to do so. At the same time, we must give equal weight to the rights and expectations of the general public. Congress has entrusted us a variety of authorities to satisfy these needs. Where the planning process, with its attendant public involvement, has clearly established a need for improved access, we must be ready to redeem our responsibility for providing this access. Too often, our reluctance to use all delegated authorities has undermined our effectiveness in working to acquire rights-of-way. Our challenge is in using these authorities in a way that best serves the needs of all users of National Forest System lands. We are committed to meeting this challenge to the satisfaction of this subcommittee and to the satisfaction of the publics we serve.

This completes my testimony. I would be happy to answer any questions you or other members of the subcommittee may have.



**STATEMENT OF MICHAEL J. PENFOLD**

Mr. VENTO. Mr. Penfold, welcome, and your statement has been made part of the record.

Mr. PENFOLD. Thank you, sir.

We appreciate being here and appreciate the committee having this hearing. It is an important matter. I will try to summarize my testimony because several points have already been addressed.

Obviously, this is a big issue for the Bureau of Land Management on the 270 million acres of land it manages. Mr. Overbay and the GAO have pretty well articulated the factors that are involved in discussing access. We agree with GAO's definition of the problem. And the BLM manages a great deal of checkerboard lands which also exacerbates the land patterns that we are managing for the public.

Congressman Williams pointed out the changes that are happening in terms of use, particularly going toward recreation uses. We very much agree with his point on that, and that will tend to increase the need for legal access. I might point out that we don't benefit very often from donations on easements, and I discussed that a little bit more in our testimony.

A point on eminent domain and condemnation. First, it is important to say that we see that as absolutely last resort in terms of acquiring access. It is a useful tool to us, though, in several situations. Obviously, one where we just cannot get cooperation. But it is also a useful tool where we have cooperation to the extent that a landowner agrees that the access should be given but we can't come to agreement on what the value is. Condemnation gives us a way to have somebody else weigh in to determine the value.

And in recent years, as the Chairman pointed out, the Congress has asked us to consult with them and get approval from the Appropriation Committees before we move forward on condemnations. We think this is unnecessary oversight. But again, I want to emphasize, we see condemnation as a last resort.

In fiscal years 1989 to 1991, the Forest Service and the BLM have acquired a great deal of access, but BLM still has, again as the Chairman pointed out, almost 13,000 easements. And we would expect that number to grow at the present rate, because of the factors that Congressman Williams has pointed out, the changes in land use.

Since the GAO issued its 1992 report on this matter, BLM has taken steps to enhance its abilities to procure more adequate access. This includes a more holistic budgeting approach, whereby benefiting resource activities provide some of the funding necessary to pay for acquisition costs. For example, up until about 1989, about 80 percent of the funds that we got for access were put into overhead.

What we are doing now is taking the \$1.4 million that we get for access, using most of that for paying for the access needs, and paying for the overhead out of other activities.

Another thing that we are doing is developing partnerships with landowners and conservation groups so that BLM does not have to secure all the desired easements in a specific area. Also, we are emphasizing use of our field personnel to assist the recreation public during periods of especially high land use such as during hunt-

ing seasons, so that the public can find where there is legal access to get into the public lands.

Some of the best examples of innovative ways to resolve access problems are found in Montana. Federal, State, and local governments working with private landowners, and users, have made real progress in providing additional access for the public. BLM-administered lands in Montana are often included in block management hunting units administered by the Montana Department of Fish, Wildlife and Parks. This program utilizes a variety of incentives for landowners for the use of hunting license revenues for providing access for sportsmen.

Montana BLM districts have been formal partners in management of these blocks. This is a State-run program. I think it emphasizes that it doesn't all have to be done by the Federal Government. State and local governments can help in this a great deal.

As required under State law in Montana, passed in 1992, the BLM in Montana identified 220 roadways across State school trust land that and provide access for adjacent BLM-administered lands. These routes were approved by the Montana Department of State Lands field offices as routes which should remain open for use by hunters and fishermen.

This program is to be fully implemented in this 1993 hunting season. We understand that there has been some controversy about this, and we hope that that will work its way out. It seems like reasonable public policy there in Montana.

In order to resolve critical access needs, the BLM has been involved in two initiatives that did not require the purchase of easements. A 42,000-acre, walk-in hunting area was established in cooperation with all landowners. Vehicle access was limited on all lands within the management area that are open for public hunting. There are 16 additional similar areas in Montana that provide almost 216,000 acres of this kind of access that is developed in a cooperative way with the landowners.

The second initiative that Congressman Williams mentioned as well is the creation of the Blackfoot River Recreation Quarter Landowners Agreement which involves a 40-mile stretch of the river east of Missoula. The land is located within 50 feet of the high-water line, and certain other designated parking and stopping areas are open to public use regardless of ownership.

As with the block management hunting program, one of the keys to success in these initiatives is the enforcement provided by the Montana Department of Fish, Wildlife and Parks, another cooperatively developed program. I might emphasize, too, Congressman Williams, knowing your interest in this, I did some assessment on what land exchange provides.

Congressman Smith and a couple of the other Members mentioned, the opportunity for land exchange to resolve issues. There have been in the last decade about 78 different land exchange transactions in the State of Montana. Fifty of those provide access, as well as other benefits. We see the land exchange program as a very important tool for us to move forward in getting rid of the need for access in some regards and blocking up and providing access in other areas.

I make a point in my testimony that access is also an issue for handicapped people. I just want to mention this. I know that is not what the committee is primarily focused on. We have got a program which we call "Access Means Freedom," which also recognizes that handicapped people need a special kind of access.

As you can see, gaining access on all the public lands we think is a monumental undertaking. We have done a lot. We want to pledge our continued aggressive action and look forward to working with the committee in finding ways to move forward more aggressively.

We are concerned that we have a good, positive program in the near future. We think that the problems get worse as time goes on and they are not treated in an up-front manner.

One other point that I don't make in my testimony, that I just want to touch on as a footnote, is that BLM lands that we manage and with our authorities don't have boundaries like the national forests, national parks, national wildlife refuges. What that means is we are able to work with landowners, local governments, State organizations, to reposition land anywhere it makes sense for the general public to provide access. We found this extremely valuable tool in providing access to navigable rivers where there is not adequate access at the present time. So BLM has a rather unique opportunity there.

One other footnote is that we are discovering that mountain biking is the fastest-growing outdoor recreation activity in the country right now. We see a lot of it here in the East and we see a huge amount of it in some areas in the West. Mountain biking will put on us, I think, a new set of acquisition access requirements. I just want to make a footnote of that to the committee.

With that, Mr. Chairman, I will be happy to answer any questions you might have.

[Prepared statement of Mr. Penfold follows:]

NOV - 9 1993

STATEMENT OF MICHAEL J. PENFOLD, ASSISTANT DIRECTOR-LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS, COMMITTEE ON NATURAL RESOURCES, UNITED STATES HOUSE OF REPRESENTATIVES, AT AN OVERSIGHT HEARING ON "PUBLIC LANDS AND NATIONAL FORESTS LOCKOUT: OBSTACLES TO ADEQUATE PUBLIC ACCESS".

I appreciate the opportunity to appear here today to discuss the adequacy of public access to land managed by the Bureau of Land Management (BLM) and the status of our efforts to improve such access.

The BLM manages the surface area of approximately 270 million acres of Federal land and an additional 300 million acres of subsurface estate, mostly in the western United States. Approximately 32 million acres of BLM land have inadequate public access.

Many factors may cause access problems. Some public lands are surrounded by or intermingled with private lands that block public access. In other instances, the public may have access to large parcels of public land but the access is inadequate because it is only at points which are impractical to use. A result is the limiting of public use of the land. For example, there are many roads in the West that access public lands, but the presence of a large canyon or a steep rock cliff may prevent direct physical access from that road to the public land beyond these obstacles.

As defined by the General Accounting Office (GAO) in its April 14, 1992, report to you on this subject, the term "inadequate access" means that the Federal government has not acquired the

permanent, legal right for the public to enter Federal land at the point(s) needed to use the Federal land as intended by the managing agency.

Inadequate access to western public lands is the result of scattered and intermingled ownership patterns created when the lands were homesteaded and the railroads built. The problem is especially apparent in the areas of the West where Federal ownership forms a "checkerboard" land pattern. Inadequate access reduces the opportunities for the public to use what it owns. It may hinder proper management of public land by the BLM under multiple use principles.

As is happening with other publicly-owned land, the public land managed by the BLM is experiencing changing patterns of use. There are major trends away from use of public land for its extractive uses such as mining and timber, and toward increasing its use for recreational activities such as hiking, biking, camping, hunting, fishing, and photography. Because of these trends, the BLM is working to maximize access by the public to enjoy the use of public lands for these recreational activities.

At the same time that public use patterns are changing, there is also a changing ownership pattern for the Western private lands. In many places, ranchers who had previously allowed the public free access across their property have sold to new owners who have

closed such access. These closings often lead to confrontations between such owners and disappointed prospective users.

To resolve public access problems, the BLM can acquire either all rights and interests associated with the land, known as fee simple acquisition, or perpetual easements which provide limited controls over the land that are binding on the present and succeeding owners. Federal acquisition of the fee estate is more costly and is not always prudent if all that is needed is a road easement to provide public access across private lands. Purchase of easements is the most cost-effective and is usually the preferred alternative.

Donations of land or easements for access purposes are rarely received. Acquisition of access cannot be paid for from our usual Management of Land and Resources ("MLR") appropriations; easements are acquired with funds specifically appropriated for such purposes.

A special type of land management problem may occur when landowners refuse to sell easements across their property. Some owners do not want the public to cross their land and some disagree with the compensation offered. In such cases, the BLM must consider the use of the power of eminent domain, or condemnation. Condemnation is the acquisition method least used by the BLM and is resorted to

only in special situations and only after other options fail. Since the early 1980's we have been required to file Declaration-of-Taking actions only after receiving approval from the Appropriation Committees of both Houses of Congress. This procedure is presently directed in the reprogramming guidelines set out in Section 6 of House Report 102-116 on the Interior Department Appropriation Act for FY 1992. We feel this is unnecessary Congressional oversight.

Approval by the Committees, if received, generally took several years. Because of the delays, BLM field offices began using the less-desirable Complaint in Condemnation process even though possession of the property does not pass to the BLM until after the final court orders are issued. In effect, the BLM, and other agencies subject to the same restriction, have lost most of the potential use of condemnation procedures needed to quickly respond to resource management problems.

In fiscal years (FY) 1989-1991, the Forest Service and the BLM acquired permanent, legal access to about 4.5 million acres of Federal land. At the present time, the BLM estimates that it will need to acquire about 13,000 easements to eliminate the backlog of access problems related to the public lands it manages. For the past few years, our appropriations for easement acquisition have been approximately \$1.4 million per year and with those funds we have been acquiring about 150 access easements per year. The

average time to process each easement acquisition is about one year. This includes time for negotiation, survey, and the preparation and execution of documents, etc.

Since the GAO issued its 1992 report on this matter, the BLM has taken several steps to enhance its ability to secure more adequate access. These include:

- \* Utilizing a more wholistic budgeting approach whereby benefitting resource activities provide some of the funding necessary to pay acquisition processing costs;
- \* Developing partnerships with landowners and conservation groups so the BLM does not have to secure all of the desired easements in a specific area; and
- \* Emphasizing use of its field personnel to assist the recreating public during periods of especially high land use such as during the hunting seasons. Such field assistance helps users find legal access to public land and assures that they will know for sure when they are on public land.

Some of the best examples of innovative ways to resolve access problems are found in Montana. Federal, State, and local governments working with private land owners and users have made real progress in providing additional access for the public.



The BLM-administered lands in Montana are often included in block management hunting units administered by the Montana Department of Fish, Wildlife and Parks (MDFWP). The program utilizes a variety of incentives for landowners, through the use of hunting license revenues, while providing access for sportsmen. Montana BLM districts have been formal partners in the management of some of the block management areas. However, in most instances, the BLM has acknowledged the inclusion of BLM-administered lands within the block management areas but has not been a formal partner in the administration of the units.

As required under State law passed in 1992, the BLM in Montana identified 220 roadways which cross State school trust lands and provided access to adjacent BLM-administered lands. These routes were approved by the Montana Department of State Lands field offices as routes which should remain open for use by hunters and fishermen. The program was to be fully implemented prior to the 1993 Fall hunting seasons. We understand the new procedures have encountered resistance from some land owners but believe the effort will enhance the public's access in the long term.

In order to resolve critical access needs along the Blackfoot River Corridor in Montana, the BLM has been involved in two initiatives that did not require the purchase of easements. A 42,000 acre walk-in hunting area was established with the cooperation of all the owners. Vehicle access is limited and all lands within the

management area are open for public hunting. Sixteen additional similar areas in the State provide access to 216,000 acres.

The second initiative was the creation of the Blackfoot River Recreation Corridor Landowners' Agreement which involves a 40 mile stretch of the river east of Missoula. The lands located within 50 feet of the high water line and certain other designated parking and stopping areas are open to public use regardless of ownership. As with the block management hunting program, one of the keys to success of these initiatives is the enforcement provided by the MDFWP.

Although it may seem to be outside the scope of the GAO definition of inadequate access, I would like to point out that the BLM is also working on some exciting new projects to provide and enhance physical access to all Bureau facilities and programs. For too long, physically handicapped people, many of whom are BLM employees, have been neglected or forgotten when we are doing our daily work. With an interstate team of professionals dedicated to really improving access, the BLM is working to correct that problem in a big way. We invite you to watch for the new banners proclaiming "ACCESS MEANS FREEDOM" as the program develops.

As you can see, gaining adequate access to all of the public land is a monumental undertaking. We agree with the GAO that at the present rate of acquisition the BLM will be negotiating such

actions for many years into the future. We want to assure the Subcommittee that we are doing all we can to make the most logical progress possible in the matter. We can also assure you that the problems caused by denial of access to public lands can be very frustrating to BLM managers as well as to members of the general public who are denied such access. We will be happy to work with the Subcommittee to improve access as quickly as practicable.

This concludes my prepared statement. I will be happy to respond to questions.

Mr. VENTO. Yes, thank you, Mr. Penfold.

Both of your Departments have prepared good testimony on this matter and, again, have cooperated with the GAO in this matter.

Mr. Penfold, you did testify that you think it is an increasing problem, will be an increasing problem with BLM, where you are at 13,000 incidents, where you find inadequate or no access today. You think that it is a growing problem.

Mr. PENFOLD. Absolutely. I don't feel bad about the accomplishments that we made, but we understand that some land patterns are changing in the West, and where you have one easement need now, if that area becomes subdivided, you might end up with quite a number. We see that happening in some States. We think the pace of that is going to increase.

Mr. VENTO. Yes, well, I think it underlines the need to make certain that the tools you have are working. I had picked up from your statement the issue about when you do go to condemnation, that you have to report this to the Appropriations Committee. While it is in a very small number of instances and you try to avoid it, clearly, it does then stretch it out and make the problem more difficult to address in terms of filling the mission of access; is that correct?

Mr. PENFOLD. That is absolutely correct.

Mr. VENTO. Mr. Overbay, does the Forest Service have a similar experience, can you say, with regards to this reporting requirement?

Mr. OVERBAY. We don't have that requirement at the present time, Mr. Chairman. We did I think back in 1987. It was in our appropriations bill, but since then it has not been a requirement.

Mr. VENTO. They forgot to include you, I take it.

Mr. OVERBAY. Well, either that or they were pleased with the low rate of condemnations or something.

Mr. VENTO. I am fairly certain that the purpose of this wasn't to deal with access, but because it is sort of a blanket provision, it doesn't end up excluding access. And so I am certain if we visited with our colleagues, at the very least, this particular limitation might be resolvable, at least on a narrow basis. So it might be something that we should solve, because it does increase costs if, in fact, at last it carries out further. That is the other aspect of this, in terms of the legal problems.

Mr. PENFOLD. I might interject, Mr. Chairman. For example, we had a bug infestation in Oregon that needed to be treated right away. We had to acquire six access agreements or right-of-ways. We were able to negotiate five of those. We were not able to get the last one. We had to go toward a declaration of taking on that and come to Congress. Congress did not process that very quickly. The insects spread to other areas. I think this is a good example. Sometimes we would prefer taking the longer approach; sometimes you need to move quickly.

Mr. VENTO. Yes. Well, it is a pretty dramatic example. I am certain that they are not that particularly dramatic always, but it is the same sort of incident that occurs.

One of the other points, Mr. Overbay, you might want to expand upon, is the increasing pressure that the rights-of-way across private land is placing on local governments in their reliance on the

Forest Service. I guess you are testifying, to really carry through in trying to maintain these rights-of-way, that they are not pursuing them across private lands where they have had historic rights-of-way, and the consequence leaves the Forest Service facing a significant challenge, maybe even having to purchase rights-of-way where there may have been some legal right that a county or State could have, should have pursued. You testified to it, and I want you just to address that.

Mr. OVERBAY. That is right, Mr. Chairman. And, of course, we would prefer to work with the local government, with the county, and help them in whatever way we could to make sure they continue to exercise that particular right. But in a lot of cases because of funding, other reasons, the counties are no longer wanting to maintain a particular road as a county road. We have some opportunities I think in that case to try to step in a more aggressive way to try to maintain that easement. That is one of the things we need to look into.

But you have to prove, first off, there is a historic right, that there was use, there was construction. There are a number of things that have to be done.

Mr. VENTO. I think it is understandable that these sometimes rural, out-State areas, would have, if they have an increasing incidence of this, they simply don't have the budget or the ability. Plus it is an uncomfortable topic. I think that trying to go in and get a right-of-way across someone in the county is not a pleasant task.

Mr. OVERBAY. No, and most of the adjacent landowners do not want public access there. You know, there is a lot of pressure.

Mr. VENTO. Even though historically, there may be a legal right. And the point, of course, is inviting the Forest Service to come in and deal with this, which I would say, or the BLM, in this instance, to deal with what is an unpopular topic, doesn't help your popularity at all, I guess; is that right, Mr. Penfold?

Mr. PENFOLD. Sometimes it doesn't help our popularity.

Mr. VENTO. Otherwise, you are so well revered and loved, I am certain you have no problems.

Mr. PENFOLD. We notice that on the Hill these days.

Mr. VENTO. But I just want to point out to my colleagues, perhaps we can deal with this particular problem where the local government, State government is not picking up a normal responsibility. There may be reasons for it; I don't think it is sort of a conspiracy.

I don't think that yet. Notwithstanding, have the Forest Service and BLM been able to identify a greater number of trespass cases that you are experiencing because of these access problems, or been able to observe trespass cases with regards to individuals, for whatever reason, that are using or trying to use public lands? Can you comment on that?

Mr. PENFOLD. We don't have quantitative information on that, but the anecdotal information is quite clear. There is a growing amount of private landowners who are subjected to a growing amount of trespass, as the demand to get access to the public land is increased. So I think it is anecdotal, but I believe it is real.

Mr. VENTO. I suppose it could be helpful if we wanted to get more of an insight into the magnitude of the problem to include that in the GAO survey.

Mr. Overbay, did you want to comment on that point?

Mr. OVERBAY. Yes, I don't have any statistics on that either, but I am sure that is a growing problem. Congressman Williams said that there is going to be a shootout in Montana one of these days, and that may be what causes some of that.

Mr. VENTO. I suppose you don't have any knowledge on weed dissemination either, along these corridors?

Mr. OVERBAY. I do have some information on that. That is a real problem. I am particularly familiar with the problem in the State of Montana. There are weed-free areas where the local counties and weed districts have worked very aggressively to keep those invading weeds out of those areas. There are other parts of the State that are absolutely covered with invading, noxious weeds. And those weed seeds are disseminated with vehicles or foot traffic or animal traffic.

Mr. VENTO. My point is, of course, that normally the weed dissemination goes on where you have disturbed areas, you know, along the side of a road certainly can be a factor.

Mr. OVERBAY. I would like to add one thing. The Forest Service assumes the responsibility for weed control along those easements that we acquire. So we do feel a responsibility to take care of that problem where we acquire easements.

Mr. VENTO. Well, I just was wondering what the human incidence of it is. I didn't want to diminish the importance of it. I just want to understand it better, to know if it is a real problem or if it is one that we are having reported to us. Do we keep records of the categories? Who monitors and records such incidents? How do we keep records in the two agencies of such problems?

Mr. OVERBAY. Are you talking about weed infestation?

Mr. VENTO. No, no, I think I have moved beyond that back to the major point here in terms of the access issues or problems.

Mr. PENFOLD. We don't keep any records on trespass problems. The local sheriffs would be the place where most of the complaints would be formally filed on trespass.

Mr. VENTO. Okay. Well, Mr. Hansen, let's give him a chance to get a question or two in.

Mr. HANSEN. Thank you, Mr. Chairman.

I know the study the GAO did was basically Montana, Oregon, and California. The rest of us don't quite have the attention on this particular issue, so I would like to discuss some generalities, if I may.

It always has been a concern of mine, dealing with either the BLM or the Forest Service, as a city councilman in a little city, as a State legislator and as a Congressman, as I look at the tools that are given you, exchanges, trades, purchases, that it is almost an impossible task to make those come about.

I don't know if you have an average of how long it takes, but I recall working on a case where Forest Service was right in our little town of Farmington, Utah, my hometown. I worked on it as a city councilman off and on for 12 years; as a State legislator, eight years; Speaker of the House for two years, and finally we got it ac-

complished when we put an omnibus bill in that picked up little pieces all over the West, in 11 western States.

It was like the district ranger was bored out of his mind with it and it went almost to the bottom of the pile, some movie actor came along, he thought it was very interesting, as we saw happen in Utah County—but I won't go into that.

Why does it take you folks so long to bring one of these things about?

Mr. PENFOLD. You want to go first?

Mr. OVERBAY. Yes.

It depends really on the complexity of the exchange. There are a lot of requirements that do take some time. But if we have a fairly simple exchange, we can get those through in fairly short order. When we try to put together a large exchange involving a number of private lands, say, and a checkerboard ownership—I am thinking particularly of some that I worked hard on Montana as did Congressman Williams—one of the difficulties we run into, we may have a willing proponent part of the private landowner, but when we start identifying all of the national forest lands that they would like to acquire in exchange, we suddenly find a whole lot of people that say we don't want that piece of national forest going into private ownership so find some somewhere else.

And we are having increasing difficulty finding those parts of the national forest land that we can exchange for the private ownership. If you are talking about just a couple of 40's, particularly that are isolated, those generally are fairly easy to exchange.

Mr. HANSEN. How long does it take? Let's say you look in the West. These little towns start growing, and because they grow and they encroach farther out, we also find the Forest Service in there. All of a sudden, we find kids riding their bikes over them and garbage on them and mess. We have to take care of them, clean them up; the Forest Service doesn't do anything for us on that.

It would seem to me that should be a simple matter, if the States want to work it out and they exchange them. Why does it take so long? What I am driving at is, Do you feel in your heart of hearts that maybe the procedure is so complex and difficult that Congress should streamline it somewhat?

Mr. OVERBAY. Okay. There are a lot of procedures. We have to comply with the National Environmental Policy Act. We have to notify the local governments. We have to look to see if there are any artifacts or cultural resources on that land and, if there are, take actions to protect those.

We have to do a survey to see if there are any endangered or threatened species on that land and, if so, figure out how we can mitigate that. All of those things do take time, going through all those procedures before we can declare a valid exchange. Of course, there is also the appraisal process.

Mr. PENFOLD. I might interject, too, often planning amendments need to be done, at least with our areas. So I might point out—excuse me, Jim.

Mr. OVERBAY. Go ahead.

Mr. PENFOLD. I might point out something else that is good news, and that is our Federal Land Exchange Facilitation Act regu-

lations have finally been turned loose by OMB. So we should have those printed Monday or Tuesday.

Mr. HANSEN. That is encouraging.

Mr. PENFOLD. I think that will help.

Mr. OVERBAY. And those will apply both to the BLM and the Forest Service.

Mr. HANSEN. By the time you jump through all those hoops you were just talking about, Mr. Overbay, how long do you think it would normally take to make a simple land change, not one of those complex rascals, but one of those simple ones?

Mr. OVERBAY. I think if it was simple and we worked as quickly as we could, we could probably do that in just a year.

Mr. HANSEN. One year?

Mr. OVERBAY. Yes. Again, it depends on the availability of the funding and what you find when you go out to look at what is on the land.

Mr. HANSEN. In my opening statement I talked about the State of Utah where I represent the first district. The complaint I get from county commissioners and local county officials is the Forest Service closing roads. Now, I have to go with the governor down to St. George, Utah, Thursday morning, and speak to the county commissioners. It is a sure bet first question will be, Why did the Forest Service close these following roads? And they will bring their map up and show it to me.

Now, you have got some very fine people out there. I don't want to criticize them; they just do what they are told to do. They say, well, we can't maintain them. Is that the real story?

Mr. OVERBAY. That is part of the story. Lack of adequate funds to maintain the road. If you leave it open, you get some damage, particularly with increasing use, that is going to be unacceptable, so closure at least prevents the erosion from the road. Roads are a major source of erosion in a lot of our watersheds. But the thing that is going on in a large part of the West is concerns about open road-density and the impacts that has on wildlife habitat. And I can think of a particular example. Again in Montana, we got a jeopardy ruling from the Fish and Wildlife Service on our existing road system on the Flathead Forest as causing jeopardy to the grizzly bear, and recommending that we reduce that open-road density to, I think, something less than a mile per section. So we are closing roads for wildlife purposes as well.

We have had an active program in the State of Idaho, working with the State Game and Fish in regards to that. There is a resource issue as well as just lack of adequate money to maintain the roads.

Mr. HANSEN. In our particular area, the issue in front of us today, I am sure there is no question, it is more the BLM enforcer is closing roads than it is private people not allowing public through. And it just drives us crazy.

As I mentioned in my opening remarks, we have constantly asked Craig Reynolds for a report on all the roads they closed. That high. Of roads that had been used for access, and the reason. Some of the reasons you just talked about, would be the reasons. Others, it is just kind of a catchall. You know, you have always got to have a catchall in every contract. You just can't maintain it. It is not too



hard to maintain roads across the desert in some areas, but that is not my place to say.

Let me just ask a couple more, if I may, Mr. Chairman.

You know, I worry about the poor John Q. Public who wants to go out on public lands and he is absolutely confused. Deer season, antelope season, whatever, camping, fishing, goes out there and he has got people yelling at him from both sides. All he wants is a pleasant experience. Some landowner is saying you are on private land; he doesn't know that. And maybe somebody else is telling him he can't camp there, he can't camp there. Why can't we just put together some very simple maps that would show what is private and what is public?

Now, all of us are not in a position to go up to the State and get the maps or go to the county and get the maps or even read them. But if a person is going to a certain hunting area, in the State of Utah, in big game we divide up the State by hunting areas, and if he just had one that would show him what he had, I am sure he would be happy to pay for those. I know you have got all kinds of maps in your areas, I have got piles of them that I picked up. Has anyone ever just thought of simplifying those and making them available to the public?

Mr. PENFOLD. We have tried that, and it has been very successful. We have different classes of maps. Some of them are a little too complex, but we have developed in some States a very simplified, very local, inexpensive handout type of a map that helps a person get into this particular drainage and how to get there. We have found those to be very successful.

Mr. HANSEN. I think the poor guys gets bamboozled. He goes in there, he is at the mercy of somebody who speaks with great authority, doesn't know what he is talking about, just doesn't want him on the ground.

You mentioned that mountain biking is becoming a very important thing. In southern Utah, around Moab, Utah, it is almost the capital of the world. I have never seen so many bike shops in that particular area. People are buying those, and they want more access to certain areas.

Now, I know I disagree with my good friend from Minnesota here, but it would seem to me if we allow horses into wilderness areas—and I know I am spitting on a flag of some of the people here, and I have had horses most of my life—but I know horses cause probably as much mess, more than a mountain bike would, clawing up those trails, people taking all kinds of trash. And we have taken out packs full of junk that people have brought in with horses. And I don't want to take horses out, but it would seem to me if we are going to allow horses in some of those areas, I don't know where a mountain bike would be all that detrimental.

Terrible thing for me to ask you, so I am not going to ask it. Well, we did make one change on it, you may recall, we allowed the mechanized vehicle in there known as a wheelchair. But would either of you like to comment on that?

Mr. PENFOLD. We can find plenty of good areas for the mountain bikers to go without being in the wilderness areas, we really can.

Mr. HANSEN. Do you think a mountain bike is dirtier and messier than a horse?

Mr. PENFOLD. I have cleaned up after quite a few horses and I haven't—

Mr. HANSEN. Not too much exhaust from a mountain bike like there is from a horse, you notice. Also, they don't eat the grass while they are in there. Don't get me wrong, I don't want to pit horses against it. I wouldn't want to do that.

Well, I better stop. I see my friend from Minnesota—

Mr. VENTO. Mr. Williams.

Mr. WILLIAMS. Yes, Mr. Chairman. It is nice to see both of you here.

And, Mr. Overbay, your appearance here signifies the real reason I asked for the hearing. I just wanted to see you come up and talk to us about something besides the Montana wilderness.

Are we going to get it done this time? I see we have got the Forest Service with us for a change.

Mr. OVERBAY. Mr. Williams, I really was disappointed I wasn't able to testify in favor of the Montana wilderness in time.

Mr. WILLIAMS. Me, too.

Mr. Penfold, when you say mountain bikes, you are referring to pedal bikes, not motorized?

Mr. PENFOLD. Yes, sir.

Mr. WILLIAMS. Mr. Overbay, you speak in your testimony of the road access fund being between \$4.5 million and \$6 million but decreasing. You say that because of the limitations of money from that fund, as well as other problems, including reluctance of private landowners to sell or trade and because of increasing prices of land, that it may take as much as, what, 40 years or half a century to get appropriate access, I think you said, to the public's estate.

Let me ask you about that fund. What is in that line item? What do you fund out that line item in the Forest Service?

Mr. OVERBAY. We don't get a line item for access. We pay for that out of our roads—

Mr. WILLIAMS. Yes, the road access fund. What are the competing elements within the fund?

Mr. OVERBAY. That is the money that is appropriated to do all of our road construction, reconstruction and the accompanying engineering that is needed to do that particular program. And that is a program that has dropped dramatically in the past four or five years.

The trail program, trail construction is still going up, so that isn't as much a restriction, although the bulk of our access easements have been connected with roads and not trails.

Mr. WILLIAMS. What percent of that, whatever it is, \$5 million, is used for acquisition for purpose of access?

Mr. OVERBAY. That \$5 million, which is down to \$3.5 in fiscal 1993, is used for the access program. The total road program, well, for fiscal 1994, what is in the budget is about \$97 million.

Mr. WILLIAMS. I see. So the \$4.5 million to \$6 million is the access—those are the access dollars only?

Mr. OVERBAY. That is the amount that we identify for access.

Mr. WILLIAMS. Within the full—

Mr. OVERBAY. Within that full line item for road construction.

Mr. WILLIAMS. Would the public be better served and your agency better served, which may be one and the same thing here, if we had a separate line item just for access and funded that separately, through the appropriations process? Just for acquisition, rather.

Mr. OVERBAY. I hate to testify on more line items for our budget. We would really like to see it go the other way. Perhaps what we need to do, and maybe we would work with the committee, is to figure out a way to identify that better and track it better so that it is clear how much is going for access, so that when Congress is looking at our total road program, they see that there are parts needed for other purposes that may have a high priority that they will leave there in the budget.

Mr. WILLIAMS. What did the Forest Service spend last year, and perhaps what you intend to spend this year, on road building for the purpose of timber sales?

Mr. OVERBAY. The amount that the President asked for in fiscal year 1994 was \$133 million. The amount that is in the conference bill is \$97 million. It is a \$36 million reduction. That is for all roads, but general purpose and recreation as well as timber.

I don't have the specific break down right with me. I can provide it if you would like.

[Editor's note—Information not received at time of printing.]

Mr. WILLIAMS. Mr. Penfold, there are one or two things that you think this committee or any committee, appropriations, perhaps, could do to encourage the resolution of this problem before us, what would they be?

Mr. PENFOLD. We talked about the condemnation. That is not a big piece.

Mr. WILLIAMS. Not condemnation, the whole acquisition and access problem.

Mr. PENFOLD. That is not a big piece of it. What we look at in terms of moving forward more rapidly. We have the staff capability as we sit right now to do a lot more than we are doing. Particularly, in right-of-way acquisition the limiting factor primarily is dollars to pay for right-of-ways, as opposed to staff time. What happens is that we choose very carefully which right-of-ways we go after, because we have a very limited amount of dollars, so we look at the least-cost right-of-ways, which might not be the highest priority for public purposes.

So we recognize that the Administration has to limit its requests and the Congress has to choose carefully, but the authorities are in place. Primarily, the problem is dollars to carry out the program.

Mr. VENTO. If the gentleman will yield, Mr. Penfold—the gentleman yields?

Mr. WILLIAMS. Sure.

Mr. VENTO. What is the source of your funding for this?

Mr. PENFOLD. We get \$1.4 million for right-of-way acquisition from Congress.

Mr. VENTO. Specifically, a line item for that purpose?

Mr. PENFOLD. It is part of our lands program and specifically mentioned.

Mr. VENTO. LWCF?

Mr. PENFOLD. No, no.

Mr. VENTO. Just part of a lands program.

Mr. PENFOLD. The lands program takes care of land acquisition, which is a separate appropriation.

Mr. VENTO. I just wanted to ask.

Thank you for yielding.

Mr. WILLIAMS. Mr. Penfold, do you find that the ability to reach compromise, to create corridors or purchases or trades, do you find that that difficulty is on the rise in Montana?

Mr. PENFOLD. I think it is on the rise. And the information I got from talking with some of our managers before coming to this hearing was the same kind of information. It is getting more difficult out there as tension in the West increases. That is driven by a lot of different things, but we see it getting more difficult.

Mr. WILLIAMS. Now, in this issue, Mr. Chairman, and a number of others, we are finding that America is coming over the brow of the last hill. And it creates the kind of contention that we see in this issue as well as many others, whether they are timber-sale roads or geothermal drilling around Yellowstone Park, or whatever. We are standing on the brow of the last hill trying to figure out what to do.

Thanks.

Mr. VENTO. Thank you.

Mr. Smith?

Mr. SMITH. Thank you, Mr. Chairman.

Gentlemen, welcome. I am glad to see you healthy again, Jim.

I wanted to ask you, both of you, something Mr. Overbay has testified to about 9 percent of the Forest Service land that is inaccessible because of access. Do you have any idea how many landowners are denying access, what percentage? Must be a very small percent.

Mr. OVERBAY. You are talking about where we don't have an easement? I don't have that specific information.

Mr. SMITH. It is probably small, isn't it?

Mr. OVERBAY. No, when I talk about the percentage or the amount that we don't have clear easements to the Federal land, there are other areas where there is access today that may be denied in the future, particularly as landowners change. That is the growing problem; there is no question of that.

Mr. SMITH. But you have to say, turning this around, that a very high majority of landowners allow access for hunting and recreation?

Mr. OVERBAY. That has been the history. The problem was not very severe several years ago, but as the landownership is changing, that is where we are really running into some of the problems.

Mr. SMITH. I understand. You know, sometimes the difficulty in our jobs collectively is we overreact to the minority problem and we restrict or deny rights to the majority who are allowing access, doing a good job, allowing people to trespass, cross their land for whatever purpose, including recreation. I wanted to make that point, because that is still the case, even though there may be a rising problem.

Mr. Penfold, would you comment on that?

Mr. PENFOLD. I agree entirely with what Mr. Overbay said. I think it is a small percentage, but growing.

Mr. SMITH. And I heard you use the exchange tool as one of the many, Mr. Penfold. I have not seen that aggressiveness with the Forest Service.

Is the exchange item a strong priority or not?

Mr. OVERBAY. It is a high priority, and we feel we can solve a lot of the access problems through exchange. But as I mentioned earlier, some of those are becoming harder to accomplish.

Mr. SMITH. Sure.

Mr. Penfold, from my own experience, I know that the landowner must initiate the proposal to the Bureau of Land Management for exchange. It must come from the individual.

Mr. PENFOLD. That is generally the case, but not all the time.

Mr. SMITH. Then if you were aggressive about it, somebody might in the Burns District look at a map and propose that the landowner come in for an exchange program that he might not have even thought about.

Mr. PENFOLD. Absolutely, and that is what we would call a "bureau in motion" program. We think that is a good tool.

Mr. SMITH. And that kind of an issue would be very important, because as you know, you have a habit of operating traditionally over the years, and change sometimes doesn't occur to you. So I would encourage both agencies to propose to people land exchanges that would block up and help solve some of these problems.

Mr. OVERBAY. Mr. Smith, in our forest planning process, we identify particularly those isolated tracts that we would consider available for exchange. We have specific maps, and that does help encourage some people to take a look and propose exchanges.

Mr. SMITH. Now, what about sale of isolated areas? I know it—

Mr. OVERBAY. We do not have authority to sell. We have no authority to sell land.

Mr. SMITH. BLM?

Mr. PENFOLD. Yes, we do, and we do occasional sales. We prefer to do land exchange, though.

Mr. SMITH. Sure, I understand that.

Would it assist the Forest Service if they had a chance, if you had authority to sell isolated tracts?

Mr. OVERBAY. We would prefer to exchange.

Mr. SMITH. I am sure you would, but there may not be that opportunity either.

Mr. OVERBAY. I am not sure that we want to see authority granted to us to sell off the national forest.

Mr. SMITH. You don't want the ball on that.

Mr. OVERBAY. Don't want to open that can of worms.

Mr. SMITH. All right, okay.

Then to both of you, does the law give you sufficient authority now to demand access for the essential kinds of efforts that both your agencies have to perform for the public?

Mr. PENFOLD. Eminent domain ultimately is the authority and we have talked about that.

Mr. SMITH. But you don't use eminent domain for recreation kinds of access? Or do you?

Mr. OVERBAY. We can.

Mr. PENFOLD. Yes, we can.

Mr. SMITH. Can you?

Mr. PENFOLD. We can.

Mr. SMITH. I didn't realize you could. But you hesitate, you are correct, you have a public image as well.

Mr. OVERBAY. It is a last-resort effort. We really would try to work things out with the landowner.

Mr. SMITH. You know most of the lands in the West I am familiar with, small towns, Federal Government, BLM and Forest Service are the major employers. And so you are part of the community.

Thank you.

Mr. VENTO. Mr. Thomas?

Mr. THOMAS. Thank you, Mr. Chairman. I will try and be fairly brief.

I must tell you that I have the same experience that Mr. Smith mentioned in terms of exchanges, and I tracked some of them. It has been more than five years, and they still are not done. We either ought to get on or get off, it seems to me. And that hasn't happened.

I have to tell you that I think the arrangement is such that if a local manager or a local supervisor doesn't want to do it, it doesn't happen. There are a million ways you can keep it from happening.

Mr. OVERBAY. I know a lot of examples where exchanges have dragged on for years and years, too. You are absolutely right. And there are a lot of reasons. And sometimes it is a lack of aggression on the local manager.

Mr. THOMAS. What about leases, Mr. Penfold. If I have a lease on public land for grazing or whatever purpose, and I have the adjacent private land, is there any arrangement made then for me to provide access to that land?

Mr. PENFOLD. Access to the private land by virtue of a lease on the Federal Government land?

Mr. THOMAS. Access to the public land, is there any trade-off, any arrangement, any obligation in the contract?

Mr. PENFOLD. Yes. Generally, for government access only, but not public.

Mr. THOMAS. I see. Have you thought about that?

Mr. PENFOLD. Yes, we have.

Mr. THOMAS. And what have you thought?

Mr. PENFOLD. We have not developed an initiative to put before Congress to go after that.

Mr. THOMAS. It would take that, you think?

Mr. PENFOLD. Yes.

Mr. THOMAS. Some sort of, that is right, authority. I am sort of interested in this study. I haven't reviewed the study, but it looks to me like it is the result of a questionnaire; is that right?

Mr. PENFOLD. Yes. The GAO study?

Mr. THOMAS. Yes.

Mr. PENFOLD. Yes, sir.

Mr. THOMAS. And you indicate, both of you—

Mr. PENFOLD. Excuse me, sir, GAO did do some field trips in regard to that as well.

Mr. THOMAS. Basically, though, they just talked to people in your agency. And you indicated in a couple places that you have been



moving on this since the study. Is this the first indication you had of the need for access?

Mr. PENFOLD. No, not for the BLM. Matter of fact, BLM participated in a Keystone dialogue in 1989 relative to access. We did our own evaluation before that. And so this is not a new issue.

Mr. THOMAS. I wouldn't think so. I mean we are acting like this GAO study is something that brought up a new idea. It is not a new idea at all.

Mr. OVERBAY. No, we have identified this problem for years, and I am also particularly familiar with it from when I lived in Montana. The governor held a number of town meetings and it was identified as probably the number one issue.

Mr. THOMAS. The hunters hold town meetings in my State and talk about it, have for years, and properly. It is something that ought to be done. It indicates, Mr. Penfold, according to the numbers here, that 33 percent of Wyoming BLM land has inadequate access. Would you think that sounds reasonable?

Mr. PENFOLD. I don't have any other information what is there.

Mr. THOMAS. Just from your own background, doesn't that seem a little high?

Mr. PENFOLD. Little bit high for Wyoming. Montana percentagewise would probably be higher than that, just from what I would believe. Wyoming tends to have a little bit better blocked land.

Mr. THOMAS. BLM land usually splits out. I mean, after all, this is not withdrawn land. This is land that was residual after everything else was done. And so it is scattered around. I really guess I find it difficult to imagine that 33 percent of it is—

Mr. PENFOLD. That would be my gut reaction, too, although I don't have any different information than that.

Mr. THOMAS. I guess I don't ever either. At any rate, it is good to have you here. The GAO study didn't have any answers. You all have sort of recited the things you have been doing, so no one has really a breakthrough on notions here of what to do. Would you say that is fair?

Mr. OVERBAY. I think we both indicated, though, that we probably need to become more aggressive and probably need additional resources to really step up the pace of acquiring these easements.

Mr. THOMAS. When you think about it, there are a number of very effective groups, private groups that have resources. They buy land for the most part and sell it to you all.

Mr. OVERBAY. Yes, we work closely with those, and that is another way it acquires easements.

Mr. THOMAS. What would you think with encouraging access to what we have rather than purchasing more?

Mr. OVERBAY. That could be a priority, certainly, in providing adequate access. We could put more priority in the use of our Land-Water Conservation Fund for that.

Mr. THOMAS. It just seems in general that it is sort of obvious to be saying a third of the land you already have is unaccessible, but we are busy buying some more with what resources we have.

Mr. PENFOLD. Our principal acquisition program is land exchange, and we are acquiring 250,000 to 300,000 to 350,000 acres

a year. That little sample in Montana, for example, 50 out of 78 tracts had important access aspects of the acquisition.

Mr. THOMAS. That is ten years, ten years?

Mr. PENFOLD. Per year. In the last ten years, I guess I don't have the figure on the top of my head, but generally on an annual basis, we are acquiring a quarter of a million to 350,000 acres per year. And that also puts land in private ownerships. So we see—

Mr. THOMAS. Sure, and I understand it is not easy. I don't mean to be critical, but it does seem that when it is all said and done, there is more said than done in this issue. And maybe we ought to change.

Thank you.

Mr. VENTO. Well, I have a series of other questions, but I think I will restrain because we have a long list. If I get started, I know that others will then join in. So I want to thank the agencies for their testimony.

We may send some written questions along to help guide us in terms of getting you transfers.

Thank you very much.

Thank you, gentlemen.

We are pleased to welcome the second panel, Dr. David Rockland, executive director of Times Mirror Magazines Conservation Council, one of the principals that pointed this issue out to me and to others, and prompted the GAO review which brought this into better focus.

Mr. Lewis Hawkes, the Public Land Access Association from Bozeman, Montana, Mr. Stan Frasier, the Montana Wildlife Federation, Helena, Montana, and finally, Ms. Anne Kersten, Reno, Nevada.

We are pleased that you are here, and thank you for your patience today.

The members are very interested, as I am, in this particular topic.

Your statements have been made part of the record.

And, Mr. Williams, did you want to welcome any of your—

Mr. WILLIAMS. Just to thank each member of the panel, particularly the Montanans for traveling back here. It is nice to see you here.

Thanks for responding to our request to be with us.

**PANEL CONSISTING OF DR. DAVID B. ROCKLAND, EXECUTIVE DIRECTOR, TIMES MIRROR MAGAZINES CONSERVATION COUNCIL, WASHINGTON, DC; LEWIS E. HAWKES, EXECUTIVE DIRECTOR, PUBLIC LAND ACCESS ASSOCIATION, INC., BOZEMAN, MT; STAN FRASIER, VICE PRESIDENT, MONTANA WILDLIFE FEDERATION, HELENA, MT; AND ANN KERSTEN, SPARKS, NV**

#### **STATEMENT OF DR. DAVID B. ROCKLAND**

Mr. VENTO. Mr. Rockland, your statement has been made a part of the record. You can summarize it as you wish as you proceed.

Thank you very much.

Mr. ROCKLAND. Thank you, Mr. Chairman.



My name is David B. Rockland. I am the executive director of the Times Mirror Magazines Conservation Council. Times Mirror Magazines is the Nation's largest publisher of outdoor recreation magazines.

Times Mirror Magazines reaches 30 million Americans every month through the pages of *Field and Stream*, *Outdoor Life*, *Popular Science*, several ski publications, the *Sporting News*, a golf magazine and a boating magazine. We see the use of public lands as critical to the recreation activities that we cover in our magazines.

I would also like to point out that this testimony is being submitted on behalf of the Congressional Sportsman's Caucus Foundation on whose board I happen to serve.

Our company applauds your leadership, Chairman Vento, and that of the subcommittee, Mr. Williams as well, for bringing this issue to the forefront. It is a big problem out West.

Mr. Williams, I just traveled back from Montana. I am a resident of this area, and although it is a topic I heard a great deal about in the southeastern corner of your State, it is not an issue we see a great deal of here within the Beltway.

This committee's request for the GAO study and the subsequent hearing I think will greatly help bring this issue to the forefront. I am not going to deal in my testimony here this morning with the causes and effects of blocked access. I think it has been done very well by the previous witnesses, as well as some who will follow. I would, however, like to offer up several solutions and also point to a little public opinion research that our company has done.

Last year, we hired The Roper Organization to look at the issue of public lands access among several others that we covered in a survey of all Americans, a representative cross section of the American public. We asked the question, At the moment, about one-tenth of all land owned by the Federal Government is not accessible to the public because it is surrounded by private property—that means there is no access to Federal land without trespassing if individuals want to go hiking, hunting or fishing—do you think the Federal Government should find a way to provide access to this public land at this time, or isn't this an important priority right now?

The responses from this representative cross section of the American public were: 51 percent came back and said, Yes, this is an important priority, the government should work on it; and, 35 percent came back and said, No, it is not an important priority right now. A volunteered response was that we should provide access for individuals only, not for businesses; that was provided by 6 percent of the public. There was no response from about 7 percent.

It was interesting, looking at some of the demographic breakdowns of the response to this question, that it does divide somewhat along income lines. People who make very little money thought this was much more important than the general public. Those who tend to be much more affluent found this not as pressing an issue.

I would like to mention one other sort of source of public opinion in a way. President Clinton, in a voter's guide that we ran in our magazines and newspapers last fall right before the elections, wrote that he would work to ensure appropriate access to public

lands. Therefore, this Nation's leader has seen this as an important issue as well.

I think when we talk about solutions, we have to be very careful how we frame the problem. As I mentioned, I spent last week in your State, Mr. Williams, hunting on a ranch. It is a 25,000-acre ranch on which are scattered seven 40-acre parcels. And when I talked to the rancher about the problem, he said, I don't want to. I believe in the importance of addressing it, but we can't go too far.

I don't want people walking across all my land to be able to access those 40-acre parcels. That is not at all what this issue is about. It is more about problems, such as Lew Hawkes showed me when I had an opportunity to visit the Gallatin National Forest, where there is a thin strip of private land that prevents access to about 500,000 acres of that national forest.

I would like to offer several solutions. We talked about the problem a great deal this morning but I would like to throw out some ideas about how this subcommittee and the Administration might address this topic. I have seven thoughts in mind.

One is the old Washington solution of "we need more money." Indeed, that is probably the case here, at least a redirection of funds within the BLM and the Forest Service, to encourage those agencies to aggressively seek easement acquisition from willing buyers and make much better effort to consolidate public holdings into accessible tracts. It is never popular as a second idea to suggest that we need more lawyers, but maybe in this case it would actually help. Legal resources devoted to documenting the legal access that already exists would take a major step in the right direction.

A third idea is that there have been efforts by this committee in fact, and the Congress as well, to disallow R.S. 2477 claims. This would only serve to really exacerbate this problem. R.S. 2477 is one of the primary tools that is used to prove the existence of a public road before that land passed into private or State hands.

A fourth idea is that some of the private land does pass through public ownership and there are defaults on Federal loans handled by the FMHA or the RTC. Rarely does the government place easement on those lands for either the purpose of creating public access or for other reasons such as conservation.

It seems to me that solutions such as this which do not have direct cost to the U.S. Treasury ought to become standard operating procedure.

A fifth approach that could be considered is that Congress sent about \$125 million to counties that hold major tracts of public lands in the form of payment in lieu of taxes. There is no reason that, in certain cases, a portion of those funds might be devoted to creating public access to those lands on which the public is in fact paying these taxes or pseudo-taxes.

The sixth idea, that has come up already this morning, is that permittees who use public lands should be required, in many cases, to provide access across their adjacent private lands as a condition of their permit.

My final thought is that we ought to consider devoting a portion of the Land and Water Conservation Funds to the addressing of public access problems. We spend most of the money acquiring land. It seems a much more cost-effective approach to providing

recreation opportunities, what that fund is partially intended to do, is instead to purchase easement to open up existing public land.

Just to conclude, I think the West is really changing. Part of that change is a movement in a way toward a land ethic that is very similar to what we have here in the East. There has been a continual erosion of access to public land. I think we need to confront the problem and reverse the trend.

Chairman Vento, Mr. Williams, I applaud you and the other members of this committee for convening this hearing, and I hope that your efforts will result in an increased focus on this important problem.

Thank you very much.

Mr. VENTO. Thank you, Dr. Rockland.

[Prepared statement of Dr. Rockland follows:]

TESTIMONY OF DR. DAVID B. ROCKLAND  
EXECUTIVE DIRECTOR  
TIMES MIRROR MAGAZINES CONSERVATION COUNCIL

BEFORE  
OVERSIGHT HEARING ON PUBLIC LANDS ACCESS  
HOUSE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS

NOVEMBER 9, 1993  
LONGWORTH HOUSE OFFICE BUILDING

## Introduction

Chairman Vento, my name is David B. Rockland. I am the Executive Director of the Times Mirror Magazines Conservation Council. Times Mirror Magazines is the nation's largest publisher of outdoor recreation magazines. We reach 30 million Americans every month through the pages of Field & Stream, Golf Magazine, Home Mechanix, Outdoor Life, Popular Science, Salt Water Sportsman, Ski Magazine, Skiing Magazine, Sporting Goods Dealer, Skiing Trade News, The Sporting News, and Yachting. Use of public lands is critical to the recreation activities we cover in our magazines.

The Conservation Council was developed in 1990 to collectively use the communications strengths of our magazines to address natural resource conservation issues. Our programs include quarterly editorials that run identically in all our titles informing our readers and urging their involvement in conservation issues, annual surveys with The Roper Organization on Americans' conservation views, an environmental education grants program, and our Washington office activities.

I am also a Board member of the Congressional Sportsmen's Caucus Foundation and the National Fish and Wildlife Foundation. Blocked access to public land is an issue that is particularly high on the agenda of the Caucus Foundation.

Our company applauds your leadership, and that of this subcommittee, in bringing the issue of public lands access to the forefront, first through your request of the GAO study, and secondly by holding this hearing. Blocked public access is a

concern of many Americans, yet its implications are not understood within the Beltway. Hence, this hearing is an important step toward improving Congress' understanding of the issue.

We view blocked public access to public lands as a critical problem in public lands management. With an increasing diversity of interests seeking to use public land, and a growing urbanization in the West, blocked access is a growing problem. Many of our readers have related to us cases of being excluded from lands to which they and every American have equal title. Blocked access to public lands is a critical issue for this subcommittee.

#### The Public Access to Public Lands Problem

As one example of the cause and effect of blocked public access to public land:

Tomorrow deer season opens. For years you've been hunting the mountain meadows on the Gallatin National Forest behind the Jones ranch. Your son is with you for his first deer hunt. You plan to set up camp for the night and await the dawn. Anticipation is high.

But as you reach the turn-off to enter the Forest, you find a locked gate. "No Trespassing, No Hunting, No Access to National Forest," says the sign.

Then it comes to you -- an out-of-state resident recently bought the Jones ranch, and this once public road that runs a hundred yards through the ranch has now been blocked off. Looking over the Forest Service map of the area, and with

nightfall quickly approaching, you see there is no other way into the National Forest. The spectacular scenery before you, with the public lands you have always used for hunting, family picnics and hiking are now off-limits. A once public land has become private.

You turn to your son and say, "I'm sorry, we won't be able to hunt this year."

#### Why Does the Problem Exist?

The West was settled in a checkerboard manner. As a consequence, access to some tracts of public land is only obtained across private land. Although these access roads were publicly built and maintained, periodically they are closed -- due to new owners or a lack of maintenance.

From the 1860s to the 1950s, federal, state, county and railroad company efforts were combined in an important effort to create unhindered road/trail access to public lands. For example, R.S. 2477 was passed in 1866 to give miners, loggers and homesteaders legal right to build public roads across public lands to facilitate the development of the West. Also, in 1885, Congress passed the Unlawful Enclosures Act to prevent anyone from enclosing public lands within private lands and thus controlling public lands. Similarly, when the railroads transferred property to private land owners, they normally added a phrase to the deed declaring that any roads across the land were public roads. In 1906, Congress passed the Forest Homestead Act to permit patenting

of lands for agriculture within the forest reserves. When the homesteads were established, the rangers reserved 60 foot strips of land across the homesteads for public access.

But beginning in the 1960s, attitudes toward increasing access to public lands changed for several reasons: 1) the increase in value of big game animals; 2) the acquisition of large ranches by corporations or non-westerners; 3) efforts by preservationists to limit public use of public land and activities such as hunting and fishing; and 4) fewer available funds for local governments to maintain roads.

Times Mirror Magazines was especially interested when Congressman Vento asked the GAO for an analysis of the public access problem. GAO found that 50.4 million acres of public lands are off-limits -- 17.3 million on the Forest Service and 33.1 million on the BLM. This is an area about the size of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey and Delaware combined. Or, to put that in another perspective, it represents an area equal to about 22 Yellowstone parks.

The problem is most significant in California, Colorado, Idaho, Montana, Oregon, Utah and Wyoming.

### Impacts

The GAO found that the primary impacts are losses of fishing, hiking, hunting, off-road vehicle use, mountain-biking, camping and pleasure-driving opportunities. In addition, construction, trail



and road maintenance, and wildlife habitat management are also adversely affected by blocked public access.

While the problem is concentrated in the West, its impact is felt by many Americans in other parts of the country. These include people who travel West to tour the land and anyone working in the outdoor recreation industry providing goods and services to those who use Western public lands. Outdoor recreation is a \$300 billion industry, so people in every state in the country including those who earn their livelihoods in outdoor recreation, are affected.

There is also the matter of equity. While we worry about 3.2 million public acres having been given away under the patenting provision of the 1872 Mining Law, the reality is that lands with blocked public access are ostensibly being given away as well. This total, however, is 50.4 million acres. The individual controlling access to public land can have defacto exclusive use and ownership of that land. They may never take title, but the individual controlling the access receives many of the same benefits as fee simple title.

Private landowners who block access may have legitimate concerns. Vandalism, trespass, poaching, liability or simply a desire for privacy are some of the reasons landowners "lock the gates."

However, other reasons also exist, including exclusive personal or commercial use of public lands and charging access fees to these lands.

### Framing the Solution

The public would like Congress to take steps to resolve the public access issue. In a survey our company commissioned last year with The Roper Organization, we asked:

"At the moment, about one-tenth of all land owned by the federal government is not accessible to the public because it is surrounded by private property. This means there is no access to federal land without trespassing if individuals want to go hiking, hunting, or fishing. Do you think the federal government should find a way to provide access to this public land at this time, or isn't this an important priority?"

The responses from this representative cross-section of the American public were:

Yes, should provide access -- 51%

Not an important priority now -- 35%

Provide access for individuals only, not for businesses (a volunteered response) -- 6%

Don't Know/No Answer -- 7%

Some of the demographic groups believing that provision of access is more pressing than the level of concern of the general public were people making less than \$20,000 a year (58%), Democrats (57%), Westerners (56%), and hunters (59%). Individuals who did not feel this was as important as the general public were upper income Americans (43%), college graduates (38%), and preservationists (46%).

President Clinton has pledged to address this issue. In a Voters' Guide we ran in all our magazines and newspapers just prior to the 1992 elections, he wrote: "I would ... reinvigorate the Land and Water Conservation fund to make more funds available for the acquisition of public outdoor open spaces.... I would work to ensure appropriate access to public lands."

But to address this issue, the problem must be carefully framed. First, proponents of increased access to public lands are not asking for every acre of public land. For example, I have just returned from visiting the Medicine Rocks Ranch in Southeastern Montana. This 25,000 acre ranch includes seven 40 acre tracts managed by the BLM that are scattered throughout the ranch. The rancher is justifiably concerned that calls for increased public access will result in the public being able to walk or drive across his land to use these 40 acres, which are virtually indistinguishable from the rest of his ranch. Cases like this ranch are not the issue.

What we are talking about are situations such as exist on the Gallatin National Forest, where a thin strip of private land prevents access to 500,000 acres of National Forest and where existing public roads have been closed by private landowners.

And, this is not a matter of taking away private property rights. Instead, it is a matter of enforcing existing public rights by not privatizing vast tracts of public land.

Specific Approaches

Solving the public access dilemma is not a matter of passing new laws. Our government agencies have the necessary powers now to resolve many of the problems. While the public access issue is discussed everywhere people gather in the West, it is not a "hot issue" inside the Beltway. Therefore, a first step is to raise the profile of the issue, and ask the agencies why they have not done more to address this problem. This hearing is a giant step in that direction.

There are some solutions to be considered:

1) Money is often what it takes. Higher appropriations for easement acquisition, consolidation of existing tracts, and documentation of existing public roads are where funds are needed or where resources need to be re-directed. This subcommittee should encourage the BLM and Forest Service to spend more money on easement acquisition from willing buyers and to aggressively use land exchanges to consolidate public holdings into accessible tracts. The rancher I visited last week in Montana believes much of the problem could be solved with greater efforts by BLM to consolidate its holdings.

2) More legal investigations would help. The Public Lands Access Association in Bozeman, Montana reports that 80% of public access problems are situations where legal access already exists but needs to be documented and enforced. Legal resources devoted to documenting existing access would deliver a sizable payback to the public.

3) Efforts to disallow R.S. 2477 claims (such as H.R. 1603) would exacerbate the public access problem. While disallowance of R.S. 2477 claims would help designate areas as roadless, and make them eligible for wilderness designation, the result would be lost public access to public lands since R.S. 2477 is one of the primary tools to prove the existence of a public road before land passed into private hands.

4) Some private land passes through public ownership when there are defaults on federal loans. Rarely does the government place easements on the land for public access prior to resale. This solution, without cost to the U.S. Treasury, should become standard operating procedure as an easy-to-implement approach to increasing the public's ability to use its land.

5) Today, state counties receive approximately \$125 million a year in Payment in Lieu of Taxes on public lands. A portion of this could be used for public access acquisition or maintenance.

6) Permittees on public lands should be required to provide access across their lands as a condition of their permit.

7) A portion of the Land and Water Conservation Fund could be used to address public access problems. One of the purposes of the Fund is to create outdoor recreation opportunities. It would be cost-effective to use these scarce dollars to acquire more easements that open up thousands of acres of public lands, rather than buy entire tracts of private lands. And, purchase of these easements would not impact rural tax bases in the same manner as outright purchase of private lands. This subcommittee should urge

the agencies to include on their lists of LWCF projects the acquisition of key easements that would unlock tracts of National Forest and BLM lands for public use.

#### Conclusion

The West is changing. And part of that change is movement toward a land ethic similar to what we have in the East. There has been a continual erosion of access to public land. We need to confront this problem and reverse this negative trend. New laws are not needed. Instead, a higher priority on solution of this problem and the allocation of existing resources in a more efficient and focused manner will solve the problem. Americans should not be locked out of their own lands.

Chairman Vento, I applaud you and the other members of this subcommittee for convening this hearing. And I hope that your efforts will result in an increased focus on a problem that affects the constituents of every member of this subcommittee as well as all other Americans. Thank you.

Mr. VENTO. Mr. Hawkes, I am pleased to welcome you. Please proceed with your statement.

#### STATEMENT OF LEWIS E. HAWKES

Mr. HAWKES. Thank you very much. You have my statement for the record, and I will just excerpt parts from it. And I have some recommendations I would like to put in.

Chairman Vento, my name is Lewis E. Hawkes. I am the executive director of the Public Land Access Association Incorporated, a nonprofit Montana corporation. I spent 38 years as wildlife manager of the Gallatin National Forest from 1973 to 1980 and kind of feel like we were really in the trenches when it came to the issue of public lands access. And as a result of that, in 1985, we went out and organized, after I had retired, the Public Land Access Association.

Their objective is to promote the restoration, maintenance, and perpetuation of public access to the boundaries of the Federal and State lands in Montana. Currently PLAA has about 900 individual members, about 7,000 institutional. We have successfully maintained numerous road and trail routes to public lands simply because we constantly monitor public access routes and immediately protest any pending closures.

As a last resort, we have also won several State District Court cases on public access rights. For example, Robert M. Lee and Victor DeBoer. Currently we have two other pending court cases. We have also helped establish other public land access organizations in Nevada, Idaho, Colorado, and Arizona.

Chairman Vento, we sincerely appreciate your leadership, Pat Williams' support, and the support of this committee. In scheduling the GAO report and this hearing, Congress should soon have a much better understanding of the public land access problem.

From a historic standpoint on access, at the beginning of the Civil War, the United States was land rich but money poor. From the Federal Union's standpoint, there was a great need to bring the Western States into the Union to obtain Western silver and gold and settle the lands.

Subsequently, in 1862, Congress passed the Homestead Act to actively encourage the settlement of the West and strengthen the Union. Land grant railroads were granted alternating sections of land, several miles wide, on either side of their rights-of-way. The land was subsequently to be sold to settlers to help pay for the railroad.

In 1866, Congress passed Revised Statute 2477 which states: "The right-of-way for the construction of highways over public land, not reserved for public uses, is hereby granted." The intent of R.S. 2477 was to encourage homesteading and allow early miners and settlers to build wagon roads or trails wherever needed without being in trespass on Federal lands open to settlement.

The majority of the major wagon roads and trails serving western communities in today's State and Federal lands were constructed prior to homesteading of the lands over which the homes and trails traversed and thus, by Federal law, are public highways.

In 1895, when Montana first codified its laws, the legislature blanketed all such existing wagon roads and trails into county sys-

tems. Unless these wagon roads and trails have been formally abandoned by petition or other legal means, these roads and trails are still public highways.

Yet, most Federal, State, and county attorneys have been reluctant to acknowledge the existence of those public property rights because, collectively, there are insufficient Federal, State, and county funds for the maintenance of the primitive roads and trails.

In 1885, Congress also passed the Unlawful Enclosures Act, of which section 1063 states in part that, "No person by force, threats, intimidation, or any fencing or inclosing or any unlawful means, shall prevent or obstruct . . . any person from peaceably entering any tract of public land subject to settlement or entry under the public lands laws of the United States . . . or *shall prevent or obstruct free passage or transit over or through the public lands,*" emphasis added.

This law was recently used by the Wyoming Wildlife Federation to prohibit a rancher from fencing and blocking an antelope herd from reaching their traditional winter range at Red Rim in Wyoming.

After 1895, when additional wagon roads were needed across homesteaded lands to supplement the federal public highways already established, the Montana legislature strengthened a petitioning process whereby ten freeholders or landowners could petition for addition of a road to the county system.

If the majority of the freeholders agreed, the county could add the road by reviewing and surveying the road. The county could also condemn or pay damages for rights-of-way or easements, and the last step after construction was to declare the road public and open for use.

In addition, under Montana statutes, a public road can be established by dedication to the county by the landowner deeding the right-of-way to the county. Also public roads and trails can be established by prescription or continuous, adverse, and uninterrupted use by the public for a period of years.

After 1903, the majority of the deeds from the Northern Pacific Railroad to the first private landowners contain a clause stating, "the lands hereby granted being subject, however, to an easement in the public for any public roads or roads heretofore laid out or established, and now existing over or across any part of said described land." The Northern Pacific Railroad thus made a major effort to assure maximum access to early miners and settlers, and they fully recognized public highways established by Federal laws.

In 1906, Congress also passed the Forest Homestead Act which allowed patenting of the agricultural lands within the forest reserves. When these homesteads were established, the old forest rangers reserved 60-foot strips of land across those homesteads as a continuation of a public highway and to maintain public access to these public lands.

All of the above actions established public property rights in the early wagon road and trail systems. Public Lands Access Association was established in 1985 to encourage Federal, State, and county officials to stop adjacent landowners from blocking historic public roads and trails and thus taking long established public prop-



erty rights. The purchase of homesteads to create larger ranches does not limit public road and trail rights leading to public lands.

PLAA's major efforts are geared toward helping State and Federal land management agencies research historical records and encourage Federal, State, and county attorneys to defend these long-standing public property rights.

We fully support and will defend private property rights. However, historically established public property roads and trails are too often ignored at a tremendous monetary cost to the public and Federal Government.

Why should the Federal Government be forced to purchase road and trail rights that the public already owns because of historical action by Congress? R.S. 2477 and the Unlawful Enclosure Act established those.

Aggressive action by Federal attorneys would preclude the attempted closure on most historical routes to public lands in the West at a tremendous savings to the Federal Government in the long run.

I have six quick recommendations that would go to the committee. I will touch on those in just a minute.

Chairman Vento, we thank you for holding this hearing. We also want to say thank you to Montana's Congressman Pat Williams and his staff for all their help. We believe this hearing will be a positive step toward keeping the 50.4 million acres of public land public and available for citizens of the United States.

Briefly, our recommendations—and I am talking as somebody that has worked down in the trenches; we are the troops. I will give you an example. I had a complaint the other day where a State representative called me, and one of our members had been up a year ago and had gone in on a road across a State school section. It was public road. He was arrested. He was convicted, and he took his case and appealed it up to the district judge. The district judge said that is a public road across that State land because the county has collected gasoline tax on that for 22 years. So the county stopped collecting gas tax on it. But the declaration was public road.

Now this year, it just happened, same man went back up there and he found the gates locked, so he cut the locks. And the next time he went by somebody had taken a trencher, backhoe, and dug a big trench across that road on that State land.

The people involved have gone to the State Land Department asking to do something about it. They have gone to the county commission to do something about it, but none of them will do anything. It is an impasse right there.

Now that is the kind of things we encounter. So in trying to get at some of these things that I would recommend after being down in the trenches and really looking at these—and I get several calls like that a year—one of the things that would help a lot, we think, would be to tie the county PL payments to taxes, because very few counties, even though they draw tax monies from the Federal lands, will support doing anything for public access. There are a few, but not many.

We think that Federal attorneys, Justice Department of the United States, and the BLM and USDA, Office of General Counsel,

they are really reluctant in supporting the historical public road and trail rights, probably because they believe they have higher priorities.

We hope the Congress will request more aggressive action and provide financial support for these Federal entities in the Federal court cases. The rights are there. They are just not being defended.

I won't go into R.S. 2477 any more because I covered that. We would like to see the definition of R.S. 2477 as defined by the BLM in 1988. We think it is good. We have tested it. It looks like it meets the on-the-ground requirements and meets historical needs. We would like to see that retained.

Access now has become a public safety issue. And as you just said, the *Wall Street Journal*—I have that with my attachment—it is coming not only to fisticuffs, but it is coming to Mexican stand-offs with firearms in the West.

I think Congress has a responsibility from a public safety standpoint. And when you get to where there are historically unsolvable access problems, where the landowner and the agencies absolutely have no reason to compromise or work out something and it has been going on and on, I think you have to return the right to the BLM and the Forest Service to be more aggressive with condemnation.

This was very restricted during the Reagan and Bush Administrations and practically didn't exist. And that is one of the reasons your public access has gotten so much worse, because they couldn't take any actions.

In Montana, you just touched on it, there are increasing private land closures because in 1992, under pressure from pending lawsuit, the Montana legislature opened about 3 million of 5.2 million acres of State school land to hunting, fishing, and general recreation. Mostly ranchers opposed uses other than hunting and fishing in season.

In 1993, under similar pressure, the State Land Board opened the same lands to year-round hiking and bird watching. Subsequently, portions of Montana ranching industry are threatening to close large tracts of private lands to hunting and fishing if hiking and bird watching are not allowed on State lands.

Increasing closures of private lands places a greater need for access to public lands. And maintaining access to most public lands is even more critical.

Thank you.

Mr. VENTO. Thank you, Mr. Hawkes.

[Prepared statement of Mr. Hawkes and attachments follow:]

TESTIMONY OF LEWIS E. HAWKES, EXECUTIVE DIRECTOR  
PUBLIC LAND ACCESS ASSOCIATION, INCORPORATED

BEFORE

OVERSIGHT HEARING ON PUBLIC LANDS ACCESS  
HOUSE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS

NOVEMBER 9, 1993

LONGWORTH HOUSE OFFICE BUILDING

## INTRODUCTION

Chairman Vento, my name is Lewis E. Hawkes. I am the Executive Director of the Public Land Access Association, Incorporated (PLAAI), a non-profit Montana corporation. I am a Forestry Graduate of Utah State University (1951) with minors in Range and Wildlife Management, and I obtained a Masters in Public Administration from the University of California, Berkeley (1965). I spent 38 years as a wildlands manager with the United States Forest Service, and I was Supervisor of the Gallatin National Forest from 1973 to 1980.

PLAAI's objective is to promote the restoration, maintenance, and perpetuation of public access to the boundaries of federal and state lands in Montana. Currently, PLAAI has about 900 individual members, and over 7,000 institutional members. We have successfully maintained numerous road and trail routes to public lands simply because we constantly monitor public access routes and immediately protest any pending closures. As a last resort, we have also won several state district court cases on public access rights (i. e.- Robert M. Lee, and Victor DeBoer). Currently, we have two other pending court cases. We have also helped establish other public land access organizations in Nevada, Idaho, Colorado, and Arizona.

Chairman Vento, we sincerely appreciate your leadership, Pat Williams support, and the support of this subcommittee, in scheduling the GAO report and this hearing. Congress should soon have a much better understanding of the public land access problem.

## HISTORICAL

At the beginning of the Civil War, the United States was land rich, but money poor. From the Federal Union standpoint, there was a great need to bring the western states into the Union, obtain western silver and gold, and settle the lands. Subsequently, in 1862, Congress passed the homesteading act to actively encourage the settlement of the west, and strengthen the Union. Land grant railroads (i.e.- Union Pacific, Northern Pacific, etc.) were granted alternating sections of land (checker board pattern) several miles wide on either side of their rights-of-way. The lands were subsequently to be sold to settlers to help pay for the railroad.

In 1866, Congress also passed Revised Statute 2477 which states: "The right-of-way for the construction of highways over public land, not reserved for public uses, is hereby granted". The intent of R.S. 2477 was to encourage homesteading and allow early miners and settlers to build wagon roads/trails wherever needed without being in trespass on Federal lands open for settlement.

The majority of the major wagon roads and trails serving western communities and today's state and federal lands were constructed

prior to homesteading of the lands over which the roads and trails traversed and thus by Federal Law are public highways. In 1895, when Montana first codified its laws, the Legislature blanketed all such existing wagon roads and trails into county systems. Unless these wagon roads and trails have been formally abandoned by petition or other legal means, these roads and trails are still public highways. Yet, most Federal, state, and county attorneys have been reluctant to acknowledge the existence of these public property rights because, collectively, there are insufficient federal, state, and county funds for maintenance of these primitive roads and trails.

In 1885, Congress also passed the Unlawful Enclosures Act, of which section 1063 states in part that "No person by force, threats, intimidation, or by any fencing or inclosing, or any other unlawful means, shall prevent or obstruct ... any person from peaceably entering any tract of public land subject to settlement or entry under the public land laws of the United States ... *or shall prevent or obstruct free passage or transit over or through the public lands.*" (Emphasis added) This law was recently used by the Wyoming Wildlife Federation to prohibit a rancher from fencing and blocking an antelope herd from reaching their traditional winter range at Red Rim in Wyoming.

After 1895, when additional wagon roads were needed across homesteaded lands to supplement the federal public highways already established, the Montana legislature strengthened a petitioning process whereby 10 freeholders (landowners) could petition for addition of a road to the county system. If the majority of the freeholders agreed, the county could add the road by reviewing and surveying the route. The county could also condemn and/or pay damages for rights of ways or easements, and the last step after construction was to declare the road public and open for use.

In addition, under Montana statutes, a public road can be established by dedication to the county by the landowner deeding the right of way to the county. Also, public roads and trails can be established by prescription or continuous, adverse and uninterrupted use by the public for a period of years.

After 1903, the majority of the deeds from the Northern Pacific Railroad to the first private landowners contain a clause stating: "the lands hereby granted being subject, however, to an easement in the public for any public road or roads heretofore laid out or established, and now existing over or across any part of said described land". The Northern Pacific Railroad thus made a major effort to assure maximum access to early miners and settlers, and they fully recognized public highways established by federal laws.

In 1906, congress also passed the Forest Homestead Act which allowed patenting of agricultural lands within the forest reserves. When these homesteads were established the old forest

rangers reserved 60 foot strips of land across these homesteads as a continuation of a public highway and to maintain public access to public lands.

All of the above actions established public property rights in the early wagon road and trail systems. The Public Land Access Association, Inc.(PLAAI) was established in 1985 to encourage Federal, State, and County officials to stop adjacent landowners from blocking historical public roads and trails and thus taking long established public property rights. The purchase of homesteads to create larger ranches does not eliminate public road and trail rights leading to public lands.

PLAAI'S major efforts are geared towards helping State and Federal land management agencies research historical records and encourage Federal, State, and County attorneys to defend these long standing public property road/trail rights. PLAAI fully supports and will defend private property rights. However, historically established public property road trail/rights are too often being ignored at a tremendous monetary cost to the public and the Federal Government. Why should the Federal Government be forced to purchase road and trail rights that the public already owns because of early historical action by Congress. (R.S.-2477 and Unlawful Enclosures Act)? Aggressive action by federal attorneys would preclude the attempted closure of most historical routes to public lands in the west at a tremendous savings to the Federal Government in the long run.

Chairman Vento, we thank you for holding this hearing. We also want to say "thank you" to Montana's congressman Pat Williams and his staff for all of their help. We believe this hearing will be a positive step towards keeping the 50.4 million acres of public lands "public" and available for all citizens of the United States.

## PLAAI ACCESS RECOMMENDATIONS

The April 1992 GAO Report documents there are 50.4 million acres of land (17.3 National Forest and 33.1 BLM) with inadequate access. The report also implies that the Forest Service and the BLM are primarily at fault for this condition. The real truth is that although Congress has designated these public lands for public use, they in turn have placed so many constraints on land management agencies that they cannot do the job. Constraints on the land management agencies that should be removed or remedied are:

- 1) TIE COUNTY PILT PAYMENTS TO ACCESS. The counties now receive payments in lieu of taxes of About 124 million dollars from federal lands. Yet, few counties will accept any responsibility for access to the public lands from which they draw payments in lieu of taxes. This is not ethical or fair in anyway and it tends to maintain a federal/county animosity over the issue of public access. Currently, the counties are asking for an increase in PILT payments. A portion (25% is suggested) of these PILT funds could and should be designated only for county cost-share agreements with federal land management agencies for maintaining needed access to public lands within that county. This would create a much better federal/county working relationship.
- 2) FEDERAL ACTION. Federal attorneys (Justice Department, Office of General Council - USDA, BLM) are very reluctant to support any historical research and subsequent litigation to protect historical public road and trail rights probably because they believe they have higher priorities. We hope that Congress will request more aggressive action and provide financial support for these federal entities in federal court actions to defend public road/trail property rights.
- 3) PROTECT R.S. 2477 RIGHTS. R.S. 2477 was the major method by which congress allowed early miners and settlers to patent mines and homesteads without trespassing on public or private lands. Most R.S. 2477 routes are/were wagon roads and now many are 4-wheel drive routes. Yet they are the key to providing reasonable public access to the 50.4 million acres with inadequate access. On December 7, 1988, Donald Paul Hodel, in the Department of the Interior established a policy and criteria for the recognition of an R.S. 2477 road/trail (see attachment). PLAAI has tested this policy and criteria in the field, and we fully support it's retention. Recently, there have been attempts to weaken or destroy R.S. 2477 (H.R. 1603). Such action would cost the public and the federal government millions of dollars in the long run and add to the

budget deficit.

- 4) ACCESS NOW A PUBLIC SAFETY ISSUE. As shown by the attached October 8, 1993 article from the Wall Street Journal, public access confrontations in the west are becoming increasingly serious and even life-threatening. We believe Congress has a responsibility to move forward from a public safety standpoint and help provide the resources and methods for resolving the issues as rapidly as possible. Public lands were established by Congress for public use and reasonable access is a necessity. PLAAI does not know of any rancher that does not have adequate access to his ranch. The public lands are the public's ranch and reasonable access is a prerequisite for public use of our ranch.
- 5) HISTORICALLY UNSOLVABLE ACCESS PROBLEMS REQUIRE STRONG FEDERAL ACTIONS. Starting with the Reagan Administration and continuing through the Bush Administration to the present, the word is out that the Forest Service and the BLM are "paper tigers" with no authority. Many adjacent landowners and/or new landowners are quick to reject most "willing buyer-willing seller" attempts by these management agencies to acquire needed rights-of-way. The administration and Congress should encourage, as a last resort, the use of eminent domain to resolve many long standing and to date unresolvable disputes. The BLM has been particularly (and politically) hard hit because Congress has unduly limited any condemnation actions by this agency through the restriction of appropriations. Let's allow the agencies to do a "professional" not "political" management job of the public's resources. Land exchanges alone by the BLM will never resolve the access problems to 31.1 million acres of public lands.
- 6) INCREASING PRIVATE LAND CLOSURES. In 1992 under pressure from a pending lawsuit, the Montana Legislature opened about 3 million of 5.2 million acres of state school lands to hunting, fishing, and general recreation. The lessees (mostly ranchers) opposed uses other than hunting and fishing in season. In 1993, under similar pressure, the State Land Board opened the same lands to year-round hiking and bird watching. Subsequently, portions of the Montana ranching industry are threatening to close large tracts of private lands to hunting and fishing if hiking and bird-watching are allowed on state lands. Increasing closures of private lands place a greater demand for access to public lands, and maintaining access to these public lands is even more critical.





THE SECRETARY OF THE INTERIOR  
WASHINGTON

Memorandum

To: Secretary

From: <sup>(S-4) Susan Rocco</sup> Acting Assistant Secretary for Fish and Wildlife and Parks, <sup>RT</sup>  
Assistant Secretary for Land and Minerals Management

Subject: Departmental Policy on Section 8 of the Act of  
July 26, 1866, Revised Statute 2477 (Repealed),  
Grant of Right-of-Way for Public Highways (RS 2477)

Although RS 2477 was repealed nearly 12 years ago, controversies periodically arise regarding whether a public highway was established pursuant to the congressional grant under RS 2477 and the extent of rights obtained under that grant. Under RS 2477, the United States had (has) no duty or authority to adjudicate an assertion or application. However, it is necessary in the proper management of Federal lands to be able to recognize with some certainty the existence, or lack thereof, of public highway grants obtained under RS 2477.

With the passage of the Federal Land Policy and Management Act, the Bureau of Land Management (BLM) developed procedures, policy, and criteria for recognition, in cooperation with local governments, of the existence of such public highways and notation to the BLM's land records. This has allowed the BLM to develop land use plans and to make appropriate management decisions that consider the existence of these highway rights.

Issues have recently been raised by the State of Alaska and others which question not only the BLM policy but also the management actions by other bureaus within the Department. We have had the BLM review and report on the various issues and concerns (Attachment 2) and consulted with the State of Alaska, the BLM, the Fish and Wildlife Service, and the National Park Service.

We believe that the land management objectives of the Department will be improved with adoption of a Departmental policy and recommend that the attached policy (Attachment 1) be adopted for Departmentwide use.

Approve: Donald Paul Model

Disapprove: \_\_\_\_\_

Date: DEC 07 1988

Date: \_\_\_\_\_

Attachments: 1-RS 2477 Policy  
2-BLM Report

As custodian of the public records retained by the  
Bureau of Land Management, Billings, Montana,  
I hereby certify this to be a true copy.

Date: 12/14/88  
Signature: [Signature]  
Land Law Assistant

Celebrating the United States Constitution

Construction is a physical act of readying the highway for use by the public according to the available or intended mode of transportation - foot, horse, vehicle, etc. Removing high vegetation, moving large rocks out of the way, or filling low spots, etc., may be sufficient as construction for a particular case.

Survey, planning, or pronouncement by public authorities may initiate construction but does not, by itself, constitute construction. Construction must have been initiated prior to the repeal of RS 2477 and actual construction must have followed within a reasonable time.

Road maintenance over several years may equal actual construction.

The passage of vehicles by users over time may equal actual construction.

#### Public Highway:

A public highway is a definitive route or way that is freely open for all to use. It need not necessarily be open to vehicular traffic for a pedestrian or pack animal trail may qualify. A toll road or trail is still a public highway if the only limitation is the payment of the toll by all users. Multiple ways through a general area may not qualify as a definite route, however, evidence may show that one or another of the ways may qualify.

The inclusion of a highway in a State, county, or municipal road system constitutes being a public highway.

Expenditure of construction or maintenance money by an appropriate public body is evidence of the highway being a public highway.

Absent evidence to the contrary, a statement by an appropriate public body that the highway was and still is considered a public highway will be accepted.

#### Ancillary uses or facilities usual to public highways:

Facilities such as road drainage ditches, back and front slopes, turnouts, rest areas, and the like, that facilitate use of the highway by the public are considered part of the public highway R/W grant.

Other facilities such as telephone lines, electric lines, etc., that were often placed along highways do not facilitate use of the highway and are not considered part of the public highway R/W grant. An exception is the placement of such facilities along such R/W grants on lands administered by the Bureau of Land Management prior to November 7, 1974. Prior to this date, the requirement of filing an application for such facilities was waived. Any new facility, addition, modification of route, etc., after that date requires the filing of an application/permit for such facility. Facilities that were constructed, with permission of the R/W holder, between November 7, 1974, and the effective date of this policy, should, except in rare and unusual circumstances, be accommodated by issuance of a R/W or permit authorizing the continuance of such facility.

The WALL STREET JOURNAL

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VOL. CXXIX NO. 70

**Wild West****Gunfire and Lawsuits****Greet City Slickers****Who Block Old Trails****New Owners Seek Privacy,****But Neighbors Say They****Tread on Historic Rights****Trouble in Cowboy Heaven**

By JIM CARLOW

*Staff Reporter of The Wall Street Journal.*  
LANES CREEK, Idaho—This used to be God's country. Now it belongs to Salvatore A. Scalfide.

Four years ago, Mr. Scalfide and a partner blocked a road leading across their newly bought ranch and into the mountains. Locals, who used to reach the mountains by driving half an hour, now face a three-hour ordeal on horseback instead.

Lin Whitworth is one of the few who still braves the trip. Cursing as he spurs his steed through dense underbrush, he eventually reaches a meadow with sweeping vistas of snowcapped peaks. Except for rough riders such as Mr. Whitworth, the grandson of a homesteader, this spectacular country now is off-limits to all but Mr. Scalfide and his guests.

"What they're saying is," Mr. Whitworth draws, "it's my little kingdom and you can't go in."

**This Land Is My Land**

Fenced-in fields are popping up across the American West as wide open spaces are closed off by rich and famous greenhorns. This has sparked a modern-day range war over access to public lands that has erupted in courtroom showdowns and even Old West-style gunplay.

Until recent years, it was relatively easy to reach the remotest corners of the West by traversing old roads and trails across private ranches. Most ranchers asked only that visitors close gates so livestock wouldn't escape. Westerners came to regard these roads as historic rights-of-way for all.

But in the New West, city slickers are gobbling up land from New Mexico to Montana and padlocking gates that lead into wild lands. Seeing newcomers get away with it, local ranchers are blocking roads, too.

An estimated 56.4 million acres, or 14% of the land managed by the Forest Service and Bureau of Land Management in the contiguous U.S., now has inadequate access. That is a land mass roughly equal to the state of Minnesota. And as the nation's population and appetite for outdoor sport grows, so too does the pressure on land that remains accessible.

"There is so much public ground that you can't get to," gripes Michael Springman, a Utah industrial-supply salesman and avid outdoorsman, "that the ground you can get to is swamped with human beings."

**Poachers and Litterbugs**

Privacy from such crowds is the main reason that ranchers block roads. Landowners say that unwanted visitors dump garbage and shoot cattle or wildlife. Ranchers also risk lawsuits if interlopers are injured on their land.

"If a man owns a piece of property and he wants to go out there and not have anybody bother him, that's his right," contends Edmund W. Dumke, a Las Vegas investor who has blocked access across his Idaho ranch.

Moreover, environmentalists often applaud the road closures. Says Michael Scott, Northern Rockies regional director for the Wilderness Society: "It is not bad to have some public lands that are more difficult to get to than others."

But road closures have become so epidemic that Rep. Pat Williams, a Democrat from Montana, has requested congressional hearings on the access issue. Ranchers and ramblers, meantime, are shugging it out among themselves, often in a very nasty fashion.

When Tracy Baxter, a Wyoming transplant, bought a ranch in southeastern Idaho three years ago, he quickly cabled off a road used by hunters and cattlemen. Soon after, he found four of his cows shot dead and an ominous note tacked to the cable: "Keep being a horse's ass about it and you'll probably lose."

Mr. Baxter also has found bullet holes in his stock tanks and has had bullets whiz by his ranch house. "We thought we would find our own little paradise when we came here," he says. "We just want to be left alone." The local county is suing to reopen the road, which Mr. Baxter says he closed to prevent vandalism.

**There Goes the Neighborhood**

Spats over access also have a cultural dimension, exposing the gulf between country and city notions about neighborliness. Mr. Dumke, the Las Vegas investor, sealed off roads across his Idaho ranch, forcing outdoorsmen to hike 18 hours to reach a trout-filled lake that they used to be able to drive to in an hour. Then Mr. Dumke bought a vacant lot beside a neighboring cafe and put up boulders to prevent customers from parking there.

"I think it's a slap in the face to the community as a whole, because most everybody tries to get along with everybody," says Carol Weston, the cafe's co-owner. Someone has since spray painted the boulders with D-U-M-B-I-E, and in July a group of townsfolk held a camp-out on the Weston spread to celebrate their defiance.

Responds the Las Vegas investor: "They hate people like me, because I'm an

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## Wild West: Gunfire, Lawsuits Greet City Slickers Who Seek Privacy by Blocking Wilderness Trails

Continued From First Page  
outsider . . . and especially if they think you're rich outsiders.

Nor do locals take kindly to newcomers who resort to guerrilla tactics. San Diego developer Richard Tutill told a spikely board across a road on his Idaho ranch, blocking a hunting route. His wife, Marie, says trespassers were taking water during a severe drought.

But one of the Tutills' neighbors, Dee Maynard, who had used the road for decades, wasn't pleased when he drove his pickup over the spikes and punctured two tires.

"That's a hell of a thing, setting a trap for your fellow man," growls the 66-year-old Mr. Maynard, who now has to drive 35 miles on back roads to reach the same place he used to reach by crossing a mile and a half of the Tutills' ranch.

### The Last Frontier

Such conflicts are flaring all across Idaho and Montana, two states that have become a sort of last frontier for rich and famous homesteaders. In the Big Sky state, retired forest supervisor Lewis "Gene" Hawkins became so fed up with closures that he helped organize a group called Public Lands Access Association to take on the newcomers.

The group persuaded a state judge to keep open a trail that New York export-import tycoon Robert M. Lee had posted as closed when he bought a ranch in 1965 at the base of the Madison Range. Mr. Lee, an avid hunter, argued that he wanted to protect local elk herds.

The closing would have blocked a key access trail into a scenic domain called Cowboy Heaven. Big game is so abundant there that elk and moose are clearly visible from a small plane flying overhead.

Cowboy Heaven, like other wilderness areas in the West, is so remote that one padlock can virtually seal it off from view. "If you control the trails and roads, you control this country," says Bill Fairhurst, an access-group member and former fighter pilot, as his plane soars above steep canyons and dense forests of fir and pine.

### One Man's Paradise

Nearby is media magnate Ted Turner's Flying D ranch, which contains a road that Mr. Fairhurst says he once used for hunting around Cowboy Heaven. Although that road was closed—at gunpoint—by previous owners 25 years ago, the access group threatens to sue unless Mr. Turner reopens it.

Mr. Turner, who bought the ranch in 1969, declines to comment. Addressing the public-access issue in a 1989 speech,

Mr. Turner said that one way to gain access to the wilderness near his ranch would be to travel on a still-open county road. "The other way to get [access] is to do like I did and work . . . and make \$22 million and go buy it yourselves," Mr. Turner said, according to the *Bozeman (Mont.) Daily Chronicle*.

Outdoorers aren't the only ones hit by road closures. In the Tobacco Root Mountains of Montana, retirees Hal and Virginia Dale say they face being cut off from their own home and gold-mining claim. California developer V. Mark Rafanelli bought a ranch with a road that the Dales and dozens of others say they have used to reach the Beal Canyon. He locked the gate, giving the Dales a key.

Mr. Dale protested, worried that permission to cross the ranch would be revoked at any time. One day, finding the lock changed, he cut it. In response, Mr. Rafanelli has asked a state court to deny Mr. Dale any legal right to cross the ranch—even though the lifelong Montanan says he has done so, on and off, for nearly 40 years.

Mr. Rafanelli says he isn't trying to shut out Mr. Dale, but only wants to establish his control of the access in case Mr. Dale were to "subdivide it to somebody." He has since reopened the gate pending the suit. Mr. Rafanelli adds that he wants to limit access in Beal Canyon, in part, to protect a herd of mountain goats.

### Italy Cow

Landowners often cite protection of wildlife—or of their own livestock—to justify road closures. But Ted Ransom, an Idaho real-estate agent who leads a group fighting for access, believes such claims are exaggerated. "I don't think there's one cow shot for every dozen people saying it," says 62-year-old Mr. Ransom. "That's a standard excuse."

Last year, Mr. Ransom helped organize *Save Our Access and Rights of Way*, which has held rallies and a pig roast to raise a legal war chest of more than \$5,000. So far, the group has helped win passage of Idaho legislation making it somewhat tougher to close roads.

But such victories are rare. Singer-songwriter Carole King bought a small ranch along the Salmon River and, seeking seclusion, closed off an 11-mile loop road that runs for all but one mile on federal land. Neighbors protested and county officials sued to reopen the road. Idaho's Supreme Court upheld the closing.

Another big-name court battle broke out in Idaho's Caribou Range after South Carolina shopping-center manager John F. Floyd and some partners blocked a hunting road. Mr. Floyd complained of trespassers and poachers on his ranch.

Local county officials, contending the road is public because they maintained it, are suing to reopen it. Mr. Floyd believes the county abandoned the road years ago and is now trying to take it back. "I just don't believe in this country you ought to take something because you want it," Mr. Floyd says.

Adding political clout to his legal guns, Mr. Floyd got his stepbrother, South Carolina Gov. Carroll A. Campbell Jr., to intervene. In a 1991 letter to Idaho Gov. Cecil D. Andrus that began "Dear Cec," Gov. Campbell pleaded his kin's case, asking that "the proper people look into this . . ."

Gov. Campbell identified Mr. Floyd in the letter only as "a citizen of my state." Through a spokesman, the governor said he didn't cite the relationship "so as to avoid appearance of seeking special assistance." Responds Gov. Andrus: "I basically told my colleague, the good governor, that we in Idaho didn't appreciate out-of-state people coming in and attempting to take over our resources."

### Keeping Up With the Joneses?

But out-of-state settlers aren't the only culprits. Longtime landowners have aggravated the access problem by mimicking urban newcomers. In the Lanes Creek area of southeastern Idaho, for instance, ranchers locked gates up and down a 15-mile-long valley after Mr. Scaffide and his partner bought a ranch, closing a road to the forest where Mr. Whitworth was riding recently.

"All I want to do is have a beautiful place to get out of this cement jungle. I'm in right now," Mr. Scaffide, a labeling executive, says by car phone as he travels near his office in Industry, Calif. Mr. Scaffide says he kept the gate open until it was forced him to close it.

In a valley steeped in Western lore—a cutoff of the Oregon Trail runs nearby, and there are ruins of a 19th-century cabin with rifle slits—the closure drew an Old West response. The lock and gate were shot up and Mr. Scaffide heard of threats on his life.

Now, he says: "We carry a gun with us when we are on the ranch."

Mr. VENTO. We have a vote here. But if we can give Mr. Frasier about five minutes, it doesn't look like his testimony is quite as long as others; and so we will give you an opportunity to get your testimony.

And now, Mr. Frasier, please proceed.

#### STATEMENT OF STAN FRASIER

Mr. FRASIER. Thank you, Mr. Chairman.

Yes, my name is Stan Frasier. I am one of the many vice presidents of the Montana Wildlife Federation. I will just hit a few high points here. Some of these things have already been mentioned.

The Gallatin Range, in particular, and the Madison Range are two mountain ranges which have very limited access. The Gallatin has almost continuous private ranches running along it. So we are talking about tens of thousands of acres of mountain range which have virtually no access, the Gallatin on the east side and the Madison range, same sort of problem on the west side, which is the next range to the west.

The Madison range contains the most spectacular wilderness areas, and it has also been blocked on the north by the Flying D Ranch.

The battle in Montana for access to our State school trust lands has been fought by sportsmen with our own Department of State Lands for nearly 40 years.

And one of the real big things that happened with an addition to opening up the State lands, it has opened up a lot of Federal land. Because by leasing State school lands for grazing, for a very low fee, the lessee could deny access to the State land previously and, in turn, cut off access to Federal lands behind that.

We are making progress in that, but there is still some problems in getting to some of these extremely large areas of Federal lands, especially the mountain ranges. And we in the Montana Wildlife Federation are not interested in having roads throughout forest; but we are interested in being able, at least, to get to the edge of the forest. And in many places that is not possible now.

We don't want special treatment. We only want to have an equal opportunity to enjoy our public lands. A few of the things that have been touched on earlier here, the isolated tracts kept coming up. That is really not a problem. The problem is the areas like the Gallatin Range or the Madison Range where we can't get to tens or even hundreds of thousands of acres of Federal land.

And the gentleman from Utah kept asking questions about the Forest Service closing roads. I can say that the ones that in cases I am familiar with, the Forest Service closes roads because they cut down trees in order to maintain some sort of minimal wildlife habitat. And they go in and take down the trees in a timber sale; and in compensation for that, they have to limit access.

So in many cases that I've seen, the Forest Service, through the timber sale program, are creating their own problem. They have, in fact, closed mining roads that have been open for a hundred years, because they built new roads into an area, took the trees down, they close off the new roads when they are through. They close the old roads, and that has been a problem.

But one of the things that the BLM has done—and I hope they are still doing—they have some excellent access maps. And I would ask you to encourage the BLM to continue putting these out. These are a real help. They have these for the entire State of Montana. They cover very small sections. They are very detailed. And I think they sell these for \$5 a piece, which I hope is cost. But I would certainly like to have a set for the entire State, and I am going to pursue that with the BLM. I hope we can get those for the Wildlife Federation also.

And one of the problems that we run into in rural county commissioners not protecting access, is that these rural county commissioners are the friends and neighbors of the ranchers that want to close these roads. And, quite frankly, the private individuals, sportsmen's organizations, should not have to spend their time and energy fighting to keep these historic accesses open.

I would like to see more help from the Forest Service and BLM whose lands are affected in maintaining these historic accesses.

Thank you very much.

[Prepared statement of Mr. Frasier follows:]



## **MONTANA WILDLIFE FEDERATION**

**P.O. Box 1175, Helena, MT 59624 406-449-7604**

1990 Outstanding State Affiliate of the National Wildlife Federation

**TESTIMONY PRESENTED BY MR. STAN FRASIER,  
VICE-PRESIDENT, MONTANA WILDLIFE FEDERATION  
BEFORE  
THE SUB-COMMITTEE ON NATIONAL PARKS, FORESTS,  
AND PUBLIC LANDS  
OF THE COMMITTEE ON NATURAL RESOURCES**

**November 9, 1993**

*Fifty-seven Years of Preserving the Last of What's Best .....*



MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS STAN FRASIER. I AM A VICE-PRESIDENT OF THE MONTANA WILDLIFE FEDERATION, AS WELL AS A MEMBER OF A LOCAL SPORTSMEN'S CLUB. AS A NATIVE MONTANAN I HAVE SPENT MY LIFE RECREATING IN THE GREAT OUTDOORS OUR STATE HAS TO OFFER.

WHEN I WAS A CHILD GROWING UP, MY FAMILY WENT FISHING, PICNICKING, AND CAMPING TOGETHER; AND WHEN I MARRIED AND STARTED A FAMILY OF MY OWN, MY WIFE, DAUGHTER, AND I ENJOYED THE SAME RECREATIONAL ACTIVITIES AS A FAMILY THAT I HAD AS A CHILD. THOSE FAMILY OUTINGS ARE WONDERFUL MEMORIES, AND CREATED IN ME A DEEP APPRECIATION OF THE OUTDOORS WHICH HAS LASTED ALL OF MY LIFE. THESE WERE ACTIVITIES THAT FAMILIES COULD DO TOGETHER WHICH DID NOT COST MUCH. THEY WERE ACTIVITIES A FAMILY COULD ENGAGE IN ON PUBLICLY OWNED LANDS.

AS A CARPENTER BY TRADE, AND ONE WHO IS CURRENTLY UNEMPLOYED, I CAN TELL YOU FIRST HAND THAT THERE ARE MANY OF US WHO LIVE IN MONTANA WHO DON'T MAKE MUCH MONEY. BUT THERE IS A RICHNESS TO ALL OUR LIVES THAT COMES FROM THE OPPORTUNITY FOR OUTDOOR RECREATION ON PUBLIC LANDS.

IN MONTANA ABOUT 1/3 OF OUR TOTAL STATE ACREAGE IS IN PUBLIC OWNERSHIP -- OR ABOUT 30 MILLIONS ACRES OF PUBLIC LAND. OUR STATE HAS A RICH HERITAGE OF USE ON PUBLIC LANDS; OVER 300,000 SPORTING LICENSES ARE SOLD EVERY YEAR TO STATE RESIDENTS, AND AN ADDITIONAL 250,000 NON-RESIDENT LICENSES ARE PURCHASED. THIS



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MASSIVE FINANCIAL OUTLAY BY INDIVIDUALS GOES TO SUPPORT THEIR RECREATIONAL ACTIVITIES FOR HUNTING AND FISHING, MUCH OF WHICH OCCURS ON PUBLIC LANDS AND WATERS.

DESPITE THIS SEEMINGLY ENORMOUS WEALTH OF OPPORTUNITY FOR THE GENERAL PUBLIC TO RECREATIONAL ACTIVITIES, THERE IS A DARKER SIDE TO THE PICTURE. IT TOOK 3 DECADES OF CONSTANT CITIZEN ACTIVISM TO OPEN MONTANA'S 5.2 MILLIONS ACRES OF STATE OWNED TRUST LAND TO HUNTING AND FISHING IN 1991, AND THE BATTLE STILL CONTINUES TO FURTHER OPEN THESE LANDS TO OTHER RECREATIONAL USES. UP UNTIL 1991 LESSEES OF STATE LANDS, PRIMARILY LEASED TO AGRICULTURE FOR GRAZING, WERE ABLE TO PROHIBIT THE GENERAL PUBLIC FROM ENTERING THOSE LANDS. THESE STATE LANDS OFTEN BORDERED FEDERAL PUBLIC LANDS, SO THE EFFECT OF THIS SITUATION WAS TO CLOSE MILLIONS OF ACRES OF BLM AND FOREST SERVICE LANDS TO THE PUBLIC.

BUT DESPITE THE SUCCESS REGARDING STATE LAND ACCESS, THE PROBLEMS ASSOCIATED WITH ACCESS TO FEDERAL LANDS IS GROWING.

MONTANA IS CHANGING IN THIS DECADE. MORE AND MORE INDIVIDUALS ARE MOVING TO OUR STATE, PURCHASING HUGE TRACTS OF LAND THAT BORDER FEDERAL PUBLIC LANDS, AND CHOKING OFF ACCESS POINTS. ADDITIONALLY, AS MONTANA'S RICH FISHING AND HUNTING OPPORTUNITIES BECOME MORE VALUABLE AS THEY BECOME RARER IN OTHER STATES, PRIVATE FEE RECREATION IS GROWING. PRIVATE LANDOWNERS WHOSE LAND ABUTS PUBLIC TROUT STREAMS AND PUBLIC WILDLIFE HABITAT, ARE AGAIN CLOSING OFF ACCESS, AND THUS CREATING PRIVATE PRESERVES FOR THEIR OWN BENEFIT.

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THERE ARE NUMEROUS EXAMPLES OF THIS EMERGING PROBLEM IN MONTANA. THE PARADISE VALLEY RUNS NORTH OUT OF YELLOWSTONE PARK, AND IS BORDERED BY TWO MAGNIFICENT MOUNTAIN RANGES. TO THE WEST IS THE GALLATIN RANGE, ENCOMPASSING HUNDREDS OF THOUSANDS OF ACRES OF PRIMITIVE RECREATIONAL OPPORTUNITY. DESPITE THIS HUGE PUBLIC RESOURCE, THERE ARE ALMOST NO ACCESS POINTS FOR A DISTANCE OF 50 MILES THROUGH THIS VALLEY FROM GARDINER, MONTANA TO LIVINGSTON. PRIVATE RANCHES BLOCK THIS WILDERNESS AREA; THE DEPEW RANCH BLOCKS ACCESS ALONG TRAIL CREEK, THE 8 MILE CREEK ACCESS IS BLOCKED THE JACK BRANDIS RANCH, THE STORY RANCH ALONG FRIDLEY CREEK SHUTS OFF ANOTHER PRIME ACCESS POINT. ADDITIONALLY, ACCESS DIFFICULTIES ARE CREATED IN CINNABAR BASIN, DONAHUGH CREEK, AND POINT-OF-ROCKS, ALL MAJOR POTENTIAL POINTS OF DEPARTURE INTO THE GALLATIN RANGE.

IN THE MADISON RANGE, ONE OF MONTANA'S MOST SPECTACULAR WILDERNESS AREAS, THE FLYING D RANCH IN THE 1960'S PETITIONED THE GALLATIN COUNTY COMMISSION TO ABANDON THE CHERRY CREEK ROAD WHICH HAD HISTORICALLY SERVED AS AN ACCESS POINT TO THIS RANGE. WHEN THE COMMISSION GRANTED THE ABANDONMENT, THEY EFFECTIVELY BLOCKED ACCESS TO THIS RANGE FOR OVER 40 MILES OF HIGHWAY THAT SURROUNDS THE NORTH END OF THIS INCREDIBLE RANGE.

UP ON THE EASTERN FRONT RANGE NORTH OF CHOTEAU, MONTANA, WHERE THE SPECTACULAR BOB MARSHALL COMPLEX SWEEPS DOWN ONTO THE FLAT EASTERN PLAINS, A HUGE RANCH ON DUPUYER CREEK WAS PURCHASED BY THE BOONE AND CROCKETT CLUB, WHO IMMEDIATELY CLOSED A ROAD THAT TRANSECTED THE RANCH AND PROVIDED ACCESS TO THE EAST SIDE OF THE BOB MARSHALL

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WILDERNESS. EVENTUALLY, THROUGH THE EFFORTS OF SPORTSMEN GROUPS, THIS ROAD WAS RE-OPENED.

THE PROBLEMS IN MONTANA ARE ACCELERATING. AS MORE AND MORE PRIVATE LANDS ARE PURCHASED AND ADJOINING FEDERAL LANDS ARE BUTTONED OFF OF PUBLIC ACCESS, RECREATIONAL OPPORTUNITIES DIMINISH. THERE ARE BOTH CULTURAL AND ECONOMIC RAMIFICATIONS TO THIS TREND. ECONOMICALLY, PUBLIC LANDS REPRESENT AN ASSET THAT IS GROWING IN VALUE AS OUR NATION BECOMES MORE URBANIZED AND TROUBLED BY THE PROBLEMS ASSOCIATED WITH SUCH URBANIZATION. CULTURALLY, THE OPPORTUNITY TO ACCESS PUBLIC LANDS BINDS FAMILIES TOGETHER AND NURTURES POSITIVE INDIVIDUAL VALUES.

THE MONTANA WILDLIFE FEDERATION URGES THIS COMMITTEE TO AGGRESSIVELY LOCATE SOLUTIONS TO THIS PROBLEM. WE WOULD ENCOURAGE SOLUTIONS THAT PROMOTE SOUND RECREATIONAL OPPORTUNITY, AND WE DO NOT ADVOCATE PUNCHING ROADS INTO EACH AND EVERY NOOK AND CRANNY OF PUBLIC LAND. RATHER, WE BELIEVE THAT CONGRESS SHOULD SEEK REMEDIES THAT ALLOW FOR VARIED RECREATIONAL OPPORTUNITY; THAT PROVIDE ACCESS POINTS TO WILDERNESS AND ROADLESS LANDS FOR HIKING AND BACKCOUNTRY RECREATIONAL EXPERIENCE; THAT PROVIDE CAMPGROUND OPPORTUNITIES FOR FAMILIES IN THE MORE DEVELOPED PUBLIC LAND AREAS THAT HAVE BEEN CLOSED OFF; AND IN APPROPRIATE INSTANCES, PROVIDE VEHICULAR OPPORTUNITIES WHEN THEY DO NOT INFRINGE ON THE SOLITUDE AND WILDLIFE INTEGRITY OF A GIVEN AREA.

AS STRATEGIES FOR SUCH SOLUTIONS, WE FEEL THAT DESPITE THE FINANCIAL BIND WE ARE IN AS A NATION, FEDERAL LAND MANAGEMENT

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FUNDS SHOULD BE RE-CHANNELED INTO ACCESS AS A PRIORITY. IN DOING SO, THE USFS AND BLM SHOULD LOOK TO DEVELOP A COMPREHENSIVE AND PRIORITIZED LIST OF MAJOR ACCESS PROBLEM AREAS, AND PROCEED TO SOLVE THEM.

TOOLS FOR CREATING ACCESS SHOULD BE ENACTED IN THIS ORDER: 1) LAND ACQUISITIONS THAT PROVIDE ACCESS, 2) EASEMENT ACQUISITIONS THAT PROVIDE ACCESS, 3) USING THE AGENCY PLANNING PROCESS TO CREATE TRAILS AND ROADS AROUND PROBLEM AREAS SO THAT THE PUBLIC CAN GAIN ENTRY ONTO ITS PUBLICLY OWNED LANDS, AND FINALLY, 4) CONDEMNATION IN THOSE AREAS WHERE NO OTHER SOLUTIONS EXIST, BUT THE PUBLIC GOOD OVERRIDES PRIVATE INTRANSIGENCE.

IN CLOSING, MR CHAIRMAN AND MEMBERS OF THE COMMITTEE, WHEN PRIVATE LANDOWNERS WHO OWN THOUSANDS OF ACRES OF LAND CAN PREVENT THE PUBLIC FROM ACCESSING THE PUBLIC LANDS WHICH THOSE PRIVATE TRACTS ADJOIN, THEN THE PUBLIC GOOD IS BEING THWARTED. THE VAST MAJORITY OF AMERICANS HAVE NOT BEEN FORTUNATE ENOUGH TO OWN SUCH PRIVATE ENCLAVES, AND THEIR OPPORTUNITY FOR OUTDOOR EXPERIENCE RELIES SOLELY ON THE LANDS THAT ARE HELD IN THEIR NAME BY THEIR GOVERNMENT. WE DON'T WANT SPECIAL TREATMENT; WE SIMPLY ASK FOR EQUAL OPPORTUNITY TO ENJOY OUR PUBLIC LANDS.

Mr. VENTO. Thank you.

And we will get back in a little bit. We have to vote. And we will perhaps return in about ten minutes and then be able to conclude your testimony. And we will have a few questions for each of you as well.

So we will stand in recess at this point.

[Recess.]

Mr. VENTO. Let's resume our sitting. We had one witness on the panel that we hadn't heard from yet. So I am pleased to welcome Ann Kersten from Reno.

Pardon me. It was envy, I was trying to think, from Reno.

Please proceed with your statement.

#### STATEMENT OF ANN KERSTEN

Ms. KERSTEN. Thank you. Good afternoon, Mr. Chairman.

My name is Ann Kersten. I was born and raised in Nevada. I am a lifelong resident, and my interest in the issue of inadequate access to public lands comes from the fact that I am an avid hiker, backpacker, and fisherman; and spending time outdoors is more and more important to me the older I get.

And I am finding it increasingly difficult to access the beautiful publicly owned land in my own State. And I have also done some research on this issue because my paper for my master's degree is on urban interface issues and inadequate access to public lands.

Two Nevada areas I am going to talk about today illustrate, I think, two sides of the same problem. We are finding loss of access to wild lands, newer urbanized areas, and inadequate access to wild lands in remote suburb areas.

Mount Rose in the Carson Range is in Reno's backyard and is one of my favorite places. It is 20-30 minutes from Reno. We have pine forests, great trout fishing streams, meadows, deer, and bear habitat. And a portion of the area encompasses the Mount Rose Wilderness Area which is fairly newly designated.

It has been very popular with the people of Reno for day hikes. You often see families day hiking. It is very popular with fishermen and hunters.

I am going to show this map, which is hard to see, but I will submit a copy. This is the Carson Range in 1960. And white is private land, green is public lands. And Reno is right up here. So basically, in 1960, there was no national forest here. Through the years, consolidating ownership and with the red field land for tax forgiveness legislation, we created basically a wonderful national forest unit, which today looks like this. And Reno again is right up here.

These are the two units of the Mount Rose Wilderness. What we are finding is that, as Reno grows, traditional access routes which were old Jeep trails, just, you know, dirt roads, Jeep trails, that people have used for years and years to access this area, the city is growing up; and we are finding subdivisions creeping up into all of these areas and access being cut off really dramatically.

One example that is the one I am very familiar with is Hunter Creek, which is right here. And this subdivision actually advertised the national forest will be in your backyard when it sold lots. And then proceeded to cut off the public access to really this whole very huge area behind it.

Rarely is access being planned into subdivisions, and we are in danger of having wonderful public resources made up of land that was painstakingly acquired for the public over the years, which the public cannot reach.

And in addition, the district ranger who manages this area has spoken publicly about serious concerns about wild fires. Public safety issues. He is afraid that he is not going to be able to get back behind these subdivisions to fight the fires that will probably, fairly inevitably, roar down these canyons. It is a natural part of those areas to have fires every once in a while.

The other area I wanted to talk about is out in Elko County in the far northeast part of Nevada. And these are the Ruby and East Humboldt Mountains, which are separated by a low pass called Secret Pass. And these are some of the most spectacular and, I think, famous lands in Nevada. Basically here we have approximately 250,000 acres of public land. This is beautiful land. It is glacier-carved mountains, a lot of lakes, abundant wildlife habitat.

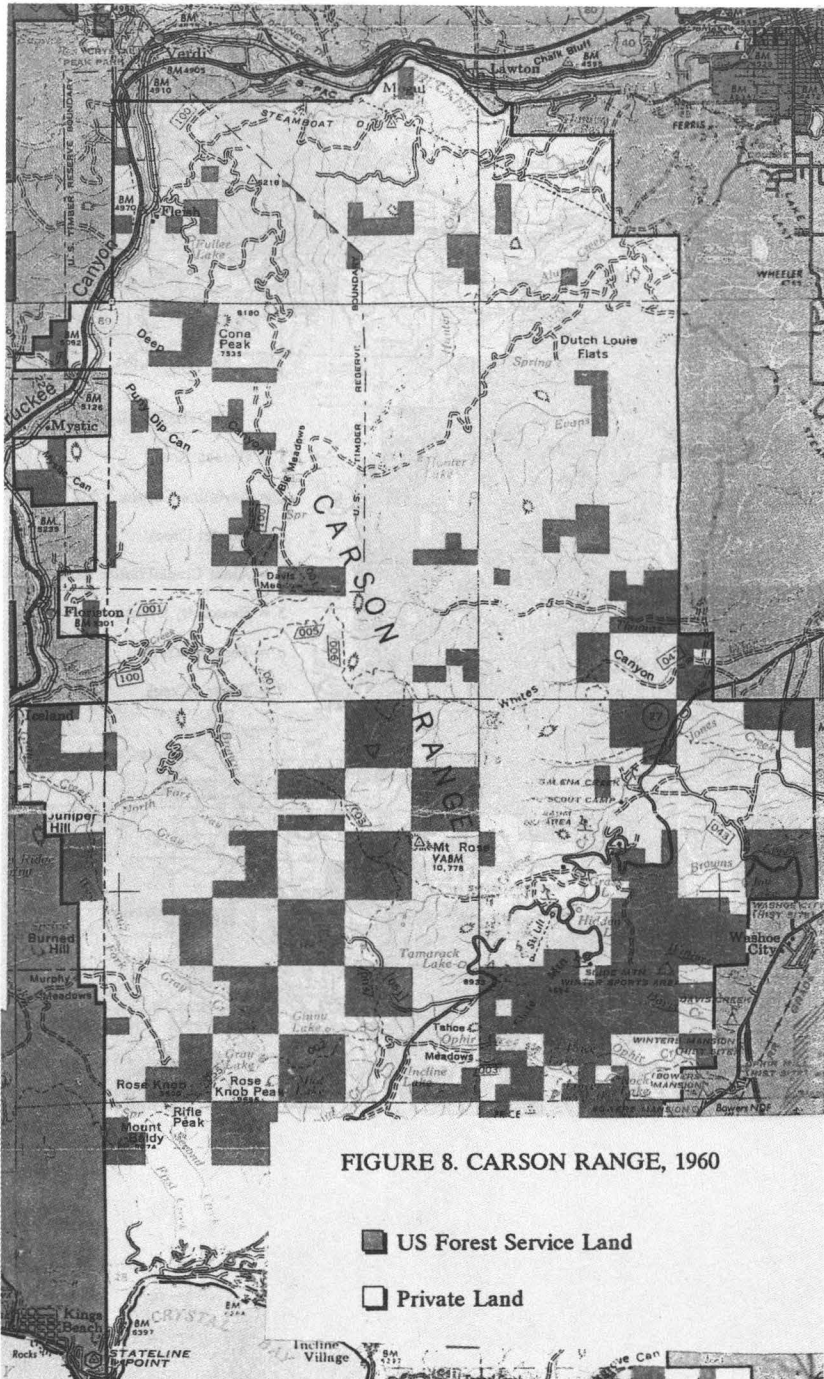
Right now, the public has clear unclouded access in really only three places. Angel Lake at the far north end of the east, Humboldt, Lamoille Canyon, down near the middle, and Harrison Pass. And, basically, private land around the edges—the roads may be open now—but they are being closed rapidly.

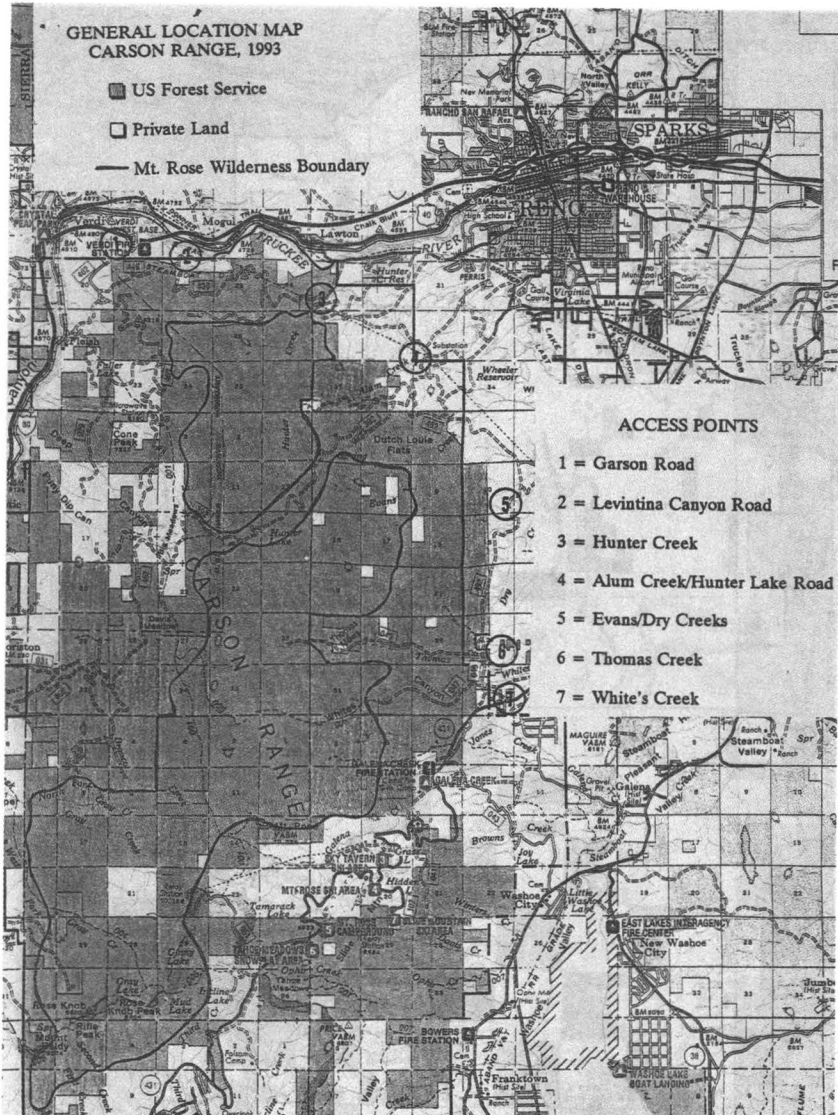
And we have had one case recently which was pretty famous and is very controversial, out of the Te-Moak Indian Reservation, of a public road which was long used for access, being closed. Long Canyon, it is called.

So I will submit these.

Mr. VENTO. Yes, without objection, those maps will be placed in the committee record.

[The maps follow:]







Ms. KERSTEN. Inadequate access results in nondisbursed use so that the few areas that are open are overused and damaged. And resources that belong by definition to the people of the United States are unreachable. And locked gates keep out not only the recreating public but Federal agency personnel who need to fight fires or rescue injured parties.

Just a few ideas for the future. I think improved planning and zoning, especially in rapidly growing urban areas, can help to build access into subdivisions. No development abutting public lands should be approved unless it provides for adequate public access. New partnerships of county planning staff, Federal agency personnel, recreation users, and private property owners can work together to solve access problems.

And the U.S. Forest Service's Salt Lake Ranger District has organized an ad hoc group of this kind, and it has been fairly successful. I am hoping to work with the Carson Ranger District to do something similar for the Mount Rose area.

In rural areas, too, county officials, Federal agencies, and private property owners, along with recreation users, should, when possible, try to work together to understand one another's concerns and seek solutions.

And I think Montana's Block Management Program that Mr. Penfold discussed earlier is a good example of this kind of program.

Fear of liability is one of the main reasons that private landowners deny public access across their land. Sometimes their fears are unnecessary. Nevada State law, for example, has clear protection from liability for landowners who allow the public to cross their land for recreational purposes. Other States may as well, and it would be worthwhile for the BLM, U.S. Forest Service, and recreation hunting and fishing groups to work to educate the public about what are the true liability situations in the individual States.

The State of Arizona recently passed a tort reform bill this past year, I think—yes, it was this past year—which was aimed at greatly reducing a private landowner's liability when he allows the public to cross his land to use public lands behind his land.

For States which lack such protection for property owners, perhaps liability relief could be part of an easement or a cooperative agreement negotiated with the Federal agency.

The expense of maintaining roads or providing signs also discourages some landowners from providing access. And, again, perhaps new partnerships here could help. Hunting and hiking groups maybe could help with these costs and these groups might also assist the agencies with the costs of purchasing easements.

Fear of vandalism is another reason for denying the public the right to cross over land. There is unfortunately, I think, a very small minority of public land users who are bad neighbors; and perhaps a fund could be created much like a degradation fund whereby private landowners whose cows are shot or whose buildings are vandalized could be reimbursed. Again, a public-private partnership could help with the funding.

And I think education is another key here as well. Federal agencies and recreation groups need to expand their recreational ethics teaching to reach the minority of people who are poor public land users.

In conclusion, I just hope that we could send a message to the BLM and the Forest Service managers that inadequate access to public lands is a serious problem and one that they need to prioritize with their realty staff. Increase funding for the purchase of rights-of-ways and exploring new partnerships to help bring some of these to fruition.

I would urge them to work cooperatively with the public land users, local governments, the private property owners to seek solutions.

Thank you very much for the opportunity to speak at this hearing.

[Prepared statement of Ms. Kersten follows:]

November 9, 1993

U.S. House Subcommittee on National Parks, Forests and Public Lands  
PUBLIC LANDS LOCKOUT OVERSIGHT HEARING

Statement of Ann Kersten  
5570 Dolores Dr. Sparks, NV 89436

My name is Ann Kersten. I was born and raised in Nevada and am a lifelong resident. My interest in the issue of inadequate access to public lands comes from the fact that I am an avid hiker, backpacker and fisherman. Spending time outdoors is more and more important to me, and I am finding it increasingly difficult to access the beautiful publicly-owned lands in my own state. I've also done some research on this issue because my paper for my Master's degree is on urban interface issues and inadequate access to public lands.

Two Nevada areas I will talk about illustrate two sides of the same problem. We find loss of access to wildlands near urbanized areas and inadequate access to wildlands in remote, suburban areas.

Mt Rose in the Carson Range is in Reno's backyard, and is one of my favorite places. It is 20-30 minutes from Reno, with pine forests, good trout fishing streams, meadows and deer and bear habitat. A portion of the area encompasses the Mt. Rose Wilderness area. Much of the land was private 30 years ago but land exchanges and the Redfield land-for-tax deal has resulted in much of the area now being managed for the public by the U.S. Forest Service. This is a wonderful public resource and is used by a wide variety of people - fishermen, hunters, wilderness hikers, and those who 4-wheel drive and sightsee. But, Reno is growing rapidly. Large scale subdivisions are springing up on the private land bordering the National Forest and the old roads and trails that have provided access to users for years are being covered by homes or crossed with locked gates. Rarely is access being planned into subdivisions. We are in danger of having a wonderful public resource, made up of land painstakingly acquired for the public over the years, which the public cannot reach to use.

Out in Elko County, in the far northeast part of Nevada, are the Ruby and East Humboldt Mountains, which are separated by low pass called Secret Pass. Here are some of the most spectacular lands in my home state, dramatic glacier-carved peaks, high mountain lakes and bountiful wildlife. Two other units of the Forest Service Wilderness System are located here - Ruby Mountain Wilderness, and East Humboldt Wilderness. Here, it is less urban growth and development that threatens access, but individual ranches, which, historically, homesteaded in the canyon mouths leaving the massive mountains above them in public ownership. In the entirety of the Ruby and East Humboldt Ranges, approximately 250,000 acres owned by the public there are only about three locations - Angel Lake, Lamoille Canyon and Harrison Pass that are guaranteed, unclouded access points for the public. All others are in danger of revocation at any time and several have had gates locked in the recent past.

Inadequate public access results in non-dispersed use: the few areas that are open are over-used and often damaged. Resources that belong, by definition, to the people of the United States are unreachable. And locked gates keep out not only the recreating public but federal agency personnel who need to fight fires or rescue injured parties.

#### Some Ideas for the Future

\* Improved planning and zoning, especially in rapidly growing urban areas, can help to build access into subdivisions. No development abutting public lands should be approved unless it provides for adequate public access. New partnerships of county planning staff, federal agency personnel, recreation users and private property owners can work together to solve access problems. The USFS' Salt Lake Ranger District has organized an ad hoc group of this kind. I hope to work with the Carson Ranger District in Reno to do something similar.

\* In rural areas too, county officials, federal agencies, private property owners and recreation users should work together to understand one another's concerns and seek solutions. Montana BLM's Block Management Program is a good example of this kind of program.

\* Fear of liability is one of the main reasons private landowners deny public access across their land. Sometimes their fears are unnecessary. Nevada state law, for example has clear protection from liability for landowners who allow the public to cross their land for recreational purposes. Other states may as well, and it would be worthwhile for the BLM, USFS, recreation, hunting and fishing groups to work to educate the public about liability. The state of Arizona passed a tort reform bill this past year aimed at greatly reducing private landowner liability. For states lacking such protection for property owners, perhaps liability relief could be part of an easement or cooperative agreement negotiated with a federal agency.

\* The expense of maintaining roads or providing signs also discourages some landowners from providing access. Again, new partnerships could help here. Perhaps hunting or hiking groups could help with these costs, and these groups might also assist the agencies with the costs of purchasing easements.

\* Fear of vandalism is another reason for denying the public the right to cross over land. Perhaps a fund could be created, much like the depredation fund, whereby private landowners whose cows are shot or whose buildings are vandalized can be reimbursed. Again, a public/private partnership could help with funding. Education is a key here, as well. Federal agencies and recreation groups need to expand their recreational ethics teaching to reach the minority of public land users who vandalize.

\* Send the message to the BLM and the Forest Service managers that inadequate access to public lands is a serious problem and one that they need to prioritize with their realty staff. Urge them to work cooperatively with public land users, local governments, and private property owners to seek solutions. Thank you very much for the opportunity to speak at this hearing.

Mr. VENTO. Yes. Thanks for your testimony and the work that you have done on this. You have actually done it for a degree program in urban interface issues and with access to public land. So I am sure that the paper includes a lot more detail in terms of the specifics.

Ms. KERSTEN. Yes.

Mr. VENTO. I think this is the type of quality work that helps instead of just having anecdotal solutions as you noticed was so often the case earlier. So we have to sharpen up the GAO and others to get to the specific information.

More important I think are the solutions that both you and Dr. Rockland offered in your testimony, as well as those from Mr. Hawkes. Some of you really get down to some important points.

I think, Mr. Frasier, your that this isn't the case of isolated tracts in sections that happen to be surrounded all by private land. As in the case of Ms. Kersten, the issue of the Humboldt and Ruby Mountains, I think you said it was 250,000 acres of wilderness?

Ms. KERSTEN. Approximately.

Mr. VENTO. And they have clear access in three cases.

Is that right?

Ms. KERSTEN. Yes.

Mr. VENTO. Am I interpreting what you said correctly?

Ms. KERSTEN. Yes.

Mr. VENTO. I recall this working with Senator Reid and others when we were working on the Wilderness Act. Yet you are saying this is an ongoing process because there hasn't been a recordation on private lands—perhaps not on public lands either—Mr. Hawkes, of the roads. That is eliminating access.

Ms. KERSTEN. Yes. Well, my understanding is the roads are recorded, but there is a hesitancy on the part of the county commissioners to go after the roads that are public.

Mr. VENTO. I can relate to that. I mean there is a cost; there is a problem; and I think the suggestion is that, then, the Forest Service and the BLM, the folks from Washington, in essence, ought to step in and go to bat and do what the locals are reluctant to do. That causes me a little bit of heartburn.

Mr. Hawkes, does it cause you some heartburn?

Mr. HAWKES. Yes, it does. In my opinion, there is some Federal county animosity, at least in our county and wherever I worked, over that. The counties say, we are not going to do anything for the public lands: that is your business, feds. And the Federal forest engineer will say, gee, they ought to be doing something to help us.

Mr. VENTO. Basically most of these rights-of-way are not based on national statute. That is, the ones that are affecting private land generally. Although you pointed out a couple of provisions or laws that might be applicable, but that they have not been broadly utilized to maintain that access. Is that—

Mr. HAWKES. A lot of good research brings up many things. The BLM or the Forest Service will be negotiating with a landowner. We go there as a third party and say, we found this information indicates it is a public right-of-way, and that moves things along.

Mr. VENTO. One of the things you pointed out—and this has been something of a hot topic, I happen to be the sponsor of 1603, ironically, which deals with the R.S. 2477—but the point is that R.S.

2477 has been repealed. Although passed in 1866, it was on the books until the FLPMA rewrite in the mid 1970's, which I am sure you are aware of.

Mr. HAWKES. Yes, we understand that.

Mr. VENTO. And the issue, of course, that we are really trying to get at is one of recordation. And the expectancy and the concern comes because of the timeframe in terms of claiming a right-of-way.

Is that the concern, Mr. Hawkes, basically?

Mr. HAWKES. Well, when we get a request or somebody complains, the first thing we do is look at the GLO plats, the patents, and what they call a master title sheet. And if you can show that the GLO plats have a road on them and they predate homesteading, you have got claims for a public highway. That evidence is just not being dug up, never has been.

Mr. VENTO. Well, I think the problem is, from my perspective, as we move 125 years from 1866 or so, it is hard to come up with tangible information and objective information. Unless the road had been continually used over a long period of time, it is difficult to always come up with adequate information.

Mr. HAWKES. Well, our experience out there is the roads exist; they are in; they are being used; and the public's always used them. Now, all of a sudden, somebody comes up and puts a gate across it, and says, you can't do it any more.

Mr. VENTO. Yes, I understand that. But on the public land it isn't if you have any access at all; isn't it a question if you have access to the public land, obviously it doesn't bar you. It is a question of whether you actually have some sort of a property-right ownership or an easement on public land, which, if we want to remedy, we would have to buy back if it presents a problem for any reason whatsoever.

And so there are a lot of other equities or questions involved with equity. But this isn't a hearing on that subject, and I understand what you are saying in terms of access—that we need to maintain adequate access within the public lands.

Mr. Hawkes, Mr. Frasier, let me ask you this question. Have you also, in your experience, noted that individuals are representing essentially what are public lands as private lands that they own and that you are not able to cross.

Mr. FRASIER. This has been a problem with the State leased lands. Not so much that I am aware with the Federal lands, but very much so on the State public lands.

Mr. VENTO. And you are from the State of—

Mr. FRASIER. Montana.

Mr. VENTO. Montana. That is right. Pardon me. And the point is you have State lease lands, and the lease lands provide a clause that you lease the lands you have to provide access—

Mr. FRASIER. No—

Mr. VENTO [continuing]. Across them or you cannot bar access across public rights-of-way?

Mr. FRASIER. Up until 1991, I believe; isn't that right? 1991, the Montana legislature passed House Bill 778, which gave the public access for hunting and fishing and other recreation.

Prior to that time, there was an administrative decision by the Montana Department of State Lands which would allow leases to

deny access if they wished. I did a little research, and that was pretty much exclusive to Montana. I surveyed Idaho, Wyoming, North Dakota, South Dakota; and they never had any problems with that.

So I guess it is kind of a peculiarity of Montana that maybe we are more peevish or more clannish or like to be left alone more or something. But there has been historic problems with that.

Now we have pretty well got that settled on the access to State lands. And, like I said before, one thing it did do is open up further access through those to a lot of Federal land, which has helped a lot.

Mr. VENTO. Dr. Rockland, you point out that the problems simply tend to be with recreational use especially as an acute problem in this instance.

Is that your testimony and the impressions in terms of the surveys that you have done, that recreation use you think is the larger problem here?

Dr. ROCKLAND. From what I have seen in the GAO report, and then we don't publish magazines that go to miners or loggers directly, although some of our readers certainly are, but we do get a tremendous amount of mail from recreational readers of our publications that indicate that this is a problem. It certainly seems to be in the GAO report as well.

Mr. VENTO. In the surveys you notice the distinct difference that some actually marked off that they only thought that access ought to be at least available on a broad basis for recreation use but not necessarily for commercial use.

Dr. ROCKLAND. That was a volunteered response, and that is a survey, not of recreational users. That is a representative survey of the American public done by The Roper Organization for us.

Mr. VENTO. I think there are a lot of questions that need to be addressed here in terms of trying to balance out these rights.

Now the other issue dealt with the whole issue of liability. And, you know, on national ends, I think we have a standard policy with regard to that. It hasn't been a concern, but we have been sometimes approached about trying to modify the rights of individuals to seek liability at various times. This is, I know, a society that has a lot of litigation issues. I don't know that there's been an increase.

Mr. Hawkes, is it your impression that there's been a big increase in litigation concerning liability with that?

Mr. HAWKES. Not in the lands that we have been dealing with. There have been increased liability requests particularly in the grizzly bear attacks in Glacier Park and Yellowstone and some of that.

Mr. VENTO. Yes, that is on public site. So I don't know how that gets treated depending on whether people have adequate advice. Personally, when they start sending the children down to get a photograph on top of the buffalo, you have got a potential problem.

Mr. HAWKES. Many landowners I talked to expressed concern over liability.

Mr. VENTO. Yes, I know that. The concern is not just that. I am just wondering if there had been a lot of liability cases that had suddenly come up or if there is an ongoing concern and they don't want to be involved.



I note that. So States have tried to develop a general policy that the liability does not attach to the purpose of providing easement across the land in these instances.

The other aspect here from a legal standpoint—and I am not an attorney—but if we are talking about fee simple ownership, it is one thing. If we begin to talk about something less than fee ownership, such as an easement or another type of covenant, each State—Montana, Wyoming, Minnesota, Nevada—would be slightly different.

Your research touched on that, didn't it, Ms. Kersten?

Ms. KERSTEN. Yes. Actually, only to the extent that those kinds of covenants really have to be created on a sort of case-by-case basis is the impression that I have gotten.

And especially in Nevada, it has negotiations with the particular property owner and with an agency and maybe with the county or city that is also involved.

So it is a very case-by-case situation. I think that complicates things for the agencies.

Mr. VENTO. Well, I know certainly in our State, in Minnesota, in terms of private lands that a lot of people have just been completely frustrated in terms of hunting and fishing type of activities, especially hunting in some areas, because they can't get access to land and private landowners are reluctant to let individuals go on and shoot ducks or pheasants or so forth.

So it is a real problem. But it isn't a question of public land necessarily involved in those instances.

Well, I appreciate all of your patience and the work that you put in. I think it is very helpful for us to get a good insight into the types of problems both in terms of the national public opinion, which is hardly what we ever get treated to, David, and in terms of the subcommittee on a scientific basis, and the other questions. It points to the need to continue to try to focus and to redefine what this problem is and then start looking at some of the solutions.

Obviously, giving the parks or the Forest Service and the BLM additional funds or additional authorities might be desirable; but I think that also may make some private landowners a little nervous in the sense of when they look how that funding is used.

I think it is especially important when the BLM, for instance, has made a decision that they not have to be forced to jump over additional hoops because someone in Congress wants to micromanage what the land manager is doing. That appears to be the case here in some instances.

And I think then the greater priority is in terms of dollars in this area. I know this, Mr. Hawkes.

I wanted to comment about the PILT funds and attaching some responsibility to that. I am sure that the decision had been made, I guess a long time ago before I began serving, when they established PILT not to allocate a specific amount to the States and local governments that received those funds, because it is a small amount; and if you start attaching certain requirements to it, you have accounting and other types of problems, plus it takes away the flexibility.



But there may be some other ways that we can of course encourage. I think the answer to a lot of this is in the types of cooperative groups getting together, because the problems are just too many or too numerous to probably resolve through law. We could perhaps look to try and establish some support for groups that have this as a focus in addition to gathering up the Forest Service or the BLM to monitor and quarterback those groups so that they do get together.

I think really we need to do something, too; and I don't know if we need to have that separate. Maybe it should be associated with the R.S. 2477 problem that I am trying to solve in terms of codification. And it might build up a little better understanding of that issue rather than, I think, what has come down as sort of a slam dunk in terms of just extinguishing those rights in too few years.

So that is at least what I am thinking, as I have listened to this today. And you have been very helpful in terms of your testimony. Let me thank you, then, and excuse you. We have a couple other witnesses that we want to hear from yet this afternoon.

In the last panel is Jack Metzger, National Cattlemen's Association, from Flagstaff, Arizona, and Bud Eppers, from Roswell, New Mexico.

And let me thank them, to start with, for their patience in waiting. And, as you can see, part of it was my fault; part of it was just the nature of the issue and the number of Members that wanted to be engaged in this particular issue. So we appreciate your testimony and participation this afternoon on this important topic.

Mr. Metzger, your material is before me, and it has been made part of the record by a previous request; so I just invite you to proceed with an outline of what you have in your statement.

Please proceed.

**PANEL CONSISTING OF JACK METZGER, CHAIRMAN, FEDERAL LANDS COMMITTEE NATIONAL CATTLEMEN'S ASSOCIATION, FLAGSTAFF, AZ; AND BUD EPPERS, ROSWELL, NM**

**STATEMENT OF JACK METZGER**

Mr. METZGER. Thank you very much, Mr. Chairman.

I was getting a little nervous wondering whether there was going to be any committee left as we sat in the back and watched it sort of dwindle.

I do want to thank you for the opportunity to testify before your committee. I am Jack Metzger. I am chairman of the Federal Lands Committee of the National Cattlemen's Association. I am the managing partner of our family's ranch, which is a five-owner limited partnership in Arizona. We have Federal lands. We have State trust lands. We have national forest lands.

I have dealt with access issues personally, and I have dealt with access issues in representing the greater industry throughout the West. Our experience has been that, in terms of access, there is a core issue that has to be recognized in order for progress to continue in any discussion of access; and that is the fundamental primacy, so to speak, of private property rights.

Once that is understood by all parties involved and everyone agrees that that is indeed a base right from which we can build,

then the heat disappears out of arguments. The questions and the jockeying and the posturing disappears; and then parties can get down and seriously look at access issues.

The second thing that is critically important in terms of access is to define what kind of access we are talking about.

This morning I have heard three kinds talked about. One is public access across private land to Federal lands for recreation and other use purposes. But that has a complementary side which has also been discussed, which is private parties' access across Federal lands to their private land for economic business or whatever purposes.

And a third component that was discussed at times here, though kind of loosely, is what is access on public lands. In other words, what is the need for access over and across and through Federal lands for the purposes of administration and for public use and commodity production, et cetera.

I think the GAO document misrepresents the whole issue by not discussing the other two parts of it. I think that is a serious omission, because we can't talk about one part without addressing the other two. They go hand-in-hand.

I also am disappointed in the GAO document in that it did not look at some of the solutions that are existing in the West. There are some very innovative, creative things going on in the West where people have frankly given up on the Federal agencies and given up on the system and process and kind of taken things into their own hands.

One such case is in Arizona, which, interestingly enough, is listed as one of the problem States in this document. About eight years ago the Arizona livestock industry and the Arizona Game and Fish Department got together and decided that access could be resolved on a community basis with local participation and local investment.

Over the course of the preceding eight years, a million acres of previously locked up—and I mean locked up—Federal lands have been opened for public access. It has worked extremely well. It is on 146 ranches.

To date, not one ranch where we had an access problem has failed to yield a solution. We have had problems where some ranches have been sold for subdivision, rural subdivision, back-land subdivision. And in those instances, we have not been able to succeed and get access. I think that point was made earlier here.

For a long-term solution for access, really the only solution can be at the local level where the people involved—the landowners involved—the communities involved, can work out their differences and sort through and find solutions.

Access is like any other commodity on Federal lands; it is like a product. It is marketable in a sense. And if opportunity can be given to landowners to succeed somehow, economically or socially or in their security structure in their business, then access can be generated.

I brought some maps along just for fun to show you what a Federal land ranch looks like. This is my family's ranch in Arizona. There are five owners of this ranch. It is about 90,000 acres. The

black land is private land. The white is national forest. And the gray—I hope you can see that—is State of Arizona trust lands.

About half of it is national forest. About a quarter is private. And about a quarter is State trust.

As you can see, it is difficult to manage really any land area separate from any of the others. In fact, the fencing patterns on that ranch do not follow property lines except only in rare cases. And it is more by circumstance than by design.

So it is impossible for us to manage as private landowners the controlled access situation. This is a very common thing in the West. We do know and have heard testimony this morning of areas where that is not the case. But, by and large, this is what they look like.

And the attitude in the West among recreation users is that this is public lands, it is all public lands; it is all open for multiple use; and it is treated that way.

Recreation is not managed. It just happens on these lands. It is managed occasionally in developed sites, at boat docks, and perhaps around national parks and things; but on millions and millions of acres, it just happens. So there is no protection for private property interests, and it just must happen.

The next map shows the water development on this ranch. Each one of these waters is a place to hunt ducks, a place to build a blind for the archery hunting. It is a place to take the family dog to chase sticks, et cetera. And each one of them, I can assure you, is used for that, whether on private land, Federal land, or State land.

We have documented from our Game and Fish Department 125,000 hunter days on this ranch in 1973. Since then, we have increased from about 35 or 40 days of regulated hunt annually to about 140 days. So now we have in excess of 60 to 70,000 hunter days on this ranch. This year we had 3,650 elk permits issued on this ranch. That is a lot of activity, Mr. Chairman.

The complications that result from that we have heard about in terms of liability. For our situation in Arizona, we did pass a law that said recreational access precludes a liability consideration for the landowner.

However, things like windmills, fences, cows, horses, cattle guards, all of those things are considered attractive nuisance by the legal profession. And we have been advised by our attorneys—and frankly industry attorneys West-wide—that there is no way that we can contract away public liability.

This ranch carries a \$5 million excess liability policy. I just paid the premium before I came back here, half year, \$1,876. It is a big expense.

The next map is just showing the roads that are on the ranch. There are 16 points of access to this ranch. Some are on private land, some are on State trust lands, and some are on Federal lands. Of all of these roads on this ranch, there is about nine miles that is fairly often maintained by national forest equipment. They do it about every other year, every third year. The balance of those roads that are graded, we maintain ourselves with our own equipment.

We also plow snow to the highway which grants public access in the wintertime. We have to plow it for our own access. Again, this is not an uncommon situation. But the fact that we do plow the snow on those roads gives us a liability consideration just like the counties have when they grade a road and someone drives off the road. Then the county is liable for whatever kind of damages someone might be able to construe out of an accident like that.

The balance of those roads are little two-wheel track roads that have mostly been built by recreationists. This is the issue of access on Federal lands. They cause a tremendous amount of management headaches for the agencies, for us, a lot of poaching, a lot of Indian ruin digging, et cetera, et cetera, et cetera.

Again, recreation is unmanaged on most of these lands. Therefore, with this kind of an access system available, it is frankly a zoo, Mr. Chairman.

The next map, just to give you an idea of the options and alternatives that we have in the ranching industry, those two little squares in the middle represent the land area, the larger one being the land area that is the largest land area occupied by livestock at any one time on this ranch, a function of management.

The livestock are moved throughout the ranch throughout the seasons for various purposes. The small square represents the smallest land area at any one time that would have livestock on it.

So using this kind of format and our hunter and sportsmen and recreation interest in access in Arizona, we have been able to take the various situations you see on this ranch and mold them into access and recreation plans. It has worked. It is working very well.

And the agency's participation has been little more than kind of a rubber stamp when the agreement's done. The participation has been earned, I guess, by the sportsmen and recreation community by supplying things that the livestock industry would need, like a cattle guard instead of a gate, a sign-in/sign-out program, instead of God knows who is in there and for how long. All kinds of ways to address the issues of liability—who is in, who is out. People are accountable, and agencies are accountable, and landowners are accountable. It works quite well, and it is a growing program.

I would suggest that, for resolution of this, that this committee and this government encourage that to happen at the local level. Perhaps I am wrong, but I will be willing to wager with you that this committee and the staff and people in this room and everybody who has been here today could not write a public access plan for this ranch from here. I don't think it can be done. But it can be done on the ground. And that is where it is being done, and it is working very well.

And so I would suggest that that is what we encourage. Rather than try to write some blanket policy to address this kind of a broad issue that has so much variety in it because of topography, individual landowners, different kinds of recreation needs—snowmobiling at times, or hunting or backpacking, or photographers. They are all different. They all require different kinds of access. Each has to be dealt with carefully and in the context of some kind of a whole picture and plan.

Once that is looked at and done kind of on a shared basis, recognizing the base of property rights, then it works. There is no contention, and it works.

Thank you.

Mr. VENTO. Thanks. We will get back with a question or two.

[Prepared statement of Mr. Metzger follows:]



**NATIONAL CATTLEMEN'S ASSOCIATION**

1301 Pennsylvania Avenue, N.W. • Suite 300 • Washington, D.C. 20004-1701 • (202) 347-0228 • FAX (202) 638-0607

**Headquarters:**

5420 South Quebec Street • P.O. Box 3469 • Englewood, Colorado 80155 • (303) 694-0305 • FAX (303) 694-2851

Comments

on behalf of the

**NATIONAL CATTLEMEN'S ASSOCIATION**

in regard to

**Access to Federal Lands**

submitted to

**The United States House of Representatives**

**Committee on Natural Resources**

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

submitted by

**Jack Metzger, Chairman**

**Federal Lands Committee**

**National Cattlemen's Association**

November 9, 1993

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The National Cattlemen's Association is the national spokesman for all segments of the beef cattle industry -- including cattle breeders, producers, and feeders. The NCA represents approximately 230,000 cattlemen. Membership includes individual members as well as 46 affiliated state cattle associations and 29 national breed associations.

Thank you Mr. Chairman for the opportunity to appear before this committee to discuss the issue of access to federal lands..

I am Jack Metzger, Chairman of the Federal Lands Committee of the National Cattlemen's Association. I am the managing partner of my family's ranch in Northern Arizona. Our ranch operation includes a National Forest permit, State of Arizona Trust Lands and private lands. I have personal experience with public access problems and with solutions to those problems on our family ranch and in the West.

In our experience as landowners and as food producers who must use land and water, public access through and across our private lands is often contentious; it is usually very personal and it is always best resolved at the most local of levels.

Successful resolutions of public access issues have a commonality in their uncompromising recognition of private property rights. Without a clear belief in the primacy of private property rights shared by all parties involved, there is little chance for success. When government agency people or public participants treat private property rights as though they were amorphous and relative to the peculiarities of a given situation, resolution is impossible. Further, when government actions and policy have the appearance of negating property rights, confusion and petty politics take the place of sound and reasoned debate over legitimate access concerns.

Another access issue, often ignored in discussions of access but of equal importance and complementary to public access concerns, is the issue of private landowners' right of access through or across public land to his or her private land. We

find the GAO April 1992 Report entitled Reasons for and Effect of Inadequate Public Access to be incomplete in scope by its omission of this other problem.

Further, the GAO Report did a major disservice to the many agency people and landowners along with interested sportsmen and recreationists who have on their own, outside of the system, resolved access issues on a case-by-case basis throughout the West.

As a point of information to this Committee, about eight years ago, in the State of Arizona, the livestock industry in conjunction with the Arizona Game and Fish Commission initiated a joint program to resolve access issues for recreationists, landowners, and the various agencies involved. It is called the Sportsman/Landowner Respect Program. A governing board of 5 landowners, 5 sportsmen, one representative from the Arizona Game and Fish Department, one from the Forest Service, one from the Bureau of Land Management and one from the Arizona State Land Department was created to make the program work. With an annual budget of \$500,000 this board, acting through the Game and Fish Department administers access agreements with 146 Arizona ranchers involving more than 1,000,000 acres of heretofore "locked-up" public land. At the outset, 1,500,000 acres of public land was considered to be "locked-up". Arizonans are confident that they will be able to finalize agreements opening the remaining 500,000 acres within the next few years. Their collective experience is that access issues are local issues and best addressed at the local level with the actual parties involved.

Central to the Arizona experience has been clear and definite recognition of property rights held by the landowners. With that clear and uncontested shared belief of the primacy of property rights among all parties; resolution of access concerns has been relatively simple. We found that property rights and their enforcement were the cornerstone of our success. We found that any assertion of an easement based solely on a



one time, or once upon a time, public use of a particular point of access across private land yielded a high level of consternation and difficulty effectively stopping any reasonable dialogue. The access achieved has been individually tailored to the 146 separate ranch situations and the particular needs of affected management agencies, the public and the landowners. By reaching a consensus of what the basic problems are, with all of the affected parties involved, and what might be workable solutions, we have "created" workable relationships that allow for amendments as may become necessary. Our agreements are simple contracts with a five year life. It has been our experience that changes in agency personnel and agency policies and directions preclude longer planning frames.

These contracts are called "stewardship agreements". If structural improvements are necessary, they are generally funded by the State Game and Fish Department with various cooperative agreements to outline maintenance and subsequent ownership of the improvements. Additionally, the State Game and Fish Department also has a fund available for road maintenance, to assuage a very common complaint among landowners. Lastly, through our program, we have been able to address all of the various concerns surrounding the mode of access to a given public land area by ensuring options for vehicular, horseback or foot access.

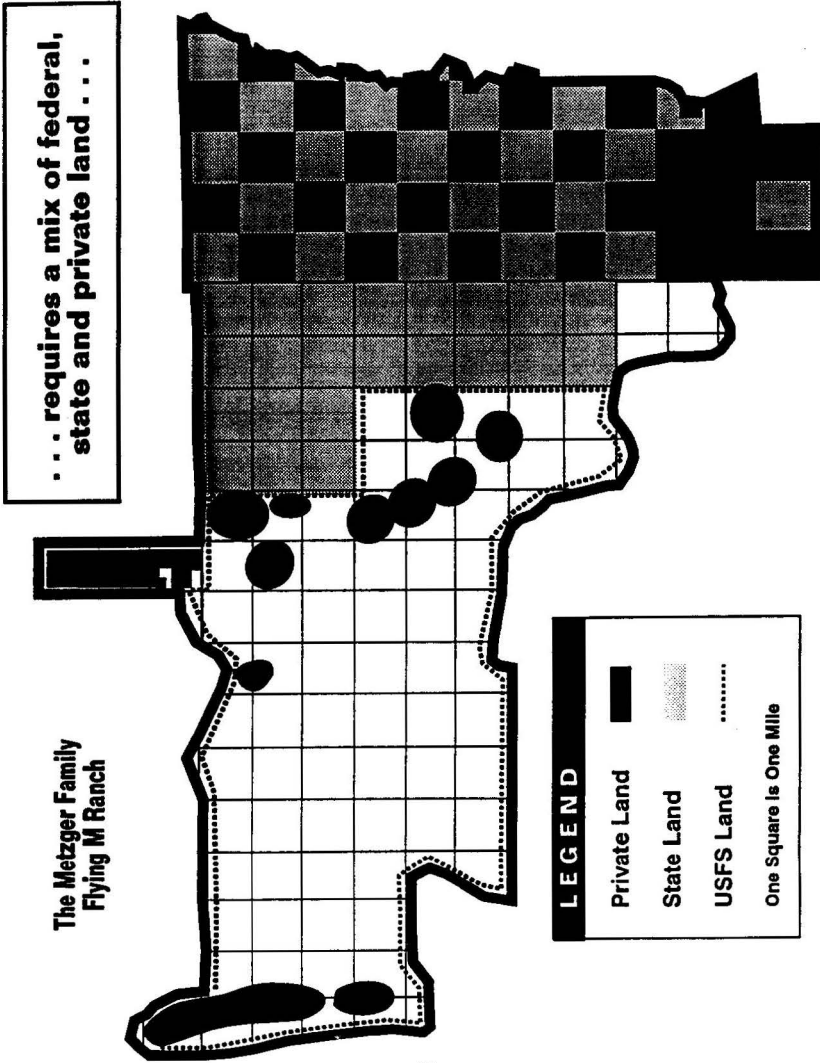
Unfortunately, overriding all of the successes in Arizona and throughout the West is the growing adversarial atmosphere between the federal government and the landowners of the west. Where there was once a sense of community and cooperation for a partnership of interests and goals, we now find growing posturing for outside control from the national level. It was on the sense of partnership that Arizona's divergent interests built its access program. We Arizonans are disappointed that the GAO chose not to study and report on our success story; but, rather identified Arizona as one of the problem states

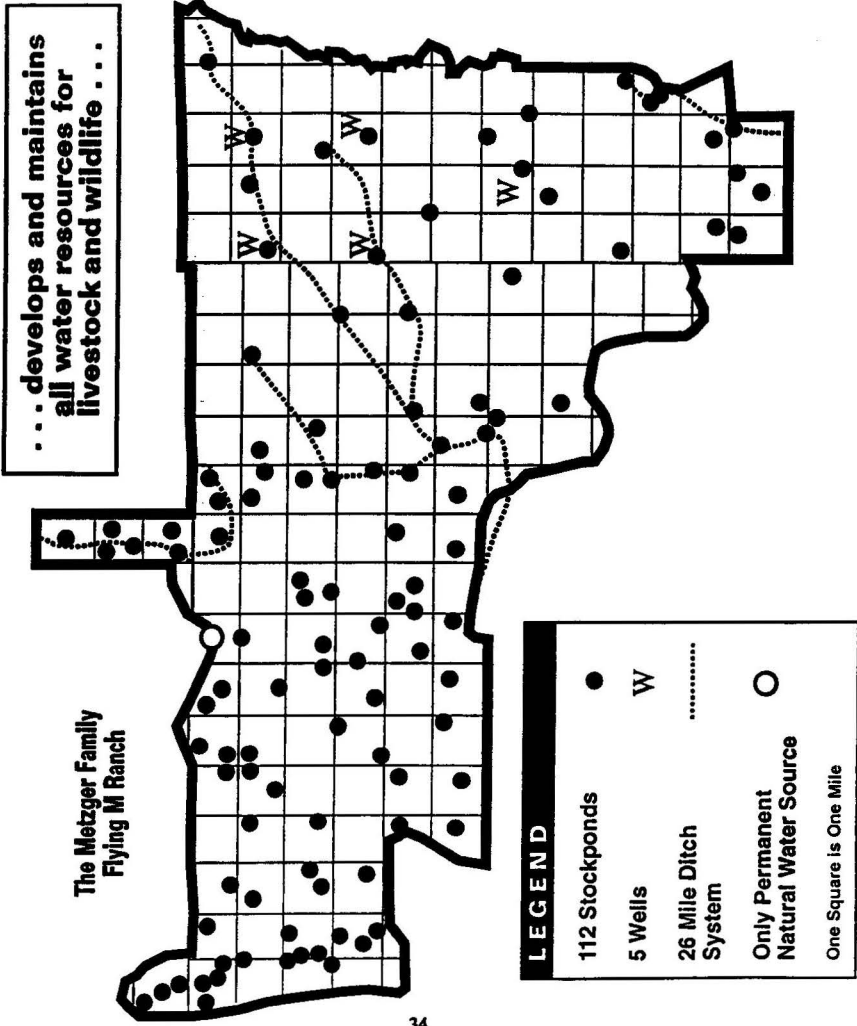
in the West. The National Cattlemen's Association is further disappointed that the Arizona example was not illustrated as a positive in the GAO Report. The National Cattlemen's Association believes that the Arizona example along with any other similar approaches should be explored as a potential solution of how to correct access problems throughout the West.

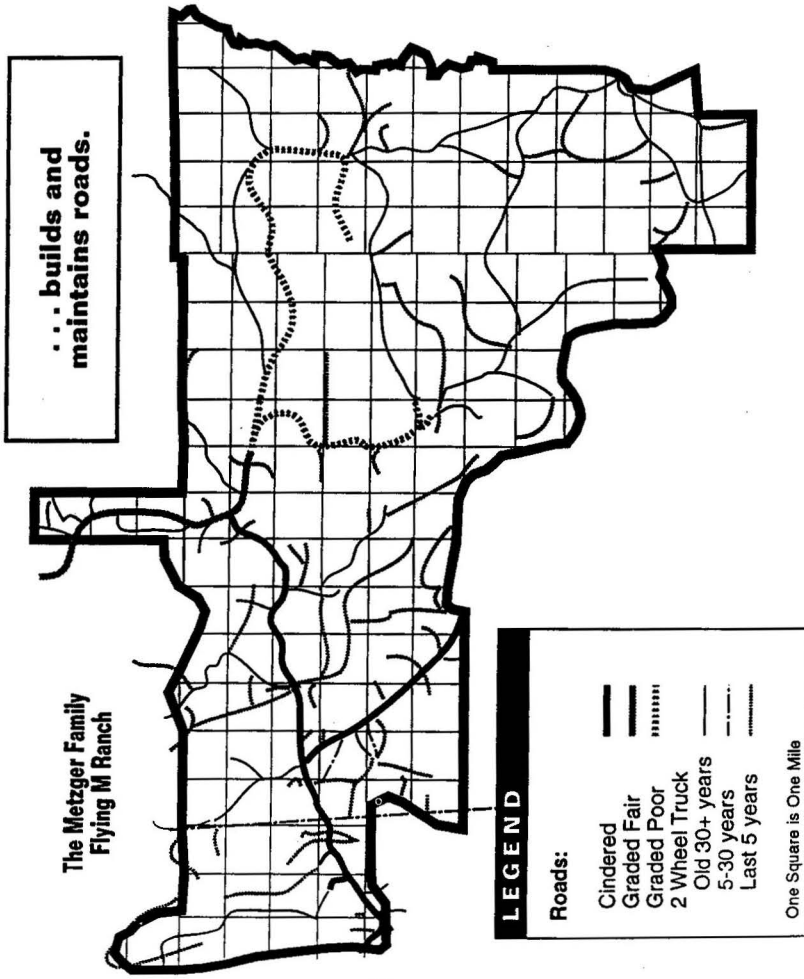
The National Cattlemen's Association will pledge itself to work at the local level with solution processes developed by the parties involved to resolve access issues on the land. Additionally, the National Cattlemen's Association would recommend that the GAO be instructed to review the access issue from both perspectives; public access to public lands and its complement, private access to private lands through public lands.

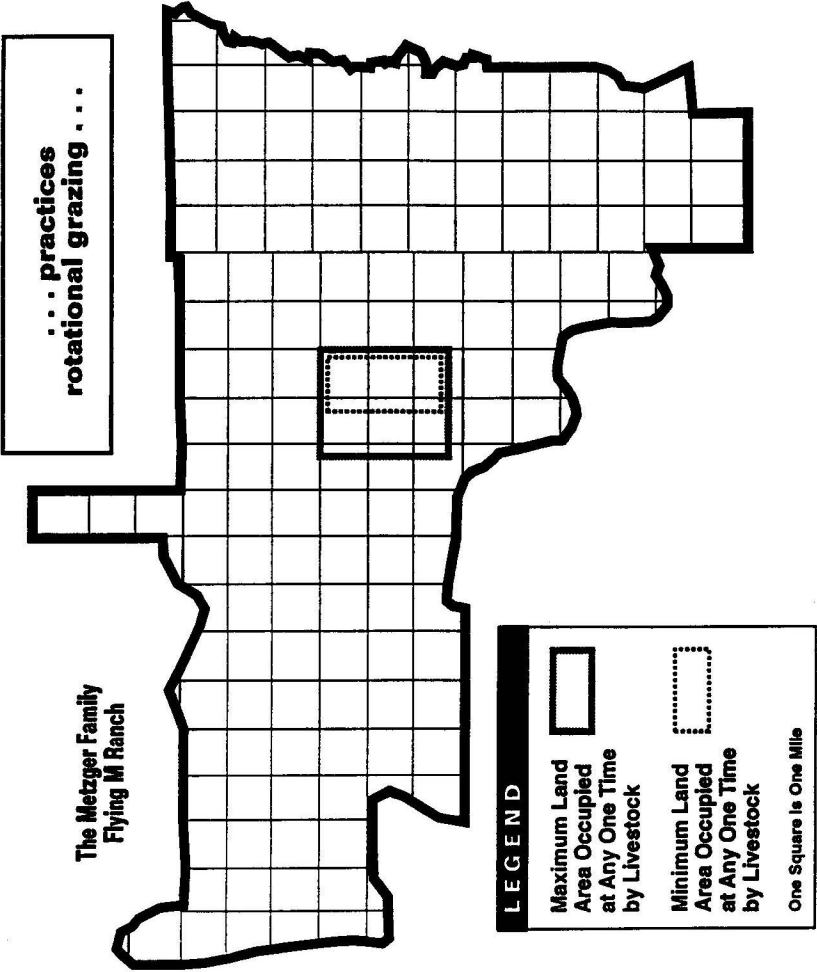
The issue of access across private lands to federal lands has surfaced, submerged and resurfaced several times in the last few years as a national issue. It is our belief that access issues are best dealt with at the local level and that the government has adequate "tools" for the job. We further believe that access to private lands across or through federal lands is of equal importance as public access to public lands across private lands. Lastly, we are certain the foundation of access resolution is an uncompromising recognition of private property rights.

Thank you.









Mr. VENTO. Finally, Bud Eppers from Roswell.  
Bud.

### STATEMENT OF BUD EPPERS

Mr. EPPERS. Thank you, Mr. Chairman. It is, indeed, a pleasure to be here before the committee to testify on an issue so important to the livestock industry, private landowners, as well as the Federal land manager.

I am a landowner in the State of New Mexico. I, too, have brought a map of one of our ranches. We have two. I think this is Federal land, the yellow. The blue is State trust lands. And the white down here is private land.

There is only one access route into this area, and it is to our headquarters which sets right near the northwest corner of this private land area, and it comes in on State trust lands. It is maintained by the county. And it accesses to our headquarters.

Outside of that, the only other road on this entire ranch are just roads that are used for our purposes of management of the livestock operation and the various improvements that we have installed upon the land over several generations.

Mr. VENTO. How large is that area?

Mr. EPPERS. This area is just over 11,000 acres, Mr. Chairman. And it is approximately 40-48 percent Federal, 47 percent State; and the balance is private land.

Mr. VENTO. Thank you.

Mr. EPPERS. As I stated, my family has been in the ranching business now in southeastern New Mexico for over a hundred years. We have been principally involved in the livestock producing business. We have learned to manage under the mixed intermingled land ownership patterns that exist throughout our fair State of New Mexico.

The access problems have—as has been stated here several times this morning—increased dramatically over the past several years. Primarily due to the awareness of the public now that Federal lands exist out there, they have the opportunity to recreate or go upon these Federal lands to do whatever they would like to do.

Most of it is unrestricted, uncontrolled, and unmanaged by the Federal land managing agencies. We have, in our area, a pipeline that transfers gas and other products from eastern New Mexico to California. When this pipeline company desired to come through our ranch, they came and negotiated a right-of-way with the private landowners, which was us. They negotiated the right-of-way with the Federal Land Managing Agency, as well as the State Trust Land, or the Commissioner of State lands in the State of New Mexico.

For many years, and after this pipeline was completed, we did not have access problems or use by other individuals other than just the pipeline company, their maintenance crews, et cetera. But now, in recent times, we are experiencing increased problems with the public wanting to use a right-of-way that was granted for the exclusive purpose for the pipeline company.

Although we have the right and have had locks provided to us that we can lock the gates on these pipelines, we have not elected to do so because we are not desiring to restrict or prohibit the

public's access. But it is a problem that is becoming more serious and severe.

In our State trust lands, we, as lessees of those State trust lands, have to police these lands for the trust. This is a condition of our lease. Anybody who is on these lands without a permit from the commissioner is in violation of trespass; and we are responsible for trying to police this activity or all of these activities.

Hunting, as Jack said, now exists nearly 150 days out of the year in New Mexico. We have numerous problems with trying to just determine whether somebody is out there for the privilege and experience of hunting or whether they are out there to try to obtain meat of other sources which is beef or lamb.

The liability factor is increasing and getting more expensive as Jack related, too. One of the things that I think somewhat ironic is, in the Forest Service areas in our State, we are seeing now that the Federal Government is restricting the use of access to private lands within the block forested land areas. They are putting more restrictions on use. They are requiring a permit now to access these private lands within the forested areas.

Many of these rights-of-way were granted before the forests were established. But now the problem is increasing to the extent to where the agencies are recognizing the problems and starting to limit and restrict, more so, the access along private roads to private property.

What this ends up doing is transferring more responsibility, more cost, to the private sector, the private individual who has access to his lands. It is something that is of concern to all of us. Public access is transferring from the Federal sector to be more a responsibility of the private sector and local governments. This is cost prohibitive to those of us who own land and the counties who are responsible for maintaining public access to many of the areas throughout their counties.

I had the opportunity in 1988 and 1989 to attend the Keystone dialogue. It was conducted in Keystone, Colorado. I thought that it was a very good exercise to bring together the diverse opinions surrounding the access issue.

Mr. Hawkes, who spoke previously, was one of the members on that access dialogue; and we were able to come to consensus on a number of issues that were raised by all of the people in attendance.

One of the things that came out during this dialogue was that the Forest Service had access roads throughout many of their lands, but they desired to shut off those roads because of the cost of maintenance, the degradation to wildlife habitat, that was being created by increased public activity. They were desiring to open up access just to the boundary lines of the forest to where the public could access them with mechanical vehicles to that point and then they would have to use other means to be able to actually enter upon and traverse across the Federal lands.

This, of course, creates numerous problems with the expense of maintenance across a public thoroughfare across private land by the private landowner. It increased the vandalism, increased the dust, increased the management responsibilities for livestock. Because of the increased traffic, increased activity, we had more live-



stock that are crippled or run over, killed by the public. And this all increases our cost of production.

And I can tell you that right now at this time the livestock industry does not need any additional costs because, at most, it is very hard to make a profit on these Federal land ranches.

There were a number of areas identified in this dialogue in which the Federal Government could acquire access or could use existing access routes, and many of those were State or county access routes that were already in existence that a lot of the agencies had not thoroughly considered nor reviewed.

And I would hope that, prior to taking any action in Congress, that the agencies could be instructed to go out and do a very thorough research of existing routes rather than trying to acquire other access routes into public land areas. Access donations are a means of acquiring access that the private landowners can capitalize on through the available tax benefit and donate that access to the Federal agencies.

Rights-of-way purchase, although they are very expensive, are, I guess, as close to being a willing-buyer/willing-seller opportunity, or transaction, as anything that we could have. It is if the agency, Federal Government desires access to a given area for public lands then they should attempt to purchase it if all other opportunities have failed through exchange or donation for existing rights-of-way.

Condemnation is the last resort, and none of us would desire to enter into a condemnation exercise with the Federal Government. I think one of the limiting factors to the condemnation process is, though, that the access sought might be for a specific purpose, not just generalized public access for everybody, because each segment of the public who desires to recreate or enter the lands for whatever the purpose is, is a different use.

That needs to be addressed and concerned with in the condemnation process. It does add to the expense of acquiring access by condemnation.

I did have some problem with the General Accounting Office's document. I noticed that their illustration that they used on page 11, the caption underneath the illustration says that if a parcel of Federal land were totally surrounded by non-Federal land and the government did not have legal right for the public to cross any portion of non-Federal land then access would be inadequate. Yet the illustration shows that it is Federal land that the access route does traverse. There is wildlife habitat on one side and sensitive environmental areas on the other side of the road.

But, irregardless, this road was either in place at the passage of the Federal Land Policy and Management Act, or it has been placed there since that time through the planning process that has been brought about by that act.

And to go and try to acquire access across non-Federal lands now, we don't know whether any of these sensitive areas exist over here on the non-Federal lands at all. There have been no studies, or if they have, the landowners wouldn't know about them and have access to them.

Figures 2-1 and 2-2 in this document leave the impression that since model portions of the Federal land remain where inadequate

access exists, that the costs could greatly exceed the value the public would receive from obtaining access.

We talked about the small isolated scattered tracts, and they seem not to be that much of a problem with other people that testified on this panel as well as the agencies. But yet those small isolated tracts would comprise probably 90 percent or more of the 52.4 million acres or 50.4 million acres of land that were identified as having access problems or inadequate access.

The GAO went to great lengths to describe how they developed the questionnaire for the BLM and the Forest Service, but there was very little addressed about the questions asked of the private landowners.

In fact, there were only three private landowners that were identified as responding to the problems associated with the access issue.

In conclusion, Mr. Chairman, the GAO report only touched the tip of the iceberg in addressing the access issue.

In my opinion it is biased to distort the concern of the Federal land managing agencies and their unwillingness to recognize and address and compensate non-Federal landowners for access across their land.

The GAO states that of the 465 million acres of Federal land managed by the BLM and Forest Service, only 50.4 million has inadequate access. This is approximately 11 percent of the land under their jurisdiction. This is such an insignificant amount when especially you take into consideration those small isolated tracts, where any attempt to acquire additional access routes may be more expensive than all of the values that could be attributed to the Federal land activities.

Such consideration should be cautiously approached by this Congress. And we are currently spending more than we are receiving in our budget anyway.

Mr. Chairman, with that, I will stop and respond to any questions which you might have. I appreciate the opportunity.

[Prepared statement of Mr. Eppers follows:]

STATEMENT BY BUD EPPERS

I am a landowner in the state of New Mexico. I also have a lease to graze livestock on state trust lands and a permit to graze livestock on federal lands under the management of the Bureau of Land Management (BLM). My family has been involved in the livestock producing business for over 100 years in Southeastern New Mexico.

I appreciate the opportunity to provide testimony on the issue of access. This issue is as important to the private land owners as it is with governmental land management agencies. However: the problems over access differ greatly between the private and federal sectors.

The United States Forest Service (USFS) in the past several years has begun requiring a permit for persons owning private land within a forest to access their property. These permits establish restrictions on the width of the road, standards and specification conditions and to whom the access would apply.

Virtually all of the private inholdings were established prior to the creation of the Forest Reserves. Access to these properties was grandfathered into the reservations. It is very concerning that the USFS is restricting the use of private property by access permits.

Much of the land status in the western states is under intermingled ownership patterns which compound the access problems more. Since land boundaries are not marked or identifiable on the ground, very few people know whose land they are actually on. Private land owners desire to know who and for what purpose a person wishes to enter their land. State trust lands are restricted to only persons with a permit of use which is granted by the Commissioner. Additionally the grazing leasee is required to POLICE the trust lands for trespass violators. Federal lands for the most part have unlimited access with the exception of the renewable and non-renewable resources users. Their activities are highly regulated, restricted and controlled.

The general public has unrestricted access for hunting, hiking, camping, off road vehicle use, fishing, biking, water sports, wildlife, and scenery viewing, horseback riding and wilderness use. As previously stated the recreating public cannot differentiate between the land ownership boundaries. Consequently hundreds of millions of

acres of private and state trust lands are trespassed upon by a confused public each year with often times unpleasant request to vacate.

I was fortunate to serve on an access dialogue at the Keystone Center in 1988-1989. The final report was released March 7, 1989 and I would be pleased to provide a copy to this Committee's members if they do not receive one from BLM or FS. A highly diverse group comprised of representatives from landowners, access advocates, BLM and FS personnel, Congressional Committee staff, oil and gas, mining, timber, County Governments and the Western Governors Association participated in the dialogue and reached consensus on a large number of important access issues.

The major concerns of the landowners were, but not limited to:

1. Fencing needs and subsequent maintenance
2. Road standards (ie- width, surfacing, drainage and culverts)
3. Dust
4. Road maintenance
5. Weed control
6. Theft
7. Rustling of livestock
8. Fire
9. Liability
10. Vandalism
11. Gates and cattle guards
12. Signing
13. Proximity to buildings and other intensive use areas.
14. Mitigating changes in use
15. Impacts on the landowners, farming and ranching operations.
16. Mitigating alternative access locations.

The Keystone group identified numerous methods for obtaining access across private land. There are two very simple and inexpensive approaches to obtaining access by users of federal land. One is a private, consensual agreement between a user, user group and the landowner. A voluntary agreement promotes and enhances a spirit of communication between the parties. Second is a cooperative arrangement

Between hunters, snowmobile groups, fishermen, recreationists, etc. This would provide seasonal access and could be developed into improving private lands in return to the access granted.

There were a number of ways permanent access could be obtained, but a problem always exists in establishing a value for a variety of uses sought by or applicable to federal access.

First, State or County access routes should be researched and which may facilitate the federal needs. County governments can be petitioned to develop access routes. Also, participation in County planning processes can provide opportunity to identify needful access routes.

Second, agencies should research other existing rights of way to avoid more expensive or confrontational means of access.

Third, gifts or donations provide a means for private landowners to capitalize on available tax benefits and donate access to federal agencies.

Fourth, land exchanges are an option to obtain access to a given area. A problem with this method is identification of lands for exchange and assessing a value to the properties. It is obvious that all of the identified means of obtaining access from this alternative forward becomes increasingly more expensive.

Fifth, right of way purchase is a preferable acquisition method. The government determines the type of access desired then negotiates with the private land owner to determine a value. This method is based more on a willing buyer - willing seller transaction.

Sixth, condemnation all would agree is a last resort option. Neither side wins and it is extremely expensive. This alternative should not be ignored, but hopefully the government and the private property owner could reach a reasonable settlement with all of the other options available.

In reference to the General Accounting Office (G.A.O.) report dated April, 1992 and titled Federal lands, Reason for and Effects

of Inadequate Public Access appears to be somewhat naive in the reporting of problems identified that concern access.

The G.A.O. states that only in the past several decades has public access become an issue. This is true, but the explanation falls short of describing the associated problems. Before adoption of the Federal Land Policy and Management Act of 1976 multiple use primarily included the consumptive uses of both renewable and non-renewable resources. Recreation was accepted and recognized as a legitimate use and caused very few problems. However, with the implementation of the FLPMA the general public was informed that everyone should use the federal lands for all types of recreational purposes. Virtually millions of citizens departed for the wide open spaces, uncontrolled, un-managed and without the knowledge of the intermix of private, state and federal lands. Numerous problems arose and continue today because of the general public's lack of information about existing business activities permitted on federal lands.

Vandalism and liability quickly surfaced as a major problem for private land owners including exorbitant increases in costs of production. Mismanagement or the lack of management of the public continues today and is not adequately addressed in the G.A.O. report.

The unwillingness of the Federal Government to participate in funding the maintenance of existing public access routes transferred that cost to local governments and the private sector. Sufficient resources were not available which created conflict within localized areas. Acquisition is just a small segment of the access issue. Maintenance, enforcement and management of the general public's use of the lands is a major cost item that needs to be addressed.

Significant problems arose where rights of way for energy, mineral and timber development became readily usable by the general public. These rights of way across private property were for the exclusive use of the companies and individuals involved in the area. They were not inclusive of other uses. Had the private

property owners been aware of the pending increase of unregulated use the use of the original rights of way would have had a considerably higher value. This value should be compensated for by the Federal Government because they were responsible for it happening.

The G. A. O. illustration in Figure 1.3 is obviously not associated with the situation described. As I interpret the diagram there exists a right of way across federal land between wildlife habitat and environmentally sensitive areas to another portion of federal land.

This road was either grandfathered in when the FLPMA passed Congress or it was constructed after the planning requirements of the FLPMA provided for it to be constructed. If there is a problem with confining the public to the access route the enforcement of the area needs to be considered rather than acquiring additional access.

Since the new route is across non-government land have they determined that this area is less sensitive to public pressure? If they have ascertained this did government employees notify the landowner as to their intent to study the non-government land and did they notify and provide the other land owners with copies of their findings? If they did not, which I seriously question that they did, given this situation then this Committee should understand the origin of part of the problem.

Figures 2.1 and 2.2 leave the impression that such small portions of federal lands remain where inadequate access exists that the costs could greatly exceed the value the public would receive for obtaining access.

Figures 2.3 and 2.4 exemplify the frustration of property owners in their attempt to manage public access and activities on the non-federal intermingled lands.

The G. A. O. went to great lengths to describe how they developed the questionnaire for the BLM and USFS, distributed it and the responses that they received. What is so obvious that it creates suspicion and questions accountability of the report is the

lack of the questionnaire of the private land owners, how many were interviewed per FS or BLM district offices or areas and a description of public access and use to lands administered under the Fish and Wildlife Service, Bureau of Indian Affairs, and Bureau of Reclamation to name a few.

Table 2.1 illustrates an alarming number of concerns of private land owners for not granting public access across their property. Only three private land owners are quoted as to their problems or concerns.

Table 3.1 cites less than 15% of the 262 supervisors and managers or only 13 identified "hunting" activities reduced due to inadequate access. The remainder of activities yielded fewer responses which is mostly insignificant in relationship to the millions of acres of federal land available for such purposes.

Table 3.2 lists less than 10% of responses from the 262 supervisors and managers that cited construction, maintenance and improvement as a significant issue due to inadequate access. Below figure 3.2 a Forest Service official stated that he was considering building a new road to a communication site on top of a mountain because the private landowner refused access across his property. This appears to be a rather expensive approach toward resolution of an access problem.

In conclusion, the G. A. O. report only touched the tip of the iceberg in addressing the access issue. In my opinion it is biased to distort the concern of the federal land managing agencies and their unwillingness to recognize and address and compensate non-federal land owners for access across their land.

The G. A. O. states that of the 465 million acres of federal land managed by the BLM and FS only 50.4 million acres have inadequate access. This is approximately 11% of land under their jurisdiction. This is such an insignificant amount when one considers that there may exist now temporary access across much of the non-federal lands. Any attempt to acquire additional access routes may be more expensive than all the values which could be attributed to the federal land activities. Such considerations



should be cautiously approached by this Congress when we are currently spending more than we are receiving in our budget analysis.

Again, I thank you for the opportunity to give this statement and I will stand for questions.

Mr. VENTO. I know. I appreciate your patience to stay and the work that you put into your statement, trying to point out other issues.

Obviously, the GAO did what they were asked to do, and I think that we were concerned about the issue of public access or access to public lands across private lands, although there has been a lot of discussion about other issues today—important issues. Nevertheless, they were doing what they were asked.

There is a need to sharpen it up probably to some extent, and we will certainly use the critique you did.

But, Mr. Eppers, one of the points you made was that 90 percent of the 51,000 instances of inadequate or no access were made up of these small tracts. Did you get that someplace out of the report?

Mr. EPPERS. No, Mr. Chairman. But the issue came up a while ago about the—

Mr. VENTO. Mr. Smith raised the issue about small tracts, isolated tracts.

Mr. EPPERS. Well, the percent of Federal lands, the section 15 lands which are those small isolated scattered tracts, comprise some 118 million acres, I believe, compared to 134 million acres that are more in solid blocks.

Mr. VENTO. Yes, Mr. Penfold in responding to the BLM questions said he didn't think that the problems that they were working on or that they had identified were scattered tracts, but we can probably point that out.

I just wanted to point out that that wasn't the impression I got. And you had a different impression, I guess, is my point.

Mr. Metzger, we have to go and vote, you see; so I am really at a disadvantage in asking you any questions at this time. And it is late in the afternoon in any case. There are some cases pointed out here, for instance, around the Ruby Mountains and Humboldt Mountains in Nevada as an example. I commend you for what you did in Arizona, and I am not as familiar with that project so I think it served a good purpose today, especially since some of us were kind of moving in that direction or talking about that particular type of resolution mechanism.

But with regard to the Ruby and Humboldt Mountain Wilderness Areas here, they pointed out there are only three access points now to that particular forest and that there has actually been an effort to extinguish public access rights as people in land management, or whatever changes occur—for all I know, it could be the cattle association members—but in any case, you recognize that as a problem, don't you?

Mr. METZGER. Well, certainly, Mr. Chairman. But I think it may be indicative of things that are coming. The West is feeling under assault, frankly, from Washington in a lot of different ways. And there is some reaction coming from that.

Mr. VENTO. Well, that is fine, and I think there are a lot of changes in terms of urbanization and ownership patterns and private property, people that are buying property, putting up fences; this is sort of the march of civilization to some extent.

I don't know that it is Washington that has, in fact, asked these people to buy this particular land and to create these particular

problems. But, in any case, everyone's entitled to their own feelings. I don't want to deny that.

Mr. METZGER. May I speak to the Ruby Mountains in particular? Urbanization is not a problem in the Ruby Mountains. I mean Elko on the west side of them has a pretty small downtown. So I don't think that is necessarily the issue.

Mr. VENTO. I don't think it is the urbanization. You misunderstood what I am talking about. I am just saying that more people in, for instance, Nevada, now live in Clark County than live in the rural parts.

That is not what I am talking about. Urbanization, in terms of people living in urban areas and not as many people proportionately in others. They are getting out there recreating, driving to the wilderness to do things. There has been an increase in the amount of recreation. You have identified that yourself on—is it the Flying M? The Flying M, right?

Mr. METZGER. That is certainly true, Mr. Chairman.

But another point that kind of flows from that is that, as the urbanization has occurred and we have a much more sort of urban mentality in this Nation about land, land use, et cetera, there is—

Mr. VENTO. That is right. Fences. This is mine, and we don't share it.

So what about the issue of the counties and States here that was testified to by the land management agency, the Forest Service, about them being reluctant to exercise the rights of way across private land? Do you identify that as any type of a problem where the local governments aren't doing this; they are sort of putting it on Forest Service?

If I am the national manager, you keep saying, you do it, we don't want to deal with Metzger and Eppers; you do it; it does lead one to have a little more of a popularity problem.

Mr. METZGER. Well, I think the issue is a little bit bigger than just access. It is the amount of expenditure that has been shifted down to the States and then ultimately down to the counties. The counties, just particularly in the West, with no tax base, don't have many options.

Mr. VENTO. I empathize that the problem is fairly new, and they probably didn't have a budget for it and don't have a budget for it. But beyond that, there might be a reluctance.

Of course, as one of our witnesses here, Mr. Hawkes said, he said, they found out the Park Service or the Forest Service and the BLM are paper tigers in terms of pursuing this. Found out the counties and local governments and States are paper tigers in terms of pursuing access rights.

Mr. METZGER. I think that is correct. And that is where we got to that point several years ago in Arizona and found out that there really was no desire by any governmental entity to make anything happen. So it had to happen from essentially the private sector and the recreating public.

Mr. VENTO. Well, loading these guys up with a lot of new weapons and money and so forth and sending them out there to do it, I guess what you are saying, is sending them out into a mine field?

Mr. METZGER. Well, I don't think that will work. It hasn't yet.

Mr. VENTO. Well, it has occurred to me that it may take more than that. So I think the hearing has been helpful. I have to go vote. I appreciate, again, the effort.

Mr. METZGER. May I add one thought before I go? There was recognition or discussion of easements and permanent easements, temporary easements, that sort of thing, as being an option for access.

I think it is important to know that those of us who do have land in the West and are slowly being denied a productive use of it, to grant an access for a tax consideration over a period of time becomes kind of crazy, looking at a long-term situation where we may have to change the use of those lands in order to survive. In other words, sell and——

Mr. VENTO. You may have to what?

Mr. METZGER [continuing]. Develop those lands.

Mr. VENTO. Oh, yes. The other issue, of course, is the subdivision where you are not dealing with 90,000 acres and one Metzger family, which is no mean task. You are all of a sudden dealing with hundreds of different individuals.

Mr. METZGER. Well, I think your option from this body is to decide whether you want to deal with just me or whether you want to deal with everybody I can sell to.

Mr. VENTO. Fine. Well, we will do what we have to do. That is what we will do.

Anyway, I appreciate, again, the testimony of all the witnesses. We stand adjourned.

[Whereupon, at 2:06 p.m., the subcommittee was adjourned.]

# APPENDIX

NOVEMBER 9, 1993

## ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

GAO

United States  
General Accounting Office  
Washington, D.C. 20548

Resources, Community, and  
Economic Development Division

December 6, 1993

The Honorable James V. Hansen  
House of Representatives

Dear Mr. Hansen:

As requested by your letter dated November 17, 1993, enclosed are our responses to some additional questions relating to my testimony before your Subcommittee on November 9, on Access to Public Lands.

Please contact me at (202) 634-7535, if you or your staff have any questions.

Sincerely yours,



John H. Anderson, Jr.  
Associate Director, Natural Resources  
Management Issues

Enclosure

Response to Questions Posed by  
Congressman James Hansen

1. Question: Your report defines "inadequate access" as meaning "the federal government does not have the permanent, legal right for the public to enter federal land at the point(s) needed to enter the land as intended by the managing agency." What process did you use to come up with the term "inadequate access" and how to define it?
- Response: The definition of "inadequate access" was arrived at through extensive consultation and concurrence with BLM and Forest Service headquarters and field personnel. Early in our survey work we realized that the term "inadequate access", could and was, interpreted in various ways. In the process of developing our questionnaire we tested the terminology and definition of "inadequate access" and arrived at the definition stated in our report.
2. Question: Your report states that inadequate access "does not necessarily mean that the public is physically prevented from entering federal land." Do you have an estimate of what percentage of land is classified as having "inadequate access" is physically accessible to the public?
- Response: We do not have an estimate of the acreage of public land which is physically accessible but for which the government does not have the legal permanent right for the public to enter. Information in this format is not maintained by either BLM or the Forest Service.
3. Question: GAO reports frequently contain conclusions and recommendations regarding your findings. Why did this report contain neither conclusions or recommendations?
- Response: As we stated in the report, the agencies had recently revised their operating procedures to identify and document public access needs. As a result, we felt they should be given the opportunity and sufficient time to fully implement and test the effectiveness of those revisions. Therefore, we restricted the report to only factual information.

4. Question: Mr. Jim Hunt of your organization has provided our staff with the 21 "non-agency contacts" that GAO interviewed while conducting this study. I note that of these 21 people only 6 were private landowners and the rest were sportsmen and retired Forest Service and BLM employees. Since private landowners are so integral to this debate, why were they less than thirty percent of your non-agency interviews?

Response: The majority of information contained in our report reflects data obtained through a questionnaire sent nationwide to Forest Service and BLM officials. The nationwide data was supplemented with a limited number of individual contacts with sportsman groups, ranchers, and other private landowners. Information obtained from these individual contacts was used only as examples to help demonstrate or add clarity to a point being made in the report.

5. Question: I understand that the situation illustrated by the picture of the private road on page 20 is merely a case where a county abandoned a road and that this particular private landowner owns .3 miles of the total mileage but has never blocked its use to the public. Is this your understanding also?

Response: The purpose of this photo was to illustrate one of the means private landowners use to limit access to public land. While the road was not physically closed, the private landowner, in this instance, erected a sign which noted that trespassers were in violation of law and subject to arrest.

6. Question: Page 20 also mentions that agency officials that you interviewed indicated that some landowners threaten trespassers with guns and attack dogs. How many people are in this category and could you provide me with their names and addresses?

Response: The statement is an example of another method that is used to limit public access. We made no attempt to quantify how often this type of method or behavior is used to intimidate the public, nor did we attempt to obtain the names and addresses of private landowners who engage in this type of intimidation. The particular incident sighted on page 20 occurred on the Eldorado National Forest in California. The

Forest Supervisor of the Eldorado National Forest would be able to provide you with the name and address of this individual if you so desire.

7. Question: Although you only personally interviewed six private landowners, page 19 of your report discusses how GAO personally observed a Montana ranch where trespassers were cutting down standing trees for firewood. Could you describe in detail what you observed?

Response: As previously stated, our nationwide questionnaire data was supplemented with a limited number of individual contacts. In this particular case we were accompanying a rancher in his pick-up truck as he pointed out posted signage and fencing on a road across his property. He allowed public access over the road to reach adjacent federal land. At one point on the tour we heard a chainsaw and asked the rancher about the source of the noise. He indicated that it was a common occurrence for people to leave the road and trespass on his property to cut trees for firewood. We then got out of the truck with the rancher and saw two men with a chainsaw cutting trees on his property. The rancher stated that he did not know the two men and that he had not given them permission to cut trees.





For America's Heritage

## Public Lands Foundation

P.O. Box 10403

McLean, Virginia 22102

11/20/93

National Parks, Forests and Public Lands Subcommittee  
 Chairman Bruce Vento  
 812 House Annex 1  
 Washington, DC 20515

Dear Chairman Vento,

The Public Lands Foundation (PLF) submits the following observations and recommendations regarding the "Public Lands and National Forests Lockout": Obstacles to Adequate Public Access. Please make this letter part of the record of the Oversight Hearings of Nov. 9, 1993 by your Subcommittee.

The PLF is a national non-profit organization of retired Bureau of Land Management (BLM) employees dedicated to enhancement of the management of the public lands. The Foundation has a unique body of knowledge and expertise and truly understands what is happening on the public lands.

The PLF has a continuing interest and concern with the lack of adequate public access to our nation's public lands. We have expressed this concern in a variety of written reports and testimony before both Houses of Congress, and specifically to your Subcommittee and the House Appropriations Committee, with the hope of increasing the awareness of this situation. We applaud your efforts to explore ideas on how the BLM and Forest Service (FS) can correct this problem and enable the American people to better enjoy their public lands.

Because of the PLF concern for this issue, we conducted an assessment of the more critical access needs and problems in 1992. With the concurrence of the Bureau, we requested field offices to identify their 3 most critical access needs. Based on this information, and knowledge of PLF members, we issued a report of May 1993. I am enclosing a copy of our report for your information and use. This assessment clearly concludes that the outdoor recreational activities are the most effected by this inadequate access. This is consistent with the General Accounting Office assessment.

There is general agreement on the extent and magnitude of inadequate access. The PLF feels strongly, based on our members experiences, that the problem will increase in the future and be more difficult to resolve. The fragmented land ownership patterns created by historical public land disposal policies and the changing public demands for a variety of outdoor

recreational activities, are fundamental to this issue for BLM. The lack of a significant effort to do something about access has allowed it to become the problem it is today.

Our May 1993 report contains a series of recommendations. I will therefore only highlight those recommendations we feel are the most important.

1. Access needs to be given a higher priority by BLM and the Department and a commitment made to devote more resources to resolving the problem. We feel the authorities are adequate. Added funds should be transferred to the access program from other lower priority Departmental programs, i.e. reclamation projects, thereby not increasing the overall Departmental budget. The commitment of additional resources will enable the BLM to pursue agency initiatives to help correct this problem through more cooperative and partnership approaches that have been pioneered in several places in the western states.

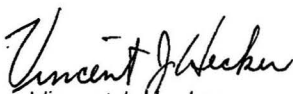
2. Access needs to be strengthened in the BLM Planning System. This is the best opportunity to get public access needs identified and analyzed. In many instances access is a very controversial issue that needs the full public participation provided for by the Planning System.

3. The most critical access actions need to be prioritized so when the opportunity exists, action be completed timely. Our requests of the field offices indicated that many have not prioritized their needs and may not be able to take advantage of opportunities that may arise.

4. Acquisition of access needs to be made an integral part of the whole land repositioning program. BLM has the opportunity to use various land title interests for exchanges that may be inducive to acquire access from private land owners who are not inclined to sell an easement to the government. This could include the exchange of reserved federal title interests, especially federal mineral interests.

5. We see no need for the Senate and House Appropriation Committees requirements for the approval of each and every Bureau condemnation action in the acquisition of easements. We feel the BLM is very careful and diligent in the use of this authority. Condemnation has been used sparingly and only when very important public values are involved. Historically lengthy delays in these micro-management approvals can result in significant damages to public resources.

We thank you for affording us the opportunity to contribute our views on the public access issue.



Vincent J. Hecker  
Board of Directors  
Public Lands Foundation

Enclosure: Critical BLM Access Needs Study (No. PLF-7-93)

**STATEMENT OF JOHN F. TOMLIN  
AND WILLIAM S. BROADBENT**

To the  
Subcommittee on National Parks, Forest and Public Lands  
Committee on Natural Resources  
United States House of Representatives

November 29, 1993

**MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:**

Thank you for your interest in obstacles to public access to public lands and for giving us the opportunity to present our views on this subject. We are the owners of the Point of Rocks Ranch near Emigrant, Montana. The ranch consists of several tracts of land located adjacent to the Gallatin National Forest and a number of Ranch and Forest Service sections are intermingled in a checkerboard pattern. This pattern has created a number of management difficulties, including the issue of public access over our land to isolated Forest Service tracts. For over three years we have been in a dispute with the U. S. Forest Service over the existence of a purported historic trail crossing the Ranch to reach Forest Service lands. Although we appreciate that public access to public lands is important, we would like to point out that this issue must be resolved within the guidelines of the Constitution and the rights of private landowners to use and enjoy their lands without invasive governmental interference.

The historical reasons that this problem exists today has been outlined in earlier testimony to the Subcommittee. The majority of the problems and issues of public access to public lands were created by Congress a hundred years ago, or more, when those representatives established policies that were seemingly helpful at that time in history. They were not able to foresee the implication of those actions on public access issues today.

Be it the Homestead Act or the Railroad Act, one of the by-products of those regulations was to create isolated public lands without any clear means of public access. We are challenged today to arrive at solutions to this problem without again taking actions like our forefathers that set unintended precedents for our posterity tomorrow. To accomplish this, we must arrive at solutions that

respect the integrity of the Constitution and individual rights. These principles are the bedrock of our political system and the standard by which any solutions must be judged.

With this in mind, we have several observations and proposals we can make, given our hands-on experience with this issue. With finite resources available to the various government agencies, there must be a more efficient means of setting priorities on public access and applying these resources where they are needed. Each agency can and does develop its own list of access priorities within various regional or district subdivisions, and differ for each agency. By setting national priorities (e.g., acres opened, resources, demand, etc.) for the public, and not by various government fiefdoms, will allow the limited resources to focus on the highest priorities.

Once the priorities are set, then various solutions can be analyzed and applied. Would the private landowner sell the land or an easement to the isolated public land? Can a land swap be concluded to solve the problem? Is there any historical right of ways that exist under state law? Is it of high enough priority to use federal condemnation proceedings as outlined in the Constitution?

These are the available solutions. How they are applied and implemented by government agencies is the question and the problem.

Government inadvertently created the problem many years ago, not the private landowner. Therefore, government needs to work in a constructive manner with the private citizen to resolve the issue. Much has been said about the private landowner buying property and closing off access used in the past by the public to reach public lands.

If there is not a perfected right of way to the public, then this is the right of the private citizen. If in the past the prior landowner allowed or permitted access because it was neighborly to do so and the new owner is not as neighborly and closes access, then this is their right. They are not bad citizens or breaking the law, they are just not as neighborly as the past owner. Many of the times this change is due to the lack of respect shown by the public for private property rights. As this Subcommittee meeting suggests, there is far more pressure by the public for greater recreational resources. This

pressure has turned what in the past was neighborly use to what is now often public abuse of private property.

So what is the solution? If past access was given by a private landowner and it is taken away, then the facts must be reviewed to see if it is a legal closure. State laws exist that deal with prescriptive easements and the determination must be arrived at by reviewing the facts.

In the experience of Point of Rocks Ranch (PORR), no one has ever presented us with the facts that would support the conclusion that a prescriptive easement exists. Instead, we have been repeatedly threatened by legal action and statements that we can see facts in court. No private citizen should have to face the time, costs and intimidation of a government agency just to find out the facts. Remember the Constitution: A citizen is innocent until proven guilty.

In these situations there should be some third party arbitration process that is efficient and not cost prohibitive that allows each party to review the facts. If research is required to find the facts, then a budget should be established to review the historical facts that support the claim. If public access is a priority for the public, then the public (government) should bear the costs of perfecting the access within the guidelines of the existing laws.

If no access exists, then the government should discuss with the landowner the feasibility of purchasing access or finding an efficient land swap that solves the problem. Although these processes exist, implementation is far too difficult or bureaucratic to provide solutions.

No one discussed with us the merits of purchasing an easement to isolated USFS property in our ranch, but if they had, I am sure that we would have experienced a similar process to a land exchange. In this latter case, we thought a simple land swap to block private and public land was the total solution. After several attempts to arrive at workable solutions, it became clear that the Byzantine process was not going to lead to a satisfactory conclusion. Every solution we presented was met with a lengthy description of why our solution did not meet the criteria necessary to finalize a transaction.

We do not know if the process forced on government agencies is at fault or those entrusted with implementing the process caused the

problems, but one thing is clear: The process does not work effectively. If solutions to public access are to be found, then this goal must be set as a priority that is recognized in the valuation process of land swaps or asset purchases. Congress must provide leadership by defining a simple process that resolves these issues and that holds the government agencies accountable for efficient implementation. And then ultimately, if all procedures are followed in good faith by landowners and government agencies and a resolution can not be found, then government has a right to condemn the necessary right of way in situations where public policy sets that outcome as a priority.

As a private citizen who believes in working toward public access to public lands, I have found the process forced on the individual citizen as abusive, expensive and unnecessary. Of the fifty million acres described that needs better public access, the priority we represent for public access is difficult to fathom. We have spent years trying to understand the issues, being threatened by litigation, being thwarted by government agencies, being lost in government bureaucratic processes, consuming our time and money and that of the taxpayer via the bureaucracy, all for access to 640 acres.

Not only is the process destructive of the private citizen, but the priorities as set by government agencies have to be brought into question--and answered.

One final note on our personal experience. At the beginning of the process with PORR, we offered to consider an easement along the purported trail that would remain as a foot and horseback trail. This was our neighborly accommodation. We were refused and have weathered the storm of the USFS ever since. Where is the justice to individual rights.

Remember, if public access is a public priority, then there will be a cost associated with resolving the issues--one which the public should accept and Congress should support. Without setting national priorities, establishing an efficient and apolitical means of conflict avoidance and resolution and applying the funds to perfect the access, the goal will not be met in any fashion that Americans can be proud of.

