PRIVATE PROPERTY RIGHTS—PART II

HEARING

BEFORE THE

TASK FORCE ON PRIVATE PROPERTY RIGHTS

OF THE

COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

THE STATE OF THE LAW IN THE TAKING OF PRIVATE PROPERTY RIGHTS BY THE GOVERNMENT AND THE EXPERIENCES OF CITIZENS IN THIS MATTER

JUNE 13, 1995—WASHINGTON, DC

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PRIVATE PROPERTY RIGHTS—PART II

TUESDAY, JUNE 13, 1995

HOUSE OF REPRESENTATIVES,
PRIVATE PROPERTY RIGHTS TASK FORCE,
COMMITTEE ON RESOURCES,
Washington, DC.

The task force met, pursuant to call, at 9:35 a.m. in room 1324, Longworth House Office Building, Hon. John B. Shadegg (chairman of the task force) presiding.

STATEMENT OF JOHN B. SHADEGG, A U.S. REPRESENTATIVE FROM ARIZONA, AND CHAIRMAN, TASK FORCE ON PRIVATE PROPERTY RIGHTS

Mr. SHADEGG. Good morning. Let me call this third hearing of the Natural Resources Committee Private Property Rights Task Force to order.

My name is John Shadegg. I chair the Private Property Rights Task Force. I would like to welcome all of you here. We are pleased to have yet again a large crowd, we have had one at both of our prior hearings, and let me make just a couple of quick comments.

Today I don't believe is the ordinary inside-the-Beltway hearing because so many of you who are here either had to fly in or come from far stretches of the country, including as far away as Alaska, and I think today we will hear from America, the real America that has come to Washington to tell our task force members what they have on their minds and what the laws we have enacted are doing to them with regard to private property rights and private property takings issues.

We have held two hearings already. The first was on May 17 where we went into the legal aspects of this issue and heard from several scholars. The second was a field hearing held in Phoenix, Arizona, where we heard from people with real life experiences in this area much like yourselves. And I view this hearing today as a continuation of that hearing in the sense that we are hearing from ordinary people from across the country who have had experiences with takings and who are concerned about the state of the law today.

We have a wide array of witnesses today. We will begin with a Member of Congress, then go to a panel that includes three leaders of State legislatures, and then on to people who own properties and whose properties have been affected by the current law.

Let me say that I'm going to keep my statement extremely brief this morning because we have, quite frankly, a long list of witnesses and very little time to get through all of them in a reason-

able amount of time. We will therefore follow a rather strict procedure. You see before you, anyone who is a potential witness here this morning, the light system which is on the center of desk ahead of me. Each witness will be allowed five minutes to make his or her statement. At the end of four minutes, the yellow light will go on warning you that you have a minute left. At the end of your time, the red light will come on, and that means your time has in fact expired and we will need you to end your testimony.

Because we have so many very bright, very talented, and very knowledgeable witnesses this morning from, as I say, all across the country who are here in Washington at this particular time, which is why we scheduled the hearing for today, anybody who can shorten their statement and get it in in less than five minutes, the committee will greatly appreciate that effort on your part.

We will acknowledge Mr. Farr if he arrives to make a statement on behalf of the minority as that is custom, but beyond that we are going to waive any other opening statements, so I beg the indulgence of the other members of the task force that are here.

For our first witness we are privileged to have with us a Member of the United States Congress, a distinguished Member who has worked very, very hard on this issue. He, perhaps more than any other Member of the United States Congress, is responsible for the fact that the U.S. House of Representatives, as a part of the Contract With America, has now passed through one body of the House a private property takings bill. Congressman Lamar Smith will join us and will make the first statement of the morning. He worked as a member of the Judiciary Committee very hard on the private property takings legislation which is a part of the Contract With America and which received an overwhelming vote, I believe over 277 votes in support of that as it passed the House some four months ago now.

With that, let me again commend him. Congressman Smith is from Texas. He knows this issue intimately from his own State and from his deep experience since joining the Congress.

I call upon the Honorable Lamar Smith.

STATEMENT OF HON. LAMAR SMITH, A U.S. REPRESENTATIVE FROM TEXAS

Mr. LAMAR SMITH. Mr. Chairman, thank you for your generous comments and for your warm introduction as well. Needless to say, you and I are in great company given the people behind me who are here today, and I appreciate both your willingness to allow me to testify and the hearing itself.

Today's meeting caps off a series of field hearings that this task force and the Task Force on the Endangered Species Act chaired by Congressman Pombo convened across this country. These hearings have examined what is, in my opinion, the civil rights issue of the 1990's. The issue is the fight to protect private property rights for all Americans. Private property rights are a basic civil right and as essential to the free and decent society as the right to practice one's religion, speak out freely, and defend oneself in court. Private property rights are guaranteed by the Fifth Amendment to the United States Constitution which provides, "nor shall

private property be taken for public use without just compensation."

These hearings are necessary because over the past 20 years the Federal Government has not respected this basic civil right. Too often the Government has taken private property, refused to compensate the landowner, and left the private property owner with a worthless title and a property tax bill.

This task force and the Task Force on Endangered Species have learned firsthand of real world problems of Americans like Ocie Mills, an elderly Florida man sent to prison for depositing sand on his privately-owned property that some government official determined contained wetlands. You have heard the stories of Americans like Margaret Rector, the 74-year-old woman in my district whose private land has been devalued from $900,000 to $30,000 by an Endangered Species Act that makes landowners an endangered species, and you have heard from citizens like Nancy Cline and her husband who worked a lifetime to fulfill their dream of starting a winery in Sonoma, California. Their dream was twisted into a bureaucratic nightmare by dictates from the Army Corps of Engineers.

These are today's forgotten Americans, honest, hard working people who have been deprived of a basic civil right supposedly guaranteed by the Fifth Amendment. These Americans are forgotten by a mighty and endless bureaucracy that unfairly forces them to shoulder the cost of public benefits which, in all fairness, the public as a whole should share. These Americans are forgotten by an Interior Department that wages a war against a West, two-thirds of which it already owns, and they are forgotten by a President of the United States who on Earth Day, 1995, polluted the airwaves with false statements about the private property rights legislation we recently passed in the House. We passed the Property Rights Protection Act of 1995 to once again recognize these Americans' civil rights.

We are here today because in this Congress the people rule and in this Congress these forgotten Americans will be forgotten no longer. Under the leadership of Congressman Shadegg, Chairman Young, Congressman Pombo, and others, we are going to make this the private property rights Congress. We are going to make sure that the people who do the work, pay their taxes, raise their children, and play by the rules have the same rights as the golden-cheeked warbler, blind case spider, or red cockaded woodpecker. We are going to make sure that the environment is protected. This is an important goal.

But we are also going to safeguard the basic civil rights of all Americans, including their Fifth Amendment rights. This is an even more important goal. We are going to make sure that we end anti-property rights regulatory practices that actually have the unintended consequences of undermining private environmental stewardship.

Property rights is about protecting both people and our natural resources. It is not just in Washington where the fight to protect freedom and preserve constitutional liberties has been joined. Yesterday in Austin, Texas, Governor George Bush signed two State private property rights bills into law. These are the first property

rights legislation in the history of the Lone Star State and the broadest bills enacted by any State. Its success was made possible by the hard work of Texans like Robert Kleeman of Take Back Texas and Take Back America. Mr. Kleeman could not be here today, but I would like for his testimony to be submitted for the record.

[The statement of Mr. Kleeman may be found at end of hearing.]

Mr. LAMAR SMITH. With the commitment that the people in this room and across this country have to the cause of private property rights, this fight is only beginning.

As the people who have traveled from across this Nation will tell you this morning, the right civil rights movement's day has finally come. I look forward to working constructively with you, Mr. Chairman, others in Congress, and thousands of Americans like Ocie Mills, Nancy Cline, and Margaret Rector, whose simple demands for justice and fairness will finally be answered. It is time that once again we restore the constitutional guarantee to all Americans. It is time that we make sure that private property will not be taken for public use without just compensation.

Mr. Chairman, thank you again for the opportunity to appear before your task force and, again, for your generous introduction.

Mr. SHADEGG. Thank you. We appreciate your testimony.

Let me start just by asking kind of a foundational question, and we will keep the questioning brief to allow you to get on to other things I'm sure you have to do. But there are many, including those in the current administration, who believe that Congress should simply leave this issue to the Supreme Court to define the civil rights of property owners. I assume you challenge that perhaps. I guess I would appreciate hearing your reasons.

Mr. LAMAR SMITH. That is absolutely correct. Unfortunately, when left to the Supreme Court, as we have already seen for the last number of years, there is no consistent ruling, and in fact the rulings are all over the map. Sometimes people are compensated if 100 percent of the value of their property is lost. Other times it might be 50 percent. So there is no bright, clear line across which the Government cannot go, and that is why, Mr. Chairman, we need this type of legislation to draw a line in the sand, to make it abundantly clear who should be compensated for lost value and make it very clear.

The other problem with leaving it up to the courts is the cost and time involved, and what we do is force private property owners to spend sometimes years of their lives sometimes tens or hundreds of thousands of dollars to try to uphold what should be a very clear fundamental, constitutional right. We should not put that burden on private property owners, and we should not allow the uncertainty to exist that does now because of that wide variety of Supreme Court rulings.

Mr. SHADEGG. Thank you.

Mr. Tauzin.

Mrs. Chenoweth.

Mrs. CHENOWETH. No questions, Mr. Chairman. Thank you.

Mr. SHADEGG. Mr. Miller.

Mr. Hastings.

Mr. HASTINGS. One brief question. You said that Governor Bush signed some legislation in Texas. Could you just briefly elaborate what that legislation is, and do you know if there are other States that are considering similar legislation?

Mr. LAMAR SMITH. Yes, other States are considering similar legislation, but Texas is the first State to actually pass and sign into law the private property rights legislation.

Actually, what they do is very, very similar to what we are trying to do here in Washington, and they have at least begun to initiate the compensation to private property owners who have in the past not been compensated when a State regulation, environment regulation, and other regulations have devalued the private property value.

Unfortunately, as we all know, as wonderful a first step as that is in Texas, that is just a fraction of the problem. The real problem for so many private property owners are Federal regulations, Federal environmental regulations, and until we protect the rights of the private property owners who have seen the value of their property diminish by Federal regulations, we are really not achieving results that we would like.

So it is wonderful that we have Texas and other States going in the direction that we are going, but we really need that Federal law in effect to properly protect the rights of private property owners.

Mr. TAUZIN. Would the gentleman yield a second?

Mr. HASTINGS. Yes.

Mr. TAUZIN. Just to point out to you that the State of Louisiana is in the final week, I think, of its session. It has completed legislation. There are two bills in Louisiana as well. One of them has to do with farmers and timber owners. That bill has passed both the House and the Senate and has gone to the governor for signature. There is a more comprehensive bill dealing with all property owners that also has a possibility of being passed and sent to the governor. Both are patterned after the exact language in our bill regarding 20 percent as the threshold.

Mr. SHADEGG. Thank you.

Mr. Metcalf.

Mr. METCALF. Thank you, Mr. Chairman.

I have a question for Representative Smith and also for any other people, because in my district it happens to be two separate areas, the private property rights of people that either own land, fee simple land on reservations, that was previously reservation land and sold in fee simple, or that are leasing from tribes—and we are beginning to have some real property rights there—water, and a whole bunch of problems. So I just mention it. Are you aware of any of those? Or any of the testifiers that are here, I would like to have you comment on it if you know anything. We have got a real problem in one of our areas.

Mr. LAMAR SMITH. OK.

Mr. SHADEGG. Any further questions?

Again, Congressman, we certainly appreciate your leadership and your efforts and taking the time to be with us this morning. Thank you very much.

Mr. LAMAR SMITH. Thank you again, Mr. Chairman.

Mr. SHADEGG. Let me call the next panel. We have the Honorable Gail Phillips, Speaker of the House of Representatives of the State of Alaska; the Honorable Carolyn Paseneaux, of the House of Representatives of the State of Wyoming; and hopefully the Honorable Melvin R. Brown, Speaker of the House of Representatives of the State of Utah.

Apparently we are missing Carolyn Paseneaux of the State of Wyoming. Hopefully she will join us in the course of the hearing.

Let me again welcome you and thank you for coming. As I mentioned before we started, I travel about the same distance as Mr. Brown travels from the State of Utah, but Mrs. Phillips, to travel all the way here from the State of Alaska to be with us, we greatly appreciate that and appreciate your effort in getting here and addressing us on this important issue.

Again, if you will please watch the lights and try to confine your testimony to the timeframe, we do have lots of witnesses to hear from, and we greatly appreciate you, we applaud you for your leadership in your own States—we are now joined by the Speaker of the Arizona House of Representatives, from my State, who testified at the last hearing of this task force, Mr. Killian, Mark Killian, the current Speaker of the Arizona House of Representatives, who has been in that position now for almost four years, a good friend, and I welcome him here, and I believe he will do the introductions.

Mr. Killian.

STATEMENT OF HON. MARK KILLIAN, SPEAKER, HOUSE, STATE OF ARIZONA

Mr. KILLIAN. Thank you, Mr. Chairman and members of the committee.

First of all, we want to let you know how much we appreciate your holding these hearings, and we appreciate your coming out and listening to the States and listening to our folks.

Property rights is a very important issue, it concerns all of us today, and you are going to hear from two of our outstanding speakers from the western United States, Speaker Phillips and Speaker Brown. They each from their States bring a perspective that I hope that you will listen to and understand. They have many concerns in their States, and property rights is right up there at the top of the list. Without any further ado, I would like to introduce Speaker Phillips and then Speaker Brown.

Speaker Phillips.

STATEMENT OF HON. GAIL PHILLIPS, SPEAKER OF THE HOUSE, STATE OF ALASKA

Ms. PHILLIPS. Thank you, Speaker Killian.

Mr. Chairman and members of the committee, thank you for this opportunity to testify concerning the impact of Federal regulations and laws on private property rights.

For the record, my name is Gail Phillips. I'm the Speaker of the Alaska House of Representatives. Alaska, despite its relatively low proportion of private patented lands, has experienced considerable agency abuse related to private property rights. In many cases this abuse may be manifested in the direct impact on private property values such as land values or the economic loss of valuable re-

sources. Although the most common perceived impacts are those related to private land values, equally important is the loss of economic opportunity. With the indulgence of this committee, I will attempt to cover a portion of these impacts within the short timeframe allotted.

Alaska has become a patchwork of landownership, with the bulk of the land being owned and managed by the Federal Government. Over 60 percent of Alaska is Federal hands. When Alaska became a State in 1959, one of the major concerns of the American people, and specifically Congress, was whether or not Alaska could be self-supporting. Because of that concern, Alaska was granted a sizable chunk of real estate, 104 million acres, to be exact, and an agreement to share in resource development activities on Federal lands by providing 90 percent of the revenues from mineral development to this new State.

Under the Alaska Native Lands Claims Settlement Act, or ANSCA, passed in 1971, Congress created an unprecedented opportunity for Alaska's native community to control their own destiny by granting over 44 million acres to regional and village corporations. Congress clearly stated that the intent was to provide mechanisms for the development and use of these lands. When the Alaska Native Interest Lands Conservation Act, or ANILCA, was passed in 1980 the apparent intent of Congress was to recognize and protect the unique values of large parcels of Federal lands while providing opportunities for the State and Federal Governments and private landowners to continue the development of other resources, rights which were guaranteed previously through Statehood and ANSCA.

Since the passage of ANILCA, Federal agencies have not lived up to these agreements and compromises established by Congress. Park, Refuge, and National Forest planning processes followed by regulations and unwritten rules and policies have successfully thwarted the intent of Congress to provide the ingredients necessary to assure that Alaska was self-supporting. The immediate impact on State and private property values and resource development options has been significant. Equally or even more important is the potential long-term impact on resource development opportunity not only on Federal lands but adjacent State lands as well.

Of major concern to both the State and private property owners is the opportunity to acquire reasonable access to valuable inholdings or property that is geographically isolated by adjacent Federal lands. Access to inholdings guaranteed in ANILCA in Title XI of ANILCA supposedly set in place a mechanism to provide timely transportation and utility corridors across Federal conservation units. Without these guarantees a significant portion of State and private lands are held captive to the whims of Federal managers due to the lack of access to salt water, ice-free ports, or access to already existing State transportation systems.

Real life impacts of agency abuse illustrates the frustration our State feels in dealing with a Federal system that appears virtually uncontrollable. Despite the guarantees for reasonable access to private lands, Congress has had to make an exception to Federal National Park System regulations to even allow the development of a

world class Red Dog Mine by a native corporation in northwest Alaska where job opportunities are rare and unemployment is high.

Established sport fishing lodges in western Alaska are being virtually put out of business due to overly restrictive rules and regulations which have been severely restricted or eliminated and have eliminated traditional environmentally clean uses which were supposedly protected by ANILCA.

The issue to access to inholdings and adjacent State and private lands has become a major problem. After working hard with the previous administration to establish adequate access regulations, we have been advised that this administration has shelved those agreements and is working to tighten and further restrict access to lands in Alaska. The stifling effect of these regulations cannot be underestimated.

My contentions are simple. The Federal regulations and Federal agencies feel no responsibility to assisting the State and the private landowner in their efforts to improve their economic status. Their only interest seems to be the preservation of lands and resources set aside at the demands of the environmentalists in the 1980's.

Mr. Chairman, I have attempted to point out some of the ways Federal regulations and laws are having a serious and negative impacts on private property values in my State. As I mentioned earlier, some of those impacts are on direct private property values and on resource values as well. In many cases it seems that there is a communications gap between Congress and the Federal agencies. Despite the fact that Congress provided many guarantees to Alaskans when ANILCA was passed, the agencies have chosen to follow their own missions. Unfortunately, it has been the State and private citizens who are being punished. America was founded on the principle of private property. I urge you to lead us back to that.

Mr. Chairman, I want to thank you for this opportunity to testify before your task force. I commit to you our full support of your efforts.

Mr. SHADEGG. Thank you very much.

STATEMENT OF HON. MELVIN R. BROWN, SPEAKER OF THE HOUSE, STATE OF UTAH

Mr. BROWN. Thank you, Chairman Shadegg and members of the committee. It is an honor to be here today to testify before this task force.

For the record, I am Melvin R. Brown, Speaker of the House of Representatives in the State of Utah.

William Howard Taft, one of our former Presidents, was quoted as saying this: "Next to the right of liberty, the right of property is the most important individual right guaranteed by the Constitution and one which, united with that of personal liberty, has contributed more to the growth of civilization than any other institutions by the human race."

The almost sacred tradition to hold, use, and dispose of property is unique to freedom-loving democratic societies and stands shoulder to shoulder with the inalienable rights of life, liberty, and the pursuit of happiness. Visionaries who crafted the Constitution of the great State of Utah which was adopted more than 100 years ago canonized the doctrine of private property in Article 1, Section

1, that states, "All men have the inherited and inalienable right to enjoy and defend their lives and liberties, to acquire, possess, and protect property." Likewise, the preeminence of private property merited a place in the United States Constitution: "No person shall be deprived of life, liberty, or property without due process of law nor shall private property be taken for public use without just compensation."

In this enlightened age the perceived public good and the right to acquire, possess, and protect private property has been on a collision course threatening the integrity of both the long-held principle of private property and the public institutions charged with safeguarding the public good. Serious and relevant questions must be addressed to the satisfaction of competing interests in order to achieve and maintain the equilibrium and perspective on this issue. What about takings in the Fifth Amendment? How much of the cost should one person or a group of people be required to bear in order to serve the public interest?

The doctrine of eminent domain has long held that appropriate compensation is compensation to the landowner when the public good is held to be superior to personal private rights. What if the cost is more than the public can bear? Is it the responsibility of the superficial landowner to offer up his ownership rights and privileges on the altar of public good? The endangered species laws and the evolution of wetland laws and policy and administrative directives governing the attitudes and actions and Federal agencies are threatening to choke off one of the main arteries which has given life and vitality to our treasured economy and social institutions of the West. Anecdotal stories about the entanglements and frustrations abound with ordinary law-abiding citizens.

The desert tortoise was listed as an endangered species in 1989. The tortoise came to the more inhabited parts of Washington County in southwestern Utah, by most credible evidence, being transported by man primarily as pets in the 1950's. There is no historical evidence that they were ever in Saint George or that Washington County area prior to that time.

As it became known that their populations were declining, the Bureau of Land Management actually paid people to grow the tortoises and set them free, and in many cases they were put on private property. Because of the effects from the listing of the tortoise, Washington County has been threatened for many years by the U.S. Fish and Wildlife Service that they would stop development in the county under a theory that all of the county under 4,000 feet in elevation is potential tortoise habitat. Washington County is now awaiting the final U.S. Fish and Wildlife Service approval for this plan. Should it receive approval, Washington County will spend over the next 20 years approximately $9 million toward providing mitigation for the right to take tortoises outside of the preserve in Washington County. Since the preserve includes all of the so-called high density area, it is not anticipated that a large number of tortoises will be taken.

The appraisal of approximately 7,000 acres of private property in the preserve has been valued at $80 million, and a rough estimate for 13,000 school trust land acres in that area, the approximate

value is $160 million. The economic impact of property owners goes beyond just the negotiated value of their property.

The horror story continues. The Tuacahn Center for the Performing Arts is a recent addition to the cultural segment of the community—a private entity, I might add. Over $20 million is invested; 80 acres on which Tuacahn sets was documented as having no tortoises. The public road which leads to it, however, goes through a habitat area. The fact that the road was built greatly inflamed the U.S. Fish and Wildlife Service. As a result, threats and challenges forced the center to pay massive fines because two tortoises were killed by construction vehicles. The Tuacahn Center was required to install three tortoise bridges at a cost of $60,000 along a road so that tortoises could migrate from one side to the other. This was required notwithstanding the fact that there is absolutely no scientific evidence that tortoises will actually use the facilities.

The State of Utah enacted a private property protection right two years ago and this past year reinforced it and included in it additional restraints on State and local government. We could go on with numerous other stories about encroachment by Federal programs and agencies on private property and also similar experiences at the State level and its political subdivisions.

We encourage the Congress of the United States to enact appropriate laws to safeguard the time-honored tradition of private property and restrict Federal agencies from actions deemed to infringe or encroach on the rights of private property owners. We believe such action is absolutely vital to the economic, cultural survival of the West.

Thank you.

[The statement of Mr. Brown may be found at end of hearing.]

Mr. SHADEGG. Thank you all very much for your testimony.

Speaker Phillips, let me begin with you. The words in your testimony that piqued my interest the most were those describing the bureaucrats charged with enforcing these laws simply taking no responsibility for the impact upon the land or upon its economic value. Is that what brought you to be a supporter of takings compensation legislation, and how do you see it affecting the people who are charged with enforcing these laws?

Ms. PHILLIPS. Mr. Chairman, that is partly what brought us there, but it was also the fact that it appears many times that a bureaucratic decision has been put into place that does not take into account at all the human aspect or the human interest, and that is what brought me to be a strong supporter of the fight for private property rights.

Mr. SHADEGG. If we were to rewrite, for example, the endangered species laws to diminish the regulatory authority of the people in charge of enforcing but to encourage them to strike cooperative agreements to protect, for example, the tortoise that Speaker Brown spoke of and to encourage cooperation between the regulators and the regulated community, would you see that as diminishing the need for takings compensation?

Ms. PHILLIPS. Not necessarily. I think that we do have to establish a balance between the two, and I was pleased to hear Speaker Brown's comment on the bridges for the tortoises because we had to spend millions and millions of dollars in Alaska putting in over-

passes for the caribou when the pipeline was built, overpasses for the caribou that have never, ever been utilized by the caribou, millions and millions of dollars for each crossing.

I do believe that we need to fairly compensate for anything that is—anything to inholders or anything to private property owners when a taking is considered to be in the best interest of the public good. It has to be fair to the property owner.

Mr. SHADEGG. Do you see compensation as being a way of society saying that if in fact this is a value, that it has an obligation to pay for that supposed greater good?

Ms. PHILLIPS. Very definitely, and at the highest value, I might add.

Mr. SHADEGG. Thank you very much.

Mr. Tauzin.

Mr. TAUZIN. Speaker Brown, I'm particularly intrigued with your testimony regarding the tortoises and the question of critical habitat area. What happened with the Hurricane Golf Course is a good example. What is your understanding of a critical habitat determination?

Just to preface while you think about responding, let me tell you, we had a similar situation in Louisiana. The Feds said don't worry about it, it doesn't mean anything until a Federal action is taken. What is your understanding of critical habitat determination?

Mr. BROWN. My understanding of critical habitat obviously is the area where a particular species actually exists and in significant number to deserve to be protected.

One of the problems we have had in that area, as you read in my other testimony, this habitat conservation plan has been under study for a number of years. There have been millions of dollars spent both by the Federal Government and the taxpayers of America as well as the local residents, private property owners, and the county and city government in that area to develop a plan so that they can protect the species.

The mere fact in my mind that everyone was willing to enter into a study process to develop a plan ought to have been a show of cooperation, and when they could come up with a plan it should have been accepted. But the first two plans that were submitted by the habitat conservation committee were refused by the U.S. Fish and Wildlife Service because they didn't include enough acreage and a large enough area that, in their view, protected the critical habitat.

Mr. TAUZIN. What I want to get to though is, what happens in real life, in the real world, once an area has been declared a critical habitat? What happens in your State?

Mr. BROWN. That is very easy to answer. The public and private use of that land is totally restricted.

Mr. TAUZIN. But U.S. Fish and Wildlife says don't worry about it; unless there is a Federal action, critical habitat designation doesn't really mean anything. Are they not telling us the truth?

Mr. BROWN. I would say that the way that perhaps Congress intended the law and the way the law is being enforced and implied upon the citizens of America, there is a direct conflict.

Mr. TAUZIN. You also indicated that massive areas of property that are documented to have no tortoises and no tortoises could get there unless somebody brought them there, even sides of moun-

tains are included in critical habitat where apparently tortoises can't roam very good, on the side of a mountain—what is going on?

Mr. BROWN. I wish I could answer that. All I can say is that the citizens of the State of Utah and the people in that area are very upset about the fact that they have lost control over the ability to control their land and their environment because of the identification of this species and the policies of the U.S. Fish and Wildlife Service.

Mr. TAUZIN. I have a situation in my own State dealing with the black bear that may have been imported from Missouri, we are not sure, but it is now called the Louisiana black bear, and the agency is coming and trying to designate three million acres—three million acres—for critical habitat. They are telling the farmers and the timber owners and everybody else in the area, don't worry, nothing is going to change. We ask them, well, why are you doing this if nothing is going to change? What are we doing you want to stop us from doing in Louisiana? They won't give us any answer to that.

Do I get from your experience that they are not telling us the whole story?

Mr. BROWN. That is my impression.

Let me tell you one other thing. In southern Utah we are just in the process of facing the possible designation of another critical habitat for the Mexican spotted owl, and in communications that have been done between our own wildlife resources and the wildlife resources—the U.S. Fish and Wildlife Resources, we face the potential of having millions of acres in southern Utah designated as critical habitat.

Mr. TAUZIN. Are there public hearings before the designation?

Mr. BROWN. There have not been any yet.

Mr. TAUZIN. You know, we had to demand them in Louisiana. They hadn't planned any either. They just do it.

Mr. BROWN. That is right.

Mr. TAUZIN. So you will know, there were 21 acres they were about to set aside in Texas for the golden crested warbler, I think it was called, and no public hearings either, but there was an election going on, and somebody got word about the effects on the election, so it all got postponed. Do you think there is a little politics involved in all this stuff?

Thank you very much, sir.

Mr. SHADEGG. Because your testimony touched upon the Mexican spotted owl, I saw the Speaker of the Arizona House just about come out of his chair.

Mr. Killian, would you like to make a comment?

Mr. KILLIAN. Mr. Chairman, Mr. Tauzin, let me tell you a story that happened to an individual, a southern Arizona rancher. They were kind of going along, running their ranch the way they thought ought, and they got a phone call from a neighbor who happens to read the **Federal Register**—has as a hobby, which is kind of a strange hobby, and he happened to notice in the **Federal Register** that the tiger-striped salamander was being listed for critical habitat, and apparently this tiger-striped salamander, the only place it lives is in the man-made stock tanks on this ranch. Mind you, this is mostly private property, this isn't any State or Federal lands.

What the U.S. Fish and Wildlife Service had done was contract a professor at the University of Arizona to come on these people's private property without their knowledge and gather this information, and they would have never known, never known, that there were going to be major restrictions placed on their ranch if a friend hadn't read about it in the **Federal Register**. They called us, and we talked to them, and they were scared to death, and to this day it still has not been resolved.

I wrote a letter to Secretary Babbitt asking him where they have the authority to come on private property without the permission of the property owners and didn't get much of a response from the Secretary, and that concerns me, and that is going on all over this country.

Mr. TAUZIN. Would the gentleman yield, just to point out to you, we adopted on the biological survey bill that came through the House provisions to make it very clear that no one could come on your private property without your permission, and when that was passed by the House the environmental community decided to kill the bill. Biological survey—you don't really need that law, they said, because we are not doing it. You are telling us they are doing it; they are going on people's private property without permission.

Mr. KILLIAN. Mr. Chairman, Mr. Tauzin, that is going on all the time, all the time.

Mr. Chairman, as to the spotted owl situation, in Arizona essentially with the Federal judge declaring 4.6 million acres of Arizona as habitat for the Mexican spotted owl on some lands that there have never been spotted owls, it is going to create real havoc, and in Arizona we have a checkerboard ownership of land in that area between private, State, Federal lands, and many of those private property owners don't even know that their land may be covered.

But as a State official, I'm concerned about the school trust lands that may be limited for use. Much of that land is just grazing land or timbering land, and whatever the Federal Government does has a sizable impact on our State, our State trust lands, and we are concerned that we are going to lose money to our schools based on this designation.

What is even more fearful is that the environmentalist who pushed this lawsuit is now quoted in the paper saying there are 46 more species that need to be protected in our State, and this is just the tip of the iceberg, and you can imagine what is going to happen.

Mr. SHADEGG. Mrs. Cubin, any questions?

Mrs. CUBIN. No questions, Mr. Chairman.

Mr. SHADEGG. OK.

Mr. Metcalf.

Mr. METCALF. Thank you, Mr. Chairman.

Just the question I asked before, because this has come up in Washington State. Are you aware of any problems with the property rights of people on tribal reservations—the fee simple owners—that is, the land that used to belong to the tribe that was sold? I'm not sure if it is a problem in other States; I'm trying to find out. If you are aware of any, I would like to know.

Mr. BROWN. Just recently I was made aware of a problem just like you are talking about. In fact, yesterday I was made aware of

the serious problem that exists in New Mexico regarding this and the large number of parcels of property that are privately owned within the tribal reservations.

We have some of those same problems in Utah out in what is called the Uintah Basin on the Ute Tribe Reservation, and it is a serious problem, in fact, not only in regards to the actual ownership of the land but the conflict that is beginning to arise between the State of Utah, the residents of Utah, the landowners, and the tribe on the water rights, and it is a very serious problem that we hope you will be able to address.

Mr. METCALF. The water rights is the key issue in the two tribes in my district, and that is why I'm asking.

Thank you very much.

Ms. PHILLIPS. Representative Metcalf, we don't necessarily have that same problem in Alaska because when the Alaska Native Lands Claims Settlement Act was passed lands were designated specifically to the native tribes. We are still having conflict, however, in the overriding claiming of those lands versus State lands.

Mr. METCALF. OK. Thank you.

Mr. SHADEGG. Thank you very much.

We have that issue in Arizona. We have indeed and, indeed, discussed at a delegation breakfast this morning the issue with regard to how, in Arizona, Native American lands are still producing timber where the Native Americans are being allowed to manage the Endangered Species Act on their land but private property owners are not being allowed to manage them or administer the Endangered Species Act on their land.

One of the reforms some of us would like to see is that kind of cooperative arrangement between the Fish and Wildlife Service and private property owners, allowing them to manage the lands so that we could produce timber on private land the way Native Americans can still produce timber on their lands.

Again, let me thank you very much. We could go into these issues. Mr. Killian mentioned the spotted owl in Arizona. There are hundreds of people who have already lost their jobs. We need to build the record here, and we appreciate your coming in. Thank you very much.

The next panel: Mr. Benjamin Cone, Mary Fattig, Bill Pickell, Sherry Sullenberger, Lorraine Bucklin, and Richard Welsh.

Once again, let me thank you for being here, for taking the time to travel from all over America, from North Carolina, and California, and Washington, and Virginia, and Pennsylvania, to be with us this morning. We appreciate your time.

I particularly want to thank Mary Fattig, whose story I heard a few weeks ago and asked her to come and tell the story again because I think it is a unique one. But to each of you, I very much appreciate your taking the time to be here with us and to share your real life experiences with the current law and help us understand what the problem is out there in America and how we might do a better job of writing the laws to protect private property rights and to compensate people when takings do occur. I thank you very much.

We can start, Mr. Cone, with you, and we will just move across.

STATEMENT OF BENJAMIN CONE, JR., GREENSBORO, NORTH CAROLINA

Mr. CONE. Thank you.

I'm a timber landowner, and I'm here as a private citizen, and I'm not the head of any organization at all.

The early history of this is that my father bought this land in the 1930's as a place to hunt and fish. There was even a sign at the entrance that said, in the order of priority, "Cone's Folly: Game, fish, and timber management." Timber was last; game and fish was first. In fact, it was called Cone's Folly because my father was a fool for buying this totally cut over, useless land in southeastern North Carolina, and he named it Cone's Folly for that reason.

Obviously with that intent of purchase of this land as a place to hunt and fish, the management practices reflect probably everything most environmentalists claim is the proper way to manage land. The timber was never clear-cut, it was always selectively thinned, we put a lot of fire through the woods to keep the underbrush out and to open up the ground to legumes, and air, and to create great quail habitat.

We spent our money in planting for wildlife. We plant every year chufa for turkey, bicolor for quail, we plant corn for the bear and never harvest the corn, we plant sunflowers for dove, and it goes on ad infinitum, and we in effect created the habitat for a wildlife sanctuary and also through our management practices created ideal habitat for an endangered species called the red cockaded woodpecker.

The red cockaded woodpecker needs two things to survive. It needs timber past economic maturity, and it also needs woods without a mid-story of hardwoods. It is the woods where you can look through, kind of like a park, and walk through easily. If it gets dense, they won't land. So the management practices created the woodpecker.

The economic effect is, with agreement, I have 1,121 acres in which I cannot cut a tree. The economic loss is about a million and a half dollars. Most of that value, by the way, is in the timber, not in the land. It is the standing timber that carries the real value.

I'm not quite as wealthy as my father. Inheritance tax does a good job of taking care of that. I can't quite afford these losses as well as my father could, so I have changed the management practices on my land and I have started to massively clear-cut the rest of my acreage, so the birds cannot expand, and go to 40-year rotations instead of 80-year rotations to prevent the timber from getting so old. This has been the effect of good management. It is creating bad management. All of my neighbors have all clear-cut all of their timber because they are scared of the birds coming on their land.

The Government has offered me one deal, as I call it, and it's kind of like the Godfather: "I've got a deal you can't refuse." They came in with their heavy hand and their power, and the deal they offered me was very interesting. The deal they offered me was: If you will commit to maintain—and they didn't say how long—for an undetermined time, 1,121 acres of woodpecker habitat, then they would give me incidental take rights on the rest of the property,

which means I could cut the timber, couldn't shoot birds, and the more I thought about that the madder I got, because they offered me nothing except at great expense to maintain 1,121 acres of habitat for the Fish and Wildlife Service and they gave me nothing, because they only gave me the right to cut the rest of my timber, which I'm doing anyway, so I did not consider that a quid pro quo and I turned them down flat, but I'm still stuck with 1,100 acres of timber I can't cut and a million and a half dollars loss.

Thank you very much.

[The statement of Mr. Cone may be found at end of hearing.]

Mr. SHADEGG. Thank you very much.

Mrs. Fattig.

STATEMENT OF MARY FATTIG, VICE PRESIDENT, CALIFORNIA WOMEN IN TIMBER, SALYER, CALIFORNIA

Ms. FATTIG. Honorable committee members, my name is Mary Fattig, and I thank you for allowing me to speak to you today.

I'm here out of concern for the community schools and families who live in rural Northern California. The impact on us due to the overregulation of private, State, and Federal timber lands has caused such devastation to these communities that they are indeed themselves endangered.

For many years Humboldt and Trinity Counties have been timber dependent for their economic base. County schools and roads have received millions of dollars in forest revenue receipts. Privately-owned timber harvests also supplied much needed tax revenue to the tax base. Harvesting this renewable resource employed many families living in this community, providing funds to local businesses and also adding money to taxes to the local, State, and Federal Government.

Trinity County now has an unemployment rate of 19.2 percent, and it is much higher in the smaller communities that are totally timber dependent for employment. Judge Dwyer's spotted owl decision has all but ended timber harvest on our National Forests and has adversely affected timber harvest on private land.

Until recently I was employed in the local school system as an outreach consultant doing social service work. To qualify for this money you must prove high instances of school truancy and dropouts, family violence, substance abuse, teen pregnancy, and other school and family-related problems.

Our local high school still has a dropout rate of 45 to 50 percent. In our elementary schools 100 percent of the children are on free or reduced lunch; at another, 95 percent eat on this program. The other schools in the district range from 84 percent to 68 percent of the students participating in the free lunch program. These numbers have not improved even with all the social work and government funds sent to this area. I know, because it was my job to fix these problems. Not until people have jobs and hope again will there be any real change.

The family unit has been altered and very often destroyed. Fathers and mothers who have always been able to provide for their families find themself now unable to do so. The loss of self-esteem has increased the instances of substance and alcohol abuse in parents and children. Family violence as well as teenage pregnancy

rates have greatly increased. There is a very high domestic violence and divorce rate, leaving too many single-parent families. As we begin to study the causes of many of these problems, we can chart a direct correlation between job and income loss and these problem increases.

In the past we had seven working sawmills in the area. We had all the woods jobs that supplied the logs to mills. These were good paying jobs that allowed men and women to provide for their families. Most of the jobs also had health care benefits for entire families. Now we have no mills and no woods jobs.

Many of the nonrelated timber industry businesses have either closed or been forced to lay off employees. This is leaving our communities virtual ghost towns with very few businesses or services. Our own Government has created a welfare state by causing families to rely upon a monthly Government check and food stamps.

As an experienced social worker, I know that no amount of Government money will fix these problems. Even President Clinton's Option Nine money has not helped any timber worker that I know. It is going to bureaucrats to feather their own nest. I know, because I sit on one of those commissions.

Timber workers are proud people that want to work and be productive members of society. They feel that the Federal Government has created these problems by overregulation and creating laws that pit man against other species. These people care about the forest that has provided them with employment. They want to take care of it so that the generations that follow will also have jobs as well as the recreation that they have enjoyed.

Now our children grow up and leave the area in hope of finding a better life elsewhere. Fathers and mothers are forced to travel great distances away from home to find jobs. My own husband and son have not escaped this hardship. This again creates a very stressful life on families.

In conclusion, I urge this committee to bring common sense back into government. Please take the time to make people a part of this equation. Remember, there are real people that must live with the consequences of your action. Their lives and the life of my rural community are depending on you to make wise choices.

Thank you.

[The statement of Ms. Fattig may be found at end of hearing.]

Mr. SHADEGG. Thank you very much.

I just want to take this moment and say, if that doesn't frame this issue—you listened to Mr. Cone's eloquent testimony of the economic devastation and then Mrs. Fattig's discussion of the social impacts—I don't know what does, and I really want to thank you both for that.

Mr. Pickell.

Mr. PICKELL. That is Bill Pick-ell.

Mr. SHADEGG. Pick-ell, OK.

Mr. PICKELL. I'll answer to anything though.

Mr. SHADEGG. Great.

STATEMENT OF BILL PICKELL, GENERAL MANAGER, WASHINGTON CONTRACT LOGGERS ASSOCIATION, OLYMPIA, WASHINGTON

Mr. PICKELL. Mr. Chairman, I am Bill Pickell, and I'm the general manager of the Washington Contract Loggers Association in Olympia, Washington. This is an association of some 600 logging companies, family owned, mostly husband and wife, operated firms that are responsible for the bulk of the logging in our State.

I personally am a forester, I am a tree farm owner, and I'm a former logger, and myself and my members live the dream that the environmentalists dream. We live on the land, most of us, and we live off the land, from the land. It is a wonderful place to be. But we are on the front lines. We feel the impact of everything this Congress does or does not do concerning forestland management on Federal lands as well as private lands, and, you know, we are hurting as businesses because of a severe reduction in harvesting. But the forest, the Federal forest, is hurting much more from poor management.

Most of our hurts, both forest and business, can be laid at the doorstep of the Endangered Species Act and its abuse. Before the owl—and I live on the Olympic Peninsula—we had a sustaining balance of timber harvest from all ownerships, private, Federal, and State.

For example, the Olympic National Forest plan had an allowable sale quantity of 200 million board feet annually forever, sustainable. That would be enough for 40 companies to work forever. Today the annual harvest is under 10 million board feet, and that is questionable. That is barely enough for two, maybe three, companies to work. The average pair of spotted owls is costing our Nation, our Government, about $100 million a pair in locked up timber never to be logged. Can we afford that? No way. And all of the other National Forests are in that same position.

Now if you will notice, I included a map with my presentation. If you would just look at that briefly, this is a map that was done in 1990 by us, and it was taken from some State figures. It shows approximately 500 spotted owl circles when there were only a known population of owls of between 200 and 250 pairs. Today we have quadruple that number. If we put those red dots on there, this would be a bloody mess, and you can see the overlap on this where it comes off the National Forest land and on to private ownership. It is a disaster.

Landowners have watched the onerous imposition of the endangered species regulations on the Federal and the State lands. They see the political locus encompassing their lands without compensation, and their natural reaction is to harvest their timber as quickly as possible, and the record number of permits we have in our State can attest to this. What incentive is there for them to keep timber as a crop?

Some examples. The Anderson-Middleton Company, the small timber firm that owns a lot of land on the peninsula, owns 72 acres on the Quinault Indian Reservation. No spotted owls have ever been documented on their property. The nearest pair is on a National Forest one and a half miles away, yet this landowner is covered by an owl circle. They cannot log their land. The estimated

value of the timber is $4 to $6 million. What is the solution? The Government is going to buy them out.

Another couple, Al and Bonnie Ryggs of Kingston, right on Hood Canal, on Puget Sound, are small landowners with only 10 acres. They found out they had an eagle's nest right on the shoreline. Now the Government has taken half their 10 acres away and they can't use it.

The one that I love is the Murray Pacific Company of Tacoma, owners of 55,000 acres, who were coerced into formulating a habitat conservation plan with the Feds; no plan, no harvesting. They had three owls nesting on their property. The cost was some $600,000 to prepare the plan plus an estimated $1 million implementation for each of the next 100 years of that contract. Then a marbled murrelet flew over, but did not land. They had the owl habitat conservation plan which did not cover the murrelet. So a new $750,000 study and they had a murrelet plan. The Federal Government touts this as a success with a private landowner. I'd call it extortion, and it is no different that if the Mob wanted money for protection.

It is funny how, after you pay the money, the circles disappear and you can now legally kill an owl or a murrelet, or should I say take.

At the same time, the Federal Forests are falling prey to natural forces. An estimated 450 million board feet of timber worth an estimated $300 million to the U.S. Forest Service has been blown down in our Region VI. That is enough to build over 30,000 homes, and it is lying rotting.

I have another report in front of you in color. It is called "Blowdown Timber on Baker Lake." It happens to be in Representative Metcalf's area. It shows this beautiful timber lying and rotting. The timber is right next to the campground, right next to the resort, right next to the public road. It is just rotting because it is under an owl circle, and it is rotting so they can allow rats to live there.

Would you folks walk across the parking lot to your car and bypass a $20 bill that was laying there? No way. You'd pick it up. Every day the Forest Service is passing $1,000 bills and watching it rot away.

The environmental extremists, using the ESA, have destroyed the U.S. Forest Service's ability to manage the public resources. The onerous rules are guaranteeing that there will never be owl habitat or any endangered species habitat on any private land. Clearcut at age 35 or 40; do not practice silviculture. Shoot, shovel, and shut up. Cut down eagle trees. What incentive are our landowners given to entice or encourage endangered critters on their land? None. Landowners used to consider wildlife a positive asset on their lands. Today the ESA makes it a liability.

Modification of the ESA has to be the first step in wresting control from these extremists. It is going to be a painful process because it has taken 30 years to get where we are, but let's start and let's make it positive now.

Thank you.

[The statement of Mr. Pickell may be found at end of hearing.]

Mr. SHADEGG. Mr. Pickell, thank you very much.

Lorraine Bucklin.

STATEMENT OF LORRAINE BUCKLIN, ASSISTANT EXECUTIVE DIRECTOR, PENNSYLVANIA LANDOWNERS ASSOCIATION, WATERFORD, PENNSYLVANIA

Ms. BUCKLIN. Good morning. My name is Lorraine Bucklin, and I serve as the assistant executive director of the Pennsylvania Landowners' Association. PLA is a nonprofit, tax-exempt organization founded in 1987 by a group of rural property owners who became frustrated and deeply concerned about excessive government regulation affecting the use of privately-owned land in Pennsylvania.

We believe that one of our most basic and fundamental constitutional rights, the right to own, use, and enjoy property, is being trampled by regulatory bureaucrats and ignored by Members of Congress. Our goal is to achieve legislative changes which would restore reason and balance in environmental regulation.

I am also here today with an organized grassroots effort known as the Fly-in for Freedom. For the fifth consecutive year, thousands of citizens concerned about the erosion of private property rights in America have come to tell our elected officials that "enough is enough!" Too many innocent people are having their lives turned upside-down because of excessive control on the use of land being imposed by unelected, unaccountable bureaucrats in the guise of protecting the environment.

In Pennsylvania horrific examples can be found, but no case better illustrates the need for regulatory reform and property rights protection than the case of *United States v. Brace,* the story of a third generation farmer.

For over 40 years Bob Brace worked hard operating a well maintained vegetable farm that he hoped to pass along to his two sons. In 1975 Bob purchased his parents' homestead farm and expanded his vegetable farming business. He took out a mortgage and paid his father $170,000 for the 137 acres farm. When in 1976 he began to repair and improve the existing drainage system on the farm that had been blocked by beavers, he had no idea that 10 years later, in 1987, the Federal Government would accuse him of destroying over 200 acres of wetlands and order him to destroy his drainage system and ruin his farm.

Bob had purportedly filled the wetlands by redepositing sediment cleaned from his ditches on to his farm fields, from where it came in the first place. Because of this, he has faced millions of dollars in fines, threatened with imprisonment, publicly vilified, and ordered to restore his property by plugging his drainage system.

In December of 1993 U.S. District Court Judge Mencer found Bob innocent of any wrongdoing, stating that Bob was lawfully operating under the normal farming practices of the Clean Water Act which exempts farmers from obtaining permits for cleaning existing drainage ditches. Judge Mencer determined that only a quarter of the area cited by the Government even met the technical definition of wetland and dismissed the case.

The Government was not satisfied, however, and appealed Judge Mencer's decision, and the Third Circuit Court of Appeals in Philadelphia reversed the District Court's ruling. A three-judge panel completely sidestepped the exemption enacted by Congress which expressly states that permits are not needed for agricultural activi-

ties related to normal farming practices including the maintenance of drainage ditches. The Appellate Court refused to rehear Bob's case.

What is striking about this is the Government's ability to put Bob in a regulatory Catch–22. His only alleged violation was that he didn't have a Corps of Engineers permit to clean sediment from his farm drainage ditches and redeposit the sediment back on the farm fields from which it washed in the first place. Instead of ordering Bob to stop while he applied for a permit, the Government tried to coerce him into complying with the restoration order under threat of enormous fines, penalties, and even jail.

To make sure citizens like Bob can't escape its clutches, the Government went on to adopt the policy that it won't process permit applications when the applicant is said to be in violation. Thus, Bob never could claim his farm exemption or try to get a permit once the bureaucrats said he was in violation.

When the Government issues a Notice of Violation, there is no appeal or forum in which to claim your exemption. You have to wait for the Government to sue you. It took three years for the Government to get around to filing suit and then three more years to get to trial. And when the Government finally sues, the imbalance of resources between the Federal Government and ordinary citizens is overwhelming.

Bob Brace has recently asked the U.S. Supreme Court to review his case so they may correct this terrible injustice. He is currently waiting to hear if the Court will hear his case.

What has happened to our country when cleaning out farm ditches and putting the sediment back on the fields becomes a "deposit of dredge and fill material into navigable waters of the United States"? Would you give up your livelihood, part of your retirement savings, or your home for someone's idea of the public good without receiving compensation?

No one is objecting to protecting truly valuable wetlands, but the Government is currently going about it in the wrong way by ignoring the Fifth Amendment of the Constitution. Individual citizens should not be expected to bear the burden alone for what others may deem important public benefits.

Additional articles and videotapes regarding Mr. Brace's case are available for those representatives who may be interested.

I thank you for the opportunity to express the concerns of our organization.

[The statement of Ms. Bucklin may be found at end of hearing.]

Mr. SHADEGG. Thank you very much.

Richard Welsh.

STATEMENT OF RICHARD WELSH, EXECUTIVE DIRECTOR, THE NATIONAL ASSOCIATION OF REVERSIONARY PROPERTY OWNERS, ISSAQUAH, WASHINGTON

Mr. WELSH. Good morning, Mr. Chairman and members of the committee.

My name is Richard Welsh. I'm the executive director of the National Association of Reversionary Property Owners, which is a nonprofit foundation dedicated to the preservation of property

rights, particularly the property rights of property owners who own land abutting railroad rights-of-way.

We would like to bring to the attention of the Property Rights Task Force the inequitable burden placed on thousands of property owners in almost every State of the Union because of what has become known as the Rails to Trails.

In 1983 Congress passed what is now known as the Rails to Trails law which, in effect, takes private property without just compensation. For those not familiar with the Rails to Trails law, I'll give you a brief overview. Its total effect and the intent of Congress in 1983, as shown in the Congressional Record and court cases, was to preempt all State property laws in every State that causes a reversion of railroad easements to property owners upon abandonment of the railroad use. That was the stated use, and that is what is happening to thousands of property owners now.

Normally when a railroad would abandon its right-of-way, the land that the tracks were on, the right-of-way, would revert to the abutting property owners because the railroads never owned the land in the first place, they only had an easement, just like most of your county and city roads have easements over the land, they don't own it in fee title. So if they ever stop the use, the land goes back to the property owners. That doesn't happen now, and we still haven't been able to get one ounce of compensation.

I'll point out a few of the inequities and how the railroads and the trails groups have twisted this little Federal law around.

The Rails to Trails Conservancy, which is a private organization headquartered here in Washington, D.C., and the Burlington Northern Railroad, probably the largest railroad in the country, last year agreed to package five soon to be abandoned railroads in Washington State together, and the price to the Rails to Trails Conservancy was $3.2 million. That included the land, the rails, and the ties.

Rails to Trails Conservancy then turned around within a month, maybe two months, and sold the package to five different government entities for $4.5 million. They pocketed approximately $1.2 million in excess profits into their private foundation. Over $1 million of that, or approximately $1 million, was ISTEA enhancement money. The local government entities that squeezed the ISTEA enhancement money turned it around and gave it to the private foundation for overpriced railroad rights-of-way. Meanwhile, the property owners have thousands of strangers walking and riding through their property.

The Federal Government says, well, if you don't like that, take us to the U.S. Court of Federal Claims and bring your $2,000, $3,000, $4,000, and $5,000 claims before us and we'll see if we take care of them.

Another example: The State of Missouri acquired a 200-mile-long abandoned railroad along the Missouri River in 1990. The railroad abandoned the line mainly because of all the flooding of the river and continuous washouts, but in their great wisdom the State of Missouri still paid numerous millions of dollars to acquire the trail, only, in 1993, as we all know what happened to the roads and the levees along the Missouri River; the whole trail washed out. FEMA

then gave the State $6 million to rebuild the trail with Federal disaster relief money.

That did not go to fixing the roads, so we had a flood here last week in the same area that washed out part of the trail that had just been rebuilt, but most of the farmers are still left high and dry because they never raised the road levels up, they raised part of the trail but never got around to fixing the roads. Meanwhile, the property owners are still trying to get into the U.S. Court of Claims, as they have for the last five years.

The last example I'll point out is in the Rails to Trails. The Rails to Trails Conservancy has found another way to extract ISTEA money and in the process kill off short-line railroads that are trying to keep some rail lines in business. They actually overbid and overappraise the value of these lines when they are up for abandonment, which usually blows out the small short-line that wants to keep rail service in place, and they are using the ISTEA money to do that. They find themselves a Government entity that can get ISTEA money, they overbid the price, and there goes the rail line into a trail.

I would hope that the task force can help straighten out these inequities for the property owners throughout the country. We have some legislation pending right now in the House Transportation Committee that is sunsetting the Interstate Commerce Commission and transferring their duties over to the Department of Transportation, and there is some language presently available that would help solve these inequities by forcing the trail proponents to pay just compensation at the time of acquisition. That way, it relieves the U.S. taxpayer and the Federal Court of Claims from the many burdens. I would hope that the members could support that type of legislation, and I thank you for your time and effort.

[The statement of Mr. Welsh may be found at end of hearing.]

Mr. SHADEGG. Thank you very much.

Sherry Sullenberger.

STATEMENT OF SHERRY SULLENBERGER, MONTEREY, VIRGINIA

Ms. SULLENBERGER. My name is Sherry Sullenberger, and I'm a cattle farmer from Highland County, Virginia. I represent no organization, just myself, my family, and my farm, and I do appreciate the opportunity to appear before you today. By doing so, I reopen a wound that has taken a long time to heal and an occurrence that I will never forget. Although I hope that this testimony will be beneficial and it could help to prevent similar experiences for others, I have to say that I'm skeptical and that my faith in government operations is badly shaken.

My farm is located in Highland County, Virginia, which enjoys the highest average elevation of any county east of the Mississippi River. This is not a place that you would think of finding wetlands, but wetlands is indeed the issue that created my nightmare.

The land in question is exclusively used by our operation for grazing and for hay production, nothing else. I own a beef cattle operation. The Jackson River, which you may have heard of, is the main tributary of the James, and it flows through this farm. Over 100 years ago there was a large main center-line ditch and a lat-

eral artery ditch line that were hand dug on this farm for the purpose of taking waterflow away from the farm points other than my farm, through this farm to the Jackson River, and there is no other physical way for it to get there; water will not run uphill.

In more recent years the Highway Department installed three culverts under adjoining Highway 222, and the adjacent landowner to my north placed over 8,000 feet of four, six and eight-inch underground drain tile with the cooperation, with the guidance, and I'm sure the cost share of the Federal Government.

This main ditch that takes all of the water from the highway, all of the water from the 8,000 feet of drain tile, and a live mountain stream that runs year round, called Cattail Run, was diverted into this ditch, and it dumps on to my property, directly on to the property, and it has no other way to get to the Jackson River. All of these factors combined inundate the property if I don't have the drainage ditches and the drainage relief.

In November of 1992, I leased a machine and I hired an experienced operator to clean the ditches. They were laden with silt and especially laden with silt after the flood, that you may recall if you are from this area, of 1985. The operator I gave specific instructions to follow the existing pattern only. He was not to widen the ditches or deepen nor to increase the scope.

In late June, which is eight months later, I received a telephone call at my home at 8 o'clock in the morning from a man who identified himself very sparingly. I recall that "environment" or "environmentalist" was in his title. And he demanded an on-site inspection with me two days later. After I questioned him and asked to talk to a supervisor, which I did not get to speak to, I received another call later in that afternoon and found out that the agency I was speaking with was the Department of Environmental Quality at Richmond. The next day the Corps of Engineers called. All of this happened via phone call, no documentation of a complaint, and I asked them if this was the way government does business.

Then in July the letter came that I had asked for directing me to cease and desist and to place earthen dams in my ditches. I complied two times to their directives, and on both occasions there was so much water in these ditch lines that they stayed less than 24 hours.

I'm going to try to summarize some of the events because it is long and it goes on in a not so timely manner.

The most memorable event, I think, was when the DEQ, the EPA, and the Corps all got together with an on-site visit. I felt uncomfortable with this, so I invited a general assembly representative to be with me. I asked them repeatedly how I was to control the contributing hydrology to my farm. How do I control this water that does not originate on my farm and pass it through my farm to the Jackson River? I was told that was my problem.

The Corps had already obtained aerial photographs and approximately a three-inch file with specific photos that had to have been taken on-site of my property long before the first phone call without my knowledge and without my permission. I knew nothing of this.

Particularly appalling to me through all of this was the uncompromising and the arrogant attitude that was displayed by the

Corps representatives. I was warned by many people not to mention it; it would make things worse. During a heated telephone conversation I was reduced to tears. It came to the point where I had to hire expensive lawyers to save myself from persecution of the Corps. The intensity decreased, but then began hours and months of research to prove my case.

The final disposition of this only came about when I involved the Soil Conservation Service to try to get a farmed wetland pasture designation. They brought out the old aerial photographs from the SES offices that clearly showed the existence of these ditches. The Corps was more interested in the $25,000-a-day threats, a $5,000 minimal hydrology study that I would have to do on the property that the SES did in less than 15 minutes and stated to them, "This lady is not doing anything but passing storm water through her property. This will never affect the wetland complex."

It is my firm belief that the Corps had every intention of creating a larger wetland on my property and that they had no concerns for my rights or the fact that I was simply trying to maintain my farm and to protect the value of my farm. Direct costs were over $15,000; indirect costs I don't know.

Professional people and various groups have told me that I am an abused victim. Unfortunately, none have offered any solutions other than a forum like this, which may or may not get to the root of the problem, but I respectfully suggest to you today that this committee look seriously at the causes and the consequences of unrestricted abuses of power such as this, and I would hope that you make every effort to effect change.

Thank you.

Mr. SHADEGG. Thank you very much. I appreciate each of your testimonies.

Let me start by asking all of you a question. Have any of you testified before Congress before?

Ms. FATTIG. No.

Mr. SHADEGG. Well, we appreciate having you here with us and affording you this opportunity.

Mr. Cone, let me begin with you. I believe you stated that there were 1,120 acres?

Mr. CONE. Eleven hundred and twenty-one acres.

Mr. SHADEGG. Eleven hundred and twenty-one acres. What is the timber on that? What kind of timber?

Mr. CONE. It was about 75 percent loblolly and about 25 percent long-leaf.

Mr. SHADEGG. And at this point under the current regulations subjected to that land you are not allowed to take any of that timber?

Mr. CONE. Yes, sir, as I understand it. But it is very hard. One of the things is, one of the biggest problems is that you are dealing with a fog. They very much like to tell you what you can't do, they don't really want to tell you what you can do. Does that make sense?

Mr. SHADEGG. Absolutely. I've heard it more than once.

Mr. CONE. OK.

Mr. SHADEGG. And once they tell you anything, they admit that they are not responsible for what they told you.

Mr. CONE. Yes.

Mr. SHADEGG. You estimated the value of that at a million and a half dollars?

Mr. CONE. The loss in value is about a million and a half dollars, yes, sir.

Mr. SHADEGG. And the compensation that you have been offered to date was?

Mr. CONE. Zero, I've never been offered any compensation. I did explain the one offer that was made. Interestingly, I have counteroffered the Government, and I thought it was a very reasonable offer, quite frankly, and I want to just say this. I offered the Government a pretty good deal. I said: "Listen, I would like to gift this to my children while it is devalued and get it out of my estate, very simple, and I will agree not to testify forever before Congress, not to give speeches, and to maintain, and just disappear. The only thing I want of the Government is for the IRS to work with me and prevalue the asset so there can never be after-the-fact consequences from the IRS." The IRS flat refused. That proved to me that the Government doesn't care about the woodpeckers or me.

Mr. SHADEGG. Mr. Pickell, you discussed in your testimony the downed timber. I guess we have some of that in your testimony before us.

Mr. PICKELL. That is correct.

Mr. SHADEGG. Do I take it that downed timber belonged to somebody before it was blown down?

Mr. PICKELL. Most of it is Federal timber, and there is downed timber throughout all the Federal Forests. We have severe winds in our part of the country, and it is real common, but the current management practice is to let it rot because if it is near an owl circle they are not allowed to go in to touch it because of the Endangered Species Act.

Mr. SHADEGG. But were it on private land, were it downed by the winds, I take it the same circumstance would accrue?

Mr. PICKELL. There is no doubt about it. Private landowners harvest it immediately.

Mr. SHADEGG. They harvest it immediately. Are they allowed?

Mr. PICKELL. No, not under an owl circle, they cannot do that.

Mr. SHADEGG. So the timber gets blown down, it is sitting there waiting, it is beginning the rotting process, and they are not allowed to do anything with it.

Mr. PICKELL. That is correct.

Mr. SHADEGG. And what compensation are they afforded?

Mr. PICKELL. They are afforded no compensation. The only way they can harvest that is if they go through the coercion of this habitat conservation deal that my southern neighbor here was talking about.

Mr. SHADEGG. Mrs. Fattig, I take it your essential position was as a social workers. Is that right?

Ms. FATTIG. Yes.

Mr. SHADEGG. And the devastation that you saw in the lives of individuals led you to your private property rights movement?

Ms. FATTIG. Yes. I had some health problems because the job was very, very demanding. I was dealing on a daily basis with many, many crises. My husband and son are here, and they can tell you,

in many instances they never knew how many children I might be bringing home with me at night because we are so far away from social services. Sometimes they needed a safe haven until social services could arrive.

But I realized that doing what I was doing was like putting a bandaid on an amputation and unless I got involved and did some real changes with government, with things that were causing this, no amount of work that I was doing at the local level was going to do any good. So I began to get involved, and that is one of the reasons why I'm here.

Mr. SHADEGG. Just to conclude, my time is running out, but I would very much like to see any studies you have of the correlation or just the raw data that shows the increase in unemployment and then the corresponding increase in juvenile delinquency, as you testified earlier, last time I talked to you, about spousal abuse. Any statistics which reflect that kind of familial disruption and social consequences coming from these policies, that is a part of the story that doesn't get told very often, and is not documented, and if you have that or can get that I would very much appreciate it.

Ms. FATTIG. Some of it is included in every packet. The statement that I read to you today or talked to you about, I backed up every one of them with facts from social services, from county schools, so I can get more detailed things, but I did back up everything I said today.

Mr. SHADEGG. I appreciate that very much.

Mr. Tauzin.

Mr. TAUZIN. Thank you, Mr. Chairman. Mr. Chairman, let me thank you for this panel and this entire hearing.

One of the things that we are met with when we present our property rights arguments and our calls for reform of the Endangered Species Act and the Wetlands Acts in America is that the huge, vast majority of permits applied for to the Federal Government are approved; "There really isn't a problem out there, Mr. Tauzin and others, you are just taking extreme cases out of the ordinary and you are blowing them up and making them into some sort of national hysteria," that "things are working fine out there."

Mr. Cone, you have described a condition that I hear repeated all the time and through this panel, the notion that you are being driven to bad management practice.

Mr. CONE. No doubt about it.

Mr. TAUZIN. You are being driven to clear-cutting when that clearly is not the way your father and most people would have managed that property. Is that right?

Mr. CONE. Absolutely.

Mr. TAUZIN. And you are being driven to do that because of the arbitrary nature of the laws that say, if you don't do that, the same restrictions that now apply to 1,100 acres of your property might apply to all of it pretty soon. Is that right?

Mr. CONE. Absolutely.

Mr. TAUZIN. In short, you have got a very large segment of your property now taken out of commerce, you can't cut a tree on it to manage it properly and to make some income on it so you can plant some other things for the wildlife, that is all gone now, and it could

happen to all of your property unless you do something that most people would say don't do, which is clearcut.

Mr. CONE. Yes, sir.

Mr. TAUZIN. What a mess.

Mr. Pickell, you mentioned the "shoot, shovel, and shut up" syndrome. I mean we don't like to talk about it. Mr. Cone has literally demonstrated how it works, and that is that the current law, while it has all the right intentions, no one wants to see a species eliminated from the planet, no one wants to see valuable wetlands unnecessarily destroyed, everyone wants to try to protect these things, but the perverse effect is that if your property is made less valuable to you by the presence of a species of wildlife on it, the perverse effect is that landowners across America are no longer cooperating. Landowners are going into a sort of bunker mode: I'm going to keep these things off my property, I'm not going to let anyone know they are here, I'm going to get rid of them if I can, even to break the law to get rid of them in some cases rather than avoid the extremes of the law which takes property without compensating me. Is that the substance of what you are telling us today?

Mr. PICKELL. Exactly, sir. I would like to give you an example. I live on a bay on the Pacific Ocean. It is a pristine place that has been in private ownership since a land grant from President Lincoln. It has been total private ownership. A peregrine falcon has been seen on our property on a number of occasions. It is a threatened or endangered species. We fought and won—beat the Sierra Club, the Wilderness Society, and the Friends of the Earth as they tried to take our ranch from us in 1986, 1987, and 1988. They liked our property because it was well maintained and it was pristine, and they wanted it. Well, we won, and we are not about to give it up to them.

Mr. TAUZIN. The problem is, how many Americans can afford that kind of trial?

Mr. PICKELL. They can't, and it is very difficult.

Mr. TAUZIN. That is the problem.

Ms. Sullenberger, the personal story you tell is one more Americans ought to hear. It can happen to anybody. What you were doing was digging a drainage ditch to maintain the drainage of your property. I mean you are not a big developer or you weren't building a lot of homes and factories and polluting your neighbors, you were doing what has always been done on that property, and that is keeping those drainage ditches open, and yet you went through living hell for a little while, had to hire lawyers to defend yourself.

You mentioned a word in here that I mentioned on the Floor of the House in describing my own constituents' problems with the Federal agencies; you mentioned the word "arrogance." I want you to hit it a lick for me today. How were you treated?

Ms. SULLENBERGER. Well, on the first meeting, the first conversations with the Corps, their initial restoration plan was, "you will fill these ditches back in, you will take the dredged material and put it all back into the ditches," and I logically think of that, and I'm not an engineer, but knowing that all of what I would put back into the ditches would be right in the Jackson River, that is not what we want in Chesapeake Bay.

Mr. TAUZIN. More importantly, you were told to do this before the case was disposed of.

Ms. SULLENBERGER. Absolutely.

Mr. TAUZIN. Before you had managed to take your arguments or to present maps showing these were existing drainage ditches, you were told, whether you like it or not, do it, fill it in, put some plugs in immediately.

Ms. SULLENBERGER. Absolutely.

Mr. TAUZIN. Get rid of that equipment, undo everything you have done; even if it costs you twice as much now to do it, undo it and redo it again if you win later on; just do it. We are in control here, we are telling you do it whether you agree with us or not. You are guilty until you prove yourself innocent. And in the meantime you have got to put it all back like it was before you started, right?

Ms. SULLENBERGER. That is correct.

Mr. TAUZIN. That is called arrogance.

Thank you, ma'am.

Mr. SHADEGG. It is called an abuse by the Federal Government.

The chairman of the Endangered Species Act Task Force is with us, and I'll call upon him for any questions.

Mr. Pombo.

Mr. POMBO. Thank you, Mr. Chairman. I appreciate you holding this hearing. I hope that after the 104th Congress we never have to do it again.

As the chairman of the Endangered Species Act Task Force, I have had the opportunity to hear a number of stories, and not too long ago one of the statements that was made in the press was that these were a bunch of cockamamie stories that were all false or exaggerated or made up, and I would like to ask those of you that have testified about your personal stories right now, are they cockamamie stories that are false, exaggerated, or made up?

Ms. FATTIG. No, sir.

Mr. CONE. No.

Mr. POMBO. Mr. Cone, you talked about your inheritance tax in your testimony, and you have made mention of it. You have made mention of what has happened to your management practices that had been in your family for generations and the way that you conducted your operation. What would have happened if Fish and Wildlife Service had come to you and said, "You have a rare or endangered species that is on your property. You seem to be managing it quite well. You have created habitat for a species that is not common in this area. We would like to enter into some kind of a management agreement with you. We would like you to continue doing what you are doing. We would like you to create the best habitat possible for the species that exist on your property, and in exchange for that we will waive your inheritance tax as it goes from generation to generation as long as you continue to manage that property in the way that you are right now"? What would your response have been to that versus what happened?

Mr. CONE. Actually, my first offer to the Government was something similar to that, and I didn't expect it, and I did it somewhat jokingly, but I made that offer to the Government. Of course that was flatly refused. I went the other way. I told the Government, talking about inheritance tax and its effect, I said, "I will give the

Fish and Wildlife Service 1,100 acres if I can have an escape from inheritance tax on the remaining land," because one of the biggest destructors of habitat on private ownership is the massive clear-cutting that has to go on to pay inheritance taxes, if you want to talk about massive—which is way off the subject.

Mr. POMBO. No, it is not off the subject. That is exactly what we are talking about. We are talking about the ability to use incentives to create habitat and foster the conservation ethic that exists in all Americans to maintain habitat versus the command and control mentality that is occurring today.

Mr. CONE. Certainly more effective.

Mr. POMBO. Do you think the wildlife would have been any better off?

Mr. CONE. There is no doubt about it.

Mr. POMBO. Do you think that if the intent really is to save endangered species, as they claim, if that is really what they want to do, wouldn't it be better to enter into some type of cooperative agreement than to do what they have done now?

Mr. CONE. I would think so certainly.

Mr. POMBO. Or do you think maybe that the incentive here is to control property?

Mr. CONE. It seems that way to me.

Mr. POMBO. Mr. Welsh, you talked about the Rails to Trails, and I know a little bit about this from personal experience. Just so I get this straight, when the railroads throughout the West were granted rights-of-way, a lot of that was on private property, a lot of it was on Government property, but there was also a lot of it that went across private property. They were granted rights-of-way across the property, and in many instances they were given every odd section of land as an incentive to create the railroad. But the right-of-way itself had no subsurface rights, it was nothing more than the right to pass over a particular area of land, and at the time, as the grant deeds state, at the time that they abandoned the railroad right-of-way, the property was to revert to the adjoining landowners, and that was the agreement that we had for 150 years throughout the West. If a city or county wanted the property for a road to replace what at that time may have been the only road into a city, they had one year from the time that they abandoned it to claim it for a road, and they could put in a road to maintain the transportation corridor, but at any time that it went beyond that they lost the right to do that and the land would revert to the adjoining property owners, and Rails to Trails came in and changed all that.

You use stories in here about cities paying $6.5 million and several millions for the right-of-way to this. Do they think that they bought subsurface rights?

Mr. WELSH. In most instances they know they didn't buy the subsurface rights, all they bought was basically what the railroad had, a surface easement.

Your explanation on the right-of-way issue does not really just germane really just to the West. The Government grants rights germane from Illinois westwards. There are over 50 Government grant rights-of-way that were issued after 1850, but the majority of the rights-of-way in the United States are not Government

grant, even in the West, like the Milwaukee Road, which was the last major railroad, was strictly all done by private, and they got easements or bought the rights-of-way.

You are correct in your discussion of abandonment of Federal granted rights-of-way, but that is really a small percentage of the railroads that are in the West or in the United States really. You are correct, the railroads got patented fee title to the checkerboard lands of the odd sections on both sides of the rights-of-way, but they did not get the title to the land that the right-of-way was on, which was usually 100 to 200 feet, and the court cases and a 1922 Federal law basically discuss how to divvy up that, and up until the Rails to Trails Act of 1983 that always went back to the abutting property owners.

Mr. POMBO. I went back and read a lot of those old grant deeds, and the way some of them were written were, "200 feet northwest from the big rock, to 300 feet north from the big rock to the little tree," and the right-of-way was 200 feet, 100 feet on either side of the track.

In my lifetime the railroads that run through my part of the country have moved 50, 75, feet one way or the other because of washouts or trying to straighten the track so that they could go faster and like that. Out in my part of the country that might not be a big difference. When you are going through the middle of San Francisco, 75 feet one way or another could be the difference in a few hundred million dollars as to what they own.

Under what authority could Congress step in and negate private contracts and negate the reversionary rights that property owners have?

Mr. WELSH. They did it under the guise and the stretching of the Commerce Clause of the Constitution. As you are probably well aware, over the 220 years of our Constitution, the U.S. Supreme Court and Congress have stretched the Commerce Clause to the very tight—to include almost everything.

Mr. POMBO. So recreational trail now fits within the Interstate Commerce Clause?

Mr. WELSH. The way they did it, Representative Pombo, was to say that the railroads really aren't going to abandon, the ICC—Interstate Commerce Commission—is still going to retain jurisdiction over this railroad because they are really not going to abandon, they are going to let them remove the rails and the ties and track all the money out of them and then go out and have the railroads sell this land that they really don't own, but under the guise of stretching the Commerce Clause saying that, well, we still have jurisdiction, the ICC still has jurisdiction, so the land really can't revert, so we are going to preempt all of 50 States' property law reversion, and the Supreme Court went along with that, Representative Pombo, in the *Preseault* case in 1990.

We spent copious amounts of money on that case, and lots of people did, and the Supreme Court said it is constitutional because we have the U.S. Claims Court—it is now called the U.S. Court of Federal Claims—to pay compensation for the mistakes that Congress makes, and basically when Congress passed this bill in 1983 they put a section in there, section 101 of Public Law 98–11, that said we are only appropriating money for trails that are explicitly enu-

merated in this bill, and of course that was the National Trails Act amendment of 1983, and there was, I don't know, 16 or 17 trails enumerated in the bill, and they funded those, and they put this little section in there, and we brought that to the attention of the U.S. Supreme Court, and they said, well, Congress didn't explicitly exclude the use of the claims court so we are making the position that if it is not explicitly excluded they meant to use it, and that is where we are today. We still haven't got claim one through the claims court though five years later.

Mr. POMBO. Thank you.

Mr. SHADEGG. Mrs. Cubin.

Mrs. CUBIN. Thank you, Mr. Chairman.

In my office—I'm from Wyoming—in my office I think we spend 80 to 90 percent of our time and our staff time trying to help constituents deal with problems with the BLM, the Forest Service, the Park Service, the Corps of Engineers, you name it, and in doing this obviously we have learned a lot. We have had some successes with particular instances, but it is ever so clear we have to change policy.

Just this last weekend while I was at home, a rancher came up to me and showed me a letter he had received from the Forest Service, and the letter said, well now, we are willing to work with you, but if you bring Representative Cubin in on this, then it is going to take you a lot longer and it is going to be a lot more complicated, and we think we can just work this out without her being involved. I mean it was very much a veiled threat, and so, believe me, we up here understand the things that you are faced with.

In my opinion, as we look at these Acts that we will be reauthorizing, the Endangered Species Act, the Wetlands Act, and so on, there are two ways we can do it. We can try to rein in some of the regulations on the existing Act, we can try to reform that somehow, or we can pitch that whole thing out and start again with a different basis for the Act.

I think right now the basis for the ESA, for example, it is punitive based, it violates people's property rights, and people resent the law, and therefore they are not going to go any farther than they absolutely are forced to by law to achieve the results. Or we can try to establish some kind of incentive-based, voluntary law that doesn't violate anyone's property rights.

I mean if the policymakers determine that it is in the public interest to take some land, then the public ought to pay for that and not leave the load on one person or a small group of people.

The reason I'm having this little discussion is, I wonder if you thought—and this is to any of you—have you thought in those kinds of terms, specifics for a new paradigm, if you will, in looking at endangered species or wetlands, or have you just looked at it in terms of trying to rein in the rules and regulations that we have? The reason I don't think that will work is because the rules and regulations that we have, I think, far overreach what the Act intended, and so if we slap their hands here, then they are pretty creative, they will just move some place else. So I would like a nonregulatory type Act but where it might even create a profit for people to help.

There is the black-footed ferret which is an endangered species in Wyoming, and the black-footed ferret is good for two things, and that is eating prairie dogs and making more little black-footed ferrets, not to mention the aesthetics of enjoying the animal, and yet they can't move them, and if you were to put them in a prairie dog town in Wyoming, well, you couldn't use the land any more, but really they would thrive in areas like that.

Just briefly, do any of you have any ideas on a program coming from a different foundation?

Mr. CONE. I have thought about it a lot, and I'm afraid it is kind of a control issue: Who is going to control the land? I think if you get rid of the regulatory environment and create something where the Government says it will buy land to protect, it can't afford to buy all the land out there that is critical habitat, so it is a system that would certainly be fair, but it is certainly going to make it very difficult. The environmentalists will just scream bloody murder because there is no way our Government can afford this 1,000 acres here and that 5,000 acres and that 4,000,000 acres here, and western timberland—I think some of my timber is worth $2,000 or $3,000 an acre; they have got some of their trees that are worth $20,000 to $30,000 apiece. So the Government can't afford to buy all the land that the environmentalists are trying to protect and control. That is the issue.

Mrs. CUBIN. Well, I don't think that that should be the goal. I think the goal should be that the Federal Government maybe could come in and help teach the landowner how to do it rather than having them come in and say if you don't do this we are going to—you know, we are going to beat you over the head. My opinion is, the people that I work with every day, they are more than willing to try to preserve the species.

You know, there are some species that are just going to become extinct because we are not going to beat Mother Nature and in nature things become extinct. However, when man contributes to that extinction, then those kinds of things we can fix.

But if they came on the land to help educate the owner on how to help preserve the species and that kind of thing—I mean I just know there has to be a less confrontational way, and until we find that way there will not be a solution to this problem.

Mr. SHADEGG. Thank you very much.

I would just caution members, we have slipped into a pattern of going over our time. We are only in panel two and we have three more panels, so if we could all try to hang a little tighter to the time line, I'm prepared to stay here as long as necessary, but others may have schedules that create conflicts.

Mr. Metcalf.

Mr. METCALF. Thank you, Mr. Chairman, and I want to welcome Bill Pickell and Richard Welsh from Washington State. We are pleased to have you here. I have known both of you for some years and worked with Bill on many different issues over that time.

I just wanted to ask if the peregrine falcon was the thing that got you involved in the property rights fight, or are there other issues? How did you get involved in this? I have known you on other kinds of issues but not so much on this one.

Mr. PICKELL. Well, you know, most people don't get involved until it affects their pocketbook. When it does you get very livid and you take off, and my members are being abused as business people. We really see a tremendous problem with the Government land management and Government wildlife management. We see it as a failure, and we see the true answer is to encourage the private sector, and private technology. I heard somebody say the other day you protect private property rights and you are going to protect the endangered species, and I think that is so true.

Our Federal Forests, as you know, Jack, are a disaster right now waiting for the ultimate fire which is going to wipe them out. Disease is rampant, and if the people back here could only walk through some of these areas and see them, environmentalists think that is back to nature, but it is just totally criminal.

Mr. METCALF. OK. I just want a quick comment. You were talking about the Government buying the land to do these things. Governments have a record of not managing lands very well. They can't afford it. Do we really want the Federal Government to own more and more and more lands that they can't manage very well? I think we ought to think very seriously before that, and I think incentives to the landowners is the proper course.

I'll just end with—under time, by the way—with this question to each of you, if you know of any places where private property rights of people on reservations, the nontribal members on simple land, where their rights are being violated. This is a serious issue in my district, and I just want to know how widespread it is. If any of you could kind of comment or know something, I'd appreciate it.

Mr. PICKELL. Well, of course, I'm in your district. I know that is a real problem with the Quinnault Indian Reservation. Tremendous. We have a lot of fee simple land, and the Indians are just tough to deal with. You know the problems there.

Mr. METCALF. Thank you, Mr. Chairman.

Mr. SHADEGG. Mrs. Smith.

Mrs. LINDA SMITH. Thank you, Mr. Chairman.

I'll just make this fairly brief, and I am not on this committee, I'm on the full committee, but am particularly interested in private property rights. I want to make a comment. Thank you, I guess, because often that doesn't happen, to Mr. Pickell and Mr. Welsh. They are leaders in our State in the private property I'll say movement, and we have passed an initiative in our State thanks to these gentlemen and the leadership especially of Mr. Pickell. But we find that even in Washington that initiative isn't going to do it all, and I was talking to Dick and realizing that there are some State laws that we could deal with on the Rails to Trails, and one way we could stop it is to put something in, I think—and tell me if I'm right, both of you, or I'm wrong. Could the States just declare, the legislature, we are not going to use ISTEA money or any other money at all if it deals with a taking otherwise in the area of Rails to Trails?

That bothers me, because wasn't it supposed to be just rails? I mean they have converted this. It was supposed to be to preserve rails. But couldn't we just stop, like we could pass something at the State level and say unless the private property rights are addressed we won't use any money on it?

Mr. WELSH. Well, in fact, Representative Smith, I just read in the Seattle paper yesterday, which was faxed to me last night, that Representative Karen Smith, an old friend of yours, who is chairman of the House Transportation Committee in Washington, she actually did exactly that in the transportation bill that just passed, and the governor is being asked to veto—line item veto that because she excluded the ISTEA money from trail projects. She wanted it to be used to preserve railroads.

There are a few railroads in the State that they wanted that could use State money to actually keep it as a railroad, and she excluded the use for that, and I have to admit, I was not privy to that when it was going through the legislature even though I was down there most of the time.

Mrs. LINDA SMITH. I don't think she wanted you to know. I mean it is OK, but I don't think you tell all the time, and I think in the last few days of the negotiations a lot of things happen.

Mr. WELSH. You can't change the Federal law that says you can't preempt State property rights reversion, but obviously her counsel had informed her that a State could make directions on how ISTEA money is spent, because the intent of ISTEA is to distribute it to the States and basically allow them to do what they want with it under certain guidelines of Title XXIII, and I was quite impressed with what came off on that anyway.

Mrs. LINDA SMITH. Thank you.

I guess the point I would like to make is that this is probably a battle that has to be fought from the city clear to the Federal level, and I look at some of your suggestions especially on amending to try to get back to where the original intent of the law is I say adhered to, otherwise maintaining trails. It looks to me like the original intent of the law was to make sure that we maintain these short-line rail areas. It didn't look to me like they ever intended it, unless I missed something, to be a way of taking private property rights away from people by converting to trail.

Was there anything that anybody found in the original law that said it was supposed to be so people could build rails—trails versus trails?

Mr. WELSH. The original intent—and I mean it is a clear intent in Public Law 98–11 because it is right in the Congressional Record and the committee hearing that they wanted to preempt the State property law reversion. They didn't want the railroads to, when they abandoned, have all the land go back to the property owners, because then it would be broken up and it would be almost impossible to then build it as a trail. They used the guise, and even the environmental movement and the trail movement in their publications in the mid-eighties admitted this was just a scam; "a fiction" was the term used by the Massachusetts Trail Association, I remember, in their magazine; "to slip it through Congress" was their terminology. Their intent all the time was to build trails.

I don't think the original intent in 1983 was to subvert the gas tax money into killing off potential short-line railroads and overinflating the price of these things and making railroads more millionaires than they are by allowing them to sell land they don't own, but, as in lots of things that happen in Congress and State legislatures, these things just turn themselves around perversely,

and that is exactly what has happened with this Rails to Trails law.

Mrs. LINDA SMITH. So you are saying, I think, in reading your testimony—and I read it before—but you are saying that we are going to have to amend the original law but we could possibly stop—you didn't say this—we could stop some of the application by getting the State legislatures to be honest to the intent of the original law.

Mr. WELSH. Yes, and they could do that, there is no reason why they couldn't do it, and of course the Congress can go along with our suggestions in the House transportation bill and make the trail proponent or trail user, depending on how you look at it, pay the just compensation when they acquire these trails rather than force the property owners to go en masse to Washington, D.C., to the Federal Claims Court, which seems to be an impossible thing.

Mrs. LINDA SMITH. Thank you. I think we are out of time, but thank you, Mr. Welsh.

Mr. SHADEGG. Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

I want to say how really grateful I am to meet and hear Lorraine Bucklin. I had a case involving a man by the name of John Posguy in Pennsylvania, and I have heard about your good work, and your testimony on the Brace case is very compelling. It hurts, and it just absolutely mandates to us that we must do something.

The Federal district judges are no longer, on their own, looking at the constitutional issues, they will look only at the way a case is framed and the question, the very narrow question that is being asked, and when Federal judges do that, as they did in the Posguy case and the Brace case, we are going to get the distorted decisions and responses that we have, and until Federal judges again uphold the public trust and automatically consider constitutional ramifications this will continue to be a distorted process.

You know, Lorraine, I started out several months ago mentioning that maybe we ought to put term limits on Federal judges because they lose touch and they lose touch with the full ramifications of the law, and they are accountable to no one, and I kind of started joking about that. I'm not joking any more, because as we realize what Federal judges have done to people like the Braces and people like the Posguys and across this land, it does put a very distinct responsibility back on us to make the law so clear that they cannot distort the constitutional intent.

So I thank all of you for being here, but it is a special privilege to meet you and see you.

Mr. Cone, you know, several years ago when the northern spotted owl began affecting the Pacific Northwest and the U.S. lumber prices, did you have any idea that your timberland over 3,000 miles away would be affected by a similar species?

Mr. CONE. I kind of laughed and said my timber sure is getting more valuable. I never thought the Government could do it to me also. I thought they were doing it to themselves on the National Forest land. I got a valuable education and an expensive one.

Mrs. CHENOWETH. And I think we are all waiting with baited breath for the Sweet Home decision to come out.

Mr. CONE. Yes.

Mrs. CHENOWETH. Do you think that there would be more or less habitat for the red cockaded woodpecker on your land if the Endangered Species Act had never become law?

Mr. CONE. There would be a lot more.

Mrs. CHENOWETH. A lot more of the red cockaded woodpecker.

Mr. CONE. Habitat.

Mrs. CHENOWETH. Habitat. Yes, very interesting.

Mr. Cone, I always found it so strange that the red cockaded woodpecker can be altering the flight patterns above its habitats. I mean a bird that beats its head all day long on a log for food is going to be upset by a plane. You know, that is not at all reasonable, but, you know, that is what we have to deal with now.

I want to ask an opinion from each and every one of you, and I'm not sure Congress normally asks this question, but I'm going to be very frank and state that lots of time back here we are kind of in a dilemma, what kind of bill, whether it is Private Property Rights Act or an Endangered Species Act, that we might put forward. We are always constrained because we are always being told, well, the President is not going to sign that kind of bill. Well, the President isn't going to sign the kind of bill that is going to move us much further than where we are today.

I want your advice, starting with Mr. Cone: How far do you want us to go?

Mr. CONE. I think I see two problems. I would like to see just the Endangered Species Act disappear completely, just gone, personally. I think the endangered species would be better off.

At the same time, I realize Congress has a serious problem in that the thought of protecting endangered species has gotten like motherhood and apple pie, and we are now an urban society rather than a rural society, and you go on the street and ask anyone, "What do you think of the Endangered Species Act?" and they will say, "Oh, we have got to protect these furry little animals." So I see it as a political football that is going to scare you to death. The best thing would be for the endangered species if the Act disappeared completely.

I don't know if that answers your question.

Mrs. CHENOWETH. Thank you.

Mrs. Fattig.

Ms. FATTIG. I just urge you and Congress to think about people and communities at least in equal manner with other species. I see us protecting even subspecies at the disadvantage of what is happening to children and families and communities, and I really wish—nobody that I know wants to hurt animals, we love the land, we love the animals, we enjoy the recreation, but if it comes down to a choice between a fairy shrimp that you can't see and farmland in the San Joaquin Valley that feeds millions of people, we have to use common sense, and that is what I beg. I beg that we use common sense and put people into the equation too.

Mrs. CHENOWETH. Mr. Chairman, I do see my time is up. I would like to ask permission to hear from the other four panelists.

Mr. SHADEGG. That would be fine to allow each of them to answer your question, sure.

Mrs. CHENOWETH. Thank you.

Mr. PICKELL. Ma'am, I agree with you wholeheartedly. I believe the Act should be gutted, in my heart. However, the political realities that face our Nation say that is not going to happen. You are going to have to get it through the Senate. You are going to have to get 60 votes. It won't happen.

I would like to see a very conservative bill with a fairly conservative Senate bill, and I would like to see something done this session, but it must be people friendly; it must be wildlife friendly, because this bill certainly isn't. And we have 20 years of history that has shown that the Endangered Species Act is a total abject failure financially and for the wildlife.

Mrs. CHENOWETH. Thank you.

Lorraine.

Ms. BUCKLIN. I want to say that I concur with you completely, and on behalf of the organization and Mr. Brace we thank you.

We believe as an organization that the Government has to be accountable, just as private landowners are. If you want it, you must purchase it. You cannot confiscate it through regulatory means.

Mrs. CHENOWETH. Richard.

Mr. WELSH. My only caveat is that, as I've seen with the Rails to Trails, you have got a Government bureaucracy that writes the rules and then interprets the rules any way they want. Whether you are here in 10 years or 20 years, or any of the Congress people here, who is the President is going to make the difference. If you write an ambiguous law with no oversight, when we are all dead and buried it is all going to come back again maybe. So what you do today is not what I'm interested in but what my children and grandchildren are going to have to put up with.

I think there is just not enough oversight in the regulations, whether it is the Endangered Species Act, or Clean Water, or Rails to Trails, or whatever it is. I think Congress, because this is so enormous, abdicates their power and gives it to the bureaucracy, and it just hasn't worked.

Mrs. CHENOWETH. I am so thrilled to hear you say that. I think it is something we must take back, the power that we abdicated.

Sherry.

Ms. SULLENBERGER. I'll be short. I would like to see fairness, I would like to see the common sense approach, I would like to see the middle of the road, and I would like to see regulator substituted with educators.

Mrs. CHENOWETH. Thank you so much.

Thank you, Mr. Chairman.

Mr. SHADEGG. Let me just make a quick comment on that. What I would like to see is middle of the road, but somehow whenever someone argues for middle of the road it gets characterized as extreme.

We have had a request for a second round of questioning because there appears to be a great deal of expertise on this panel. I have agreed to that, so we will do that. I'm going to waive any questions on the second round and call on Mr. Pombo.

Mr. POMBO. Thank you.

Mr. Pickell, I would like you to clarify something that was in your testimony. On your map you said that there were about 500

owl circles but that there were only 200 pairs that were identified. Could you explain that to me?

Mr. PICKELL. Wherever there is an owl pair that has had a nest, a circle is put around that. Now owls can leave that area and move across the street or into the side of the valley, yet they still maintain that circle around that nest for a period of time, so that area is still impacted whether an owl is there or not.

Mr. POMBO. Could you also explain for me why the circles for the most part are outside of the National Park areas?

Mr. PICKELL. At that particular time there was very little inventory done in the National Parks. Since that point in time the number of circles in the Olympic National Park, in particular, has probably tripled.

Mr. POMBO. Most of the land that the circles are on from this map that you have here are in National Forest areas. What about the owls that are on the private land? Has that been documented since this map was done?

Mr. PICKELL. Yes, most of those owls are still in those areas, and of course the Olympic Peninsula you will see has a tremendous amount of private land impacted by them.

Mr. POMBO. And if you have an owl circle you can't do anything within that area.

Mr. PICKELL. No. On the Olympic Peninsula the owl circles are 2.8 miles in radius, 9,960 some acres.

Mr. POMBO. For each pair of owls.

Mr. PICKELL. For each pair of owls. However, the law says you must maintain 40 percent of the habitat within that area. So in the Olympic Peninsula you have to maintain a minimum of 3,700 acres. If somebody else has logged in that area and you still own your property, you are stuck.

Mr. POMBO. So that is almost 4,000 acres for a nesting pair of owls.

Mr. PICKELL. That is correct.

Mr. POMBO. In this area that you show on the map, you show National Park areas and you show Forest Service land. Are there other areas such as wilderness areas or other areas that are protected by some type of a conservation easement?

Mr. PICKELL. That may be true, yes. Some of these areas do show a wilderness area, particularly that North Cascade National Park. Just below that is the Alpine Wilderness Area. And I might point out that within this National Forest, these hash-marked areas, a tremendous amount of private land in there, particularly the checkerboard ownership of the large landowners.

Mr. POMBO. You have in the State of Washington about 11.5 million acres of federally-owned land, and about 5 million of that already has some type of a permanent conservation easement. So you have just in federally-owned land, you have about 5 million acres that is permanently set aside with some type of a conservation easement such as a wilderness area, National Park, or some wildlife refuge, some other type of area like that.

Mr. PICKELL. Five point one million acres set aside and another 600,000 set aside under administrative set-asides. That is bigger than the State of Massachusetts.

Mr. POMBO. Do they tend to concentrate on the areas that are already set aside with the permanent conservation easement as a method of trying to recover the endangered species?

Mr. PICKELL. Not necessarily. Specifically with the owl, they are working in the area where the owl is heavily populated, and they will try to purchase lands in those areas if possible. Otherwise—literally—you can't do anything with your land as long as you are in an owl circle, so there is no compensation for that.

Mr. POMBO. Mr. Cone, in North Carolina you have about 2 million acres in contrast, about 2 million acres of federally-owned land, with about a million acres of that set aside with a permanent conservation easement on it. Are you familiar with where that is, the million acres that is set aside already?

Mr. CONE. Most of it, I believe, is in the western part of the State up in the Appalachians. There is a Croatan National Forest in the east there, and there is Bladen Lake State Forest, but most of the Federal land in North Carolina is in the Appalachian, which is not woodpecker habitat of course.

Mr. POMBO. Is there State-owned land that is being used as some type——

Mr. CONE. Woodpecker?

Mr. POMBO. Yes.

Mr. CONE. Bladen Lake State Forest has some woodpeckers, Holly Game Shelter has some woodpeckers, and Fort Bragg has a lot of woodpeckers which they are having problems with, the military.

Mr. POMBO. You say they are having problem with it? What problems are they having?

Mr. CONE. Well, if you remember, the bird needs a lot of fire and old trees. In the firing ranges where they have been dropping artillery shells for years it has created a lot of fire and open woods. The artillery shells and the woodpeckers were getting along fine, but the Fish and Wildlife Service shut down the ranges—shut down the firing ranges so they couldn't shoot guns from tanks and artillery any longer to protect the endangered species that were in there.

Mr. POMBO. Won't that destroy the habitat?

Mr. CONE. Over 30 years the mid-story will come back if they don't—they have straightened that out and started shooting again, but, again, it shows the kind of—Fort Bragg is struggling under horrible problems of military readiness because of the red cockaded woodpecker.

This is a taxpayer problem too, all of our problem.

Mr. SHADEGG. Mrs. Chenoweth, do you have anything further?

Mrs. CHENOWETH. Mr. Cone, your statement just now is really alarming, especially in view of the fact that Mr. O'Grady—is it lieutenant or captain——

Mr. CONE. Captain O'Grady.

Mrs. CHENOWETH. Captain—was able to save his own life because of his good training and his state of readiness, and he was well prepared, and the whole country rejoiced because he came home safe, and yet in your State as well as my State our military training capabilities are being altered for frivolous reasons like this, and I think it is about time the United States of America reestablish their priorities, and our first priority to protect us from for-

eign invasion and to train our young men and women before we ever ask them to lay down their life, liberty, and future for us on foreign soils is to have them well trained. I'm very concerned about this, and I will be pushing for hearings on reestablishment of our priorities. We all love a wonderful environment, but our first priority is military readiness and a good defense system.

Mr. CONE. As a Vietnam veteran, thank you very much.

Mrs. CHENOWETH. Thank you.

Mr. Pickell, you mentioned that actually these spotted owls have about a 4,000 acre area per pair of owls.

Mr. PICKELL. That is correct. You have seen the T-shirt: "Two teenagers can do it in the back seat of a Chevy. Why do owls need 4,000 acres?"

Mrs. CHENOWETH. Yes. I just wonder how they find each other in 4,000 acres.

Mr. PICKELL. If you go back to the original biology, most biologists will say they need a square mile, which is 640 acres. The rest of it is emotion and whatever else to come up with this. They go by foraging area. Technically they really don't need that much.

Mrs. CHENOWETH. Given a choice between old growth, Doug fir, and a viable prey base where there is a lot of open meadows and a lot of little critters, what will the owl choose first to live in?

Mr. PICKELL. The owl likes a multistoried stand. He likes a little bit of old growth, but he does very, very well in managed forests. In fact, one of my members will talk to you a little later. He lives in an area where the largest concentration of owls are, and they have been selective harvesting for 100 years there. That is where the owls are, and it is mostly second and third growth type timber.

Mrs. CHENOWETH. Thank you.

Thank you, Mr. Chairman.

Mr. SHADEGG. Once again, I want to thank each of you for coming here and for sharing with us your information and your experiences.

Let me call the next panel, and I apologize if I mispronounce any of these names. Mr. Joseph Deray—is that how you pronounce it?

Mr. DE RAISMES. "De-Rem."

Mr. SHADEGG. "De-Rem." Thank you.

Reverend Mark Johnston, David Allen Smith, Sally Ormsby, and Mr. Hank Graddy.

Let me express my sincere appreciation for your coming here and being with us today and for sharing your testimony, for preparing it, and for being willing to step forward and to give it to us. We do genuinely appreciate it. We are glad you took the time to be here. This is an important issue, and we appreciate your willingness to participate in the hearing and be a part of the process.

Again, let me caution you, as I will caution members of the committee, we do have still two more panels, so we will try—I don't like to enforce the red light rule too strictly, so I won't gavel anybody down either on the witness table or here on the task force. Just do your best to try to hold yourselves or conclude an answer within the time as best you can.

Again, thank you, and I guess we may begin.

Mr. DE RAISMES. I'll try it again—"De-Rem."

Mr. SHADEGG. "De-Rem."

OK, Mr. de Raismes. Thank you for being here.

Mr. DE RAISMES. Unfortunately, the member from Louisiana is not here or I'm sure he could do it.

Mr. SHADEGG. Yes, I'm sure he could.

STATEMENT OF JOSEPH DE RAISMES, BOULDER, COLORADO

Mr. DE RAISMES. Mr. Chairman, members of the committee, and ladies and gentlemen, my name is Joseph de Raismes, and I am the president-elect of the National Institute of Municipal Law Officers, which is a nonpartisan, nonprofit organization consisting of over 1,400 local governments and local government attorneys.

On April 8, 1995, the 18-member NIMLO board of directors unanimously adopted a resolution, which I have supplied to the committee, which opposes pending Federal takings legislation currently captioned as H.R. 9 and 925. I recognize that I'm swimming against the tide this morning, but my issue is not defense of Federal regulation or overregulation but opposition to takings legislation. As has already been stated, takings legislation is simply not a practical solution to the problem of Federal overregulation, and I'm here to explain the reason why city and county attorneys have a great concern about that proposed solution. I have nine short points to make.

As historian Sam Bass Warner put it, the genius and the downfall of American land law lies in its identification of land as a civil liberty instead of as a social resource. This concept is embedded in the popular phrase which we have heard this morning, "You can't tell me what to do with my land," which is ultimately grounded in the Fifth Amendment to the United States Constitution. As such, it is the law of the land, and we pay allegiance to that concept.

But today this committee is considering bills that would go far beyond the Fifth Amendment and enshrine an extreme form of protection of private property that truly threatens the common good of our country and is far beyond the resources of the Federal Government.

Local governments believe strongly that private property owners need to be treated fairly and should be eligible for just compensation for takings of their properties, and they are, according to the guarantees of the Fifth Amendment, but we also believe in the obligation of all citizens to protect the common good, including the environment, public health, and public safety. That is why we oppose the takings bills before you. They will inappropriately diminish the ability of Federal, State, and ultimately local governments to protect environmental quality and habitats. Many will suffer to vindicate the property interests of a few, and our precious natural heritage will be further squandered.

While local governments are aware that the bills only deal directly with Federal Government programs, they set an extremely dangerous precedent in inserting the Congress in the process of defining the coverage of the Fifth Amendment which applies to State and local governments as well.

The recent seminal decision of the United States Supreme Court in *Dolan v. City of Tigard* has already announced a new activist judicial role in enforcing the Fifth Amendment which will have to be elaborated through case law developments in the State and Fed-

eral courts, and the last thing local governments or, for that matter, the State and Federal Governments need is a second explosion of takings litigation based upon a new and amorphous Federal standard such as that set forth in the bills before you.

I don't have time today to describe the *Dolan* case and its aftermath, but I have attached a legal memorandum which describes the decision and its implications and the reported case law in the year since that decision was handed down. I think you will have to agree that those effects are quite dramatic, which we will be dealing with at all levels of government for some time to come.

The bills are simply not a viable solution to the problem of Federal overregulation, a problem of which local governments are often complained in the past. Indeed, by focusing on private property, the bills ignore the problems of State and local governments entirely, and if the Federal Government is overregulating, the principled and straightforward response is to cut back on the statutory responsibility that is being abused, not to layer on another dysfunctional layer of regulation with unknown costs and consequences. That is what these bills do. They are an open invitation to litigation and, as such, are a poor substitute for a careful adjustment of legislative policy to decrease regulation where the burden on private property outweighs the benefit to the public interest. And with the current Federal budget deficits, we simply cannot afford to enact an open-ended entitlement program for property owners.

The City of Boulder has had significant issues with the Federal Government, especially the Forest Service, concerning water pipelines on land granted to us by the Federal Government and water rights granted to us by the Federal Government in the early part of this century, but the solution there is reforms to the Endangered Species Act and to the FLPMA legislation, not takings bills and the open-ended commitment of Federal moneys that they represent.

I'm not going to have time to describe the details of the legislation, but it is internally contradictory. The numerical limits, 20 percent in the House bill, 33 and a third percent in the Senate bill, are going to be a big problem. Expect completely arbitrary results given the state-of-the-art in the appraisal business, and expect extensive litigation, and extensive attorneys' fees, which are specifically granted by the statute.

I suggest that takings legislation is simply not the solution to the problem, and I'm not here to deny that there is a problem, I'm simply here to suggest that this is the wrong course to take.

Thank you very much for your time. I appreciate the committee's serious attention to obviously somewhat critical remarks of the direction the committee is taking.

[The statement of Mr. de Raismes may be found at end of hearing.]

Mr. SHADEGG. Thank you very much.

Reverend Mark Johnston.

STATEMENT OF REVEREND MARK JOHNSTON, NAUVOO, ALABAMA

Reverend JOHNSTON. Mr. Shadegg, I really appreciate the opportunity to be here.

I know that, Mr. Chairman, you are a freshman and you are still learning. I'm really glad I'm here, but I think that you need to listen to the little people who don't own thousands of acres like Mr. Pickell and Mr. Cone, but whose property rights are being abused. You need to know the little people down in Alabama. Come down there and listen to them. They would make you cry.

I'm the Reverend Mark Johnston, 44 years old and married with three teenage sons. I'm a priest in the Episcopal Church, ordained 15 years ago yesterday. I'm a carpenter by trade with over 20 years of experience. My boys and I love to hunt and fish and camp. I'm a native of Alabama. I operate a camp and conference center for the Episcopal Diocese of Alabama named Camp McDowell. The camp is 49 years old. I'm the third director of the camp, and I have been there for four and a half years.

At the camp we have 650 acres of the beautiful hardwoods, forests, pastures, canyons, creeks, and waterfalls. I have 53 employees working at the camp, and we are a year-round, seven-day-a-week operation. We are located in Winston County known as the Free State of Winston, the only traditional Republican county in the State. When Alabama seceded from the Union we tried to secede from Alabama. The closest town is Nauvoo, and if you are not familiar with Nauvoo, I'm sure you are familiar with our sister city, Slick Lizzard. You have heard of that, haven't you?

Anyway, I'm here to tell you what rural Alabama thinks of private property rights and the Federal Government. I know and you know that I live in the heart of conservative, patriotic America. I live and work with these folks every day. Timber cutters, truck drivers, garment workers, and small business owners of rural Alabama live around me. I know and love them; they know, love, and trust me. Several of my employees who live in the area told me some things to tell you, but first let me tell you the camp's general problem. It looks like this [indicating plastic bag]. This is the manganese. The black on there that I got by rubbing on the bottom of a rock. I'll shake this up first. This is the iron, OK? You watch. It will settle out in a minute, and you can see how the iron comes out and smothers all the critters that used to live in the stream. There is no life in there any more.

You can see it on the bottom of some of the small streams that cross our property. It is iron and manganese that exceeds maximum containment levels. It is there because of irresponsible mining practices that occurred about seven years ago. Central Mining, Incorporated, mined private property adjoining ours. They did not follow State and Federal regulations. They defaced and devalued my private property. I have an environment education program at Camp McDowell. Because of Central Mining I have only one small stream that has enough life in it so I can do a stream ecology class.

At first reluctantly, for the past three and a half years I have been trying to get existing laws and regulations enforced so that my private property rights won't be harmed by my neighbors. In the last three and a half years I have been lied to overtly, threatened overtly and physically, put off and entangled in an incredible and legal bureaucratic web that has denied me my basic property rights.

If existing laws and regulations had been followed the Church, several State and Federal agencies, and the miners would have more money and better land and waters. Lawyers are the only ones that came out ahead on this one. Now I'm dealing with a bonding company because, of course, the mining company has gone bankrupt. My neighbors tell me that they don't need fewer regulations to protect them, they need existing regulations enforced because my problem at Camp McDowell is only the tip of the iceberg. It is the middle class and the poor landowners who are getting hurt. Their private property rights are being abused.

Certainly there are good miners, good timber cutters, responsible farmers, and responsible manufacturers in Alabama. Most are responsible, but the irresponsible, greedy ones are severely damaging private property and the water that flows through it. I can show you dozens of cases. I don't know of a single case where Federal regulations have devalued or harmed property rights in my area.

It is interesting to note that the leadership in Alabama promoting the bills are on public record also unable to identify any cases where private property has been devalued by Federal regulations. I'm talking about Richard Lindsey, a member of the Alabama State Legislature and chairman of the House Agriculture, Natural Resources, and Forestry Commission; John Dorrill, the president of Alpha Insurance; Bill Moody and his son Mike who directs Stewards of Family Farms, Ranches, and Forests; and I would like for the material documenting their inability to name any cases made a part of the Congressional Record.

On the contrary, I know of an instance where a developer just south of Birmingham, a really upscale place, has built something inside the habitat of the red cockaded woodpecker and has used that to increase his property values. He has used it to advertise his location.

I beg you to withdraw all takings legislation and strictly enforce present regulations in Alabama so private property owners can retain the value and beauty of their land and water, and I would be happy to show you some of the other pictures and things we have got over here.

Thank you very much.

Mr. SHADEGG. Sure. Bring them on up so we can see them.

Did you want to make any comments about these beyond what you said?

Reverend JOHNSTON. Could you turn that around, and let me see what actual picture that is? Yes, that is some water in my camp. Where your thumb is, that is where I took this water sample, and it is interesting that that water comes out of a National Forest. They mine right next to the National Forest, and I haven't been able to get the forest people to do anything to clean it up. They have said to me many times, "You are doing a really good job, Mark, we support you," but they haven't done anything on their own.

Thank you.

Mr. SHADEGG. Thank you.

David Allen Smith.

STATEMENT OF DAVID ALLEN SMITH, SNOHOMISH, WASHINGTON

Mr. DAVID SMITH. Mr. Chairman, and members of the committee, I appreciate the chance to testify before the committee.

My name is David Allen Smith. I have lived in Washington State all my life. Since 1967 I have worked as a railroad switchman. In 1974 I purchased a beautiful 3.89-acre piece of land 15 miles southeast of where I was born. It had a two-thirds-acre pond through which a small, clear jump-over creek flowed. There were rainbow and cutthroat trout in the pond as well as a few bullfrogs. The creek, actually the west fork of Evans Creek supported crayfish as well, attesting to its purity. During the winter as other ponds would freeze over my pond became a haven for waterfowl because of springs that kept the pond from freezing.

Besides kingfishers and great blue herons that came to eat the fish in the pond, I would have dozens of mallards and lesser numbers of buffleheads, scups, golden eyes, ring necks burgansers, and wood ducks. To many, including myself, wood ducks are the most beautiful of all ducks. In order to draw more wood ducks, I placed nesting boxes around the pond. In the spring of 1990 I counted 30 wood ducks on my pond, a thrill I'll never forget.

In 1988 the Snohomish Chapter of the Snohomish County Sportsmen's Association began planting coho salmon fry in my pond in the hopes that we could get a run of silvers in the west fork of Evans Creek.

The headwaters of the west fork began in a semiforested wetland about one-half mile upstream from my pond. In the summer of 1990 the owner of a large nursery bought this eight-acre parcel which was mostly wetland. By early August of 1990, without permits, the owner began to fill in this wetland in order to create high ground for nursery stock. Despite the fact that the Community Development Division of the Department of Planning and Community Development placed two stop work orders on the property, the work of filling in the wetland continued. By late August Snohomish County had obtained a temporary restraining order in Superior Court requiring the owner to cease and desist with any further work in the eight-acre wetland. This temporary restraining order was good for only 30 days, but the owner agreed at this time to acquire the necessary permits and restore the wetland. However, such was not to be the case. As the winter of 1990/91 set in, each time it rained, tons of silt would flow into my pond via Evans Creek. There would be days on end when the color of my pond looked much like a cup of coffee with cream added.

This heavy siltation continueed throughout the spring of 1991 until, on May 27 and May 28 of 1991, the flow of Evans Creek stopped. On May 29 the creek started to flow again, looking more like a mud flow than a freshwater creek. The county went back to Superior Court and asked for a Federal permanent injunction in early June 1991. Even the Army Corps of Engineers became involved.

In the fall of 1990, after inspecting the eight-acre property, they found the owner had cleared 4.4 acres of semiforested wetlands and filled in waters of the United States without the necessary permits. The Corps concluded the owner was in violation of Federal law, but

due to their findings that the wetland was under five acres the matter did not fall under their jurisdiction.

By the winter of 1991/92 the siltation of my pond had finally begun to lessen. However, with each downpour the pond would still turn the color of coffee with cream, but, unlike previous years, it would settle in a day or two. Today, three years later, my pond has one to two feet less depth and approximately 15 percent less surface. The trout that used to maintain an equilibrium and spawn in the headwaters of the creek are almost all gone. There are no bullfrogs and no crayfish. The Snohomish County Sportsmen continue to plant 2,000 coho salmon fry each spring in the pond, but none have returned, although there is a return on the opposite, the east, fork of Evans Creek.

This year while planting fry, the Snohomish County Sportsmen and I observed several young wild cutthroat trout laying belly up in the pond. After they left I checked downstream. I found a few more. I suspect it was this nursery owner that owned the headwaters that sprayed something on his nursery stock which is now in the headwaters.

The kingfishers and the heron still visit because of the salmon fry, and ducks still come in the winter, but their numbers are well less than one-third of past years. The headwaters of the west fork of Evans Creek are nowhere to be seen. The area is now covered with nursery stock. The creek no longer flows during the summer months, and if it were not for a small spring approximately one-tenth of a mile upstream from my place and another small spring on my place, there would be no water entering the pond at all.

When the rains do return in the fall, all of the debris that had settled in the creek flows into my pond, and it still turns the color of coffee with cream added every time there is a heavy downpour.

In conclusion, it is this kind of tragedy that points out why a property owner should not be allowed to do what he damn well pleases with his land. Land ownership requires stewardship, as this event clearly shows. With strong environmental laws, there will always be those who feel they can do anything they want with their land and to hell with everyone else, be it humans or wildlife. In fact, my upstream neighbor is a Property Rights Alliance member and a founder of the PRA offshoot, Stand Up Action Committee in Snohomish County.

Recently in Washington State, Initiative 164 was passed by the legislature. If this initiative—that is, a property rights taking issue—is not rejected by the voters, my neighbor believes he will receive compensation from the county if he were to be required to put in a retention pond to mitigate his actions. So-called property rights bills in Congress are likely to have similar effects across the country, only on a larger scale. I strongly oppose bills which would reward those who abuse the land and hurt taxpayers and good stewards of the land. Further, I strongly oppose legislation that would compensate landowners for the hypothetical value of their land if they could develop it the way they wished and not just the actual price of the land that they paid initially.

Thank you.

Mr. SHADEGG. Thank you for your testimony.

Sally Ormsby.

STATEMENT OF SALLY ORMSBY, FAIRFAX, VIRGINIA

Ms. ORMSBY. Thank you, Mr. Chairman.

We have resided in the suburban neighborhood of about 1,500 homes in Mantua in Fairfax County for the past 30 years. The first 25 of these years were tranquil and happy. Our community is blessed with such amenities as a good elementary school, public park, public hiking and jogging trail through a stream valley, meandering creeks, a canopy of old growth hardwood trees, as well as an active swim, tennis, and social club. We Mantuans have been proud of our neighborhood and had a real sense of place because we worked hard toward building and maintaining a community spirit, a real challenge for a bedroom community.

That sense of place and reputation as a blue ribbon community came to a screeching halt one day in September 1990 when a Mantuan discovered oil on the surface of Crook Branch which flows behind her house. Investigation led to the discovery of a significant problem at a tank farm storage facility located nearby. The initial shock turned to fear when we learned that a plume of oil estimated at a few to several hundred thousand gallons was flowing from the tank farm under the adjacent four-lane highway, under the commercial properties along the highway, under the tree-buffered area, and beneath about 17 properties of our community. Real estate values plummeted. Our community had developed the plague.

In addition to a flat real estate market, the health impacts of the exposure of patches of surface water and contaminated storm sewer pipes have yet to be determined. Residents had smelled gas vapors near storm sewer manhole covers for as long as six years. A panel of nationally recognized epidemiologists is currently studying the issue.

Mantuans living over and near the plume were under extreme stress financially and emotionally. Nearly 200 families signed a statement with the oil company in late 1992. Only two families living on the two streets of primary impact still reside there. The oil company has become the property owner of about 70 homes.

While less than 20 properties received a direct impact of the oil plume, our entire community had a stigma and still does to some degree. For nearly five years our total focus was on this situation, the contamination, the loss of real estate values, the lack of property marketability, our community's tainted reputation, possible health impacts, et cetera.

The situation didn't have to happen. Monitoring wells at the tank farm facility would have alerted the company of a problem. Out of sight, out of mind, as the saying goes.

Based on our experience with this situation, Virginia has enacted regulations requiring the installation of monitoring wells and double-bottomed above-ground storage tanks at large tank farm facilities. The same is true of nuisance. The plume of oil flowing underground cannot be seen. It is not a visible invasion of one's property. Therefore, it is argued by some, including the Virginia Supreme Court, that such an invasion is not a nuisance.

A group of Mantuans brought suit against the oil company on that charge, among others: "Under Virginia law, in order to recover for a nuisance, a property owner must show the nuisance complained of will or does produce such a condition of things as in the

judgment of reasonable men is naturally productive of actual physical discomfort to persons of ordinary sensibilities," and I've got the legal references here.

In all Virginia cases permitting recovery for nuisance, the activity or condition complained of was actually physically perceptible from the plaintiff's property. In the present case the facts as alleged in the complaint indicate the underground oil spill is incapable of detection from landowners' properties. Therefore, the Supreme Court ruled against the plaintiffs.

Section 4 of H.R. 9, Effect of State Law, concerns me. As a Virginian who has suffered from a private action which diminished the value of the privately-owned properties in our community, the recent finding of our Supreme Court gives me no comfort vis-a-vis section 4 of H.R. 9. I do not know what the other 49 States in our Nation have legislated with regard to nuisance laws. It may be that you will find 50 variations on the theme. Is that fair to Americans?

An action, whether by a public agency, a private company, or an individual, which seems an obvious nuisance to one or many property owners may be found to be such in one or more States but not in others. Section 4 seems to provide an uneven application of who may or may not be compensated for invasions of their properties. If the takings legislation were in place, would citizens be barred from getting protective regulations enacted because our situation was found by our Supreme Court not to be a nuisance?

Thank you.

Mr. SHADEGG. Thank you very much.

Mr. Hank Graddy.

STATEMENT OF HANK GRADDY, REEVES & GRADDY, VERSAILLES, KENTUCKY

Mr. GRADDY. Good morning.

Mr. Chairman, my name is Hank Graddy. I'm an attorney in private practice in a small town in Kentucky. I come from a farming county. Woodford County is the third most productive agricultural county in Kentucky and one of the most productive counties in the Nation. My family has farmed in Woodford County for over 200 years. My brother and sister are currently farming approximately 600 acres of farmland in that county. I own a one-fourth interest in the farm.

I come here as a property owner who must comply with all Federal, State, and local land requirements. I'm a lifelong Republican, and I'm a 20-year member of the Sierra Club, and I'm a former elder and a current Sunday School teacher with Pisgah Presbyterian Church.

I want to say that there is some irony today. I joined the Sierra Club about 20 years ago in Kentucky in order to fight the building of a dam, the Red River Dam. I joined that fight because I was sympathetic for the property owners that were going to be flooded by the proposed Red River Dam in Powell County. We considered our adversary, or our enemy, if you will, the Corps of Engineers. We thought that the Corps of Engineers was arrogant. We sought a common sense solution, and we successfully stopped the dam so that the Red River Gorge today is one of the treasures in Kentucky and in the Nation.

I thought Congressman Pombo in his discussion with Mr. Cone on the previous panel asked a very interesting question: What would have happened if the Fish and Wildlife representative had come with a plan to try to provide habitat for the species and an opportunity to offer some inheritance tax relief? There are, in fact, things like conservation easements that are usable in some situations to accomplish some tax relief. It seems to me that there are ways that we can build on the current system and perhaps remedy a certain approach by providing a new approach, not by scrapping the existing approach but by creating incentives built on the mandates.

I note when Mrs. Sullenberger on the previous panel complained about her treatment by one agency she did, I think, say that the evidence that she used in order to prevail was evidence that came from the Soil Conservation Service. So at least one Federal agency there was able to help provide evidence that helped her accomplish in the end what I think may have been the right result.

I told myself when I agreed to be on this panel that I was going to try to avoid commenting on cases I know nothing about, and I'm now getting away from those instructions.

I come here today to discuss how private property owners are being impacted in my State of Kentucky. I want to talk about some situations in three counties, Bell County, Harlan County and McCreary County.

In 1983 a group of citizens filed suit against the City of Middlesboro and the Middlesboro Tanning Company of Delaware because of many years of pollution in Yellow Creek. In the mid–1970's as a result of the Clean Water Act, the City of Middlesboro had received Federal money to upgrade its sewage treatment plant. The upgrade was completed, but the plant never operated. It was never able to treat the waste. Essentially the chemicals coming from the tannery destroyed the bugs in the facility. The Middlesboro sewage treatment plant was dead on arrival. For the next eight years it seemed like nothing worked to solve the problem.

My clients and I filed a tort claim against the city and the tannery. You will be interested to know that count 15 of our complaint alleged that the actions of the City of Middlesboro in polluting Yellow Creek had destroyed property values of property owners downstream and constituted a taking under the U.S. Constitution under the concept of inverse condemnation, a concept that is, frankly, alive and well in Kentucky, and as far as I know across the country. I didn't need a statutory amendment to make that allegation. From my perspective, the Kentucky Constitution and the U.S. Constitution worked to give me the opportunity to prove that claim without the necessary feature of legislative enhancement.

We settled the case with the Middlesboro Tanning Company in 1988—with the City of Middlesboro. The tannery filed for bankruptcy protection. Ultimately at a trial earlier this year, our appraiser, using multiple regression analysis for the 300 property owners, determined property values in Bell County had diminished as a result of the pollution by a figure of $1.4 million. The tannery is bankrupt. Those sums may never be collected. Do we have a claim against the U.S. Government or the State government for

failing to enforce requirements that keep these pollutants out of the water?

In the second case, in Harlan County, as a result of a random well survey done in Dayhoit in 1989 as part of safe drinking water requirements, the State of Kentucky discovered a plume of contaminated groundwater at that time believed to be about two miles in size that contained vinyl chloride, trichloroethylene and dichloroethylene. We learned that for 20 years a company had been dumping these chemicals or solvents into a drain that went into the ground and contaminated the groundwater. As a result of that litigation, the company paid a $2 million damage claim.

My concern and the reason I bring these before you is, if the purpose of a property rights hearing that is going to try to extend the takings concept to governmental action, if that is truly an honest inquiry, then why isn't it extended to take into consideration those people who are victims of other kinds of governmental action?

I think the correct solution is to find a different approach. I think the takings clause is not the right way to try to address these kinds of problems, and I go back to my reference to Congressman Pombo earlier on. I think the right solution is to take the existing laws which mandate certain activity and then to try to build on top of that a new way to get there that is voluntary and cooperative if both parties wish to come to the table. But if you remove the regulatory mandate you eliminate the incentive for the parties to come to the table and solve the problem.

I see that my time is up. I obviously prepared a good deal more material than I am going to be able to read. I would refer you to the written material, and I would like to answer any questions.

[The statement of Mr. Graddy may be found at end of hearing.]

Mr. SHADEGG. Thank you very much, and of course all of the material submitted will be included in the record, and the record will be held open for additional submissions by any of you.

Let me just say first of all thank each of you for coming here and for testifying. You have added a great deal, I think, to the process of this hearing.

What I find fascinating about this is how much common ground there is, because the Reverend, in your testimony; Mr. David Smith, in your testimony; Mrs. Ormsby, in your testimony; and even to some degree Mr. Graddy's testimony, what I hear is that you all believe very much in private property rights. You happen to be viewing it on the other side.

Particularly, Reverend, in your testimony; Mr. David Smith, in your testimony; and Mrs. Ormsby, in your testimony, you are each talking about your experiences where your own private property was destroyed by the conduct of someone off of your property. In each of those instances it appears that was a private party off of your property, and it is where I see, regrettably, a tremendous disconnect in the discussion of this issue, and that is when I hear phrases like "paying people not to pollute," and that what people in America who are concerned about the environment fear in takings legislation is that people will be paid not to pollute.

It seems to me there is a great misconception there, and I often mention to one of my staff members that the English language is imprecise. It is imprecise. I think everyone in this room is of good

spirit and wants to achieve things. I am deeply concerned about protection of the environment, and I am absolutely opposed and would fight vigorously to oppose laws which would make it easier for anyone, in the use of their property, to damage the use by you of your property.

For example, Reverend, in your experience, clearly the mine involved has an obligation, having polluted that water and having then had that water migrate on your land, to be responsible for that and to clean it up, and, indeed, if they are bankrupt and can't be made to clean it up, then I think it is the task of those of us in the rest of society to assist in its cleanup. Several people on the earlier panel indicated that they had no desire to promote pollution or to encourage pollution.

Mr. David Smith, your tale, the use of the land upstream from you to abuse it—I started law school in the State of Washington and actually did some duck hunting on ponds I'm sure not unlike the one that you have, and it seems to me we have an outrageous circumstance where somebody can so use their property so as to destroy or damage the value of that property and then leave you holding the bag and say, "This is tough luck. I used my property the way I wanted. Too bad if it damaged your property," if it damaged the aesthetics of your land, Reverend, and made it impossible for you to fully use that land and enjoy it as you should be able to.

And, Mrs. Ormsby, the tale you tell, again, I think if that is in fact the law of nuisance in Virginia, I hope it is not, and I believe it is not the law of nuisance in Arizona, and I think the principle of nuisance is long-standing in America, and I would suggest that we ought to talk to the Virginia legislature about changing the law, because when somebody such as an oil company or whoever uses their land so as to cause an injury to your land, whether the injury is something you can see or whether it manifests itself in cancer in children who grow up on the adjoining property 50 years later and drink the water, someone ought to pay for that.

But what I see in takings legislation and where I see common ground—and I'm going to use my five minutes to make a little speech here—is that I think we are all concerned about protecting the notions of private property and how do we get to that in a way that is fair, because I see private property takings not as applying to the situation the three of you describe where someone uses their property so as to destroy the value of my property. I see it rather as applying in situations where we as a society decide that there is a value that has to be protected; for example, the protection of a species. Then having made that decision, we say that species is found on your land, and, by the way, since it is found on your land, we are going to ask you to pick up the whole tab for not being able to use that land.

One of the examples I cite is, you leave your home for a weekend, a long weekend, and a storm comes along on the first day. It knocks down a tree which breaks a window in your home. A pair of endangered cockaded woodpeckers fly in, and they now nest in your home. If society says that species needs to be protected and if your home has now become the habitat for them, then I think it is society's job to compensate you, and I think the question which

we are trying to address in this legislation and I believe trying to do so in good faith is, how much should we ask you to give up of your home before we say, "Oh, by the way, we'll pay you"? And the line we have drawn in the legislation was at 20 percent, so if you have 10 rooms in your house and they habitate two rooms, you are supposed to just give up those two rooms and forget the value of them and we have no duty to compensate you, but if they habitate more than that, then we say we are going to compensate you.

Will that lead, Mr. de Raismes, to additional litigation? I don't know. One might argue that the U.S. Civil Rights Act of 1964 or the Voting Rights Act which I spent my legal career enforcing led to additional litigation. I would argue that that litigation was worth while.

Now my time has essentially gone. I just want to conclude by saying, Mr. Graddy, I applaud you for coming here and talking about this in a rational way and for talking about the idea of thinking outside the box. Clearly, many of us on this panel believe deeply that we aren't going to throw this Act out and trash it, that we do not want to get away from the values that exist in our current environmental policy, but where it has created excess, where you hear people testify, as on the last panel, that they are now clearcutting their land because they are afraid that, if they don't clearcut it, habitat will be created and they will be told they cannot use that land, we have got to do better than that.

And you used a word which I believe is the word that has to be the hallmark in the future here, and that is "incentives." We need to create a system where each person in America wants to protect and preserve species so that they can survive and is not given an incentive by poorly written laws by us to destroy species or to destroy habitat.

Mr. GRADDY. Congressman, if I may reply as the last person that you referred to, as long as you and I understand that what I'm saying is not to throw away the mandate, I believe that without the mandate upon which we try to build an incentive-based program we are left in the position the country has been for the past 50 years trying to address nonpoint source pollution based solely on education and incentives, throwing money at it.

We have to have some legislative expectations or requirements, and then we have to look for flexibility to accomplish those requirements, but if we can clear that hurdle in any way together then there may be an opportunity for common ground.

Mr. SHADEGG. I believe there is an opportunity for common ground. I believe we can do a better job.

Mr. Pombo.

Mr. POMBO. Thank you.

Mr. Johnston, in your particular case you talk about a neighbor, a mining company that you claim did not follow State and Federal laws in their conducting of their business.

Reverend JOHNSTON. That is correct, and I have several letters from the Attorney General's Office in Alabama that verify those things.

Mr. POMBO. In what way would the takings legislation that we passed here in the House previously affect you and the situation that you are in?

Reverend JOHNSTON. Well, I think it would affect all of us. I think that is a very good question. I appreciate your asking that. I appreciate what you are trying to do to save this country financially and balance the budget and cut back on some of the unnecessary programs. I think that is a really good idea.

In our area, both responsible and the few irresponsible miners, they get biologists to look over their property and make sure, file reports—they have a lot of regulations—make sure that they can mine that property without harming species, particularly threatened and endangered.

It would be so easy for those irresponsible miners to hire a biologist that says just the opposite, take us to court, and even if they didn't win cost us—and I'm talking about all of us American people—lots of money to try to—what they would like to do. It would be so much easier for them just to get the money and not mine the coal, wouldn't it, because it was a danger to the environment?

I'm afraid that this takings bill will give irresponsible people even more leverage to abuse the Government as well as private landowners.

Mr. POMBO. If the legislation had been intact and being implemented over the past several years, I don't see how they could have used takings compensation legislation to somehow say that it was OK to pollute the river. We went out of our way to try to make it very accurate in the law itself that in no way could someone use that to avoid clean water regulations that stopped them from being able to pollute our rivers and streams, and in your case, whether that legislation was in effect during the time that they were polluting your stream, I see no way in which they could have used that to say that because we can't pollute this river we are going to file a takings claim.

Reverend JOHNSTON. You are a bit naive, Mr. Pombo. Mr. Shadegg was talking about common ground a little while ago. The common ground that we all share in here is abuse of Federal regulations. Some of our folks have been in here talking about the abuse of the opposite effect that I have had, the overregulation. I haven't experienced that. I have great sympathy for the woman from Virginia and the problems that she had. My experience has been the exact opposite. It has been irresponsible people not upholding the regulations, and because all those other regulations haven't been upheld, because all the other regulations have been abused, how can I expect that yours will be upheld?

You know, as a small guy from Alabama, I can't expect that, and what I've read of your takings bill—I'm not a lawyer or anything, but I get the exact opposite interpretation from it. I guess it is just because I don't have that background.

Mr. POMBO. Well, fortunately, I'm not a lawyer either.

Reverend JOHNSTON. I apologize to all the lawyers in the room.

Mr. POMBO. I was going by what the lawyers told me because we tried to be very exact in what we were doing.

Reverend JOHNSTON. Yes. I appreciate your good effort.

Mr. POMBO. Some of the stories that you heard earlier about what has happened to some of the other people because of the attitude of Federal regulators that we were specifically going after, and you state at the end of your testimony that you are not aware

of, and you list off a number of other people that are not aware of anyone who could go on record as saying that there had been some type of a devaluation in property values in your area, and if that is true, that you don't have that problem in your area of the country, then this legislation would have little or no effect on you, whether it was property owners who perceived that they had had a taking or could prove that they had had a taking, or whether it be on the pollution side in stopping someone from being able to pollute——

Reverend JOHNSTON. Again, I have to disagree with you because of your speculation there, speculating that that wouldn't happen.

Mr. POMBO. You said in your testimony it is interesting to note that the leadership in Alabama who is promoting takings bills are on public record also unable to identify any cases where private property has been devalued by Federal regulations.

Now it is true I am speculating, but I'm speculating based on the information that you just testified to that there were no cases that private property had been devalued by Federal regulations.

Now I apologize if my information is not correct, but I was taking it from your testimony.

Reverend JOHNSTON. I hear what you are saying. I just totally disagree with you.

Mr. POMBO. It was your testimony. I'm sorry, my time has expired.

Mr. SHADEGG. Let me call on another nonlawyer, Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

Mr. de Raismes, I'm very fascinated with your testimony. In item number two you said that while local governments are aware that the bills only deal—the Private Property Rights Acts—only deal with Federal Government programs, they set an extremely dangerous precedent in inserting the Congress—oh, of all people—in the process of defining the coverage of the Fifth Amendment which applies to State and local governments as well. Do you feel that the Congress should not have a role?

Mr. DE RAISMES. Fundamentally the interpretation of the Constitution, under *Marbury v. Madison,* is a role for the courts, and it is my view that if Congress was indeed supporting the Constitution consistently in its enactments, particularly with regard to the Tenth Amendment, we probably wouldn't be here.

When the Congress gets in the business of establishing a 10 percent or a 20 percent or a 33 and a third percent threshold, which is nowhere in the Fifth Amendment, then I have to suggest that that is inappropriate under our system of constitutional governance, yes.

Mrs. CHENOWETH. Then following that line of thinking, one would conclude then that the only laws really that we need are the United States Constitution.

Mr. DE RAISMES. Not in the least. No, I think in regard to the taking of private property, the issue that is before you, the Fifth Amendment states the policy of the United States; and particularly as it regards the ongoing litigation to which local government is subject under *Dolan v. Tigard*, we are concerned with a parallel system of jurisprudence based on congressional policy which is at

variance with the standard set by the Fifth Amendment. That is a matter of considerable concern.

Mrs. CHENOWETH. You mention in item number four, "The Government at all levels will have to change radically to meet the challenges of the *Dolan* cases"—and you are talking about *Dolan v. City of Tigard*, right?

Mr. DE RAISMES. That is correct.

Mrs. CHENOWETH [continuing]. "while preserving its role in regulating the use of property for the public good."

And then over here you talk about in section 8 the bill seeks to restrain government and to compensate citizens but misses the important fact that government only acts to meet what its leaders understand as the needs of their constituents, "the greatest good for the greatest number."

Have you ever heard of Jeremy Bentham?

Mr. DE RAISMES. Yes, I have.

Mrs. CHENOWETH. And so you follow the British Utilitarian philosophy?

Mr. DE RAISMES. No, I don't particularly myself.

Mrs. CHENOWETH. Jeremy Bentham is the person who coined that phrase.

Mr. DE RAISMES. Actually, I believe it was John Stuart Mill. But the point is that government has to make allocation decisions with scarce resources, and under the constitutional jurisprudence of *Dolan v. City of Tigard* and a number of other cases that preceded and will follow it, in the case of development actions developers are required to mitigate the effects of what they are going to do in what the Supreme Court has called a roughly proportionate way, and the courts are in charge of determining that rough proportionality. They don't apply a 20 percent or a 33 and a third percent test, they simply decide what is the effect of the development going to be on the water, on the air, on the traffic, and then decide what that development then needs to contribute in order to allow society to deal with those impacts. I'm suggesting that that is the correct template to apply in the takings area and that a numerical limitation is not a good way to go.

Mrs. CHENOWETH. The greatest good for the greatest number though, whether it be Bentham, Mills or Marx, ultimately they believed that society should ultimately proceed to a point where there is the ultimate good and the ultimate happiness for the maximum number of people, but we here in America do not believe that what makes you happy will make me happy and that by the force of government we should not impose my happiness on you but, rather, give you the freedom to pursue your own happiness and individually, so long as what you pursue does not harm or take away my ability to pursue happiness.

So I think it is very interesting. You are a very good writer. I think we have a very basic conflict of philosophies here, and some day I would like to talk to you longer.

Thank you.

Mr. DE RAISMES. Thank you.

Mr. SHADEGG. Again, I want to thank each of you for coming. I would love to go further into this. As I read the Fifth Amendment, it does not set a 20 or 30 percent threshold, it says any taking has

got to be compensated, so if we erred I think what we have done is set it too high and not too low.

I am also mystified by Mr. Babbitt's proposal that if there is a private property taking that affects a parcel of land, say an acre or less or five acres or less, somehow there ought to be compensation and the Fifth Amendment applies, but if it is a large parcel it doesn't apply.

We could go into this forever. We have two more panels. Again, I thank you for coming and call the next panel.

Mr. SHADEGG. Mr. James Ayer, Brian Bishop, Georgiana Murray, Terri Moffett, and Marilyn Hayman.

Once again, let me thank you all for joining us. I notice we have quite an array here. We move from Rhode Island and New Hampshire on the one side of the Nation to Oregon and California on the other, and we include Wisconsin in the middle. So I look forward to great things and great perspective from this panel. I appreciate your being here.

Mr. Ayer, why don't you begin.

STATEMENT OF JAMES AYER, BROKER ASSOCIATE, COLDWELL BANKER MOUNTAIN GATE PROPERTIES, MT. SHASTA, CALIFORNIA

Mr. AYER. Thank you very much. I would really like to thank this panel because it seems like a unique opportunity to share with this Congress something that I don't think has been shared before, and I thank you very much for that.

I have been a real estate broker and salesperson for 16 years in my county in Siskiyou County, California. Five generations of us have been there and have loved the land. My dad was a timber faller, which nowadays seems like a dirty word. The rest of the family, my grandfather delivered milk, had a dairy and delivered it by horse and buggy to the neighbors and friends. So we have been in the area a long time.

Sixty-five percent of our county is owned by some form of Government agency. In 1994, after what we found out later here after the fact, two years of environmental work quietly here in Washington caused the keeper of the historic record, Jerry Rogers at the time, to find eligible about 200 and I believe 35 square miles of our area for a National Historic Preservation Area or a cosmological district. There were over 1,000 property owners within this district that were affected by this, 50,000 acres of private property, and no one had notified them at all as to what was going on.

To keep it very short today, you have that in the testimony. There are a lot of ramifications. We formed an organization called Enough. With Congressman Herger's help, we got him out there to look at the area. He had never seen it before he had designated it. He came out and looked and decided, with all the outcry, they said they had never heard anything like what we had—the ruckus we had raised—that they decided to raise the eligibility level a little higher elevation to exclude, at least for the time being, the private property owners, but during that time property values virtually died and sales quit completely in the area. The escrows that were in escrow totally fell out, and, as I understand it, as I interpret the law, definitely the environmental groups do, from a historic dis-

trict, whatever you can see from that district can be controlled. Whatever you can hear from that district can be controlled as to the activities on property outside of the district. So it is an extremely onerous situation that has been occurring to us, and I understand now in Virginia and Idaho and other areas starting throughout the country.

In 1994 the little town of Happy Camp in our area virtually died because of the spotted owl situation. They had a little mill that employed the 85 families that lived there with a few other families around for support businesses and things. They couldn't get any timber any longer. They closed the mill. Those 85 families have absolutely nothing at this time in their lives. They can't sell their homes, because who is going to buy a home now in this deserted little town? They have lost their entire life savings.

In the 1970's the Fish and Game Department tried to kill the short-nosed sucker fish just north of us because it was just a trash fish and it was trying to eat all the food of the other fish and things, so they tried to kill it. They couldn't eradicate it. Now in the 1990's they want to save it and it has become an endangered species, and how do they treat it? They are taking all the water from all the farmers and the ranchers and trying to do something, whatever, to keep this little fish going now, and consequently there are no crops, the property values are going down, the ranchers and the farmers are having a tough time of it.

In my own personal town in the 1800's Mount Shasta was built on a swamp. I guess nowadays that is a wetlands. But because of all the other things that are going on in the area, we are trying to survive on tourism because we have lost every other type of high-paying job—the timber industry, mining, ranching, et cetera—but the problem is, we need more restaurants and the things that go along with a tourist area.

The only real area to expand, that is grasslands that are adjoining our camps, but the environmental organizations called in the Army Corps of Engineers, and all the developable land in those areas they found, "Sorry, you cannot develop it," and these individuals, who have millions of dollars in their land, have virtually lost it all. In one instance they have made a little bit of a trade and tried to trade out property to try and do something to at least develop a little of it.

We fought for year—10 years now—to replace a ski area that was on our mountain on Forest land and private land. We have gone through 10 years of appeals process. The Forest Service told us the other day we are no further along. We have at least another 10 years in the appeals process, and now with the Historic Preservation Act we may never see it happen.

So, again, we are in a county that is struggling to survive, and it seems like everything we try and do, we are shot down at every corner, every avenue.

The various agencies of the Federal Government are trying to buy our private land, what is left of our private land. They are trying to come in and buy the very best lands, which means it removes it from the property tax rolls in an already struggling county, so we have great problems.

But it looks like my time is almost out. I want to read you one thing. It is on the Taft Memorial out here. It says, "if we wish to make democracy permanent in this country, let us abide by the fundamental principles laid down in the constitution. Let us see that the state is servant of the people and the people are not the servants of the state."

Thank you very much.

[The statement of Mr. Ayer may be found at end of hearing.]

Mr. SHADEGG. Thank you.

Brian Bishop.

STATEMENT OF BRIAN BISHOP, RHODE ISLAND WISEUSE, EXETER, RHODE ISLAND

Mr. BISHOP. Thank you, John.

I see that this is quite a friendly audience, and that is causing me to rethink my hen scratch just a bit because maybe I could say something that would be productive to yourself. I've heard much of your own philosophy.

As someone from Rhode Island, people in the Democratic Resources Office were surprised yesterday when I visited on the issue of the Tongass Land Management Act in Alaska. They asked how did anybody from Rhode Island know or understand anything about habitat conservation areas in the Tongass since I spoke with some knowledge of the subject. I hope that actually this type of attitude and the type of gathering that has fostered this hearing will help to give you a sense of the unity we have in the country.

Also my appearance and my own philosophy, you know, when I first came to this movement, many people believe that I was probably an infiltrator. I do wear my hair long, I carry a backpack to meetings, and it has taken some time to build the trust and find the common ground in as varied—I mean I must tell you, I come to this movement and I come to affecting government from a history of having asked my parents to escape or to have time off from a boy scout meeting so I could go to a demonstration on the moratorium on Vietnam in 1969.

And I don't say that with disrespect for the people who clearly served honorably and have spoken before me on these panels and people on the panel who may have served in the forces. I certainly never, as an opponent of the Vietnam War, had any quarrel with the people who served honorably within that war, yet there were people within the movement who did or who perhaps carried that to excess who in fact characterized the very voices of hate theme that we have heard echoed around Washington, especially since the unfortunate incident in Oklahoma City.

Now I would suggest—and I do this with all respect to the President who obviously was a part of the Vietnam War movement as well—that what is being done to our movement in light of this and in light of the attempts to somehow pair us with the militia is nothing short of the red baiting that accompanied Vietnam, and as someone who was part of both movements I have seen it again.

Now what I learned in that (anti-war) movement was not that as an adolescent and in those changing times I was 100 percent right or 100 percent wrong—I'm not here to read out of Robert McNamara's book, but what I learned was to question authority.

Now Bill Clinton has chosen a different move, he has decided to become authority. Now I find that to be a rational pursuit when you thought that the system was unresponsive, but I can't believe that he can honestly look in the mirror after the things that have been said out of the administration regarding the way that this movement does and interface with the government that anyone could—that he could take himself seriously, and I find it to be tragic, and I don't know anyone else to tell it to.

But when you see us here with buttons that say we don't hate government, we are government, that is what characterizes our movement overall, it is not that we are old or young or that we are radical or not or we haven't ever been frustrated enough to take rhetoric and to the extent that it perhaps sounds violent as many people demonized President Nixon in the (anti-war) movement. So I really hope that I can give you the feeling of what a broad movement this is.

In specific, what I really wanted to talk about was a couple of wetlands cases, and my own battle has been with wetlands. I want you to understand that what the Federal Government does is not only important. All the Tenth Amendment questions that we have heard or the questions of whether the Federal Government might be adequate in its application of takings legislation obviously applies to the way that it currently administers its responsibilities, and I would say yes, it does leave open the question how the Federal Government is going to deal with things.

Cheryl, can you toss that memo up?

I haven't had the privilege of having my—although in theory I'm a Federal criminal, I haven't had the privilege of being treated in the manner that some people have, but Gaston Roberge, who will testify at your field hearing in Maine—and I believe Representative Longley has asked him to—he was in this memo from the Army Corps regarding his case, at the very beginning of an eight-year battle suggesting of Mr. Roberge that he would be a good one to squash and set an example.

Now that was written by an Army Corps employee, and that gives you an idea of why, for us in New England, the Army Corps is synonymous with the disregard for property rights. Forgetting the Fifth Amendment question of compensation for property, that is obviously an equal protection issue. I mean there are many intangible issues here that are not even addressed when we address what is the monetary aspect.

If you have a lost family, a lost dream, a lost marriage, all of which I have had in my battles, those are intangible and they balance, the very same questions environmentalists pose about, well, how do we value open space or solace, which may not have as much monetary value.

What I would really ask you to do, because there goes the light, is, in the pragmatic debate it has been very difficult to frame this because of the subtleties of framing this law regarding the percentage cap. I feel strongly that if we can move the debate toward implementing the constitutional law that exists on an administrative level so that we don't have to wait eight years to get it, that that will accomplish much of what we need and that this percentage of value trigger is being used against us to make ours appear as an

agenda of greed. We don't want to pollute anything, we support the nuisance concept, and we also would want to work within our own States to make sure that nuisance is strong and fairly understood.

I thank you for your time.

[The statement of Mr. Bishop may be found at end of hearing.]

Mr. SHADEGG. Thank you very much.

Mr. Pombo.

Mr. POMBO. Mr. Bishop, I just want to make one thing clear, and I understand what you are saying, but when myself and a couple of other members wrote the takings legislation a year and a half ago there was no threshold limit in it. The threshold limit was put in as a compromise. I never wanted it in there to begin with because I didn't think it was good policy. I thought it should be zero.

Mr. BISHOP. Well, I think perhaps in a compromise with the Senate I understand—I'm not sure exactly what mechanism they would take, and because of the mischaracterizations, which is really what affects me most emotionally, that is why I ask that consideration.

Mr. SHADEGG. Thank you very much.

Georgiana Murray.

STATEMENT OF GEORGIANA MURRAY, COLUMBIA GORGE UNITED, THE DALLES, OREGON

Ms. MURRAY. Mr. Chairman and members of the committee, thank you very much for this opportunity to speak today.

I'm just an average landowner whose property has been devalued because Congress passed a Federal law which caused my husband and I to spend $80,000 in defense costs. When you, the Congress, make a law, it is never free, there is always a cost, and in this case the cost was to the private property owner for the benefit of, in our case, one class of people and also the public at large.

The National Scenic Act which was enacted in 1986, layered parts of six counties in Oregon and Washington along the Columbia River Gorge and beyond with land use restrictions in various forms. It affects the development of unimproved properties and even the continued improvement of already developed properties. It outright prohibits uses of properties if it deems it will be a conversion of land or that the improvement will affect the cultural, scenic, or natural resources.

Some properties have been downzoned, resulting in absolutely no use, not even for a cow to graze on, yet these lands are intended to be for the public at large with no direct compensation provision in the Act by Congress because such lands were in supposedly restricted general management areas, the more restrictive special management areas have a compensation feature with a simple willingness of a seller to sell, and the acquisition is handled by the U.S. Forest Service.

My personal experience with the National Scenic Act concerns a 20-and-a-half-acre parcel which was once dividable under county regulations. It had the potential for two home sites. The Act enabled the Columbia River Gorge Commission to downzone the property to a large-scale agricultural 160-acre minimum. This land was never going to grow into that size. It was surrounded by a road.

My husband made an effort to farm this rocky parcel. He resloped the land, planted a wind break, and ornamental trees. He planted grass and drilled an irrigation well. In the course of his efforts, he piled rock from levels for the well site and piled up the overburden which means the soil that was saved from in between the rocks. When he piled the rock he was extremely careful to follow the Oregon State laws of Department of Geology and Mineral Industries because nothing in the Act spoke to rock in the general management areas. During the course of these events we made three individual land use applications for a nonfarm dwelling, a division of the land, and a quarry. All three were denied, and, when appealed, the decision of the director was upheld by the commission.

Activities which the commission deemed to be quarrying caused litigation with two plaintiff intervenors, thus our one attorney, inexperienced in civil litigation, faced four of their attorneys. The litigation involved a temporary restraining order, the permanent restraining order, an injunction, an attempt for a contempt action which sought compensation of my husband's equipment and incarceration of my husband. The contempt was dismissed, but the false documentation by the commission staff is a matter of public record.

The Columbia River Gorge Commission advocates publicly that States' laws do not apply to them. They frequently remind property owners that they have been empowered by the Congress to protect scenic, cultural, and natural resources, yet they claim not to be an instrumentality of the Federal Government. Something is wrong with the picture here. We, the people, did not get to vote on this legislation. We cannot even vote on the people who make up this commission as they are political appointments and have picked their own replacements in the past.

One voting member of the commission is a protected class in that they are a Native American who are exempt from the Act. The commission cannot tell them how to live on their lands, yet this person can vote on a land use decision whether or not it contains the protection of cultural resources, and these resources may very well have been derived from the forbearers of that particular sovereign nation.

Please consider that you enjoy your beautiful buildings and statuary here in the Nation's capital but your highest ranking official, the President of the United States, could not reside in our region. If you are wondering why, it is very simple. The White House would not be allowed in the National Scenic Area. Our buildings must be dark, earth-toned color colors more like the colors of the poor of the world because you, the traveling public, would be horrified if a home broke the scenery being colored in such a way as to express the customs and cultures of people who live in the region of the Columbia River Gorge.

Thank you.

[The statement of Ms. Murray may be found at end of hearing.]

Mr. SHADEGG. Thank you very much.

Terri Moffett.

STATEMENT OF TERRI MOFFETT, JUNCTION CITY, OREGON

Ms. MOFFETT. For the record, my name is Terri Moffett. I'm here today representing myself, a private property owner, along with my husband Dale, owner of Moffett Logging Company of Junction City, Oregon. We have been there for 29 years as a logging company also.

I appreciate the opportunity to share some stories about regulatory problems that private landowners face in Oregon. Before I do that, I would like to describe my family's private property that has been in our family for 138 years. Our land is located west of Eugene, Oregon, and it is just at the foothills of the coast range. We own 120 acres of forestland along with 60 acres of farm ground. The most important thing I can offer to you today is my pride and love of this property. This land is the legacy left to our family by our pioneering great grandparents. Our three daughters are the beneficiaries of this tradition and culture. As girls, they raised 4H livestock, planted trees, and drove mint trucks. As young women, they treasured these experiences.

Our timberland management has served as our rainy day fund for college education and will be a portion of our retirement, but mostly it will be an inheritance for our grandchildren of the future. The Moffett family are good land stewards and should not live in fear of Government takings but live instead in expectation of keeping the tradition alive. No government could possibly care more about this small piece of Oregon than we do.

In the past we have known with certainty what we could do with this land. Our investments in management included replanting areas, harvesting, and making improvements in the values. Today the possibility of Federal laws or State laws implemented with the threat of Federal actions has taken that away. We do not know if the land will be tied up due to the Endangered Species Act because we live in the coast range or some new regulatory program. These are questions that our children will have to deal with unless we make some changes now. In short, policy at the State and Federal level have eroded predictability and my confidence in managing my land.

The examples of why we should be concerned are not far away. The National Biological Survey was proposed to help us, yet when we bring up our concerns about objections we are viewed as radicals. Modifications in the ESA have been proposed, yet even the suggestion of peer review science receives a response like we want to gut the Act. So far, we have been lucky not to lose too much of our management flexibility with regulations. There are several, however, examples of where private property owners are severely impaired by Federal actions.

Take the example of a large industrial landowner in southern Oregon. For 40 years they had a reciprocal right-of-way agreement with the Bureau of Land Management for access to their ownership bordered by the BLM. One day last year they received a letter explaining that the BLM planned to close the road. The letter asked if the landowner had any objections to the proposed closure. They also advised that if the landowner had any objection they would keep the road open. The landowner responded to the BLM the need for the road to remain in place. The landowner thought the issue

was dead until company foresters tried to reach the property this spring only to find the road was obliterated.

This sort of unilateral action causes the complete loss of faith in government agencies. To make matters worse, to repair the road the BLM would have to prepare an environmental analysis that would obviously cost money, take months to finish, and potentially be appealed by some group. Instead, the landowner is left to repair the road themselves at the direct—this was the direction of the BLM—with no certainty that the claim would be accepted.

But just think what would have happened if the landowner this summer would have tried to reach that property to extinguish a fire where fires would probably occur.

Another example of excess problems with mixed ownership was in Central Oregon. This situation involves a logger and a landowner. A logger had been contracted to harvest timber for a private landowner on property landlocked by the Winema National Forest. There are no spotted owls, no streams, no sensitive habitat areas on the private land. However, access to the harvest unit is on a Forest Service road that is within one-quarter mile of an eagle nest.

The landowner was denied a permit from the Forest Service for access during the season seasonal restriction. Despite this, recreational traffic is not prevented from entering the area and the nest site is within visual sight of U.S. Highway 97, a major travel route through Oregon. It seems just a bit inconsistent at the present time to stop a few chip trucks yet allow public traffic to utilize the same road.

My final example, a road contractor had plans to complete a road for a major industrial landowner in Willamette Valley. During the final stages of completion the landowner informed the operator he would be unable to finish the job because the operation was within one-quarter mile of the spotted owl nest. This spotted owl had previously been within one and a half miles the year before. The landowner offered to place a certified biologist on-site of the owl to monitor behavior until the road was completed. The U.S. Fish and Wildlife would not accept the offer and stopped the job, leaving the road contractor without work. In subsequent years the road contractor had to move three additional times because of the owl location on this one property at $4,000 per move. The road contractor now has to be concerned about other jobs in the area because the BLM will not allow road access through the area until a two-year murrelet survey has been completed.

It is interesting to note that the area in question is dominated by second growth stands of 50 to 55-year trees yet the landowner has healthy owl population densities.

These are only a few examples of what private property owners face every day. I believe I am a responsible landowner, I provide protection to streams and to wildlife, but when the Government knocks on my door and says they are here to help me I'll know my landowner rights are gone. Better yet, before anybody in Congress decides that we need more uncompensated Federal regulations, they should ask themselves the following question: Are you willing to take just one bedroom of your home to dedicate to a homeless shelter so society can benefit?

Thank you.

Mr. SHADEGG. Thank you very much.

Marilyn Hayman.

STATEMENT OF MARILYN HAYMAN, PRESIDENT, CITIZENS FOR RESPONSIBLE ZONING AND LANDOWNER RIGHTS, MAIDEN ROCK, WISCONSIN

Ms. HAYMAN. Mr. Chairman, in the interests of time I'm going to shorten my written testimony.

My name is Marilyn Hayman. I'm president of Citizens for Responsible Zoning and Landowner Rights, a property rights organization which covers Minnesota, Wisconsin, and Iowa.

I'm here today to express our opposition to the Mississippi River Heritage Corridor plan and to all other heritage area bills which may be proposed in the future. We wish to avoid burdens similar to the ones that have been expressed here today.

Everywhere owners of waterfront property are particularly vulnerable. Control of water controls the use and value of land. We are faced with the prospect of having the entire 2,500 miles of the Mississippi River designated as a heritage corridor. Initially the corridor would be one county wide on either side of the river. We have a good idea of what is to come. One section of the river has already been designated.

The Mississippi National River and Recreation Area, known as MNRRA, is the 72 miles of the river around Minneapolis and Saint Paul. The National Park Service was the lead agency in creating the plan. Industry and agriculture were totally shut out when the management plan was written, and as a result they formed an organization and worked and tried to moderate the plan. They have had some success, but, quite frankly, they are apprehensive about how the plan is going to be implemented. Much depends on the interpretation of the people who are in charge.

Professor Dennistoun, retired from the Minnesota Department of Agriculture, told me there are enough loopholes, the Government can do just about anything it wishes.

The river is essential to the economy of the region. There is fear that future restrictions will be put on fleeting facilities and would severely limit the barge traffic. The plan itself favors alternative methods of transportation.

A State agency document envisioned elimination of locks and dams. MNRRA will create continuous open space along the river. The goal is to restore the shoreline and the adjacent areas to a more natural appearance. Businesses and homes are not considered to be compatible with this natural appearance. As a result, they will be targets for eventual removal in the future. This is why we are opposing the heritage corridor plan.

MNRRA is the model. It is the first segment of the heritage corridor. Again, in the heritage study agriculture and business have been ignored. This is a monumental plan that would affect tens of millions of people, hundreds of millions of acres, and megabillions of dollars.

"We are talking about hundreds of billions of dollars worth of timber which the commission chose to ignore in their report." This is a comment by a man who owns a lumber business. The same can

be said for the agricultural production of the area. This is a "preserve and restore" philosophy that can eventually be used to remove homes from the viewshed so it can be returned to its natural state. As a matter of fact, we are already feeling this happening from State agencies. Commissioners have said they intend to recommend designation despite the fact there is overwhelming opposition for this plan along the entire corridor and despite the fact that they have never held a single public hearing.

One commissioner explained, "We are pioneering a new way of government where government doesn't have to put money into a project, just give its blessing by way of designation." Frankly, we don't want any part of it.

The list you have with this testimony, represents people who are opposing designation of the river. It includes Governor Tommy Thompson of Wisconsin. If you look at it carefully you will find that it represents an estimated 7,000 businesses and perhaps as much as 12 million people. We also have collected 12,000 signatures of people who do not want any interference with their property. The copies of the petitions are in these three books.

The three large books were collected by, not slick media campaigns, they were collected by real people, ordinary people who took them to meetings and family picnics, who drove their Chevies and Fords for hundreds of miles to let their neighbors know what bureaucrats were planning for them.

Finally, I would like to quote from a letter the Park Service received, one of hundreds in opposition to the corridor. The gentleman said simply, "I was in Vietnam and fought for the land I didn't own. This is my land, and I will fight for it."

Please help us to prevent any further heritage designations. Thank you very much for giving me this opportunity.

[The statement of Ms. Hayman may be found at end of hearing.]

Mr. SHADEGG. Thank you very much, Mrs. Hayman.

I presume you will put into the record for us and leave that set of petitions.

Ms. HAYMAN. I certainly will, sir.

Mr. SHADEGG. Thank you very much. I appreciate it.

[The petitions were placed in the files of the committee due to their volume.]

Mr. SHADEGG. Cheryl Johnson.

STATEMENT OF CHERYL JOHNSON, NEW HAMPSHIRE LANDOWNERS ALLIANCE, CAMPTON, NEW HAMPSHIRE

Ms. JOHNSON. I am president of the New Hampshire Landowners Alliance, an organization which came about by accident in 1991. I am president because I was the person who had the copy machine, and I probably will be president forever unless I get rid of the copy machine.

It took me six months to get up enough courage to ask a question at a public hearing. I never dreamed I would be one day testifying in front of a congressional hearing. I appreciate the opportunity to be here even though, if you can see my hand shake, it scares me to death.

Mr. SHADEGG. You are doing just fine.

Ms. JOHNSON. We organized because of a State river management plan that would have begun to dictate what people could do on their property. The land in our area has been owned for generations by the same families, and they didn't take kindly to being told all of a sudden what they could do with their property. We organized too late, and we were unsuccessful in defeating the State designation, but in the process we discovered the river was also nominated to the Federal Wild and Scenic Rivers Act.

We started learning about it. We learned that it had some very negative impacts on private property in other parts of the country, and in 1991 I was invited by the Park Service—probably they regret that invitation, but they invited me to serve on the study committee, which I did. I got to the first meeting, discovered there was no study. This was an advocacy group, not a study committee. There was no study done. All the meetings consisted of people sitting around discussing ways to publicize the designation to gain public support. It was absolutely orchestrated by the National Park Service. One of the participants in the study said—and I thought it was a perfect summation—I feel like we are all in a play and each night the Park Service gives us another page of the script. That is exactly how it went.

Two aspects of the study are certainly deserving of your attention because this is happening all over. One, the National Park Service made cooperative agreements with two environmental groups to help conduct the study. They were supposed to do public opinion surveys and outreach and that sort of thing. They were paid quite an amount of money to do it. The Park Service also revealed that should designation take place these environmental groups would continue to be paid to do educational and outreach activities.

The organizations both became very vocal outspoken advocates for designation, and they attacked personally and publicly anyone who dared to oppose them. Also, we asked ourselves how could these groups possibly render an objective result to the information they gathered if they were so biased in their view? We obtained an internal memo from one of the two organizations, the Merrimack River Watershed Council, written to its board of directors which proved to us that they could not remain unbiased and they could not render unbiased opinions.

The memo said: "Our involvement is on two levels. First, we are a technical cooperative to the National Park Service and the study advisory committee. We are also an independent advocate for the study but have played down any role as an advocate in order to maintain the appearance of objectivity." They admitted in their own memo they were not objective.

In addition to the public outreach, the memo continued, "a coalition has been formed funded by the Merck Fund through the Appalachian Mountain Club. This coalition's purpose is to counteract the Wiseuse group"—meaning us—"in New Hampshire, a paid community organizer working in each of the Pemi communities to rally support for designation. This work is being coordinated through the Society for Protection of New Hampshire Forests, one of the groups being paid, and our staff person Dijit Taylor," meaning the other group who was being paid were now organizing a quasi-supposedly

grassroots group to lobby for designation while they are accepting money from the Park Service.

Even more interestingly, the Park Service itself became an advocate for designation. They began writing letters to the local papers. They attacked us personally, describing us as antienvironmentalists because we dared to say we don't want Federal involvement in our local land use.

The conclusion of this whole thing happened when our towns, which have a local town meeting form of government—you must remember, we are the live free or die State, we take our town government very seriously—our congressional delegation said they would not introduce a bill for designation unless there was strong local support, and they said the town votes would determine whether or not there was strong support. The towns all voted against it, all but one town which only voted yes by 20 votes.

The outcome of that was that the study—the Park Service is supposed to submit a final report to Congress three years from the date of enactment of the study, which was in 1990. It is now two years past that nearly. There is still no final report. They won't even release the draft report even to study committee members in spite of the fact that Senator Bob Smith and Congressman Bill Zeliff have both been pressuring the Park Service to do so.

I'm told that wild and scenic river studies can stay open forever. A Mr. John Hoburg, who works for the Park Service, told me that there were several studies which are still open from the seventies and with a simple 90-day review they can be reopened and designation can take place, and I'm very distraught that in the course of this whole thing the National Park Service—we talked about and heard testimony on arrogance in public officials earlier, and Mr. Drew Parkin, who is the chief of rivers and special studies for the Park Service in the North Atlantic Office, saw fit to make unbelievable comments in a letter to my Senator attacking me personally saying—here he says—my Senator wrote with a request for information on the report. Drew Parkin replied in a letter on Park Service stationary: "It is my understanding that your call was prompted by a request from Mrs. Johnson of the New Hampshire Landowners Alliance. She has made similar requests of me that I have refused to answer." He then said that—he characterized our efforts as saying, "Over my career seldom have I observed such a display of viciousness, hate, and dishonesty." He said that we were a minority of people who see the world through glasses clouded by ignorance, avarice, and obsession with nonexistent conspiracy, and he declared that the final report, when and if it is ever produced, will point out that these town votes were heavily influenced by the fear and intimidation instilled upon voters by study opponents. Mind you, the votes were by secret ballot, and I don't think of myself as an especially intimidating person. But this is what the Park Service responded to my Senator.

The Wild and Scenic Rivers Act is being used by environmentalists to control and regulate millions of acres of land and rivers all over the country, and it is really time that something was done about it. It needs to be amended, perhaps it needs to be ended, and certainly something has to be done to make them finish these studies to report to Congress and to abide by their own law.

Thank you.

[The statement of Ms. Johnson may be found at end of hearing.]

Mr. SHADEGG. Mrs. Johnson, thank you very much.

I would request that you put each of those documents into the record because I think they tell a wonderful tale that needs to be part of the record before us.

The bells you have heard suggest that we are required to go vote. We have now just a little less than 10 minutes to do that. Unfortunately, because it could be a series of votes, we can't even try to keep this hearing going nor promise to you that we will be back within five minutes. Normally it would take us about five minutes to go over there and come back, but because they have told us there may be a second or a third vote we simply have to recess until the sound of the gavel. So we will be back as quickly as we can. Thank you very much, and we will come back for questions. We will be back.

[Recess.]

Mr. Shadegg. Thank you all.

I did speak with both Mr. Pombo and Mrs. Chenoweth on the Floor. I expect them to be rejoining us and I know they each have questions, so it is at some risk that I am going to go ahead and get started because if they don't get back here and my questions don't go on long enough, one of us, either some witness out there or myself, will have to punt. But we will do that and we will use this time as best we can right now.

Several of you have testified on aspects of private property takings or regulation of private property in ways that are not traditional, not the Endangered Species Act implications that we so often focus on and the wetlands implications that we so often focus on, and I thought it might be worthwhile to get a couple of you to expand upon those areas.

At one point in the testimony, I did note, somebody said, "Look, we would just like the Federal Government to get out of the business of regulating land, period." That strikes a chord very near and dear to my heart, and I am not convinced that the 10th Amendment doesn't suggest that we should do exactly that. But at the moment, the Federal Government is very much, I think, in the business of regulating or affecting private property and private property rights.

And in that regard, when it does, I think it is important that it strikes a balance which is fair and that it not take private property rights without compensating for them, which is what this hearing is all about.

Given that, let me start, Mrs. Hayman, with you. Tell me, if you would, what your understanding of the implications of the legislation you testified about would be. That is, if, in fact, this corridor is established, what is your understanding its powers would be and how far would its reach go in terms of taking private property rights from you?

Ms. HAYMAN. They are very good questions. It is difficult in a way to answer them because we never know until the designation is made and the management plan is written just how bad it is going to be, but by that time, you are stuck. But looking at it from—I just kind of have to—I have to get my mind together.

Mr. SHADEGG. Sure. I am just looking—to the degree you can be, please be specific about what you understand its powers would be in its ability to restrict people's right to use their own property.

Ms. HAYMAN. For one thing, the commission that is presently working has assured us that there will be no regulation of private lands, that they won't regulate private lands. However, they don't have that authority in the first place. That was not their job.

The regulation of private lands will come by another commission, which is always appointed after the study is over. A new commission is appointed and that is the group that we are concerned about that writes the management plan and sets the guidelines that have to be followed by the localities.

Now, they also tell us that it is going to be local control, that we won't lose our ability to make decisions. However, if you have a management plan and guidelines that specify certain conditions must exist, it is then up to the localities to pass the resolutions or the ordinances to meet those guidelines. So in effect, you don't have local control. You have—your control is from the higher authority.

Another concern that we have is they said "initially one countywide". We have seen in other areas where they start out in a limited way and then as the program commences, it is expanded to a far wider range.

A good case in point is the Saint Croix Wild and Scenic River, which is right in our area. It started out as a narrow corridor with the Park Service owning a thousand acres of land. The Park Service now owns 60,000 acres of land. They have systematically removed every private residence and structure along the controlled area of the waterway.

Mr. SHADEGG. Actually removed them or directed that they be removed?

Ms. HAYMAN. They have directed them to be moved and there may have been some compensation even, but these people didn't want to leave. These were vacation homes. Some of them had been in families for several generations, but they have been required, obliged, finally to leave the property and——

Mr. SHADEGG. Do you know if that has occurred with regard to actual private property?

Ms. HAYMAN. Yes. Yes. And now, what they are saying is, we really can't totally control this—or protect this waterway, this wild and scenic river, unless we can control a larger area. So now they are going ahead and are going to control the development on the entire watershed.

So we look at the Mississippi River and they started out with one county wide. How long is it going to be before they go up the Illinois, the Missouri? They are already suggesting that, the Arkansas, and the Ohio River and all the rest of them and every little tributary along the way. The Mississippi River drains 31 States. It is the heartland of the country. They could potentially control the entire heartland if they once begin.

A Texas businessman told me, kill it right now. If they once get a foot in the door, you will never be able to stop them.

Mr. SHADEGG. Thank you.

Ms. Johnson, you wanted to comment on that question. I would appreciate that.

Ms. JOHNSON. Yes. Wild and scenic river is a good example. Wild and Scenic Rivers Act itself doesn't have a whole lot of specific regulation in it. However, in September of 1982, the **Federal Register** published the Federal guidelines for the management of wild and scenic rivers.

The Park Service today is telling people, Oh, don't worry, we won't implement those here, but they exist. They have now been superseded by a later set of regulations. They say very specifically—I wish I had a copy in front of me but I can almost quote it verbatim—that land uses that are in existence at the time of the act may be allowed to continue but all new land uses must be considered for their compatibility with the purposes of the act. So that sort of thing is what we are afraid of.

Mr. SHADEGG. Can you cite for me an example of where, as a result of the act, someone has been compelled, with regard to private property, to remove a structure or to do something else that amounted to a taking, and do you know if, in fact, there was a compensation?

Ms. JOHNSON. Marilyn just mentioned the Saint Croix. The Saint Croix was one of the first wild and scenic rivers to be designated in 1968. We know people who own land on the banks of that river who are denied the right to cut a view of the river unless they cut it at a 45-degree angle downstream so that people passing by in a canoe won't be able to see their house. They don't want the wilderness experience to be ruined.

They fought for 20 years to keep their freedom to use their property, and in order to keep it, to keep the land, they were forced to sign a very restrictive easement on the property. That is one case.

Mr. SHADEGG. The restriction you just mentioned, the cutting the view at a 45-degree angle downstream, that is on private property?

Ms. JOHNSON. Yes, it is. That is on the Saint Croix River in Minnesota.

Mr. SHADEGG. OK. Thank you very much.

Georgia Murray, perhaps yours is a different law. Maybe you could comment on, can you give me an example of what you would consider a taking or an extreme restriction on the value of private property as a result of—is it called the Heritage Act?

Ms. MURRAY. No. It is called the National Scenic Act.

Mr. SHADEGG. OK.

Ms. MURRAY. I think the most extreme is with regard to our open space provision. The act itself says that you cannot convert agricultural land to open space land. Yet, in fact, they have accomplished that, and in the general management area, there are no compensatory features for open space or any land.

Mr. SHADEGG. It says you cannot convert agricultural land to open space land?

Ms. MURRAY. Yes.

Mr. SHADEGG. Give me—what would that mean? That would mean I can't take a field where I am growing corn and turn it into just grass?

Ms. MURRAY. In essence, that's correct. Whatever the agricultural process was on that land. It could have been an orchard or it could have been—doesn't matter, whatever is deemed agricul-

tural, and I guess we have facilities in our county which would denote what is agricultural.

There is—I can't remember the exact name of the entity, but there is an entity and so they have done on that—done that on a place call the Chenoweth Table, where wells have been drilled, orchards have been planted, not on the entire parcel. The entire parcel consists of maybe about 200 acres and it was the intent of the landowner and the zoning prior to the act that this land was going to be dividable and be available for home sites on a five-acre parcel basis, and the act comes along and denotes it open space. So anything that he had planned for the future is null and void with no compensatory feature.

So that is, I think, the worst part of it because actually it has no use. In the open space, you can't graze on it, you can't put a fence, you can't put a barn. The public can walk on it, but the cows can't graze on it, OK? So that is the worst scenario.

There have been—in the act, though, there have been instances where they have tried to evict people from the property because they are building. Although it came in existence prior to the act, the final approval for the siting of the manufactured home was not accomplished until five months after the act. Although it was physically there, they didn't actually get the county to come down and approve it, and they did try to go to court to evict this person from the property when they learned that his placement had not been approved until after. They were not successful, only because public opinion was so against it.

Mr. SHADEGG. OK. Let me just ask one generic question. Have any of you testified before Congress before?

Ms. MURRAY. I have not.

Ms. JOHNSON. No.

Mr. SHADEGG. Are any of you, in the examples you have given, aware of anyone pursuing a takings claim, who has pursued a takings claim?

Ms. JOHNSON. I don't know of anyone who has any money to pursue. I know of situations where people would very much like to, but they are blocked just because they are told that without a minimum of $2- to $5,000, no lawyer will even talk to them and that it could run into the hundreds of thousands if it goes to the Supreme Court level where their Fifth Amendment rights will protect text them.

Mr. SHADEGG. Two- to $5,000 is not even—doesn't even open the door.

Ms. HAYMAN. I just thought of one case on the Saint Croix and I have heard of this from someone who did surveying work for the family. They purchased a plated lot between two houses about 25 years ago on the Saint Croix. They used it for a vacation sort of thing and camped out on it for years when their kids were small. Now they are ready to retire and they want to build on that lot. They cannot get a building permit because the restrictions on the law—on the lot are such that, you know, that the lot is no longer buildable. But all of these restrictions and the regulations were all made after they purchased their lot, a considerable number of years after they purchased their lot.

Mr. SHADEGG. Do you understand some of those to be based on Federal law?

Ms. HAYMAN. I just talked with one of the—with this gentleman the other day and he said he believes that they are going to pursue a takings claim, but I don't know how far they have gone on it.

Mr. SHADEGG. Do you know if the regulations that restrict the use of that land are Federal?

Ms. HAYMAN. That is on the wild and scenic river, yes. That is Federal restriction.

Mr. SHADEGG. Ms. Murray, you want to comment?

Ms. MURRAY. We are seeking counsel for an inverse condemnation on our 20-acre parcel. That is in effect a takings.

Mr. SHADEGG. Mr. Ayer.

Mr. AYER. One of my friends and clients on a wetlands issue ended up—they were going to go to court and they ended up negotiating. The negotiating ended up that he would be allowed to build on a small portion of his property. The rest would be set aside as wetlands. So it never actually went.

Mr. SHADEGG. OK. Thank you very much.

Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

Cheryl Johnson, I just—I would very much appreciate a copy of the letter that you had received from——

Ms. JOHNSON. I have several with me.

Mrs. CHENOWETH. Thank you. The author of the letter, if he thinks you are fierce, he ought to meet your copy machine.

Ms. JOHNSON. I would just like to point out that he no longer works for the National Park Service. He—Dru Parkin, who was chief of rivers and special studies, and Gary Weiner, who was the project manager for the Pemigewasset wild and scenic study, have both been dismissed from the Park Service, we are told, for budgetary reasons.

Mrs. CHENOWETH. Isn't that interesting. I would be very interested in a follow-up on that, but I really, really would like to receive a copy of the letter.

All of your testimony is so compelling, I am going to try to get as much in in five minutes as I possibly can.

Mr. Ayer, you talked about the fact that in California now they are trying to take the use of water for a stubbed-nosed what, fish?

Mr. AYER. Snub-nosed sucker.

Mrs. CHENOWETH. What redeeming value is there in a snow-nosed sucker?

Mr. AYER. Well, apparently the government thought none back in the 1970's because they tried to poison it and tried to eradicate it, and then all of a sudden now it is an endangered species. And I don't know if you know Klamath, the Klamath River area in Oregon flows down into California into the Tule Lake basin, and their zeal of trying to protect this fish now, it is also apparently causing some migratory bird breeding problems because they are reducing the water levels in the national game refuge and which in turn flow to these farmers' ranches and things. So it is a real interesting thing.

One of the things, you had asked someone earlier about what would you do in changing things. One, every single agency out

there isn't on the same page. Everyone has their own agendas, doing their own thing, and everyone causes you lots of consternation individually. If at least they were all together on the same page, you would have some semblance of knowing how to deal with these people.

Mrs. CHENOWETH. That is right, and it is creating so much confusion. But I do want to say if I was a snub-nosed sucker's mother, I would see some redeeming value. I know they talk about ecosystems and biodiversity and all that, so I am really trying to learn. But I can tell you one thing, that in your State of California, you people own the water and the State owns the unappropriated water and they have been massively taking water for use that they don't pay for—they being the extreme environmental community—and up in Idaho, we watch what you do in California because eventually it trickles up to Idaho, and—but we really are beginning to speak out all over and say, This is our water. If you want it, buy it.

Mr. AYER. Well, this is what is happening in our area, they are now coming in and buying some of our very best lands and controlling the water too with our tax dollars, and removing that from our income base.

Mrs. CHENOWETH. And you know something, I think that is something that Congress is going to have to deal with because unless there is a public purpose, a public interest value that is established that is of greater value than having property and private ownership, I think that they cannot willy-nilly just expend our tax dollars. I feel very strongly about that.

But I can tell you that the five of you sitting up here today will have more impact in terms of stirring up the public interest and starting to state our case. We are still working with a spider web back here, but we are making hay, and we are making great strides forward. And I thank John Shadegg and Richard Pombo for their leadership in these issues. They are really on the cutting edge. And I served with Richard Pombo on the Endangered Species Act Task Force, and things are changing, but it is you people who took your country back and are fighting for our land, and, boy, we are fighting right with you.

I do want to say that each one of your testimonies showed a serious violation in civil rights and some day I hope that attorneys will look at the pending huge case that is very winnable on individual violations of civil rights.

I understand on another issue that the National Historic Preservation Act has tied up about 235 square miles of land up in your area, and if an Indian, or a member of a tribe, I should say—I really am trying to be politically correct—if a member of a tribe can attribute mythological or cosmological values to this land, it can be protected under that act.

How is the act impacting your communities?

Mr. AYER. Well, what the situation was specifically is, the University of California-Berkeley, which probably most of you have heard of, was commissioned by the United States Forest Service to do the study because they thought there could be some significance to Mt. Shasta, and it all springs back to 20 some years we had a ski area there and the individual was getting old, an avalanche

wiped out the ski area, and he gave the permit back to the Forest Service.

Right about that time, Congress began doing the rare one and two studies and the wilderness studies. All the environmental groups came back here and lobbied for what they wanted on the mountain and so did the ski area proponents.

Everybody finally agreed that 38,000 acres of the mountain would be designated as wilderness and 2,000 acres would be designated to replace the old ski area.

The Forest Service set about bids for the permit again. We had a successful bidder, and bottom line there, we have been 10 years in appeals for that successful bidder. Now, by those same organizations that came back here and agreed that we could put skiing back there. And the Forest Service seems to be right in there alongside of this, Oh, there must be some historic significance now to this, so let's study it. They hired Berkeley.

Berkeley went out and did a "independent study," a nonpartisan study. They advertised that we want to find out what significance there is to the Mt. Shasta area for Native Americans. Thirty-nine Native Americans showed up and it ended up that they said, our great grandfathers worshipped this mountain from afar and the whole surrounding area, and therefore, by the act, it is significant enough to deem it a cosmological area. No one needs to set foot on it. Nothing need occur, only that they said that it was worshipped from afar.

And so we were successful at the moment and finally we got Jerry Rogers out here, who has since quit, who is the keeper of historic record, we got him out there, he looked, and finally said, OK, he got so much pressure he raised it back up some.

It still precludes us at this point in time from getting our ski area. It gives the environmentalists a tremendous amount of pressure that way. Plus, everything we can understand, these environmental groups are working to incorporate a few Native Americans so that they can be the advisory groups that the Forest Service looks to to manage all of these lands that have been designated.

The interesting thing is they don't even have to actually be designated; they only have to be eligible. If they are found eligible, then you have to treat them as if they were, and you don't even get any input into this, and we can't even, by the Freedom of Information Act, get any testimony of the Native Americans.

Mrs. CHENOWETH. Because it is proprietary information to the tribes?

Mr. AYER. Yes.

Mrs. CHENOWETH. That is happening all over, Mr. Ayer, and I am telling you, we are going to have to take that up here because it distorts the FOIA concept totally.

Mr. AYER. And it is so sad because our county, we have got a lot of natural resources, we have got a tremendous amount of good, hard-working people who love this country and we can't hardly function at this point in time. If we just had the government out of our lives, we would be a really healthy, prosperous county and economy.

Mrs. CHENOWETH. Mr. Chairman, I would like to ask Mrs. Murray just a couple of questions, if I might.

Mr. SHADEGG. Without objection.

Mrs. CHENOWETH. Thank you.

Georgia, in the act that created the Columbia River Gorge Commission, did they explicitly exempt the commission from any State law? Did the Congress explicitly exempt the commission from State or local law, which is usually——

Ms. MURRAY. I don't know if it actually says it in the act that State laws don't apply to them, but they advocate that. I don't know if there is actually a paragraph, and it is a 31-page book.

Mrs. CHENOWETH. I would like to work with you on that because I would be surprised if they did. If they did—very often they say that this is our interpretation. If they did, I would like to know so we can work on that and make some changes.

Ms. MURRAY. See, they are funded by the States.

Mrs. CHENOWETH. Pardon me?

Ms. MURRAY. They are funded by the States but they actually publicly say at public hearings that State laws don't apply.

Mrs. CHENOWETH. They were created by the Federal Congress funded by the States.

Ms. MURRAY. Yes. The Federal Government created the ability to have a bi-State commission funded by the States.

Mrs. CHENOWETH. Do the counties receive funds from the Columbia River Gorge Commission?

Ms. MURRAY. No, they don't. They are to administer the ordinances that become acceptable to the commission that are consistent with the act. They administer those now by charging fees for land use applications, whereas if the gorge commission is administering in those counties that have not adopted consistent ordinances, there is no fee.

Mrs. CHENOWETH. What is the accountability of the gorge commission? Who are they accountable to?

Ms. MURRAY. Nobody. Absolutely—the only thing we have been able to hear is that if there are wrongdoings, perhaps we can have an oversight hearing. But that is not even well defined and that is something that Senator Hatfield has touted for a few years now, but has never come across with.

Mrs. CHENOWETH. You know, I would like to just make a final comment in the form of a question. Have you appealed to your State legislature to do away with the funding?

They are of a new mind-set, and I know being from Idaho, what happens down there impacts us. And I think that we would love to see the States withhold funding, because the governor can't veto withholding funding.

Ms. MURRAY. But in our State, the governor that we have now, he would never do that. We did have people down there suggesting that they not get funded and they didn't give them what they wanted. They wanted about $750,000 and they gave them $556,000 and that was about the level that they had before.

Mrs. CHENOWETH. I think there may be other funding from other foundations and so forth.

Georgia, I would really like to work with you on this, OK?

Ms. MURRAY. OK, thank you.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

Mr. SHADEGG. Thank you.

Mr. Pombo.

Mr. POMBO. Thank you.

Jim, I have talked to you before about what is going on on Mt. Shasta and some of the problems that it could cause in your area. I would like to talk to you a little bit about this concept of what they concede they can control and how that would affect your area.

How much of the Mt. Shasta area is federally owned?

Mr. AYER. It is a little bit tough to say how much of just our area. Like I say, 65 percent of the whole county is owned by various governmental agencies, BLM, Fish and Wildlife, Forest Service, et cetera. Right now the governmental agencies are also the biggest employer. But to say exactly, I can't give you a figure around the Mt. Shasta area. It is a large amount and like the little town of McCloud, it is even larger. Some of the towns have no—hardly any land base of their own.

Mr. POMBO. But what happens on private property in your area is dictated by the laws that are established for federally controlled property in terms of what happens with endangered species or what happens with this national heritage area?

Mr. AYER. Well, what is interesting, I find a lot of our people of course are moving out of the area. They can't find any jobs anymore. The people that we are getting coming up from the Bay Area, Los Angeles area, want a nice little piece of land next to Federal land, and I typically advise them that that may not be such a good idea because one of these days I tend to think it is going to be absorbed and they may not have their home anymore.

I know that isn't exactly what you are looking at, but the Federal regulations and the environmental groups that have been pushing this on us now say this is—the National Historic Preservation Act as amended in 1992 is—such a benign law; this is simply for recognition purposes only, and we are saying, Well, then why not just recognize them and say, you know, whatever.

But what you really find when you start digging into the law is, like I say, these groups are starting to form coalitions with certain Indian names and they are going to the Forest Service as the experts and representative of all the Indian peoples within a particular geographic area and saying, We will now help you manage this. And they have already, just on the side, gone out and they are appealing certain timber sales of private property that can be seen in what is called the view shed of the district, and if there is any noise pollution, so they can—eventually they can begin controlling everything.

And one of the leaders of the groups even talked about when the water system of the City of Mt. Shasta was within one of the areas before we were able to get it removed, they were talking about, well, they wanted to make certain they could control the water so that we always had pure water.

It is kind of crazy. You know, we have been managing the area for 100 and some years and all these folks move up and fall in love with it because it is so well managed. And then they want to take it away from us because we don't know how to manage it.

Mr. POMBO. You mentioned view shed. I would like to explore that a little bit. What do you mean by view shed?

Mr. AYER. In this case, Mt. Shasta is over 14,000 foot elevation, and it is now, since with the designated area or the eligibility, anybody sitting up on top of the mountain, as we understand the law, could in theory control as far as they see anything that happens within that area.

Mr. POMBO. So if you wanted to build a home or a business or something that may disrupt the view.

Mr. AYER. Right now they are only talking about ski towers, but yes, it just seems like it keeps on——

Mr. POMBO. Is there any difference in the law between a ski tower and a home?

Mr. AYER. No, none whatsoever. None whatsoever. And like I say, what really seems scary about it is these groups that are forming and purporting to be the experts for the Forest Service and the Forest Service is embracing them with open arms. We are saying, Wait a second, how did you guys get to be the experts here?

Mr. POMBO. In my area, they have established recreational trails on the ridge lines and they have commanded their view shed restrictions from those recreational trails.

On one particular point, they were able to stop the construction of a home because they could see it from their trail. From that exact same point in the trail, they could also see the San Mateo Bridge and the Bay Bridge. So it would be fairly easy to say that they controlled land use for most of the Bay Area from their trail, and I think that you are probably maybe a few years behind us but you are probably going down the same path.

Mr. AYER. I believe so. And not only that, but we see this particular law now, the environmental groups have found it. They are starting to use it everywhere. You are going to hear from Virginians in a moment. It is happening in Idaho. Clark Collins is talking about a lot what is going on there. It is happening in different States now all over. They have come up with these districts and these districts are, you know, thousands and thousands of acres. It is the next wilderness bill, in my opinion.

Mr. POMBO. Mrs. Murray, you also talked about the restrictions in your area based on view shed, on this concept of view shed. Have they used it in the same way in your area?

Ms. MURRAY. Exactly the same way. We had another piece of property that had the ability to have a home, a barn and a runway, but the Forest Service had made a trail up the side of the mountain and the doctor that wanted to buy it wanted to build a two-story home and they said he couldn't do that because it could be seen from the trail. So this has occurred with us as well.

We also have a woman who owns about 200 acres of property and she has 11 deeds on this property because she acquired them at different times, and under this act, when you have one person owning property, they join all those properties together, not by creation of a deed but by saying that if you own property that is contiguous, it is one property. And her home was falling down around her and she wanted the ability to rebuild that home. She is an elderly woman, has just a tremendous amount of doctor bills because her husband was very ill and had a long time of illness, and she wanted to sell a 20-acre parcel in order to have dollars to rebuild that home. And they said that she could not sell the 20-acre parcel,

even though it was surrounded by residential use, was conveyed to her by one deed, because there was a view shed within 3.3 miles of that property and if it were developed, it could be seen. So there is another example of where view shed is similar to what previous testimony said.

Mr. POMBO. But you are saying that there was already development around that particular parcel.

Ms. MURRAY. Exactly, all around it, residential development all around it.

Mr. POMBO. What about strictly agricultural use? You talked about an area where they were planting orchards, that they had drilled a well and put in an orchard. Does that not destroy the view?

Ms. MURRAY. No, not—no. They want agricultural use. They will bend over backwards for agricultural use.

Mr. POMBO. Have they ever told you what agricultural use was acceptable and what was not?

Ms. MURRAY. No, they never tell you what your options are. They will only allow you to tell them what you want to do and they tell you whether or not you can or cannot do that. And then if you want to submit a second application and it is anything similar, you have to wait a year before you can do that.

Mr. POMBO. What about changing from grazing areas to production agriculture? Is that OK?

Ms. MURRAY. That would be OK. That would be OK.

Mr. POMBO. Thank you.

Mr. SHADEGG. We have one more panel to get through and we are running out of time. I want to thank you all for coming, but before you go, Mrs. Murray and Mr. Ayer, lest we are accused once again of anecdotal stories being allowed to come into the record without substantiation, I would very much appreciate it if each of you, with regard to the view shed testimony that Mr. Pombo just brought out, would be certain that—we will leave the record open for 14 days following this hearing.

To the extent that you can get in the names—the name of the woman you had related, she has a parcel of property surrounded by developed property. She simply wants to use it, consistent with that, and she is stopped by a view shed regulation. And, Mr. Ayer, if we could get that kind of information into the record, as hard as we can with the names of the individuals, the locations of the property, that would help tremendously.

Mr. POMBO. Mr. Chairman, I would also like to ask the entire panel one additional question along those same lines. And that is, if any of the stories that you have related to us are cockamamy stories that are false and exaggerated and made up, could you identify those stories for the record.

Mr. SHADEGG. Seriously, this is the kind of thing we are being accused of.

Ms. MURRAY. I told the truth.

Mr. SHADEGG. So we would very much appreciate whatever additional document you could put in. It would help us build this record and we appreciate you being here.

Ms. HAYMAN. Mr. Chairman, may I make just one comment?

Mr. SHADEGG. Certainly.

Ms. HAYMAN. One of things that is of great concern to us is the fact that these studies hang around for years, that they can be reopened. They dust them off 10, 15, 20 years from now and they consider it a valid study.

Is there no way, or could not our Congress consider a way of putting a limitation, a time limit on these studies so that they cannot hang around forever? If we are able to defeat something now, we shouldn't have to worry that it is going to come back to hit us in the back of the head five years from now.

Mr. SHADEGG. Yes, Mrs. Hayman, we have been talking up here, I have been talking with staff about some small pieces of legislation we may be able to put through to affect small issues like that. I would like to say perhaps we could do that.

For example, on the Wild and Scenic Rivers Act, put in a time limit. The problem is that while in the law there is this concept of res judicata, once an issue has been litigated and resolved, it can never be litigated again and parties are bound by it, unfortunately, when you are dealing with a government like ours, it is hard for me to sit here and say that we will ever have that kind of concept with regard to public policy. Because as you have seen all day long, stories about people where the government has made certain representations, the tracks-to-trails, all of those. So we can try to deal with it specifically, and hope to.

Mr. BISHOP. I would respond very briefly to Mr. Pombo's question which perhaps was rhetorical or comical in a sense. But there are certain instances, and people tend to capitalize on this, where it is simply the perception of the way that government operates as a result of the arrogance and as a result of the very real experiences that some people have experienced that other people may develop a certain paranoia of even dealing with the government.

And so therefore, there are many people who can't come to you with a specific story, or who on occasion may be taken to hyperbole. I have given you three specific examples which I will submit further documentation to back up the general nature of my comments, but I think that we need to be not derailed by the fact—or we need to recognize the fact actually that aside from specifically where property has been affected, the chilling impact on the dreams of Americans and the dreams of people, this is another totally intangible impact of regulation that cannot be measured monetarily.

Mr. SHADEGG. Thank you. Good point.

Let me call the last panel. Alice Menks, Margery Pinkerton, David Guernsey, Bill Burgess, and Carol La Grasse.

Let me begin by first thanking you for your patience. It has been a long day, I think a very productive day. We appreciate your coming and staying with us and being available and having the patience to bear with us to the end. We very much appreciate it. We also appreciate the distances you have traveled to be here and are anxious to hear from you.

So let's begin with Ms. Menks, if you would.

STATEMENT OF ALICE MENKS, PRESIDENT, VIRGINIANS FOR PROPERTY RIGHTS

Ms. MENKS. Thank you for your patience in sticking around, too. We appreciate that.

We thank you for examining the property rights issues because we in Virginians for Property Rights believe that property rights are the solution to our environmental problems because of the clear-cut lines of responsibility and it capitalizes on an owner's natural desire to protect what is theirs, and our government agencies have been left pretty well unchecked, as you have heard today, and we feel property rights are a way to deal with that.

Your takings legislation in H.R. 925 is a step in the right direction, but I do want to point out that it leaves out the National Park Service as some of the agencies that needs some oversight. So we consider it a beginning but we don't consider it dealt with completely.

We are dealing with problems like heritage areas and trails and parks and rivers and things like you have heard about today. My particular involvement is, I live near Shenandoah National Park, and living next to a national park can be a rather harrowing experience.

I found out four years ago, they were beginning a related land study on land that was five miles from the actual boundary of their park that exists today, and I found out that this was because they said that in 1936, an authorized boundary was set up within which they could accept properties. And they consider this a boundary today that is five miles larger than what they have in eight different counties.

My concerns arose because I started finding out the National Park Service tends to take over properties; whether actually buying the properties and taking them out of hands, they do remove the local, State and representative form of government when their bureaucrats step in.

So I have fought very hard over the last few years to make sure this doesn't happen in my community, however, even as I am testifying, they are studying my property in spite of all my hard work.

We found out through FOIA information that the superintendent of our national park was discussing issues like inverse condemnation and things with the Conservation Fund, a private environmental group. We found out too that the National Park Service appropriated thousands of dollars for land it did not own in the 1992 budget.

We tried to point this out to Congress and all we got was, our Senators gave a slap on the hand but the Park Service got the money anyway. We couldn't get anyone in the Park Service to take responsibility for this action, and so they are trying to manage my property? I don't think so.

We are concerned because it is like living next to a sleeping dragon, and it is not good to know when this dragon is going to wake up and try to gobble up our community. Our Representative Bliley has put in H.R. 1091 to try to take the boundary that exists right now in Shenandoah National Park and the Richmond battlefield parks, which have similar problems and you will hear about it, and we want support for this bill.

It would help a lot of landowners to rest a lot easier because we know the park could still continue to expand but it would at least come under your scrutiny. Right now it can happen without any

light of public day. It can go to people like Conservation Fund and get around it.

I did document some of these abuses in a book called "Us Versus NPS," which I would be happy to furnish to anyone who would request one. We have found that the Park Service is coercive and abusive in other situations like along the Appalachian trail. They were forcing a farmer to take an easement on his property or they would condemn it, but they were requiring this easement—he could not use any mechanized equipment on his farm, and when he was beginning to fight this because he saw that there were people who were leasing land right next to him from the Park Service who were allowed to use mechanized equipment and he just didn't think that was fair, and that kind of abuse is not necessary. The Park Service did back down when the right people were brought to bear, but this kind of thing is what they try to get away with.

Another problem we have in Virginia especially is historic designations and you have heard about the Mt. Shasta situation. Well, we have beaucoup situations in Virginia with historic districts. One of the biggest ones is the size of Manhattan Island. It is to commemorate one small Civil War battlefield, the Brandy Station Battlefield, and there is a cloud over all that property within 21 square miles.

I know one farmer who was trying to retire and he had permits to put three houses on the edge of his farm. He wanted to keep the bulk of his farm in tact, but he couldn't do the three houses because he couldn't get financed because he was unsure of what he could and couldn't do, even though he had the permits.

There was a situation last week. I went to a section 106 hearing from the Corps of Engineers who was dealing with a man who was trying to deal with less than one acre wetlands and the Corps was satisfied with the wetlands issue but the preservationists were using this as a historic issue. They wanted the whole 21 square miles to be examined under this one little wetland permit again.

Average landowners just don't have the funds to deal with these problems and they don't have the funds to hire archaeologists and wetlands experts and biologists and to go legal authority to get these things removed.

So what we are trying to say is, we are tired of trying to see the public good being put on individuals' backs, and people who are trying to put in parks on the cheap are costing the public little but they are costing individuals too much and we need your help.

Thank you.

[The statement of Ms. Menks may be found at end of hearing.]

Mr. SHADEGG. Thank you very much.

I would like to right now request a copy of Us v. NPS for myself, and I hope you will supply one for the record as well.

Ms. MENKS. Surely will.

[The submission of the booklet "US vs. NPS" was placed in committee record files.]

Mr. SHADEGG. Margery Pinkerton.

STATEMENT OF MARGERY B. PINKERTON

Ms. PINKERTON. Mr. Chairman, Members of the committee that are here, my name is Rennie Pinkerton and I am from eastern Henrico County, which is east of the City of Richmond in Virginia.

I know Alice Menks—sort of by accident. We got together because we had a mutual problem. I started into this 12 years ago—well, 15 years ago now—when the National Park Service "served us with papers through a newspaper" that said that they were going to take our property as a national park! We had to read about it in the paper! It had passed the House of Representatives and was on the way to the Senate.

At that time, I had my first son in my arms. He was an infant. That child is now 15 years old and is very patiently waiting for us today. Fifteen years I have been dealing with this.

The bill failed. It was an "Omnibus parks bill."

Then in 1989 we got served the papers for a national historic landmark.

I went to law school and actually practiced before I had kids, and then life kind of changed a little thereafter; which is fine, because I don't have time for it anymore anyway. All I do is private property rights stuff.

It is going on so much in Virginia that historic designations—they could take all of the State of Virginia should they choose to.

If there is a "Heritage Bill", I don't think that there will be anything left. They are looking at the Shenandoah. They are looking at going from Jamestown up to Richmond and up to Fredericksburg. There will not be anything left.

In 1991, we did kill the "national historic landmark", incidently, by going and arguing and showing where the National Park Service had lied in the documents that they had presented to the committee (National Parks System's Advisory Committee, History Areas Committee). They did not come back after us again.

Instead, the Civil War Sites Advisory Commission identified an area for a battle that would probably take 100 acres. It is now 10,000 acres! It is so large they have to have the right site and the wrong site.

If what Congressman Bliley said is true, and I am sure that it is, my superintendent let him know that they wanted our properties in that area for a new headquarters. This is not an appropriate way to do business.

This document right here is supposed to be a "draft" document. It was an agreement between the local governments and the National Park Service, and they had a meeting on it. I was very fortunate, I was in an area where I asked the superintendent, "Hey, when can I get a copy of that?" And she dropped one (the document, "Conserving Richmond's Battlefields") in my briefcase and said, "Don't tell anybody I gave it to you."

Well, I went straight to the copy shop and made copies of it and handed it to people, and said, "Read this; let's figure it out." It has got things in here that the Richmond National Battlefield Park presently has an authorized boundary of 250,000 acres. They own a little over 700. With the taking of the Malvern Hill property, they will double the size of their current holding. However, we are all within this boundary, 250,000 acres—vulnerable to condemnation

with "donated funds"—with "donated funds." They don't have to come to Congress for an appropriation. They don't have to get approval for this.

Why title companies have not caught onto this and said, "Oh, my gosh, these people are really under a cloud with their properties." I don't know. I don't know whether to even tell them or not, because I am one of those people. When they start pulling second mortgages because they don't know whether people are going to have the money to pay them off or not because the property is not worth anything, this is what worries me. How many people are going to go bankrupt?

So Tom Bliley's bill is to freeze the boundaries as they presently are, with a few exceptions in Richmond, and in Shenandoah and a few other areas, which don't really concern me, because the people there have said that they want those things. I would ask for your support on this bill because that would then give us an opportunity to go fight for these other things.

Having gotten into this area for the last 15 years, I realize that all of these property rights issues are vastly and horribly connected.

The "greenways" situation that you were hearing about, the rails to trails, there is something in here (Conserving Richmond's Battlefields) that talks about those particular things. It even gives them a name. I heard Francis Kennedy, Director of the National Park Service's wife, several years ago say, Oh, Richmond has been selected to be the "premiere greenways area" and we are going to start having meetings.

My daddy and I looked at each other and we have been attending meetings all over the world. We finally killed that, too; but not after going through it for over a year, going to meetings. The Conservation Fund was there (at the greenways meetings). The National Park Service was the one "facilitating it," and it was nothing but a bunch of special interest groups that were going to go up every stream, every creek, across every power line, every field—everything had been marked off. When the Farm Bureau found out, they were not real thrilled about it.

We have found these people to be oppressive, aggressive. They have been scheming to figure out what to do.

Everything I have I got from the Freedom of Information Act. Thank you for it. I don't always get it right away, but when I get it, at least I can do something with it.

There is so much that I want to tell you, I cannot do it in five minutes. I have been doing this too long. I know things about wetlands. I know things about Shenandoah. I know about Brandy Station. I know of things all over the nation, simply because I have to.

I want my life back. I want a home for my children to live in. I want to know that these people cannot come back and "get me" again. I have lived on this property since I was three. I live next door to my parents. My husband was kind enough to say we could build a house there, and we have. My parents are getting old. I need to know where my children's future lies.

Please help. Please help us with this bill (H.R. 1091). Please put the National Park Service where it should be, by limiting its budg-

et, and changing the National Historic Preservation Act of 1966. Tell them they cannot designate property as "eligible", even for the National Register of Historic Places, over the objection of any property owner. To do those things would correct a lot of these errors.

Thank you.

[The statement of Ms. Pinkerton may be found at end of hearing.]

Mr. SHADEGG. Thank you. You did a marvelous job in just five minutes.

David Guernsey.

STATEMENT OF DAVID GUERNSEY

Mr. GUERNSEY. Yes, sir. Mr. Chairman, I have to say, I think a lot of us have been waiting, I have been waiting 20 years for this day, and believe me, just to wait a couple extra hours is a very, very small price to pay and we really appreciate it. But if you held this hearing every day for the next two decades, you would never get all the stories. And as we look at it, we see a pattern that keeps on recurring in these. In almost every instance, it is not just the government versus a private property owner. The private property owner is really up against an in-depth special relationship of governments with some sort of private special interest group and environmental advocacy group, and many times, these are funded by further backed wealthy, privileged interests which have a far different agenda from what the public is being told, and my written testimony goes in depth to one of these, that involving the Appalachian Mountain Club. I won't go into that, except come right to the point at the end that the Appalachian Mountain Club operates a hut system for hikers on national forestland under a 30-year permit for no fee.

It is now—it has been accused of siphoning off over a $1 million a year from this hike hut system in direct violation of its permits. This leverages with more foundation grants to go into political advocacy. The Forest Service looks the other way. In return, the Appalachian Mountain Club lobbies for the Forest Service funding as identified by Forest Service staff for whom lobbying is prohibited. Now, those are their words, not my words.

When they get into political advocacy, one example, the Forest Service, the Appalachian Mountain Club and 23 other environmental organizations have formed a partnership and this is their categorization, not mine, to green-line the 26-million-acre Northern Forest which puts hundreds of thousands of property owners at risk.

The AMC has intervened with many environmental groups in the dam relicensing process under the Federal Energy Regulation Commission. One thing they did in Maine is they are pushing to have the applicant accept condemnation authority so it can go around and condemn other private landowners abutting the project even though there is no new construction involved.

One of these abutting landowners happens to be the State of Maine, so you have a private landowner being forced to condemn public land in order to satisfy the environmentalists' appetite for preservation.

The Appalachian Mountain Club is this year in the process of getting repermitting. Its 30-year permit expires this September, I believe. They have asked that the Forest Service pay for all the environmental analysis.

The Forest Service, it looks like, is going to respond. It responded by saying, Well, there is no environmental work really needed. I think here is an example where oversight of this repermitting process is certainly in order from some entity other than the Forest Service. They have certainly shown themselves incapable of doing this.

Coos County, which is the northern New Hampshire county, has appropriated $25,000 just to try to protect their rights in this repermitting. That is a lot of money for a local county to spend just on legal fees to protect itself against the relationship with an environmental organization and the Forest Service.

I think something should be done about limiting the Federal Energy Regulation Commission's authority to those legitimate power issues. It should not be in the land-grabbing business. But underlying all this, however, is the fact that these problems will never go away until we can make the nonprofits and their funding sources accountable to the public for the harm they are causing.

We found evidence in this of substantial grants to the Appalachian Mountain Club from foundations to promote greenlining in the northern forest, and that is a quote out of their grant. Local government officials demanded to see the actual grant documents and these requests were denied. Accountability requires free public access to the relevant facts and we would ask that you force some sunshine into this process and provide for the imposition of severe sanctions against those who abuse it.

Thank you.

[The statement of Mr. Guernsey may be found at end of hearing.]

Mr. SHADEGG. Thank you.

Mr. Bill Burgess.

STATEMENT OF BILL BURGESS

Mr. BURGESS. Thank you very much.

Honorable ladies and gentlemen of the committee, I am honored to be here today. My name is Bill Burgess and I am a fourth generation landowner and logger from Chelan County in the State of Washington. My family settled in Chelan County on July 4th, 1895 and began logging and sawmilling. On July 4th, 1995, we will have our one hundredth centennial celebration. My family is still managing the same forestlands that my great grandfather settled and we have been good stewards for 100 years.

At this time I would like to present a photo collage that I have got of the past, present and hopefully future management of that parcel. I would like to share that with you. I have shown the land manager's pictures there and if the past managers were alive today, I have showed pictures of the trees on our property that represent the ages of those managers. I have got—my great-granddad there was—he would be I think 125 years old today, represented by trees of that age class, so we have got a mixed age class over that property.

Our property consists of approximately 2,000 acres and we take good care of our forest environment because that is where we work and live. We have a variety of wildlife on our land including elk, deer, bear, cougars and numerous species of ground rodents, squirrels and chipmunks. We also have northern spotted owls.

The U.S. Forest Service tells us that we have owls on our land because we have created spotted owl habitat through our forest management practices over the last 100 years. Our timberlands that once represented security and a source of income for my great grandfather, my grandfather and my father are now in jeopardy. They are being disrupted and destroyed through fire, insects and disease because of crazy management policies that have been adopted by the U.S. Forest Service because of the Endangered Species Act.

Our timberlands are intermingled and in some cases surrounded by U.S. Forest Service managed lands, so their management or lack thereof affects our lands. An example of this nonsense forest policy can be shown with the 1994 forest fires in Chelan County where 200,000 acres of habitat and approximately one billion board feet of Federal timber burned up.

The U.S. Forest Service, during their backburn operation in their firefighting effort, knowingly burned up a spotted owl nesting circle. My family had a 40-acre parcel in the owl circle that was consumed in the backburn operation. To date, we have been unable to obtain a harvest permit to salvage-log our burned timber, because it is in the northern spotted owl circle. These regulatory actions are devastating to the owners and to the forest resources.

The 1994 Chelan County fires were predicted. The U.S. Forest Service lands have been abandoned and the Agency has decided to let nature and the enviruses manage the resources.

The Federal forestlands are loaded with huge fuel concentrations. Insect infestations and disease are running uncontrolled on Forest Service lands and are having devastating effects on the private timberlands and wildlife habitat. These buildups of fuels have been created because the Forest Service has stopped all professional, scientific forest management activities.

Without a good salvage harvest plan over the burned area, the private landowners can be assured that the devastation will continue. The insect infestations will move off from Federal lands and on to private, as will forest disease and the potential for additional catastrophic fires.

In the State of Washington, the Department of Natural Resources, through the revised Code of Washington, requires private landowners to control forest insect pests and diseases. If you don't, the State has the right to do it for you and charge accordingly.

This law should be in effect against Federal lands to force the U.S. Forest service to get their forests back to healthy conditions. It is difficult to maintain a healthy private forest when your Federal neighbors ignore the problems and let nature take its course.

Chelan County represents about 1.9 million acres and is 88 percent government owned. That leaves 12 percent of the land base in private ownership. Private property is being purchased at alarming rate by the U.S. Forest Service through a mechanism of nonprofit

environmental organizations purchasing lands and selling it to the U.S. Forest Service at huge profits.

This takeover of private lands by the Federal Government will have devastating effects on the remaining private property owners of Chelan County. The tax burden to operate the infrastructure will be greatly increased on remaining property owners as the tax land base is reduced through these fraudulent land sales. In some instances, the land sale to the Forest Service is prior to the sale to acquire the property. They sell it before they own it.

My family has initiated land trades with the U.S. Forest Service to block up our ownership to make more efficient management for the U.S. Forest Service and ourselves. The U.S. Forest Service has stated that they would prefer to outright purchase our land than trade. That attitude will only reduce the existing tax base in our county and goes against our principles of selling the tax land base to the Federal Government.

This concludes my remarks. Thank you very much for the opportunity to testify. And I will be available to assist you if you have additional requests or questions.

Mr. SHADEGG. I thank you very much.

I would appreciate it if you can either working with our staff or on your own, figure out how to make a copy of that photo collage and get it into the record. I think it would be very nice to have in our record to show the way you have shown it there. And so——

Mr. BURGESS. I can do that.

Mr. SHADEGG. If we can find a photocopy shop or somebody that can mount that on a machine and get us a copy, I would appreciate it.

[The photocopy may be found at end of hearing.]

Mr. SHADEGG. All right, Carol La Grasse.

STATEMENT OF CAROL LA GRASSE, PRESIDENT, PROPERTY RIGHTS FOUNDATION OF AMERICA

Ms. LA GRASSE. Thank you, Mr. Chairman and Members of the committee.

I would like to say something personal. My name is Carol La Grasse, President of the Property Rights Foundation of America. Over the years, I have been slandered with every sort of accusation from being involved in the Oklahoma bombing to being a well-paid tool of Exxon and Chevron. But in fact, we in Upstate New York and others have, with our own personal resources, defeated such measures as Peter Berle of the Audubon Society and others' proposals for the Adirondack Park, Congressman Maurice Hinchey, or Assemblyman Maurice Hinchey's proposal for the Hudson River Greenway and the Hudson River Heritage, and this spring the Rockfellers' and others' proposals for the designation of the Catskill region as a United Nations Biosphere Reserve, these and so many other programs. Some of us have lost our life's fortunes, yet we remain and have been all these years unpaid volunteers.

I want to thank you from my heart for the privilege of testifying today on behalf of three individuals who have entrusted their stories to me. This is a shortened version of my full statement. Voluminous, very revealing documentation is also available.

Here are examples of how Federal environmental laws and regulations have made farm, home and church lands unusable while the private property owners have borne the losses and costs. The 130-year-old family farm of Bart Dye in Shoals, Indiana was seized by the Farmers Home Administration in 1984. Mr. Dye's problems began when he and other farmers in Martin county started having difficulty obtaining the usual operating funds after they temporarily stopped the expansion of the Hoosier National Forest into the county in 1977.

After the 1983 drought, 14 farms in that county were taken by the Farmers Home Administration. Under the Farmers Home Administration, his lands deteriorated greatly, including the collapse of a 150-foot bridge, 18 miles of fence wrecked, and pasture gone to weeds.

In 1991, after six years' delay, Mr. Dye was granted the right to lease his land, but he could not obtain a buy-back because the Farmers Home Administration required easements under the 1990 farm law and the endangered species law. The easements would leave the use of his land to the whim of the Fish and Wildlife Service.

This procedure has encumbered or transferred to environmental agencies over 1 quarter million acres of farmland. The easement law needs to be repealed and a voluntary conservation program substituted.

Farmers need redress so that those who drain their equity in lease payments because of the easements can apply them to buy-back. And like others have said here in connection with national parks, national forest boundaries need congressional definition.

Marinus Van Leuzen, an elderly Texan in Port Bolivar placed his prebuilt home on a high and dry four-tenths of an acre parcel that he had owned for 25 years. For a crime against the planet, so Federal Judge Samuel Kent said, he sentenced Van Leuzen, who had fled the Nazis from Holland and fought seven years in World War II, to a fine of $350 per month for eight to 12 years, totaling $50,400, a giant 20-foot apology billboard and the restoration of the wetland. His house is to be ultimately removed.

Mr. Van Leuzen was forced to create a moat around his house which is now filled with stagnant water. His estranged wife just sued for divorce because she is afraid of the Federal Government.

The office of his Congressman, Representative Steve Stockman has informed me that even if the Clean Water Act is revised under current proposals, Mr. Van Leuzen's sentence would not be remitted.

Churches are not exempt from financial tribulations caused by wetlands rules. A Free Will Baptist church, a mission church in Waldorf, Maryland just south of the Beltway, was recently established on a three acre parcel. But the Corps of Engineers decreed that about 35 percent of the property should be off limits to save another wetland. The denomination, which has already spent about $155,000 for the parcel, was forced to spend $45,000 for a parking area.

Now, on another personal note, I am an environmental engineer, over 30 years of involvement as an environmentalist and a civic activist, as a public elected official and as a professional environ-

mentalist. The point where property rights advocates depart from people who lay exclusive claim for themselves to the name environmentalist is where the environment law and its imposition override constitutional protections of human rights, especially property rights. Idealistic causes should not be used to trample fundamental rights, and to deny the American tradition of private landownership.

Thank you again.

[The statement of Ms. La Grasse may be found at end of hearing.]

Mr. SHADEGG. I thank you very much.

I appreciate each of you coming forward and telling your stories.

Mr. Pombo, why don't we start with you. Any questions?

Mr. POMBO. Thank you, Mr. Chairman.

Ms. La Grasse, on your second example, you said that he had to put a billboard outside of his home and put a moat around his house.

Ms. LA GRASSE. Yes, that is correct, Congressman Pombo. In fact, Mr. Bishop, who testified earlier, had the good grace to visit the site and there is a photograph here. There are also some photographs attached to the testimony with a short summary of the latest status of his situation.

Mr. POMBO. Under what thinking did they do that?

Ms. LA GRASSE. Well, it was a further perversion of justice even beyond Judge Samuel B. Kent's sentence. The judge decreed that the wetland be restored, but when the Corps of Engineers' enforcement official carried the enforcement out, she required that the land be excavated two to three feet below the surrounding area. So what happened was that she required that this area in effect become a moat, and it truly is a moat around his house. It has no basis whatever in law.

Mr. POMBO. I have heard a lot of stories, but, you know—I have heard the stories about—in my area where somebody would affect a half acre of wetlands and have to recreate 11.5 acres somewhere else and I have seen a lot of these scenes, but I have never seen anything like this and I really don't understand what the thinking is behind——

Ms. LA GRASSE. It truly is incomprehensible. I have explored every nuance of this. How we as thinking people could sit in this room and be debating this is incomprehensible to me. But the entire parcel is four-tenths of an acre. His house occupies part of that.

Mr. POMBO. The whole parcel is four-tenths of an acre?

Ms. LA GRASSE. The entire parcel, yes, sir.

Mr. POMBO. And ultimately he has to remove his house?

Ms. LA GRASSE. Ultimately when the funds are accumulated in this escrow account, the house is to be removed. So you have this 74-year-old gentleman who served his country, is respected in the community, experiencing public humiliation. His wife, who he was tremendously concerned about becoming upset, is now so upset she is suing for divorce and he also is going to have to know that the house, a good human habitation, will go to waste, a perfectly usable human facility.

Mr. POMBO. OK. I will read the rest of that. I may have more questions about that. I don't understand—I don't know, maybe Helen's idea of term limits for judges isn't a bad idea.

Ms. LA GRASSE. It isn't that bad of an idea. Forgive me for continuing, but the reason I presented this case today was that I don't believe—and I am not a lawyer, but in my reading of the bills, I can't see any way beyond another very complex lawsuit that he and other people like Bill Ellen and Ocie Mills and so many others whose cases are well-known would have any redress because they already experienced their sentences. But I feel that there is a real need for Congress to give a form of redress and remittance of sentences to these people, in a correction bill format or some other kind of separate legislation.

Mr. POMBO. Ms. Menks and Ms. Pinkerton, you both talked about the park area in Virginia and I understand what your concerns are, that we had hearings on that bill in my committee and discussed it quite a bit. I do have a few concerns about that bill.

You have a road that is a national park and they want to purchase land that is owned by the Conservation Fund with Federal dollars because it is in imminent danger of being developed, to expand the road that is a national park. And that is in that bill.

Ms. MENKS. I am not sure I understand what you are referring to. There is a——

Mr. POMBO. Twenty-five lots.

Ms. MENKS. Yes, little tiny portions of road that they don't have a right-of-way on and they are trying to get the Park Service——

Mr. POMBO. No. They have—what they are doing is they have a road and it is a national park.

Ms. MENKS. Are you talking about the Blue Ridge Parkway and the Skyline Drive?

Mr. POMBO. I would have to ask. I think that is what it is though.

Ms. PINKERTON. Maybe the Colonial Parkway. That is Mr. Bateman's portion?

Mr. POMBO. Yes, it is in Mr. Bateman's area.

Ms. PINKERTON. I am sorry, sir. I am not familiar with that part. I remember listening to it when we were at the hearings that day—the price was rather steep.

Mr. POMBO. It is a million dollars.

Ms. PINKERTON. I was not familiar with that part. I realize that the bill was put together with the intent of trying to get it through, and taken care of, because all of them individually are so parochial, was my understanding; that nobody would be too interested about them separately, so they were all thrown in the hopper together.

Mr. POMBO. We are attempting to bring some finality to the situation that you are in, and there are just some things that we need to work out before we can go any further on that because I do have some concerns about that. I have some concerns, some deep concerns about the way that Congress has added national parkland as pork. Instead of saying that this is a unique area that we need to protect for future generations, we have used the National Park Service as a means of dispensing pork through the U.S. Congress. And I think that if you looked at the parks that we have created

in the past 20 or 25 years out of this Congress, you would understand what I mean.

I mean, there are a lot of things that we call national park that are not national parks. Even the Secretary of the Interior, Bruce Babbitt, has tried to get rid of a couple of roads that we call national parks. So we have some serious reservations.

I would like to ask both of you a question, though. What kind of an area do you live in? Is this a rural area? Is this a subdivision?

Ms. MENKS. Where I live is a rural area. There are farms all around me.

Mr. POMBO. It is farmland where you live?

Ms. MENKS. Yes, and most of them have been there for at least 100 years.

Mr. POMBO. Ms. Pinkerton.

Ms. PINKERTON. Where I live is an interesting place because it is at the intersection of Interstate 295 and State Route 5, and yet it is out of view of, and a mile from, that intersection, which is a circumvential road around Richmond and which will take you to I95 and to I64—the major highways to Williamsburg, Petersburg and Fredericksburg. All the neat little places that the National Park Service would like to be close to, which is why I mentioned the headquarters idea, you can see why the Park Service would like to be located there.

We own three and a half acres which is part of my parents' property—together we own eight acres. We raise Christmas trees on it, and kids. Around us is farmland and a few houses, and it is basically rural. Our property is on a small State road, but it is one of the major roads in the area. I can't say that it is subdivision area, and I can't say that it is all completely open space either. We are about nine miles from the City of Richmond.

Mr. POMBO. Would you estimate the number of people who live within that 250,000?

Ms. PINKERTON. About 400,000 people within that. They have no intentions of taking all that property. It includes the entire City of Richmond.

Mr. POMBO. Oh, it includes the entire city of Richmond?

Ms. PINKERTON. Yes, sir. The way it reads (the boundary legislation), it is five miles from each existing park and five miles from the City of Richmond. What happens is when you go east in my direction, you have got the City of Richmond out five miles and then they overlap in five-mile concentric circles. Then there is the Malvern Hill unit which takes you actually into a couple of other counties. That one takes you into Charles City County and some others, and Hanover, so it takes in 250,000 acres, taking in at least four different jurisdictions, maybe five, a little bit of each.

What they have the right to do is to condemn land, with private funds, and we know there is no lack of private funds, if you look to the Conservation Fund, etc. They have even been out to talk to one of our neighbors. His daddy had put a price on the property and they said, "Well, that is too much." He said, "Well, that is what my daddy wants for it; he intends to retire on this piece of property"—what he gets for it. And they said, "But look at all the tax benefits you can get." He said, "Well, I am telling you, this is what I want." And they walked away.

They may well be back if they can designate the area as a historic landmark. They will then lower the value and they may then be able to purchase it.

I am sure you have heard this before, that once they do that, the value is lowered and people will beg the Park Service to buy them, and then they will treat them as a "willing seller" because the value has been lowered. There are a couple points——

Mr. POMBO. Let me ask you on that, it is designated parkland?

Ms. PINKERTON. It is not now designated.

Mr. POMBO. If it was——

Ms. PINKERTON. Yes, sir.

Mr. POMBO [continuing]. If it was designated parkland, the only logical person to buy that would be a conservation group or the Federal Government.

Ms. PINKERTON. Right.

Mr. POMBO. So they begin to set the price.

Ms. PINKERTON. Yes, sir. There would be no market.

Mr. POMBO. And as they go in and buy a piece of property and then go to the next one and get it for a little bit less and the next one for a little bit less, you become a willing seller because you know what is happening to your property values.

Ms. PINKERTON. That is correct.

Mr. POMBO. So a provision in the law that says "willing buyer, willing seller" really does no good if there is only one buyer.

Ms. PINKERTON. Precisely. That is the way it has been when we watched things—we went to hearings in the State of Virginia. One Senator there had a constituent with a problem. They had designated their property, over their objection, as a historic site or district, and these hearings—I went to them all, all over the State.

So when I say I want my life back, I mean it. I go to more meetings than anybody deserves to have to go to. Everybody at these meetings testified how it had reduced the value of their property. One lady lost a $5.5 million contract because she was on the rail line into Washington; of course they "walked". They then spent all of their retirement funds trying to figure out what had happened to them on lawyers and they are now back at work. So we know——

Mr. POMBO. It can't happen that way. Everybody tells me when they designated a park area that you are going to have increased tourism and recreation and your property values are going to soar.

Ms. PINKERTON. And you believe that?

Mr. POMBO. No, I don't because where I live. But that is what we hear.

Ms. PINKERTON. I realize that. It is not true. Everybody that I have dealt with, except the people who have some special interest involved and are part of a special interest group, understand that property values will fall, and every example that had been given—Mrs. Menks was at some of those hearings with me—every example, every bit of testimony showed that the value went down.

If you are talking about an inner city where you are going to revive the buildings and make the whole area from trash to treasure, you are talking something entirely different. But when you are talking rural properties, there is no way but down. There is no way but down.

Mr. POMBO. Thank you.

Mr. SHADEGG. Mrs. Chenoweth, do you have any questions?

Mrs. CHENOWETH. Just two, Mr. Chairman.

Mr. Guernsey, this relationship between the Forest Service and the Appalachian Mountain Club consortium, it is more—it is quite overt. What is the outcome of that? What is——

Mr. GUERNSEY. Well, what is maybe one of the strangest things, is the permit is up this summer. They have not yet announced what the process is going to be for permit renewal and here it is, you know, June, and what people up in northern New Hampshire—and I am talking about the public officials—are afraid of is they will wait until some long weekend and then come back Monday morning and find out it is all over and it has been repermitted, and this is why that rural county has appropriated $25,000. That is a lot of money up there just to spend on lawyers and just to try to protect their interests.

Now, they, for instance, have asked the Forest Service to get an audit of the Appalachian Mountain Club to find out where this money is going. The Forest Service has refused. You know, this is just a very small sketch of what has happened up there. There are files this thick that the county officials and municipal officials have of years of trying to get the Forest Service to have some oversight in this.

And the Appalachian Mountain Club, one particular instance, they fought the permitting of a hydro improvement plan by the local paper company there that was going to lower everyone's property taxes by 20 percent in the City of Berwin. The environmentalists fought it so hard that the paper company backed out. So everyone lost. All the people in that city lost that tax windfall. This goes on and on and on, and I didn't even cover that aspect in my testimony.

Mrs. CHENOWETH. Mr. Guernsey, do you have pretty good attorneys?

Mr. GUERNSEY. Me personally?

Mrs. CHENOWETH. Yes, the citizens there who have been fighting this for so long.

Mr. GUERNSEY. Well, I mean, I am not a resident of that section of New Hampshire. You know, I am in Maine and there are different things they have been fighting in Maine. I have no idea who the attorneys are of that—I don't know if you are asking if I have got good attorneys to protect me from a liability suit by the AMC or what.

Mrs. CHENOWETH. No. Quite frankly, I think sometime we are going to have to look at suits under RICO because there absolutely is a criminal element when people get together to put a plan together that would ultimately deny people their ability to make a living, their property and their civil rights. Some day we are going to have to have some attorneys who are aggressive enough or aggressive sufficient to the aggressiveness on the other side.

Mr. GUERNSEY. Well, I certainly like the way you talk.

Mrs. CHENOWETH. Carol, it is sure good to see you again.

Ms. LA GRASSE. Thank you.

Mrs. CHENOWETH. I am shocked at this sign, but that is good work and in the true tradition of Carol La Grasse. Thank you for providing it for the committee.

Mr. POMBO. Mr. Chairman, I am asking your permission, I had a couple more questions I wanted to ask if——

Mr. SHADEGG. Well, I thought you would do that, but let me get a couple in myself here just very quickly.

Mr. Burgess, are you familiar with the President's veto of the emergency timber salvage provision that was in our rescission bill?

Mr. BURGESS. Yes, I am. I am familiar with the fact that he vetoed that bill. It is devastating to the area we live in.

Mr. SHADEGG. Let me ask you, as I understand your testimony, you have owned this land for over 100 years and as a result of your conduct and your proper management of that land, you created the habitat for the northern spotted owl; is that right?

Mr. BURGESS. That is correct.

Mr. SHADEGG. And now the Forest Service or the wildlife service, Fish and Wildlife Service, has come in and designated some of this habitat?

Mr. BURGESS. No. We are in—some of our property lies within an owl circle. We have got the—the owls are paired up and just off of our property on national forestland and then we have a 1.8 mile circle that is drawn around that nesting pair and that takes us in on our private property.

Mr. SHADEGG. Probably one of the circles we saw on the map.

Mr. BURGESS. That is correct, but I am on the east side of the Cascades so my designation is a bit smaller. I think it is about 3,000 acres for a pair.

Mr. SHADEGG. And in that vicinity, you have timber that was taken down by a fire, is that correct, and could be used now if you had authority to go in and get it?

Mr. BURGESS. That is correct. During the fire situation, I can understand the need to do some backfiring. The Forest Service uses that technique to try to stop wildfire.

The owl circle was such sacred ground that the public could not cut firewood inside that owl circle and the Forest Service, in their attempt to control the fire, set that on fire and it burned up about 40 percent of a parcel that the family has and now they have been denied harvest application or the opportunity to go in and harvest our own timber.

Mr. SHADEGG. So the timber is lying there and you are denied the authority to go in and harvest it even though it is down on the ground at this point, is that right?

Mr. BURGESS. It is standing dead. The needles are all burned off for the most part, yes.

Mr. SHADEGG. And it could be timber at this point?

Mr. BURGESS. Yes.

Mr. SHADEGG. Is there any prospect that you will ever have the ability to go get that timber?

Mr. BURGESS. I am not sure. We have submitted a claim against the Forest Service. The forest ranger said that we would be compensated for the loss. I am not sure if his compensation is like what we think we have.

Mr. SHADEGG. He didn't pull out his checkbook, I take it.

Mr. BURGESS. I am not sure if he will even admit to the statement that he made.

Mr. SHADEGG. What would you estimate the value of that timber?

Mr. BURGESS. The loss was predicted for the standing timber that we could determine a value and then a value is estimated on some of the younger growing stock. There were trees there that were 15, 20 years old. In 20 years, those would be harvestable. I think the value is estimated at approximately $450,000.

Mr. SHADEGG. And at this point it is sitting there and at best——

Mr. BURGESS. That is correct, and the timber is still in good shape and I think we have got probably about 18 months yet that the timber could be salvaged and maintain the value.

Mr. SHADEGG. And if it is not salvaged within that 18 months, will its value be lost?

Mr. BURGESS. That is right.

Mr. SHADEGG. Maybe a takings compensation bill would require them to decide to let you have it.

Mr. BURGESS. The frightening thing about this is, though, this timber that I am talking about on our small parcel is almost insignificant because the Federal Government, the Forest Service, has one billion board feet of the same kind of material standing out there that is going to fall down and be lost. I don't even know what the value of that could be. But if they don't harvest that under the salvage bill, they are going to create a catastrophic fire situation that isn't going to go away and they are going to burn us up.

Mr. SHADEGG. Would that have been salvageable had the President not vetoed the rescissions bill?

Mr. BURGESS. That is salvageable today, absolutely, and we have still got about 18 months on that. All the private landowners in the area that have also been burned that aren't on an owl circle are harvesting the burnt timber as fast as they can because they realize the value of that timber. I think only in America can we waste that kind of value and resource.

Mr. SHADEGG. How many people does your company employ?

Mr. BURGESS. Well, approximately 15 people, and some of those are my brothers and my dad and folks like that. We are just a real small logging contractor in that area.

Mr. SHADEGG. Let me flip to one quick last question. As I understand the State of Washington law, were you to manage your private land the way the Federal Government is managing its land, the State would have the right to come in and improve the property so as not to damage surrounding property; is that right?

Mr. BURGESS. That is correct. We would be declared a nuisance and they would step in and take care of the problem and assess damages and put a lien against us.

Mr. SHADEGG. That is a consistent theme that I have heard today. I wonder if we should add to takings legislation the right of private property owners to go after the Federal Government for damages when it mismanages Federal land in this fashion, because it is happening again and again.

Mr. BURGESS. It is devastating to private property owners. They are the worst neighbor you could ever hope to have.

Mr. SHADEGG. Everybody's land is nobody's land.

Thank you very much.

Mr. Pombo.

Mr. POMBO. Mr. Burgess, on the scenario that you just laid out, they are telling you that you can't cut down the trees on your property?

Mr. BURGESS. That is correct. We applied for a harvest permit application through the State of Washington and have been denied to date because that property is within the boundaries of the northern spotted owl circle.

Mr. POMBO. If your request is denied and you cannot harvest trees on your private property, what is your property worth? Could you go in there and build homes or is there another use that you could have?

Mr. BURGESS. No. That is designated timberland. It is off a national forest system road, fairly rugged terrain.

Mr. POMBO. So we are not talking about development; we are talking about totally timberland.

Mr. BURGESS. It is timberland. That is why we own it.

Mr. POMBO. Can't cut trees down?

Mr. BURGESS. That is correct.

Mr. POMBO. So it is not timberland.

Mr. BURGESS. And the owls wouldn't have been there if we wouldn't have been there first.

Mr. POMBO. So what can you do with the property if you can't cut trees down?

Mr. BURGESS. Pay taxes on it, I guess.

Mr. POMBO. Have you talked to an attorney about a takings under the Fifth Amendment?

Mr. BURGESS. Well, at this point all we have done is submit a claim to the U.S. Forest Service through the local district office and have not had a response from that yet. So I am not clear on whether or not they are going to pay damages or how they are going to approach it. We will certainly follow that up. It is not a——

Mr. POMBO. Now, one of the things that is always talked about is that no one has ever taken a claim on endangered species for a taking of their property. And if you don't mind me asking, why haven't you?

Mr. BURGESS. We were advised by the local Forest Service district to pursue it through the small claims or the court of claims at the district level initially, and the district ranger told us that we would be compensated for our loss. So I guess——

Mr. POMBO. Does that normally happen? Are they paying other private property owners for their loss?

Mr. BURGESS. I don't think there is any evidence of that yet. This thing—you know, we only got the fires out because it snowed in October and so it has just been a short time that we have had to pursue this.

Mr. SHADEGG. Will the gentleman yield?

Mr. POMBO. Yes.

Mr. SHADEGG. Just one question. When they told you that you should pursue this claim administratively, was that the claim—a claim based on the damage due to the fire and their having to light a backfire, or was that a claim based on the fact that there is an endangered species there and you are not allowed to cut?

Mr. BURGESS. A claim based on the damage done by the fire.

Mr. SHADEGG. OK, thank you.

Mr. POMBO. So if there had not been a fire and you had green trees standing, would they have let you cut them?

Mr. BURGESS. You would have to do a fairly detailed management plan. If the Forest Service had harvested timber next door to you, they may not have let you cut. It depends on how much you have that is available for spotted owl habitat.

The potential is there, I guess, that yes, some day we could, if we made a plan, there was the opportunity to harvest some of the timber.

Mr. POMBO. So there is a possibility that some day maybe you could have used your own property?

Mr. BURGESS. That is correct.

Mr. POMBO. And this is not just you; this is other private property owners in the area?

Mr. BURGESS. That is right. If you have got an owl circle, you are affected by that. We do have the opportunity that if the owls fly away, for instance, or die of old age or for whatever, they can survey that owl site for two years and if the owls have disappeared and are gone, then you can adjust your management plan accordingly.

Mr. POMBO. OK.

Mr. Guernsey, in your statement you say that a memo of a 1992 annual meeting of the Forest Service and the AMC stated under the heading of Corporate Relationship Lobbying, "More an opportunity to exhibit the strength of a partnership than a negative concern, we need to be more coordinated in our interests so that the AMC's high regard in Washington can be used to lobby for funding for forest needs as identified by the U.S. Forest Service staff for whom lobbying is prohibited."

Mr. GUERNSEY. Yes, sir. That memo is attached, the first page of the memo that has that in it so——

Mr. POMBO. That was going to be my next question.

Mr. GUERNSEY. I think it is an eight-page memo. I can certainly give you the whole memo.

Mr. POMBO. I would like a—I would like a copy of the complete memo.

Mr. GUERNSEY. I have an extra copy with me. I can leave it with——

Mr. POMBO. And leave it for the record as well because this is—that is serious.

Mr. GUERNSEY. Well, again, I am glad to hear you say that because it seemed to me, but there have been a whole lot of things over the past 20 years which have been serious and seem to have gotten swept under the rug. So I am very happy to hear you say that.

Mr. POMBO. Well, there is a new day, and thank all of you for giving us that. But this is—I guess maybe things have been ignored for so long that things got this bad, that they were using outside groups to do what they were specifically prohibited in law from doing.

I have heard stories of the National Park Service going to outside groups and having them purchase land that they wanted to hold

until they were able to get money out of Congress, which concerned me a great deal. But this is a serious—a serious statement that is here, and if you would provide that for me, I would greatly appreciate it.

Mr. GUERNSEY. Yes, sir.

[The memo may be found at end of hearing.]

Mr. POMBO. Yes, ma'am.

Ms. PINKERTON. When you are talking about these, what I call, "incestuous relationships," and who does the lobbying, there is something that I would like to share. That is that the Association for the Preservation of Civil War Sites, Inc., pretty well-known around here, fought Disney, et cetera, not them in particular but a lot of its members. When I first looked at this group of people, and my daddy is a member, he gave them money because he thought the idea of private people with private money buying battlefields was an excellent idea. That is the way it should be done.

What they are doing, of course, is buying battlefields and giving them to the Park Service. They also give tours. In one of their documents about two years ago was a tour bit of information, "Meet the tour leaders," and the tour leader was their executive director (then they changed the title to President) Will Greene. Mr. A. Wilson Greene, it says in there, used to work as a park employee at the Fredericksburg National Park and is on leave to create and be executive director of the Association for the Preservation of Civil War Sites.

They were headquartered out of Fredericksburg. They are moving to Sharpsburg, Maryland, because when Mr. Greene has recently left and gone to Pamlin Park, the new fellow coming in (his name is Dennis Frye), he is a Park Service employee at Harper's Ferry and he too is on leave to do this, and they are moving to Sharpsburg, where he grew up, at Antietam in Sharpsburg.

They are putting their headquarters downtown, I understand, with ISTEA money that the local government asked for, and the people who live downtown are very upset about having their nice, quiet town turned into a tourist area, because they intend to have some kind of a tourist thing.

Mr. POMBO. Are you saying that they used the ISTEA money?

Ms. PINKERTON. To buy a building to house the APCWS. That is my understanding from a friend who lives there.

What I am asking you, would somebody please find out what these things mean? What does "on leave from the Park Service" mean? Is he gathering retirement points at our cost? Is he getting insurance at our cost, as citizens? What does that mean?

Are they just another arm of the Park Service to go out and scarf up property and give it to the Park Service so that they can expand their holdings when they don't even take care of what they have got, I know, in Richmond?

I keep asking these questions, and in a public meeting, somebody did. And Will Greene did say, "Well, you have done your homework". When they asked, "Are you a Park Service employee, were you indeed on leave to do this? Did you work for the Park Service?" And his response was, "Well, I can see you have done your homework."

I don't know what it means and I would like to know whether we are all paying for this group and whether it truly is a separate private entity or not.

Mr. POMBO. I think we can find out. And as far as this AMC thing goes, are you aware of any Federal money that they get in terms of grants or anything in your——

Mr. GUERNSEY. I am not aware of any specific grants that they get. It would not surprise me at all if there were some. They, of course, do get free use of Forest Service land, which I suppose could qualify as a grant. At the same time, they complain that other users of Forest Service land aren't paying enough. So there is that kind of double standard which isn't all that unusual.

Mr. POMBO. Well, thank you very much, and as the Chairman said, the official record of the hearing is going to remain open for two weeks and I would appreciate any further information that you do have, if you would provide that for the task force.

And along these same lines, Mr. Chairman, I do think that possibly this begs for a hearing into these exact issues and possibly we could talk to the Chairman of the full committee, Don Young, about possibly having a full committee hearing to look into some of these issues and some of the things that were brought up by this particular panel, because I am extremely concerned about some of the testimony that we have received here today.

Mr. SHADEGG. I would join you in that. It seems to me that there is some extremely disconcerting aspects to the testimony we have heard.

Let me conclude simply by again thanking each of you for taking the time, each of the witnesses that came today.

Let me also reiterate what Mr. Pombo said earlier: A new day is dawning.

Mr. Guernsey, I guess you said you have waited for this day for 20 years. I believe another witness said she waited 12 years or 15, and now has a son who has grown. I will tell you, I am personally committed to this task and will not let go of it as long as I have an opportunity to serve.

I do want to conclude by thanking the Chairman of the full committee, Don Young, for creating this task force and for making these hearings possible, because without him and his commitment to this, none of this would have been possible. You would not have been able to be here. I think this has been very productive, and I appreciate your time.

I guess I also want to thank each of the Members of the task force who has been able to spend some time with us today, take it out of their schedule to hear this testimony. And again, thank each of you for coming and thanks to each Member of the task force that participated.

With that, we stand adjourned.

[Whereupon, at 3:42 p.m., the subcommittee was adjourned; and the following was submitted for the record:]

STATEMENT OF ROBERT KLEEMAN

My name is Robert Kleeman. I have assisted several landowners in Austin, Texas obtain 10a permits. I am here today as general counsel for Take Back Texas, a nonprofit property rights group. Take Back Texas literally sprang into existence less than eleven months ago. People in Hays, Blanco and Travis Counties became alarmed by a well-coordinated attempt to utilize federal law and federal regulations to prevent all future economic development in a 354 square mile area.

The "environmental" initiatives that stirred the people included a petition to designate Barton Creek an Outstanding National Resource Water, a FWS proposal to list the Barton Springs salamander as endangered, and, a news leak that the United States Fish & Wildlife Service (FWS) had considered declaring portions of thirty-three Texas Counties critical habitat for the federally listed gold cheeked warbler.

As this committee knows, Texans cherish their land. More than 95% of Texas is privately held. These simultaneous efforts to create a de facto federal preserves energized and broadened the property rights movement in Texas that culminated last month in the adoption of in the most extensive real property rights legislation adopted by any state.

While giving harmed landowners greater and easier access to the courts good, it is not the permanent solution. The Texas property rights legislation and allows redress from an overly intrusive government, but still requires the expenditure of tremendous amounts of energy and resources to protect what we already have. It is in effect a tail pipe fix.

However, Congress can help minimize the harm to private landowners and the need for litigation. You must amend the Endangered Species Act and the Clean Water Act so that they operate constitutionally, fairly, less bureaucratically and with more accountability.

The remainder of my statement will focus on specific problems that we have encountered in the Austin area. We are a hotbed of "environmental activism" and in many respects we are a testing ground for environmental initiatives to be attempted elsewhere in America.

The Listing Process:

1. Barton Springs Salamander. Last summer the FWS published its listing proposal for the Barton Springs salamander as

endangered (Federal Register, Vol. 59, No. 33, Thursday, February 17, 1994, 7968-7978.)

The listing proposal has been thoroughly critiqued and criticized in written responses to FWS for having inadequate data, poor science, and poor research. See my Attachment "A" for the critique that I sent to FWS. Put bluntly, the listing proposal is a result-oriented document that falls woefully short of the Congressional mandate of "best available science and data." FWS never responded to these detailed responses because the ESA does not require FWS to respond.

Within the last month, the Texas Department of Parks and Wildlife and the Texas Natural Resources and Conservation Commission sent their respective concerns regarding the inadequacy of the data and of the research in the listing proposal. (Attachments "B" and "C"). The State of Texas now officially opposes the listing of the Barton Springs salamander as endangered.

A scientifically sound, non-political listing process with rigorous, independent, peer and landowner review would have denied the listing petition a year ago. Unfortunately, such a process is not part of the current ESA and the uncertainty of a probable salamander listing hangs over our area.

2. Rare is Not Endangered. Many species have been listed because there were newly discovered and therefore, new to humans. Rarity, from a human perspective, is not and should not be a reason for listing. Or if it is, then evidence that the species is not rare should be sufficient to immediately delist the species.

In central Texas, the Texella Reyesi (Bone Cave Harvestman) was listed without the statutory listing process because FWS determined that a previously listed cave invertebrate was actually several species. Through a "refinement" of the prior listing (58 FR 43818) the Bone Cave Harvestman became endangered because it had been found in less than ten caves. By the time FWS had released the recovery plan for listed cave invertebrates in central Texas, the Bone Cave Harvestman had been located in 69 caves (P. 38 Recovery Plan). Williamson County filed a

petition to delist the Bone Cave Harvestman based on this data. In denying the petition, FWS cited insufficient data to delist the insect.

3. Enforcement. The ESA makes the FWS the investigator, prosecutor, judge and jury in virtually all aspects of listing, permitting and enforcement under the Act. For years, landowners in central Texas received threatening letters from FWS regarding "possible" violations of the ESA. Examples attached. See Attachment "D". This federal enforcement has created hostility and mistrust. Since wildlife remains the property of the States, Take Back Texas believes that much of the ESA activities should be delegated to the states. The Texas Parks and Wildlife Department has a much greater familiarity with the land, the people and the species of concern.

Additionally, the recent Lopez decision by the United States Supreme Court has revived the once "dormant" Commerce Clause of the Constitution. This decision begs the questions of what constitutional authority the FWS has to regulate cave invertebrates which clearly have no nexus with interstate commerce.

4. Critical Habitat. One of the inciting causes for the formation of Take Back Texas was the threat of a critical habitat designation for the golden cheeked warbler. This brief, but intensive episode last summer illustrates a fundamental problem with the ESA and FWS today - a loss of credibility.

After the San Antonio Express-News ran the story about a possible critical habitat designation, the FWS began a campaign to not only soothe the concerns of the public, but to also publicly attack those who questioned the FWS position. Attached is an opinion piece published in the Austin American Statesman by Kevin J. Sweeney, an assistant to Secretary Babbitt. This column is disturbing for two reasons: First, this federal bureaucrat is interjected a federal agency into our gubernatorial election by attacking one of the candidates. Secondly, Mr. Sweeney's statements regarding the impact of a critical habitat, which were consistent with other FWS officials, were only partially correct. What Mr. Sweeney would not say is that even a Section 10A permit could not be issued within critical habitat. (See Attachment "E").

In other words, the ESA provides no procedures to allow the adverse modification (use of land) of critical habitat except for an appeal to the "god squad." A landowner with habitat designated as critical has only the prospect of years of administrative process and litigation against his government to seek compensation for the taking of his property. (See Attachment "F" for Critical Habitat Fact Sheet).

5. FWS Misinterpretation of the ESA. Last fall the Texas General Land Office (GLO) sued FWS and the Corps of Engineers after the Corps required the GLO to mitigate for the loss of 2.5 acres of endangered ocelot and jaguarundi. Attached is a section of a paper that I presented at a recent Endangered Species Act conference that describes a very curious episode in the history of the FWS. (See Attachment "G").

CONCLUSION

In closing, let me be clear that Take Back Texas does not advocate the repeal of the ESA. We see the need and we care. However, we do not believe that a good cause could ever excuse or justify the abuse of our property rights or to work with academia and environmental groups to spread their power. Thank you.

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[The attachments were placed in the hearing record files of the committee.]

Testimony by Melvin R. Brown, Speaker,
Utah House of Representatives
Before the Private Property Task Force
of the
Committee on Resources
United States House of Representatives
Tuesday, June 13, 9:30 a.m.
Room 1324 Longworth House Office Building

Private Property vs. Federal Laws, Programs and Agencies

In no other country in the world is the love of property keener or more alert than in the United States, and nowhere else does the majority display less inclination toward doctrines which in any way threaten the way property is owned. (Tocqueville)

Next to the right of liberty, the right of property is the most important individual right guaranteed by the Constitution and the one which, united with that of personal liberty, has contributed more to the growth of civilization than any other institution by the human race. (William Howard Taft)

Government has no other end but the preservation of property. (John Locke)

The almost sacred tradition to hold, use, and dispose of property is unique to freedom loving, democratic societies; and it stands shoulder to shoulder with the inalienable rights of life, liberty, and the pursuit of happiness. Private property and the rights traditionally associated with it are like an indispensable thread woven into the fabric of our economic and social lives. Both its color and its strength are necessary to complete the whole. Therefore, the potential negative, ripple effect caused by tinkering with long-held traditions associated with holding private property without serious consideration to the potential consequences is at best shortsighted and at worst catastrophic in both economic and social terms.

Visionaries who crafted the Constitution of Utah which was adopted 100 years ago canonized the doctrine of private property in Article I, Section 1. In part, it states "**All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; . . .**" Likewise, the preeminence of private property merited a place in the United States Constitution. "**No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.** (United States Constitution, Amendment V)

In this enlightened age, the perceived public good and the right to acquire, possess and protect private property have been on a collision course threatening the integrity of both the long-held principle of private property and the public institutions charged with safe-guarding the public good.

Serious and relevant questions must be addressed to the satisfaction of competing interests in order to achieve and maintain equilibrium and perspective on this issue. What about takings and the Fifth Amendment? How much of the cost should one person or a group of people be required to bear in order to serve the public interest? If, in fact, there is a public good, should not the public compensate the person who is being required to give up his private property ownership rights? The doctrine of eminent domain has long held that appropriate compensation is due the landowner when the public good is held to be superior to personal, private rights. What if the cost is more than the public can bear? Is it the responsibility of the sacrificial landowner to offer up his ownership rights and privileges on the altar of "the public good?"

The endangered species laws, the evolution of wetlands law and policy, and administrative directives governing the attitude and actions of federal agencies are threatening to chock off one of the main arteries which has given life and vitality to our treasured economy and social institutions in the West. Family and community insecurity, uncertainty, resentment, and economic hardship have been the unwanted results of these intrusions into the lives of our citizens.

Anecdotal horror stories about the entanglements and frustrations abound with ordinary, law-abiding citizens. The stories coming from Southern Utah about the Desert Tortoise are legion.

The Desert Tortoise was listed as an endangered species in 1989. The tortoise came to the more inhabited parts of Washington County, by most credible evidence be transported by man, primarily as pets in the 1950's. There is no historical evidence that they were ever in the St. George area other prior to that time. As it became known that their populations were declining, the Bureau of Land Management actually paid people to grow the tortoises and set them free. In many cases, they were put on other private property. Because of the effects of the listing of the tortoise, Washington County have been threatened for many years by the U. S. Fish and Wildlife Service that they would stop development in the county under a theory

that all of the county under 4,000 feet is potential tortoise habitat. Because of these threats, a very complicated Habitat Conservation Plan was developed which would set aside 60,000 acres as a wildlife preserve. Washington County is now awaiting the final U. S. Fish and Wildlife Service approval for this plan. Should it receive approval, Washington County will spend over the next twenty years approximately $9 million toward providing mitigation for the right to take tortoises outside of the preserve in Washington County. Since the preserve includes all of the so-called high density areas, it is not anticipate that a large number of tortoises will be taken, but there will be some.

Appraisals of the approximate 7,000 acres of private property in the preserve has been valued at $80 million. A rough estimate for the 13,000 acres of State School Trust Lands in the area will be approximately $160 million since it is similar in nature to the private property. The federal government intends to trade approximately $250 million worth of its property for these properties as a value-for-value exchange. This will benefit approximately 8,000 to 10,000 tortoises believed to be in the area.

The economic impact to the property owners goes beyond just the negotiated value of their property. A 2,400-acre parcel of private and adjacent State School Trust Land was master planned for a community consisting of seven golf courses, related commercial structures, schools, government buildings, and approximately 16,000 residences. The economic loss in this situation can only be measured in the billions. There are other bona fide losses. The city of Washington invested heavily (approximately $7 million) in water and utility infrastructure for these planned developments along with a golf course. Another planned golf course in Paradise Canyon potentially worth hundreds of millions of dollars will not be part of the proposed preserve because there are tortoises in the Paradise Canyon area. The private property owners who own that property are now only going to be getting raw-land value out of their property rather than the economic benefit that they could have realized. They are trying to figure out a way to live with the Act through the HCP process; and they are doing so, but the impact on private property is significant.

The horror story continues. The Tuacahn Center for the Performing Arts is the most recent addition to the cultural segment of the community. Over $20 million has been invested in this site with the intention of creating a "Julliard of the West" facility, including a beautiful outdoor amphitheater. The 80 acres on which the Tuacahn Center sits has been documented as having no tortoises. The public road that leads to it, however, goes through a habitat area. The fact that the road was built greatly inflamed the U. S. Fish and Wildlife Service and they basically went after the Tuacahn Center. A result of their legal threats and challenges forced the center to pay massive fines because two tortoises were killed by construction vehicles). Legal costs and mitigation costs will total some $500,000! The Tuacahn Center was required to install three tortoises bridges, at a cost of $60,000, along the road so that the tortoises could migrate from one side of the road to the other. This was required notwithstanding the fact that there is absolutely no scientific evidence that the tortoises will actually use such a facility! The center is also required to prepare its own conservation plan.

The horror story continues. The Hurricane Golf Course, built under a bonded arrangement in conjunction with other developers involves BLM land. The BLM determined that there was no significant biological impact on the tortoises. The wisdom of the Wildlife Service prevailed, however. In drawing lines and defining boundaries, they clipped a portion of the course into their critical habitat designation and then proceeded to cause all kinds of havoc which remain unresolved to this day.

Near the Hurricane Golf Course is the Ken Anderson project, Hurricane Garden Homes. Mr. Anderson's property had been stopped from development for a number of years. The U. S. Fish and Wildlife Service finally let him sell lots in the lower part of his project (which had been fully approved and was in the process of being built when he was stopped). Circumstances surrounding this project horror story include the following: During a certain point in the attempts to put together a habitat conservation plan, the committee became very frustrated and voted to suspend its activities. Within weeks after this occurred, the U. S. Fish and Wildlife Service put together a team of approximately 30 officers and came down and combed the area for violations with the obvious intent of forcing us back into the HCP process. During their investigation, they found tortoises on the upper reaches of Mr. Anderson's property. Again, this is a situation where the erection of a tortoise fence would have easily rectified the situation inasmuch as it was such a small portion of the tortoises range that encumbered the upper portion of Mr. Anderson's property. As of today, Mr. Anderson is not allowed to sell lots in the upper portion of his property, and he will not be able to until the HCP is approved. He has been held stonewalled for years with the very real prospect of bankruptcy on the horizon. His investment in the project amounts to more that $600,000 and the cloud created by the tortoises has made it very difficult for him to even sell the lots that were released.

The U. S. Fish and Wildlife Service would like to have people believe that a critical habitat designation under private property really does not mean anything unless there is a "federal action." Under the expansive regulations of the U. S. Fish and Wildlife Service, they believe that they have the right to declare areas as habitat even though the animals are not documented to be there under broad areas of buffer zones and corridors for the animals to travel from one area to the other, even though no one has ever seen them in a particular area. The critical habitat designation in this area is instructive of that. They included massive areas of property that are documented to have no tortoises, and no tortoises could get there unless a human being carried them there. It included properties that are above the historical range (approximately 4,000 feet) and areas that include sides of mountains from which tortoises would not ever roam. They are, simply speaking, an agency out of control.

The experience of Washington County elected officials has been one of frustration. Only 17 percent of the county is privately owned. Federally owned land surrounds Washington County. It is impossible for them to develop their property without obtaining federal government approvals and jumping through the bureaucratic hoops. The complex maze of environmental regulations have been used as control devices adding substantial costs

to doing business. Their view is that there is a "war on the West" and the federal government is leading the charge against their communities.

The federal regulators and their attorney have been cavalier in their approach to regulating away legitimate use rights. Citizens of those Southern Utah communities have been told that nothing short of complete taking of the private property rights will result in their paying compensation.

The Quail Creek Project in Washington County, Utah, is another story to be retold.

The Quail Creek Project consists of a diversion dam, 4.7 miles of 66-inch pipeline, 1.2 miles of 54-inch pipeline, 3.1 miles of 48-inch pipeline, two hydropower plants, and a 40,000-acre feet of steam reservoir. It was constructed by the Washington County Water Conservancy District in 1983.

The portion of the pipeline serving the reservoir and the reservoir itself is located on Bureau of Land Management lands , the use of which were authorized by a BLM right-of-way. Prior to issuing the right-of-way, the BLM entered into Section 7 consultation with the U. S. U. S. Fish and Wildlife Service. The results of this consultation was a non-jeopardy opinion. this opinion was based on a water simulation model submitted by the District to the BLM and the FWS. This model simulated exactly how the reservoir and pipeline would be operated and how it would affect the flows in various segments of the river. The District has consistently operated the reservoir in accordance with the simulations submitted to the BLM and the FWS.

Nevertheless, in 1991 in response to a perceived but unverified, long-term declined in the populations of the Spinedace minnow and the Virgin River Chub, two listed endangered species, the FWS instigated a reconsultation with the Bureau on the operations of the reservoir based on the allegation that the District was not operating the reservoir according to the stipulations of the biological opinion and that a new species, the Virgin River Chub had been listed subsequent to the permit and had not been considered as a part of the biological opinion. The basis of the FWS's current demands would require the District to release 86 cubic fee per second at the diversion dam during the entire year.

If such conditions were to be imposed upon the project, it would destroy the entire basis upon which it was constructed. The District cannot release 86 cfs at the diversion dam and meet the long established (prior to 1900) water rights or the commitments for water delivery to the city of St. George as part of the Quail Creek Project. Nor could the two hydro plants along the pipeline be operated efficiently. Thus, the entire economic justification and basis for the reservoir would become invalid causing a default on the obligation bonds which were incurred to build the project.

We could go on with numerous other stories about encroachment by federal programs and agencies on private property. We have also had similar experience with the state level and

its political subdivision. To deal responsibly with what we felt was an abuse of private property rights, Utah passed the Private Property Protection Act.

We encourage the Congress of the United States to enact appropriate laws to safeguard the time honored-tradition of private property and restrict federal agencies for actions deemed to infringe or encroach on the rights of private property owners. We believe such action absolutely vital to the economic and cultural survival of the West.

BENJAMIN CONE, JR.

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DECRIPTION OF PROPERTY AND PLIGHT

I, Benjamin Cone, Jr., live in Greensboro and own 8,000 of timberland in eastern North Carolina in Pender County. A small family lodge, caretaker's home, shed, dog pens, and barns are the only structures on the property called Cone's Folly. Approximately 2,000 acres are swampland along the scenic Black River and are not suitable for timber farming.

A wildlife biologist has documented the presence of 29 Red Cockaded Woodpeckers living in my old growth pine forest areas. Under current interpretation of the Environmental Protection Act by U. S. Fish and Wildlife personnel, I must maintain 1,121 acres of my timber farm as habitat for these 29 birds. I cannot cut my timber on the infested acreage. Penalties for cutting a tree where one of these birds lives or for killing a bird are severe-- a felony conviction results in $25,000 in fines and/or up to five years in prison per incident.

EARLY HISTORY OF THE LAND

In Colonial times, the major industry of eastern North Carolina was provision of naval stores with transportation provided by the natural rivers. The pine forests were rich sources of pitch and turpentine. It appears that the Cone's Folly land was clear-cut in the early 1700's due to the large number of tarkels (tar kilns) on the property.

Large numbers of stump holes indicate that the property was clear-cut on additional occasions over the next 200 years. The last major clear-cut occurred in the early 1930's just prior to acquisition of the property by my late father, Benjamin Cone.

Of general interest, a scientist from the University of Arkansas, testing bald cypress trees as party of a study of weather patterns over the centuries, has discovered the oldest living trees east of the Rocky Mountains on the Black River perimeter of the property. The State of North Carolina has recently declared the Black River an Outstanding Resource Water.

HISTORY OF CONE'S FOLLY PROPERTY

My father bought the land in the 1930's, not as an investment, but as a place where he could always hunt and fish. Most of the timber had been cut prior to his purchase; he replanted the pine forests. The property gained the name Cone's Folly because his friends from Greensboro thought he was a fool to buy timberless land in the middle of nowhere. At his death in 1982, significant inheritance taxes were paid and the property passed to me .

MANAGEMENT PRACTICES AT CONE'S FOLLY

Benjamin Cone, Sr. bought the land in order to hunt and fish. About every six or seven years, he would cut enough timber to show a profit and maintain the tax advantages of land ownership. The timber cutting was usually done through selective thinning. Plantings were done to benefit wildlife: chufa for turkey, bi-color for quail and songbirds, corn for deer and bear, rye for deer, sunflowers for dove. This practice of letting timber mature and frequent burning of the undergrowth was considered the best method for managing land for timber for wildlife and is recommended by most environmentalists. This practice was followed for 60 years and it also created a perfect habitat for Red Cockaded Woodpeckers.

CONE'S FOLLY AND THE ENDANGERED SPECIES

In 1991, I told my consulting forester to plan for a sale of timber in my bird hunting area. He reported that he had discovered signs of Red Cockaded Woodpeckers which are protected by the Endangered Species Act and that I had a problem. I requested that the U. S. Fish and Wildlife Service come to Cone's Folly, review my situation and explain the guidelines for dealing with Red Cockaded Woodpeckers. At that time, the guidelines were slowly being shifted from "Henry's Guidelines" to "Costa's Guidelines" which appeared to be more lenient than "Henry's."

For every active colony of Red Cockaded Woodpeckers, "Costa's Guidelines" call for all three of the following within one-half mile radius:

- A minimum of 60 acres of suitable foraging habitat
- 2,950 sq.feet of basal area of pine trees greater than 10" DBH (diameter at breast height)
- A certain stem count of pine trees greater than 10" DBH

I hired a wildlife biologist who determined that I have 29 Red Cockaded Woodpeckers living in 12 active colonies. I hired a forester to cruise the timber. With this additional information, the wildlife biologist calculated that I have 1,121± acres that cannot be cut. The U. S. Fish and Wildlife Service accepted the wildlife biologist's report by letter dated July 25, 1994.

With this acceptance letter in hand, I hired a qualified real estate appraiser. He determined that the value of the land and timber in the 1,121 acres without woodpeckers would be $1,685,000 and that the value of the land and timber with the presence of woodpeckers is $260,000. Therefore, my loss in value, the difference, is $1,425,000.

THE U.S. FISH AND WILD LIFE SERVICE OFFERED ME A "DEAL"

Because of the loss of value of my timber and fear of additional loss, I told the U. S. Fish and Wildlife Service that I was going to change my past management practices and would begin to clear cut the rest of my property to prevent the expansion of woodpeckers on it.

Mr. Ralph Costa of the U. S. Fish and Wildlife Service offered me the following deal: "If I would maintain the existing habitat for the 29 birds, he would give me incidental-take rights on the rest of my property." (This existing habitat is confirmed as 1,121 acres.)

I did not accept this "deal" because I would receive no compensation for the property required for the birds and I already have the right to cut timber on the rest of my property where there are no birds.

MY COUNTEROFFER

Since I cannot cut the timber in the 1,121 acres of woodpecker habitat and the U. S. Fish and Wildlife Service will not compensate me for my losses, I want to give the Red Cockaded Woodpecker-infested land to my heirs to get it out of my estate. I requested that the Internal Revenue Service agree on a value of my affected land prior to my gift. The IRS has refused to pre-value my land so I can't risk giving the land to my children.

CONCLUSION

By managing Cone's Folly in an environmentally correct way, my father and I created habitat for the Red Cockaded Woodpecker. My reward has been the loss of $1,425,000 in value of timber I am not allowed to harvest under the provisions of the Endangered Species Act. I feel compelled to change my previous practices and massively clear cut the balance of my property to prevent additional loss. Finally, I plan to sue the U. S. Fish and Wildlife Service to try to recover my losses.

STATEMENT OF MARY FATTIG

June 1, 1995

Honorable Committee Members;

Thank you for allowing me to speak to you today. I am here today out of concern for the communities, schools and families who live in rural Humboldt and Trinity Counties. The impact on us due to the over- regulation of our private, state, and federal timber lands have caused such devastation to these communities that they are indeed themselves endangered.

For many years Humboldt and Trinity Counties, in Northern California, have been timber dependent for their economic base. County schools and roads have received Forest Revenue Receipts based on actual harvest of federally owned timber. Privately owned timber harvest also supplied much needed revenue to the tax base .

Harvesting this renewable resource employed many families living in these counties providing funds to local businesses and also adding money in taxes to local, state, and federal governments. This is now a thing of the past for most of the families living in my area. Trinity County has an unemployment rate of 19.2% and it is much higher in the smaller communities that are totally timber dependant for employment. Judge Dwyer's "Spotted Owl Decision" has all but ended timber harvest on our National Forest, and has adversely effected timber harvest on private lands.

Until recently I was employed in the local school system as an Outreach consultant doing basically social service work. This job is funded by the State of California for only the most troubled areas in our state. To qualify for this money you must show high incidents

of school truancy and drop outs, family violence, substance abuse, teen pregnancy, and other family and school related problems.

Our local high school still has a drop- out rate of 45 to 50%. In two of our elementary schools 100% of children are on free or reduced lunch ; at another, 95% eat lunch on the free lunch program. The other schools in the district range from 84% to 68% of students participating in the free lunch program. These numbers have not improved , even with all of the social work and government funds sent to our area. I know because it was my job to fix these problems. Not until people have jobs and hope again will there be any real change.

The family unit has been altered and very often destroyed. Fathers and mothers who have always been able to provide for their families find themselves now unable to so. The loss of self esteem has increased the instances of substance and alcohol abuse in parents and in children. Family violence as well as teenage pregnancy rates have greatly increased. There is a very high domestic violence and divorce rate resulting in many single parent families. As we begin to study the causes of many of these problems we could chart a direct correlation between job and income loss and these problem increases.

In the past we had seven working saw and plywood mills in this area. We also had all of the woods jobs that supplied the logs to the mills. Basically anyone who was willing to do hard work was able to get and keep a job in the timber industry. These were good paying jobs that allowed men and women to make good wages. Most of the jobs also had health care benefits for the entire family. Now we have no mills and no woods jobs . All of the mills have closed taking with them hundreds of jobs.

Because of the loss of these jobs, many of the non- timber industry businesses have either closed, or have been forced to lay off employees. One business owner stated to me this week that many of the other businessmen are hanging on by their finger nails. This is leaving our small communities virtual ghost towns with very few businesses or services. Our own government has created a welfare state by causing these people to now rely upon a monthly government check and food stamps to provide meager subsistence for their families.

As an experienced social service worker I know that no amount of money sent to our area by the government to fix these problems is going to work. Even President Clinton's promised Option Nine money has not helped any timber worker that I know. I was appointed to one of these committees which were supposed to help the unemployed timber workers, and it is a joke. I see other committee members feathering their own nest instead of helping the unemployed with these funds.

Timber workers are proud people who want to work and be productive members of society. They feel that the Federal Government has created these problems by over regulation and in some cases stupid acts and laws that pit man against other species. These people also care about the forest that has provided them with employment. They want to take care of it so that the generations that follow will also have jobs as well as the recreation that they have enjoyed. Many of these families have lived and worked on this land for many generations. Now our children grow up and leave the area in hope of a better life elsewhere. Fathers and mothers are also forced to travel great distances away from home to find jobs. My own husband and son have not escaped this hardship. This again creates stress on normal family life.

In conclusion, I urge this committee to bring common sense back into government. I also urge you to take into consideration what the effect of your vote on the ESA and private property rights reform will have on people and small communities. Please, take the time to make the **people** a part of this equation. Remember, there are **real people** that must live with the consequences of your actions. Their lives, and the life of my rural community, is depending on you to make wise choices in this very serious matter before you.

Thank you,

Mary A. Fattig

Mary A. Fattig

Klamath-Trinity Joint Unified School District
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Telephone (916) 625-4255

FREE LUNCH PROGRAM

PERCENT OF STUDENTS PARTICIPATING

Jack Norton Elementary	100%
Weitchpec Elementary	100%
Orleans Elementary	84%
Hoopa Elementary	95%
Trinity Valley Elementary	67%
Hoopa Valley High School	70%

BURNT RANCH
SCHOOL DISTRICT

Burnt Ranch Elementary	79%

PLYWOOD AND SAWMILLS THAT HAVE CLOSED IN EASTERN HUMBOLDT AND WESTERN TRINITY COUNTIES

BURNT RANCH MILL	200 EMPLOYEES
CAROLINA CAL	250 EMPLOYEES
PILOT MILL	150 EMPLOYEES
ROCKLIN PLYWOOD	170 EMPLOYEES
CAL PAC PLYWOOD	200 EMPLOYEES
HUMBOLDT FIR	300 EMPLOYEES
STONE CONTAINER	300 EMPLOYEES

LOGGING AND TRUCKING JOBS LOST

THE LOGGING AND TRUCKING JOBS HAVE BEEN ESTIMATED BY CONTACTING PAST OWNERS OF THESE BUSINESSES . THE NUMBER OF LOST JOBS IS ESTIMATED AT 400 IN EASTERN HUMBOLDT AND WESTERN TRINITY COUNTIES.

DEPARTMENT OF SOCIAL SERVICES
COUNTY OF HUMBOLDT
929 KOSTER STREET • EUREKA, CALIFORNIA 95501
JOHN FRANK, *DIRECTOR* • MAURICE McMORRIES, *DEPUTY DIRECTOR*

GAIN	AID & MEDICAL	FOOD STAMPS	ADULT SERVICES/IHSS	CHILDREN'S SERVICES	ADMINISTRATION
707-445-6159	707-445-6103	707-445-6122	707-445-6174	707-445-6180	707-445-6022

Impact of the Endangered Species Act on local North Coast communities in California:

Humboldt County is located in northern California. It is bordered by Del Norte County to the north, Trinity County to the east, and Mendocino County to the south. Humboldt County's economic base is 70% dependent on natural resources. Subsequent timber harvests in Humboldt County have been reduced from 1987 through 1995 by forty-one percent (41%). Such a reduction has put the coastal region of this state in economic gridlock. The effects that the Endangered Species Act has had on local communities and local government are as follows:

EMPLOYMENT AND EMPLOYMENT OPPORTUNITIES:

Currently in Humboldt County the Unemployment rate is 8.8%. Pacific Lumber company is scheduled to close a local mill in April 1995. This will displace 105 additional timber-related jobs that would increase the total number of unemployed persons in Humboldt County to 5,505, which would give us an unemployment rate of 9 percent. This closure is due to poor log supplies, primarily because of court injunctions regarding the Endangered Species Act. Simpson Timber Company closed a local mill in February of 1993. That displaced 262 timber-related jobs in Humboldt County.

For every primary position lost in this community we can anticipate, based on the best analysis, that it will have an impact on 1½ additional jobs indirectly in this community. Therefore, with such impact on our local employment base, one must discuss job retraining for displaced timber workers.

Job retraining has been implemented on two separate occasions in Humboldt County. One, during the Redwood Bypass project and one more recently during the closure of Simpson Timber Company's mill.

What we have learned from these experiences in job training of timber workers is that in order to maintain the same level of earning that this displaced worker lost, the trainee must be trained for positions that are located outside of our community. They would be required to relocate to other communities or they would have to compete with new workers entering the labor market for lower paying jobs in order to remain in this area. Secondly, when retraining our displaced worker for positions outside our jurisdiction, we consequently take employment opportunities away from individuals within the area that our displaced worker was forced to relocate.

IMPACTS ON LOCAL GOVERNMENT:

Because of the increase in unemployment, there will be an increased demand for Aid to Families with Dependent Children (AFDC), which is currently in excess of $31 million in our County.

Humboldt County has experienced an increase in reports of child abuse and neglect of 67% during the past two years due to stress that families have been faced with living in an economically depressed area. Our investigation of those reported abused and neglect case demonstrated that 90% of those cases had alcohol and drug abuse as one of the primary symptoms of abuse.

Therefore, a corresponding increased need for Mental Health services, Drug and Alcohol services for those families who live in this economically depressed area, with a corresponding reduction in general purpose revenue to support the increase demand for services.

The justice system has had a corresponding increased demand for court intervention due to the increased need for Child Welfare Services (CWS), Probation, District Attorney (DA) and Public Defender.

There is also the potential need to move much needed financial resources from our school classrooms to pay for additional services for the newly-created underprivileged, such as free and reduced meals.

A normal carryover of purchased timber volume on the Six Rivers National Forest at the end of the logging season was approximately 200 million board feet. It is evident from the enclosed charts what the impact of the Endangered Species Act has had on our local community.

Poor log supply has caused lumber prices to rise approximately 84% from December 1991, and added approximately $3,000 to the price of a 1,700 square foot home in Humboldt County.

Finally, the timber industry pays 30% of all property tax in Humboldt County. With local government's inability to raise revenue by other means, it is imperative that decisions about the Endangered Species Act be based on biologically sound judgement rather than intuitively-based opinion.

John Frank

John Frank, Director
Humboldt County
Department of Social Services

TOTAL TIMBER VOLUME CUT-HUMBOLDT COUNTY

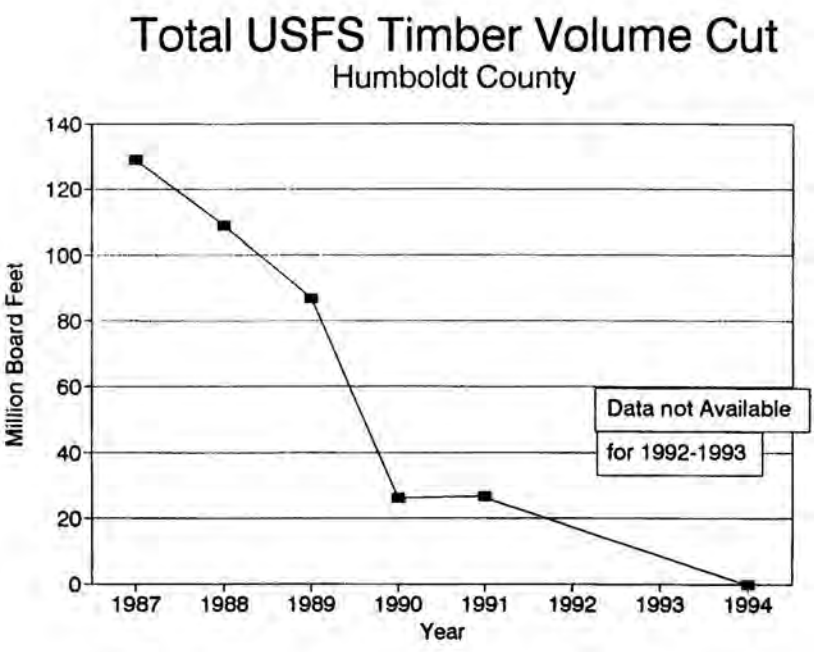
1987	773	Million	Board	Feet
1988	753	"	"	"
1989	664	"	"	"
1990	609	"	"	"
1991	459	"	"	"
1992	475	"	"	"
1993	465	"	"	"

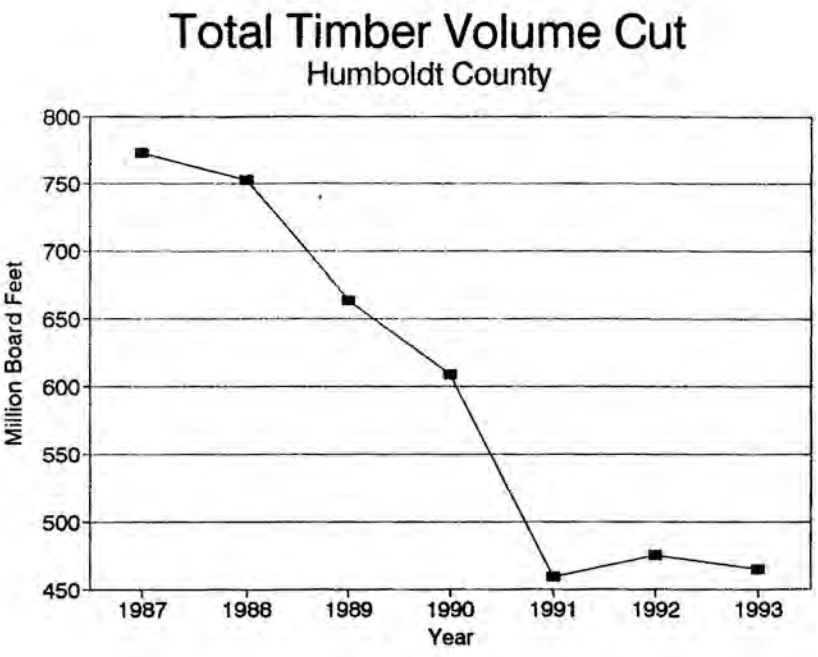
TOTAL U.S.F.S. TIMBER VOLUME CUT-HUMBOLDT COUNTY

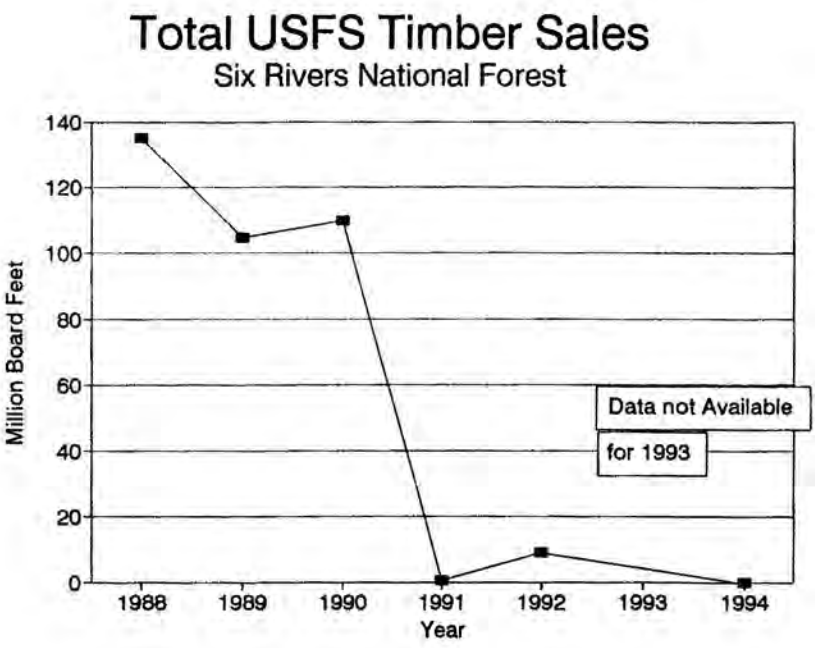
1987	128.9	Million	Board	Feet
1988	109.2	"	"	"
1989	86.7	"	"	"
1990	26.1	"	"	"
1991	26.6	"	"	"
1992	N/A	"	"	"
1993	N/A	"	"	"
1994	0	"	"	"

U.S.F.S. TIMBER SALES SIX RIVERS NATIONAL FOREST

1988	135.0	Million	Board	Feet
1989	105.0	"	"	"
1990	110.0	"	"	"
1991	.3	"	"	"
1992	9.0	"	"	"
1993	N/A	"	"	"
1994	0	"	"	"


Total USFS Timber Volume Cut
Humboldt County
Million Board Feet
140
120
100
80
60
40
20
0
1987
1988
1989
1990
1991
1992
1993
1994
Year
Data not Available
for 1992-1993


Total Timber Volume Cut
Humboldt County
800
750
700
650
600
550
500
450
Million Board Feet
1987
1988
1989
1990
1991
1992
1993
Year


Total USFS Timber Sales
Six Rivers National Forest
Million Board Feet
140
120
100
80
60
40
20
0
1988
1989
1990
1991
1992
1993
1994
Year
Data not Available
for 1993

James B. French, Trinity County Superintendent of Schools

TRINITY COUNTY OFFICE OF EDUCATION
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Jessie Brown • Grade 2

FISCAL CONSIDERATIONS EFFECTING THE FUTURE OF
TRINITY COUNTY EDUCATION

For many years Trinity County, in northern California, has been timber dependent for it's economic base, and since 1960 the county schools and roads have received Forest Reserve Receipts based on the actual harvest of federally owned timber. Historically 180 million board feet have been harvested on the Shasta-Trinity National Forest, and the schools have been a major benefactor of that utilization of renewable resources. In 1994 only 36.4 million board feet were harvested, of which 24 million board feet were non-sustainable burned or dead trees, leaving only 12.4 million harvested from renewable stock.

Judge Dwyer's "Spotted Owl Decision" provided closure (literally) on the subject of national timber harvest. The current and future negative effect on our economy, communities, and children are outlined below for your consideration.

* Forest Reserve Receipts are projected to be 15% less than the 1994-95 actual of $2,780,087 (see attached).
* Forest Reserve Receipts from 1993-2003 are scheduled to be reduced by $1,070,724, under the Family Protection Act formula (see attached).
* The Shasta-Trinity National Forest acquired 3,595 acres during 1994 increasing federal ownership, further reducing the already limited private tax base in Trinity County.
* Trinity County will no longer receive P.L. 874 federal funding due to change in allocations (P.L. 874 is another federal impact offset)
* State funding of schools has been flat, with no increases in three years
* Children living in extreme poverty worse than the state average (source: Children Now)
* Unemployment is 19.2% in Trinity County, and only 7.7% statewide

The concurrent effects of these factors, coupled with the state's intent to fund schools more locally (an impossibility in Trinity County) will have a severe effect on our county and it's children.

I am appreciative of the Family Protection Act because it provides a structure that school administrator's can use in planning while the federal government reduces it's contribution to our schools. It does not, however, provide schools with any long term funding solutions that are necessary to maintain program integrity. Over the next few years the federal government and schools will have to work together to protect our children, their futures, and our communities.

James B. French
Trinity County Superintendent of Schools

FOREST RESERVE COMPARISON

1985-86 TO 1995-96

YEAR	RECEIPTS	COUNTY OFFICE 15%	% CHANGE OVER PRIOR YEAR
1985-86	1,794,357	269,154	+ 3%
1986-87	2,350,076	352,511	+ 31%
1987-88	2,444,921	366,738	+ 4%
1988-89	3,683,020	552,453	+ 51%
1989-90	3,472,410	520,862	- 6%
1990-91	3,730,321	559,548	+ 7%
1991-92	3,269,963	490,494	- 12%
1992-93	2,889,691	433,454	- 12%
1993-94	2,625,930	393,890	- 10%
1994-95	2,780,087	400,506	+ 5%
1995-96 est.	2,383,474	357,521	- 15%
Average:	2,856,750	427,012	

DISBURSEMENTS:

	94-95	95-96
MUSIC	$ 18,422	$ 14,851
GATE	85,332	91,217
SPEC. EDUC.	128,250	101,397
SERV/DIST.	86,955	110,867
INST. MEDIA SERV.	40,000	40,000
CONTR TO RESTRICTED PROG	34,931	42,174
TOTAL FOREST RESERVE	$393,890	$400,506

* Estimated 76% of 5 year average for base years 86-90

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2/7/95

FOREST RESERVE PROJECTIONS

	92-93 Receipts	(actual) 93-94	(actual) 94-95	95-96	96-97	97-98 (85%)	98-99 (58%)	99-00	00-01	01-02	02-03
5yr aver		3,136,150	3,136,150	3,136,150	3,136,150	3,136,150	3,136,150	3,136,150	3,136,150	3,136,150	3,136,150
%	130,293	0.85	0.85	0.76	0.76	0.73	0.7	0.67	0.64	0.61	0.58
Apport	2,889,891	2,625,930	2,670,039	2,383,474	2,383,474	2,289,390	2,195,305	2,101,221	2,007,136	1,913,052	1,818,967
beg bal+apport		2,759,597	2,760,087								
Klamath	144,485	125,240	90,861	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000
Emergency	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000
Tmbr Cltn	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000
Mainstr	10,332	8,355	9,882	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Coe 15%	433,454	393,890	400,506	357,521	357,521	343,408	329,296	315,183	301,070	286,958	272,845
	2,390,713	2,191,113	2,237,828	1,844,953	1,844,953	1,764,981	1,685,009	1,605,037	1,525,066	1,445,094	1,365,122
Projected ADA based on 94-95 4th month ADA											
Burnt Ranch 96	91,325	75,837	79,863	65,842	65,842	62,988	60,134	57,280	54,426	51,572	48,718
Coffee Creek 26	23,509	24,463	21,630	17,832	17,832	17,059	16,286	15,513	14,740	13,967	13,194
Cox Bar 33	37,072	31,803	27,453	22,633	22,633	21,652	20,671	19,690	18,709	17,728	16,747
Douglas City 153	126,588	111,717	127,282	104,936	104,936	100,387	95,839	91,290	86,742	82,193	77,644
Junction Cit 80	73,240	64,421	66,553	54,868	54,868	52,490	50,112	47,733	45,355	42,977	40,598
Lewiston 191	173,607	165,536	158,894	130,999	130,999	125,320	119,642	113,964	108,285	102,607	96,929
Trinity Cent 42	27,126	30,172	34,940	28,806	28,806	27,557	26,309	25,060	23,811	22,563	21,314
Weaverville 470	446,677	403,647	390,996	322,352	322,352	308,380	294,407	280,434	266,461	252,489	238,516
Trinity HS 634	556,989	521,072	527,429	434,833	434,833	415,984	397,136	378,288	359,439	340,591	321,742
No Valley 731	613,954	558,583	608,124	501,361	501,361	479,629	457,897	436,164	414,432	392,700	370,968
So Trinity 205	220,626	191,631	170,541	140,600	140,600	134,506	128,411	122,317	116,222	110,128	104,033
Col Redwoods 29		12,232	24,125	19,890	19,890	19,028	18,166	17,303	16,441	15,579	14,717
2690	2675	2687	2690	2690	2690	2690	2690	2690	2690	2690	2690
	2,390,713	2,191,114	2,237,828	1,844,953	1,844,953	1,764,981	1,685,009	1,605,037	1,525,066	1,445,094	1,365,122
per ADA	904.20310	815.4493859	831.9063755	685.8560967	685.8560967	656.1267917	626.3974907	596.6681877	566.9388848	537.2095818	507.4802788

Hansen Logging Supply

P.O. Box 936
Willow Creek, Calif. 95573
(916) 629-2413

June 8, 1995

Honorable Committee Members,

I was very disappointed when President Clinton vetoed H.R. 1158. Not only would it have helped many people from all walks of life, it would have put thousands of unemployed people back to work in the forest industry, while improving the health of our forest.

We are surrounded by 183,444 acres in the Lower Trinity of the Six Rivers National Forest, that we have been unable to harvest for over four years. The loss of these good paying jobs come as a terrible sacrifice to the working people in our area. We are unable to support our families on low paying tourism jobs which seem to be encouraged when we lose our employment. How can this country survive on these minimum wage jobs?

My husbands logging supply is down by over 80% and he is just one of many effected by unreasonable regulations that has caused timber harvesting to come to a hault on federal land and adversely affected timber harvesting on private land.

While we continue to protect every animal, bird, and insect, we seem to have forgotten the working people and their families. High crime rate and low self-esteem are but two of the results when people are unemployed. How would your children feel going to school and receiving free lunches because dad and mom can't afford to buy theirs?

During the final compleation of the 110,000 acre Redwood National Park a promise was made by Congress to increase the allowable cut in the 960,000 acre Six Rivers National Forest. This promise was never kept. Now we can't even remove a small portion of the dead trees in and around our small community due to the presidents veto of legislation that would have benefitted many.

Please help us by enacting legislation to benefit land owners and timber harvesting on national forests.

Sincerely,

Betty Hansen

WASHINGTON CONTRACT LOGGERS ASSOCIATION

State Officers: President: Sherri Hansen of Chowichi
Vice-Pres: Tom Van Slyke of Vaughn
Treas: Kevin Morris of Shelton
Sec: Lloyd Anderson of Shelton
Assoc. General Manager: William Pickell

13 June 1995

Testimony on the ESA to Congressional Committee on Resources

Ladies and Gentlemen, I'm Bill Pickell, General Manager of the Washington Contract Loggers Assn in Olympia, Washington. This is an association of some 600 logging companies, family owned, mostly husband/wife operated firms that are responsible for most of the logging in our state. We are on the front lines--we feel the impact of everything this Congress does or doesn't do, concerning forest land management, on federal lands as well as on private lands. We are hurting as businesses because of the severe reduction in harvesting, but, the forest is hurting more, from poor management. Most of our hurts, both forest and business can be laid at the doorstep of the Endangered Species Act and it's abuse.

The northwest forest industry and rural communities reliant upon federal timber have traveled the road from "riches to rags" and "independence to dependence" in just the past five years (89-93). A once lucrative "cash cow" producing timber dollars to the federal treasury has now been reduced to an "emaciated piggybank" which is draining dollars from the treasury while allowing the resource to self-destruct for lack of proper management.

Since 1989, Washington State has lost at least 42 sawmills and two major pulp mills attributable to the lack of a predictable, federal timber supply. The losses of 'only' 6300 jobs, while a family and community tragedy, has been tempered by the large amounts of private timber available in our state. Private landowners responded to good market conditions, plus the fear of more governmental regulations and provided work for many of those companies that were previously working on federal sales. However, this switch has led to another problem, the pre-mature over harvesting of small private lands.

Before the "owl" we had a sustaining balance of timber harvest from all ownership's. For Example, the Olympic National Forest plan had an allowable sale quantity of some 200 million board feet annually, forever. After the "owl" and now "murrelet" the sale quantity is under 10 million board feet annually--and that's questionable. The average pair of spotted owls is costing the government about $100 million a pair in locked up timber within the circles protecting these birds--never to be harvested. Can we really afford that? All the other National Forests are in the same situation. The balance has been broken.

- The attached map - vintage early 1990 - illustrates approximately 500 known owl sites at that time. The known owl populations were about 250 pairs. 1995 population is about 800 pairs - and if this map were redone it would be bloody-red with circles.

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Landowners have watched the onerous imposition of Endangered Species Regulations on the federal and state lands. They see the political locust encompassing their lands, without compensation, and their natural reaction is to harvest their timber before a questionable species can take residence. State timber harvest permits attest to the record numbers. You can not blame the land owner. What incentive is there for them to keep timber as a crop?

- The Anderson-Middleton Company, owned 72 acres on the Quinault Indian reservation. No spotted owls have ever been documented on their property. The nearest pair is on the National Forest 1.5 miles away, yet this landowner is covered by an owl circle. They can't log their land. Estimated value $6-8 Million. Solution--the government is probably going to buy them out.

- Al and Bonnie Ryggs, of Kingston, small landowners with 10 acres. An eagle nest has caused them heartburn due to onerous regulations which will take about half of their property.

- The Murray-Pacific Timber company of Tacoma. Owners of 55,000 acres, were coerced into formulating a Habitat Conservation Plan with the feds. No plan--no harvesting. They had three owls nesting on their property. The cost was some $600 thousand to prepare the plan plus $1 million implementation for each of the next 100 years. Then a marbled murrelet flew over--but didn't land. The owl HCP did not cover the murrelet so $750 thousand later they had a murrelet plan.. The fed government touts this as a success with a private landowner. I'd call it extortion--no different than if the mob wanted money for protection. It's funny how after you pay the money, the circles disappear and you can now legally kill an owl or murrelet--or I should say take.

Meanwhile, the federal forests fall prey to natural forces. An estimated 450 million board feet, worth est. $300 million to the USFS, has been blown down in Region 6--enough to build over 30,000 homes. It lies rotting. Over a billion board feet of timber was burnt in the 94 holocaust; only the private timber is being salvaged--the federal timber is beginning to rot because of lack of action. Our east side forests, predominately federal, are in the midst of the greatest bug and disease infection in this century--yet little is being done.

- The attached photo essay of blowdown timber at Baker Lake in the Snoqualmie National Forest was done in 1992. The timber is now still rotting - hundreds of thousands of dollars available to the USFS. A resort is on one side, a campground on the other. Owl circles and rules prevent any harvest.

Environmental extremists using the ESA have destroyed the ability to manage our public resources. The onerous rules are guaranteeing that there will never be owl habitat or any endangered species habitat on most private lands. Clearcut it at age 35/40. Do not practice silviculture. Shoot-shovel-and shut-up. Cut down potential eagle trees. What incentive have you given them to entice or encourage endangered critters on their land? Absolutely none.

Modification of the ESA has to be the first step in wresting legislative control from these people, followed up by amending the NFMA and NEPA. It will be a painful process undoing 30 years of onerous legislation--but we must begin here. Senator Gorton has some good suggestions to make the ESA livable. I hope you'll consider those highly--we must have positive change.

* * *

BLOWDOWN TIMBER

BAKER LAKE AREA

OF THE

MT. BAKER-SNOQUALMIE NATIONAL FOREST

STATE OF WASHINGTON

PICTURES TAKEN BY: ROBERT GARA, PH.D.
PROFESSOR OF ENTOMOLOGY
COLLEGE OF FOREST RESOURCES
UNIVERSITY OF WASHINGTON

JUNE 4, 1992

Approximately 20 acres patch of blowdown timber on north edge of Baker Lake Resort & Campground - blew down November 1990 - primarily douglas fir with hemlock understory.

Bottom of picture main road to Baker Lake Resort less than 1/4 mile from resort.

Douglas fir logs 30" to 40" in diameter bucked up to open road to resort.

Stand original 60 to 70 thousand board feet per acre about 3/4 blew down. Larger trees, from 40" to 50" DBH and 150' to 180' tall.

Douglas fir blowdown riddled with ambrosia and douglas fir bark beetle attacks.

Circles indicate bark beetle attacks with brown bark dust

Arrows point to ambrosia beetle attacks with white wood dust.

Note: New attacks primarily on underside of this log - last year's attacks were on top side, which is no longer suitable habitat.

Live douglas fir tree being attacked by bark beetles, see orange bark dust in circles 1' below axe. Attacks were currently in progress; they will either weaken or kill tree next spring. If tree survives 1992 attacks it will be weakened and killed by 1993 attacks unless blowdown is removed before beetles emerge in late spring of 1993.

Both large trees to right of man have had numerous bark beetle attacks and will suffer same fate as tree in picture on left.

Virtually all douglas fir trees in blowdown will probably be killed by douglas fir bark beetle attacks in 1992 or 1993.

In more shaded areas ambrosia beetles are still attacking tops of logs. These beetles bore directly into wood - currently 1" to 3" deep - cause small black holes about 1/16" in diameter which severely degrade logs and lower lumber grades.

Douglas fir bark beetles only bore to sap layer between bark and wood where they lay eggs which riddle the tree with engraved chambers after they hatch. Normally build up populations in the first and second springs after blowdown. Third spring attack and kill standing live trees when down logs no longer suitable breeding habitat.

Douglas fir tree near edge of blowdown patch in the Baker Lake Compound that has been attacked by douglas fir bark beetle; it will probably die in spring of 1993.

If blowdown is not removed before spring of 1993 hundreds if not thousands of similar trees will be killed in 1993 and 1994 by epidemic attacks of douglas fir bark beetles.

Also, this blowdown timber poses an extreme fire hazard in this high recreation use area, given current drought conditions.

Douglas fir overstory trees approximately 150 to 180 years old. Timber would have sold for between $20,000 to $30,000 per acre if sold last spring. Flat headed wood borers, ambrosia beetle, checking and saprot have currently reduced value by about one third. If not removed within nine months logs will be worthless for wood products except possibly for pulp.

Timber sale had been laid out but stopped because blowdown is in spotted owl habitat area, even though salvage will not harm owls.

Pennsylvania Landowners' Association, Inc.

Post Office Box 391 • Waterford, Pennsylvania 16441 • Telephone 814/796-3578 • FAX 814/796-6757

TESTIMONY PRESENTED TO THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON RESOURCES

TASK FORCE ON PRIVATE PROPERTY RIGHTS

BY

LORRAINE BUCKLIN

ASSISTANT EXECUTIVE DIRECTOR

PENNSYLVANIA LANDOWNERS' ASSOCIATION

JUNE 13, 1995

Good Morning. My name is Lorraine Bucklin and I serve as Assistant Executive Director of the Pennsylvania Landowners' Association (PLA). PLA is a non-profit tax exempt organization founded in 1987 by a group of rural property owners who became frustrated and deeply concerned about excessive government regulation affecting the use of privately owned land in Pennsylvania. They believed that one of our most basic and fundamental Constitutional rights, the right to own, use and enjoy property, was being trampled by regulatory bureaucrats and ignored by members of Congress. PLA's initial objective was to educate our legislative leaders, other landowners and the general public about the devastating impacts that these regulations were having upon decent, hard-working individuals and upon the economy of our country. Ultimately, the goal was to achieve legislative changes which would restore reason and balance in environmental regulation and to correct similar injustices which were occurring throughout our country. Obviously, the voice raised by this small handful of landowners, struck a responsive chord in many others as well because, today, PLA is comprised of over 2,000 individual members and is recognized as the leading advocate of private property rights in Pennsylvania. Our organization communicates and networks with other like-minded Pennsylvania organizations whose memberships exceed 100,000 individuals and businesses.

I am also here today with an organized grassroots effort known as the "Fly-In for Freedom." For the fifth consecutive year now, PLA members, along with thousands of other citizens concerned about the erosion of private property rights in America, have come to Washington, D.C. to tell our elected officials that "Enough is enough!" Too many innocent people, doing nothing but minding their own business and working hard to achieve the American dream, have been treated like common criminals, having their lives turned upside down because of excessive control on the use of land being imposed by unelected, frequently insensitive and largely unaccountable bureaucrats in the guise of protecting the environment. Many regulatory programs, including those under the Clean Water Act, the Endangered Species Act, and the Wild & Scenic Rivers Act, have proven to be devastating to private property owners. In Pennsylvania, horrific examples can be found which demonstrate the unfairness of these programs, but no case better illustrates the need for regulatory reform and property rights protection than the case of United States v. Brace. The story of a third generation farmer, this case graphically demonstrates the federal government's abuse of innocent citizens.

Bob Brace is an example of an individual who strived to achieve his dream of owning and operating a farming business in rural Pennsylvania. For over forty years, he worked hard, often seven days a week, to provide for his family and operate a well-

maintained, vegetable farm that he hoped to pass along to his two sons one day. In 1975, when his parents retired from their beef and dairy business, Bob decided to purchase his homestead farm to keep it in the family and expand his vegetable farming business. He took out a mortgage and paid his father $170,000 for the 137 acres farm which he planned to add to his other farming property.

When in 1976 he began to repair and improve the existing drainage system on the farm that had been blocked by beavers and fallen into disrepair, he had no idea that 10 years later, in 1987, the federal government would accuse him publicly of destroying over 200 acres of federally controlled wetlands and order him in effect to destroy his drainage system and ruin his homestead farm. Ironically, Bob had purportedly filled the "wetlands" by redepositing sediment cleaned from his ditches onto his farm fields from where it came in the first place. Because of this, Bob's dream has been turned into a nightmare and he has been caught in a regulatory and judicial snarl just trying to defend his farm. He has faced millions of dollars in fines, threatened with imprisonment, publicly vilified and ordered to "restore" his property by plugging his drainage system to stop the natural flow of water.

In December of 1993, after a trial on a suit brought by the United States U.S. District Court Glen Mencer found Bob innocent of any wrong-doing, stating that Bob was lawfully

operating under the express "normal farming practices" exemption of the Clean Water Act which exempts farmers from obtaining permits for cleaning existing drainage ditches. After personally viewing the property, Judge Mencer also determined that only a quarter of the area cited by the government even met the technical definition of wetland and dismissed the case against Bob. Sadly for Bob and thousands of American farmers however, the government wasn't satisfied and appealed Judge Mencer's decision and the Third Circuit Court of Appeals in Philadelphia reversed the District Court's ruling in November of 1994. In a seemingly counter-intuitive decision, a three Judge panel completely sidestepped the exemption enacted by Congress which expressly states that permits are not needed for agricultural activities related to normal farming practices including the maintenance of drainage ditches. And when the Appellate Court refused to rehear the case, Bob was placed in a completely untenable position. The Third Circuit sent the case back to the District Court for enforcement of the EPA's restoration order and for determination of a civil penalty. Now that the original order has been upheld by the Court of Appeals, Bob is theoretically liable for hundreds of thousands of dollars, even millions, in penalties. Moreover, to EPA, restoration of the property means converting it into a wetlands preserve. To Bob, it means destroying the farm he worked too long and hard to make productive and taking his land.

What is striking about this is the government's ability to put Bob in a regulatory Catch 22. His only alleged violation was that he didn't have a Corps of Engineers permit to clean sediment from his farm drainage ditches and redeposit the sediment back on the farm fields from which is washed in the first place. Instead of simply ordering Bob to stop while he applied for a permit, the government tried to coerce him into complying with the restoration order, thus destroying his farm, under threat of enormous fines, penalties, and even jail. To make sure that citizens like Bob can't escape its clutches, the government went on to adopt a policy that it won't process permit applications when the applicant is said to be "in violation." Thus, Bob could never claim his farm exemption or try to get a permit once the bureaucrats said he was in violation. What is worse, when the government issues a Notice of Violation in situations like this, there is no appeal or forum in which to claim your exemption. You have to wait for the government to sue you. In this case it took three years for the government to get around to filing suit and then three more to get to trial. And when the government finally sues, the imbalance of resources between the federal government and ordinary citizens like Bob is shocking. Ordinary citizens are simply overwhelmed by raw government power.

Bob Brace has recently asked the U.S. Supreme Court to review his case so that they may correct this terrible injustice. He is currently waiting to learn if the Court will hear his case.

No one should have to endure what Bob Brace and his family have over the last decade, but thousands of other property owners throughout America are being subjected to this same type of regulatory abuse. What has happened to our country when cleaning out farm ditches and putting the sediment back on the fields becomes a "deposit of dredge and fill material into navigable waters of the United States." What is it about our government that make it want to push a man like Bob Brace to the limits?

I have often heard Bob ask preservationists who advocate our current regulatory system to simply place themselves in the shoes of himself and others like him. How would they feel? Would they give up their livelihood, part of their retirement savings, or their home for someone's idea of the public good without receiving compensation? No one is objecting to protecting truly valuable wetlands, but the government is currently going about it in entirely the wrong way...by steamrolling over ordinary, law abiding citizens and ignoring the Fifth Amendment to the Constitution. Individual citizens should not be expected to bear the burden alone for what others may deem important public benefits. And individual citizens cannot

continue to have their lives and dreams destroyed through regulatory programs aimed at preserving the land for preservation's sake if the American dream of owning, using and enjoying property is to endure.

Additional articles and videotapes regarding the Brace case are available for those Representatives who may be interested. Thank you for this opportunity to express the concerns of our organization.

The National Assoc. of Reversionary Property Owners

Property Rights Advocates

2311 East Lake Sammamish Pl. S.E.
Issaquah, WA 98027
(206) 392-1024 fax (206) 392-1024

Richard Welsh, Executive Director

UNITED STATES CONGRESS
HOUSE RESOURCES COMMITTEE
PRIVATE PROPERTY RIGHTS TASK FORCE

June 13, 1995

The National Association of Reversionary Property Owners (NARPO) is a non-profit foundation dedicated to the preservation of property rights; particularly the property rights of property owners who own land abutting railroad rights-of-way. NARPO would like to bring to the attention of the Property Rights Task Force the inequitable burden placed on property owners by what has come to be known as rails to trails. NARPO would also like to point out to the Task Force how federal gas tax dollars are being misappropriated for the furtherance of the rails to trails scam.

NARPO has been involved since 1985 both in the courts and in the promulgation of rules regarding the rails to trails scam. The property rights of tens of thousands of property owners have been taken, without just compensation, by this rails to trails scam. For those members of the Task Force not familiar with rails to trails, let me give a brief overview of the federal law and how the Interstate Commerce Commission (ICC) and the courts have interpreted the effects of the law.

In 1983, after four years of mulling around a bill to keep railroad rights-of-way as trails after the abandonment of the railroad use, Congress passed what is now codified as 16 U.S.C. 1247(d) and better known as the rails to trails law. The ICC promulgated the rules for 1247(d) in 1986. Since August of 1986, over $1 million has been spent by property owners to try and protect their property rights to the land the railroad rights-of-way are on. The majority of these rights-of-way are on easements and as such, once the railroad abandons the railroad use, the right-of-way land reverts to the abutting property owner-free of any easement. 1247(d) **preempts** state property law of reversion and allows a private entity or a government entity to take over the right-of-way for a trail without any compensation to the property owner. The constitutionality of 1247(d) was challenged in the federal courts, and in 1990 the U.S. Supreme Court ruled 1247(d) constitutional. The Supreme Court also ruled that the conversion to a trail from railroad use constituted a "taking" of property rights, but the Supreme Court ruled that the individual property owners had to go to the U.S. Court of Federal Claims, see **Preseault v. U.S.**, 494 US 1

(1990). Over 30 other lawsuits have been filed both in state and federal court challenging various aspects of 1247(d); all of which have not been totally successful.

I want to point out to the Task Force a few examples of how private and government entities and the railroads have twisted 1247(d) to profit immensely from its effects.

1. The Rails to Trails Conservancy (RTC) and Burlington Northern Railroad agreed to packaged five soon to be abandoned railroads in Washington State together so that RTC paid Burlington Northern $3.2 million for the package. RTC then turned around in two months and sold the pieces of the package for $4.5 million to various government entities throughout Washington State; with RTC pocketing most of the $1.2 million difference. You might be interested that RTC is a 501(c)(3) tax free foundation. Approximately $1 million of the government money was ISTEA enhancement money. Notice the perverse way the property owners paid their gas tax to the federal government and then the government turns around and steals their property and on top of that gives the gas tax money to a private entity for profit. Meanwhile, the property owners have thousands of strangers walking and riding through their property. The government says thank you very much and if you don't like it sue us in the U.S. Court of Federal Claims in Washington, DC--not Washington State. The Task Force might also be interested in the fact that Burlington Northern had only easements for the majority of the five rail lines, but Burlington Northern was able to hold up the local governments for this $4.5 million by saying that if they didn't pay up they would abandon the rail lines and the government entities wouldn't have their trails.

2. The State of Missouri acquired a 200 mile long abandoned railroad for rails to trails in 1990. This railroad ran along the north side of the Missouri River. The railroad had over 120 years of problems because of the Missouri River flooding and washing out the tracks. The State of Missouri put in millions of dollars to rebuild the right-of-way for a trail. Everyone is familiar with the floods of the Missouri River in 1993 and now 1995. After the flood of 1993, the State of Missouri applied for federal flood relief money and used at least $6 million to rebuild the trail, but they never did fix all the local roads. Now the flood of 1995 has wiped out over 40 miles of the trail and one would assume they will apply for more federal disaster money to rebuild the trail. The postscript to this story is that the property owners have been waiting since 1990 for the U.S. Court of Federal Claims to hear their "takings" case.

3. The Rails to Trails Conservancy has found another way to get ISTEA money and in the process eliminate railroads that are still going concerns. When a railroad attempts to abandon a line, another railroad can force the abandoning railroad to sell the line to them for what the ICC calls the net liquidation value. RTC steps into the picture and makes a bid for far more than the line is worth, but in the process blows out the small railroad attempting to keep the line a going concern. RTC then finds a government entity that can get ISTEA money. The government entity then pays the railroad the over-stated price and now has a trail with federal gas tax dollars. A case in point just happened in Seattle, Washington. A small railroad was trying to acquire a 2000 foot stretch of a soon to be

abandoned Burlington Northern rail line. Burlington Northern already had an agreement to give the line to the City of Seattle for no money, but when the small railroad tried to buy the 2000 feet, RTC stepped in late and bid far more than the net liquidation value. The ICC allowed the RTC bid to stand. The City of Seattle then said they would pay $975,000 for the right-of-way for a trail. The City of Seattle used $600,000 of ISTEA money as part of the $975,000 to pay off Burlington Northern so they would go along with this scheme.

These are just three examples of how a supposedly good law can be turned around and used against innocent property owners and taxpayers. I would like to point out that the railroads have discovered how to make tens of millions of dollars from land that they do not own. All the railroads have to do is threaten to abandon the line and the government entities will pony up what it takes to get their trail, mostly with ISTEA enhancement money since the advent of ISTEA in 1991.

I would hope the Task Force can somehow straighten out the inequities that are occurring to all these property owners. One way would be to repeal 16 U.S.C. 1247(d). Another way would be to amend the railroad abandonment laws---49 U.S.C. 10905 and 10906--so that the trail proponent has to pay compensation to the property owners for the taking of their reversionary rights through state court proceedings before a trail can be started. This has the added benefit of keeping the federal government out of the compensation loop. If the trail proponent thinks it is so important to railbank the line and build a trail, then they should be able to pay just compensation to anyone who has legal reversionary rights. That is what the Fifth Amendment is all about.

Thank you for taking the time to address the property rights problems in our country.

Sincerely yours,

Richard Welsh

Richard Welsh, Executive Director

STATEMENT OF JOSEPH N.
DE RAISMES, III, PRESIDENT ELECT,
ON BEHALF OF THE NATIONAL
INSTITUTE OF MUNICIPAL
LAW OFFICERS

HOUSE OF REPRESENTATIVES
RESOURCES COMMITTEE
1324 LONGWORTH OFFICE BUILDING
9:30 A.M., JUNE 13, 1995

The National Institute of Municipal Law Officers (NIMLO), founded in 1935, is a non-profit, non-partisan organization, consisting of over 1400 local governments and local government attorneys. On April 8, 1995, the 18-member NIMLO Board of Directors unanimously adopted the attached resolution, opposing pending federal takings legislation, currently captioned HR 9 and 925 and S 145 and 605 (hereafter, the "bills"). I am NIMLO's President-Elect, City Attorney of Boulder, Colorado, and Adjunct Professor of Law at the University of Colorado. I am appearing to explain the great concern of city and county attorneys around the United States about the legislation that you are considering this morning. I have nine short points to make:

1. As historian Sam Bass Warner put it, the genius and the downfall of American land law lies in: ". . .its identification of land as a civil liberty instead of a social resource." This concept is embedded in the popular phrase: "You can't tell me what to do with my land," and is ultimately grounded in the Fifth Amendment to the United States Constitution. As such, it is the law of the land, and despite what this concept has done to devastate parts of the American landscape, through deterring appropriate regulatory responses to misuse of property, it remains a bedrock value, to which we all owe allegiance. But today, this committee is considering bills that would go far beyond the Fifth Amendment and enshrine an extreme form of protection of private property that truly threatens the common good of our country. Toqueville observed this when he toured America in 1831. "Individualism," he wrote, "at first only saps the public life; but in the long run it attacks and destroys all others and is at length absorbed in selfishness."

Local governments believe strongly that private property owners need to be treated fairly, and should be eligible for just compensation for "takings" of their property -- and they are, according to the guarantees of the Fifth Amendment. But we also believe that the obligation of all citizens to protect the common good, including the environment, public health, and public safety, must be upheld.

That's why we oppose the takings bills now before you. The takings bills will inappropriately diminish the ability of federal, state, and local governments to protect environmental quality and habitats. They also will undermine the wetlands protection provisions

of the Clean Water Act, the Endangered Species Act, and a variety of other environmental and public lands protection laws. Many will suffer, to vindicate the property interests of a few, and our precious national heritage will be further squandered.

2. While local governments are aware that the bills only deal with federal government programs, they set an extremely dangerous precedent in inserting the Congress in the process of defining the coverage of the Fifth Amendment, which applies to state and local governments as well.

3. The recent seminal decision of the United States Supreme Court in Dolan v. City of Tigard has already announced a new activist judicial role in enforcing the Fifth Amendment, which will have to be elaborated through case law developments in the state and federal courts. The last thing local governments need is a second explosion of takings litigation based upon a new, amorphous federal legislative standard, such as that set forth in the bills.

4. I don't have time to describe the Dolan case and its aftermath here, but I have attached a legal memorandum describing the decision and its implications and the reported case law in the year since the decision was handed down. I think that you will have to agree that the effects have been quite dramatic and that government at all levels will have to change radically to meet the challenges of the Dolan case, while preserving its role in regulating the use of property for the public good.

5. The bills are not a viable solution to the problem of federal overregulation -- a problem of which local governments have often complained in the past. Indeed, by focussing on private property, the bills ignore the problems of state and local governments entirely. And if the federal government is over-regulating, the principled, straightforward response is to cut back on the statutory authority that is being abused, not to layer on another dysfunctional layer of regulation, with unknown costs and consequences. That is what these bills do. An open invitation to litigation is a poor substitute for a careful adjustment of legislative policy to decrease regulation where the burden on private property outweighs the benefit to the public interest. And courts are inherently unsuited to such an inherently legislative role.

6. With regard to private property, the bills are a blunt instrument with the unrealistic aim of avoiding any diminution of value of any portion of any person's property, as set forth in HR 925, Section 2. This is, quite simply, impossible. Government actions inevitably augment and diminish value. The issue is when an exaction is not "roughly proportionate" to the impact of the property owner's action, and that, under Dolan, is a question for the courts, not the Congress.

7. The 20% threshold of HR 925, Section 3, which conflicts with Section 2, and

which is raised unaccountably to 33 1/3% in S 605, goes beyond any court decision and will be impossible to determine, given the state of the art in appraisals. Expect completely arbitrary results after extensive litigation if Congress adopts a numerical standard for takings.

8. The bills seek to restrain government and to compensate citizens, but miss the important fact that government only acts to meet what its leaders understand as the needs of their constituents, "the greatest good for the greatest number." Thus, the issue is not how much an oppressive government should be able to extort from property owners but to what extent the needs and rights of other citizens can be protected by a reasonable accommodation of property rights, brokered by a responsive government. The bills will make that kind of compromise harder, if not impossible, to get.

9. In summary, the bills suffer from grave conceptual flaws. If they are merely intended to reiterate what the constitution already requires, then they are gratuitous. The constitution speaks for itself. If they are intended to codify the rulings in recent court cases, then they are an exercise in futility. This is a constantly evolving area of the law, where court decisions are based on the application of specific regulations to specific facts. If they are intended to go beyond the constitution and the court cases, then they are intellectually dishonest because they no longer really deal with takings in the constitutional sense. City and county attorneys are united in their opposition to federal takings legislation as an unwarranted congressional usurpation of the role of the courts in interpreting the federal constitution. And while the immediate target is federal programs, we are acutely aware that state and local governments will be next.

Thus, I urge that you reflect carefully on the proposed bills and their direct and indirect impact on local government. I am confident that your long-standing support of local government will lead you to oppose such legislation. Thank you for this opportunity to address you and for your courteous reception of remarks critical of this legislative initiative.

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NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS

1995 MID-YEAR SEMINAR

WASHINGTON, D.C.

RESOLUTION NO. __1__

National and State "Takings" Legislation

WHEREAS, the National Institute of Municipal Law Officers [NIMLO] is assembled in its Mid-Year Seminar in Washington, D.C.; and

WHEREAS, the National Institute of Municipal Law Officers [NIMLO] is the national association consisting of the Chief Legal Officers of local governmental units and has served the legal interests of local governments since 1935; and

WHEREAS, the United States House of Representatives approved H.R. 925 on March 3, 1995, which entitles private property owners to compensation if government actions under the Endangered Species Act, the Clean Water Act, wetlands permit programs, farm conservation programs, and federal irrigation programs reduce the value of even a small portion of the property by twenty percent or more; and

WHEREAS, such legislation has the potential to increase litigation among all levels of government and private property owners, and thereby increase litigation expenses, attorneys' fees, and shared compensation awards for local governments; and

WHEREAS, such legislation would threaten the integrity of zoning and other land use regulations by requiring payment for reductions in property values regardless of the impact of the property use on surrounding property values, or on the public health, welfare, and safety; and

WHEREAS, such legislation would undermine necessary environmental protection measures by impeding the enforcement of clean air, clean water, and wetlands protection regulations; and

WHEREAS, H.R. 925 is expected to go to the United States Senate for debate; and

WHEREAS, the same groups that are pursuing "takings" legislation at the federal level are also actively promoting similar legislation at the state level;

NOW, THEREFORE, BE IT RESOLVED, that the National Institute of Municipal Law Officers [NIMLO] assembled in its 1995 Mid-Year Seminar opposes any legislation or regulation at the national or state level that would attempt to define or categorize compensable "takings" under the Fifth Amendment to the United States Constitution or similar state constitutional provisions, or that would interfere with a state or local government's ability to define and categorize regulatory takings requiring compensation by a state or local government, as such issues should remain a matter for case by case determination in accordance with evolving Fifth Amendment jurisprudence.

ADOPTED BY THE NIMLO BOARD OF DIRECTORS this 8th day of April, 1995.

CITY OF BOULDER, COLORADO

Office of the City Attorney
Municipal Building
P.O. Box 791
Boulder, Colorado 80306-0791
Phone 441-3020

Joseph N. de Raismes, III
City Attorney

Jane W. Greenfield
Deputy City Attorney

MEMORANDUM

TO: Whom it May Concern

FROM: Joseph N. de Raismes, III, City Attorney

SUBJECT: Potential Impact of Dolan v. City of Tigard, 512 U.S. ___, 114 S.Ct. 2309 (June 24, 1994)

DATE: June 12, 1995

In Dolan v. City of Tigard, the United States Supreme Court announced a sweeping new federal takings standard. In Dolan, the Court ruled that a condition of a development approval requiring the landowner to dedicate the floodplain for flood control and an adjacent 15-foot strip of land for a pedestrian/bicycle path potentially constituted a regulatory taking requiring payment of just compensation. In reversing the decision of the Oregon Supreme Court upholding the City of Tigard's conditions, the Court created new land-use takings law that will significantly alter government practices in imposing development exactions and in attaching conditions to development approvals. Government at all levels must also prepare for implications beyond limitations on development exactions. This memorandum describes the Court's decision, the new takings test for development exactions, the possible implications of the new test, and the case law interpreting Dolan to this date.

It should be noted that Dolan was a 5-4 decision, that some commentators believe that it will be limited to land dedication exactions, and that, at least in theory, it followed the dominant "reasonable relationship" standard. Thus, this memorandum should be considered a "worst case" analysis.

The Facts

In Dolan, the landowner sought a permit to expand her plumbing and electric supply store, located in the City of Tigard's central business district, from 9,700 square feet to approximately 17,600 square feet. The proposal included replacement of the existing structure and paving of 39 parking spaces in the first phase, and construction of an additional structure and more parking for

the second phase. The site is bordered on one side by a creek, which is designated as a problem area in the City of Tigard's Master Drainage Plan. The central business district also had been designated as a traffic congestion area by a recent transportation study.

Consistent with the Master Drainage Plan, recent transportation and bikeway studies, and the City of Tigard's Community Development Code, the planning commission approved the redevelopment permit subject to dedication of portions of the applicant's land. The city required dedication of the floodplain land in order to improve and maintain the storm drainage system along the abutting creek and an additional 15-foot strip to serve as a pedestrian/bicycle path. The dedications comprised approximately 7,000 square feet, or about 10 percent of the 1.67 acre site. The dedication was deemed to satisfy the city's 15 percent open space and landscaping requirement. The planning commission supported its conditions with findings that increased impervious surface created by the new structures and paved surfaces would exacerbate drainage problems on the site, which would be mitigated by the floodplain dedication. For the pedestrian/bicycle path, the commission reasoned that the continuous pathway system bordering the property would encourage use of alternatives to short trip automobile travel, thus mitigating traffic congestion anticipated from the new development. The Oregon Supreme Court ultimately upheld the conditions as valid development exactions under Oregon's "reasonable relationship" test.

The Decision

Building on its prior decision in Nollan v. California Coastal Commission, 483 U.S. 824 (1987), the Supreme Court announced that a stricter federal standard would apply to takings claims related to "adjudicative" actions imposing conditions on individual development proposals. In such cases, the burden would be on the government to show a "rough proportionality" between the conditions imposed and the expected development impacts.

The direct holding of the Dolan case requires that whenever a land use development approval is conditioned upon an exaction of property rights, the exacting government has the burden of proof to show: (1) that there is a logical nexus between the impact of the land use development and the exaction being required (the Nollan test) and (2) that the exaction is "roughly proportional" to the impact. According to the Court, the second test requires that the exacting government make specific findings which quantify the impacts and demonstrate the nature and extent of the relationship between the quantified impacts and the exaction.

The Court enunciated this new "rough proportionality" test by stating:

> No precise mathematical calculation is required, but the [government] must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.

This formulation, while more demanding than the reasonable relationship rule as previously applicable in most states, including both Oregon and Colorado, does not depart substantially from prior case law, and the Court attempted to justify its "rough proportionality" test accordingly. The troubling aspect of the Dolan case is that the facts of the case and the findings made by the City of Tigard were a textbook example of the way in which cities have used the reasonable relationship test to validate exactions. Thus, a new and higher level of scrutiny is clearly implied, though not stated, in the shifting of the burden of proof and the requirement of specific findings relating means to ends.

The Application Process

According to the Tigard City Attorney, the Dolan application was particularly deficient, containing no drainage or traffic studies, which are otherwise required by the City of Tigard's application criteria. The application was accepted by the staff notwithstanding those defects because it presented the opportunity of a downtown rehabilitation project in an area where the city had been encouraging infill development, and the staff felt that it could fill in the gaps in the application by referring to the city's plans to obtain drainage and traffic data. This was the first and perhaps the critical mistake made by the city.

Thereafter, in analyzing the application, the city determined that it would normally impose a one-half street construction requirement in order to account for the additional automobile and truck traffic caused by the development. However, in a second critical mistake, the city decided not to impose the one-half street requirement otherwise justifiable because such an exaction might well kill the project and, as a matter of principle, the city desired to focus on alternative modes in the downtown. Accordingly, the exaction was reduced first to a requirement that the applicant build a path and then even further to a requirement that the applicant merely dedicate enough land for a path, all in the interest of making the project happen.

And third, and perhaps most significantly, the city never considered turning down the application pending a commitment by the applicant that she would undertake actions to quantify and mitigate the drainage and traffic impacts, nor did it require that the applicant conduct or pay for any studies or present any evidence to refute the city's position. Thus, although a number of findings were made about the need for drainage and traffic mitigation, the Supreme Court had

little difficulty in piercing the findings, which were not based on any study of the drainage or the traffic impact of the precise development in question, but instead were simply extrapolated by the city from its own plans.

The Issues

The Court found a logical nexus between the exactions and the impacts of the applicant's proposed development. The requirement that the floodplain be kept open and made available for drainage improvements also appeared not to trouble the Court. Rather, the Court seemed most troubled by the fact, conceded in oral argument, that once the dedication had occurred, the city could open the floodplain area to recreational use and that such use may in fact have been contemplated by the city as a part of its comprehensive plan. The Supreme Court observed that it could see no justification for taking the plaintiff's "right to exclude others" from her land as part of the drainage exaction. Thus, the dedication was found to fail the "rough proportionality" test. The city had made no findings about the need for a dedication of the floodplain rather than an easement.

With regard to the path exaction, the Court seemed most concerned with the inability of the city to demonstrate a mathematical relationship between the increased car and truck traffic which would be caused by the doubling in size of the applicant's store and the exaction of the fifteen foot bicycle easement, which might or might not reduce the car and truck traffic sufficiently to deal with a reasonable portion of the impact of the development. Again, the dedication was found to fail the "rough proportionality" test. It should be noted that at least one commentator referred to the notion that a bike path serves as a useful form of transportation for a plumbing supply store as "obvious nonsense." This observation needs to be taken to heart, as the courts cannot be expected to give much deference to social engineering, absent convincing findings based on objective evidence. The Court also focussed on the conditional language of the city's findings, that the creation of the bicycle path "could" offset some of the traffic demand, a far cry from finding that the system "would" or "would be likely to" offset a reasonable portion of the traffic demand created by the development.

Substantive Due Process Resurrected?

The Court's rejection of the city's findings is difficult to fathom in light of the assurances given by the Court that "no precise mathematical calculation is required," and that all that is required is "some effort to quantify...findings in support of the dedication." That is the single most troubling aspect of the Dulan decision. It is in the vagueness of the extent of the relationship to be required between means and ends that the Supreme Court in Dolan effectively reserved to itself and the other courts great freedom in passing judgment on the adequacy of local government motives and justifications in imposing exactions. Under this way of looking at the Dolan case,

it is effectively a resurrection of the "substantive due process" line of cases which had been largely defunct since the 1930's, using the takings clause of the Fifth Amendment instead of the due process clause of the Fourteenth Amendment. Like the substantive due process cases, the Dolan case represents the potential of an ideology hostile to land use regulation using the convenient instrumentality of the vague wording of the Fifth Amendment to make value judgments on the necessity and ultimately the wisdom of land use decisions.

This is not the place to go through the history of the use of substantive due process to invalidate economic regulation in general and the New Deal in particular. But it is important to recall the history of the use of the substantive due process analysis from the late 1880's through 1940 to impose judicial vetoes on economic regulation which ran contrary to the ideology of the conservative Supreme Court of the time. Like the test of "real and substantial relation" enunciated in Mugler v. Kansas, 123 U.S. 623 (1887), the "rough proportionality" test of Dolan represents precisely the kind of vague means/ends test which the Supreme Court may use to invalidate land use restrictions which it finds not to present a sufficiently direct relationship with the impact of land development to justify the regulatory exaction. Even more closely on point is the case of Nectow v. Cambridge, 277 U.S. 183 (1928), in which the Supreme Court found that the City of Cambridge was unable to impose a residential use restriction on the plaintiff's property because the industrial character of the existing neighborhood made such a restriction unreasonable, in that the restriction bore no "substantial relation" to public health, safety, morals, or general welfare. If this analysis is correct -- and only time will tell how far the Dolan analysis will be carried -- then the jurisprudence of the Reagan/Bush Supreme Court may be moving toward a takings analysis founded on the substantive due process cases of Mugler and Nectow.

Under this admittedly pessimistic reading of the Dolan case, there may be grave implications for the future of land use regulation of all types. The clearest implication is that any kind of exaction is subject to invalidation by the courts, plus payment of the plaintiff's attorneys fees, based on an ex post facto judgment of a court that the exaction does not follow the trial court's or a subsequent appellate court's view of the appropriate means/ends "rough proportionality."

This puts the courts in a position to invalidate any non-traditional exaction and perhaps some very traditional exactions as well, such as paths, sidewalks and perimeter streets. Any exaction tainted by perceived opportunism, because it obtains a general public benefit beyond that justified by the particular development, will be suspect. Officials and planners may be intimidated by allegations of unfairness and threats of litigation during the development review process. The fact that the local government will bear the burden of proof will make it incumbent upon local governments to hire experts (and attorneys) to justify their opinions, even though the experts' opinions may be of no avail against a court ideologically committed to a different result. Moreover, the consequences of such a takings analysis can easily be expanded beyond the area

of exactions to include any other form of restriction on the use of real property, and the Dolan case should not, in my view, be read as limited to its facts.

Subsequent Cases

The following list is an inventory of the reported post-Dolan litigation to date:

1. Ehrlich v. Culver City, 19 Cal.Rptr.2d 468 (Cal.Ct.App. 1993), cert. granted and judgment vacated, 114 S.Ct. 2731 (1994), California Supreme Court Action No. S033642.

In this case, Culver City exacted a $280,000 fee from a developer proposing to convert his property from a recreational use to a residential use. The fee was allocated for the replacement of four tennis courts that would be lost to the community as a result of the change in land use. California's Second Appellate District rejected the developer's challenge to the fee as a taking. The United States Supreme Court remanded the case to the California Court of Appeal for rehearing "in light of Dolan." The Second Appellate District decided that Dolan and its precursor, Nollan v. California Coastal Commission, 483 U.S. 825 (1987) both were applicable to the City's exactions, yet it once again upheld the fee as a valid exercise of the City's police power in an unpublished opinion. The California Supreme Court then accepted the developer's appeal.

The following points will be argued in that appeal:

(a) Nollan and Dolan apply to adjudicatory exactions, not legislative acts.

(b) Even if the City's decision were entirely adjudicatory, Nollan and Dolan are limited to physical occupation exactions and do not apply to development fees.

(c) The City possessed the authority to disallow the change in use from recreational to residential in order to preserve a balance of land uses in the city.

(d) The city could allow the conversion conditioned on the developer's mitigation of the impacts of the removal of the recreational use under the principles enumerated in Nollan.

(e) Exactions of the type used in this case are an efficient and equitable method for funding the delivery of traditional public services by governments and mitigating the adverse impacts of real estate development.

2. Altimus v. Oregon, 862 P.2d 109 (Or.App. 1993), review denied, 871 P.2d 122 (Or. 1994), cert. granted, judgment vacated and remanded in light of Dolan, 115 S.Ct. 44 (1994). In

this case, the trial court admitted apparently persuasive evidence that a portion of property being condemned as right-of-way could be subject to a forced dedication policy upon annexation, since the value was based on the probability of such annexation occurring. Thus, the award was set at $7,000 instead of the $65,000 to $86,000 urged by the landowner, and the award was sustained by the Oregon Court of Appeals. The United States Supreme Court remanded "in light of Dolan." Although the exaction issue is peripheral to the condemnation award, the case raises the extremely significant issue of the application of a takings test to annexations, which have traditionally been viewed as entirely discretionary and contractual in most states. The hypothetical nature of the Altimus "probability of rezoning" analysis, which inherently lacks any "rough proportionality" finding (since the annexation has not yet been proposed, much less occurred), makes the case of doubtful precedential effect. And the Oregon annexation standards may well turn out to be unique. But the potential application of the "unconstitutional conditions" analysis to a decision otherwise without any due process safeguards shows how far Dolan may extend. The case is still pending before the Oregon Court of Appeals. The landowner claims that the mere admission of evidence of the probable dedication requirement constituted a taking. The state contends that the dedication issue is one of probability, to be determined by evidence on both sides, and that it is premature to apply a Dolan analysis.

3. Harris v. City of Wichita, 862 F.Supp. 287 (D.Kan. 1994). Dolan was distinguished based on the premises that (a) the airport overlay district at issue in this case was legislative rather than adjudicative and (b) there was no dedication requirement, although the regulation did sharply restrict the development potential of the land. Although ultimately decided on standing and ripeness grounds, the case did determine that the airport overlay district did not violate substantive due process, since a study supported the reasonableness of the city's finding that there was a greater danger of airplane crashes within the district. The resultant restrictions on development were not subjected to a "rough proportionality" test.

4. Schultz v. City of Grants Pass, 884 P.2d 569 (Or.Ct.App. 1994). (a) Dolan was applied to void a right-of-way dedication requirement based on the ultimate finding that an increase of eight vehicle trips per day could not justify a 20,000 square foot dedication under the "rough proportionality" test. (b) The decision to impose the dedication as a condition to "partition" (i.e. subdivide) the property was viewed as subject to Dolan, even though an ordinance required imposition of the dedication, because the ordinance went beyond regulation to require a dedication. Schultz thus extends Dolan beyond adjudicative decisions. (c) Finally, the Schultz court refused to entertain the City's "worst-case" analysis of future development potential and insisted that the "rough proportionality" test be applied to the precise "proposed development" being permitted by the City, i.e. the partition itself.

5. J.C. Reeves Corp. v. Clackamas County, 887 P.2d 361 (Or.Ct.App. 1994). While sustaining interconnectivity with neighboring properties, the Oregon Court of Appeals remanded

a right-of-way improvement condition for further findings of "rough proportionality" in light of the Schultz case, since (a) the zoning ordinance could not be used to justify the exaction and (b) the relationship between the subdivision-generated traffic and the required improvements was not made with the specificity required by Dolan

6. City of Portsmouth v. Schlesinger, 46 F.3d 133 (1st Cir. 1995). In the first post-Dolan impact fee case to go to judgment, the First Circuit, while declining to intervene on estoppel grounds, found that the exaction of $2,500,000 for a housing trust fund in exchange for condominiumization of a portion of the existing low income units and rezoning to permit an additional approximately 300 market rate condos was not justified by City Council findings about the impact of an up-zoning on the City's costs in coping, "with the impact of the proposed project in light of its effect on the amount of low-income housing stock throughout the city." 46 F.3d 133, at 137. Thus, Dolan would have required a remand for a "rough proportionality" finding, but for the estoppel.

CC AD YAD

SIERRA CLUB

408 C Street, N.E. Washington, D.C. 20002 202-547-1141

STATEMENT OF

HANK GRADDY
SIERRA CLUB

Before the
Private Property Task Force
House Resources Committee

Washington, D.C.

June 13, 1995

Fax: 202-547-6009

Good afternoon Congressman Shadegg and Task Force members. My name is Hank Graddy. I am an attorney in private practice in a small town in Kentucky. I come from a farming family. Woodford County is the third most productive agricultural county in Kentucky and one of the most productive counties in the nation. My family has farmed in Woodford County for over 200 years. My brother and my sister are farming approximately 600 acres of farmland in Woodford County. I own a one-fourth interest in the farm. I come here as a property owner who must comply with all of the federal, state, and local requirements of land owners. I am a life-long Republican and a twenty-year member of the Sierra Club. I am a former elder and a current Sunday school teacher in the Pisgah Presbyterian Church.

I am here today to discuss how private property owners are being impacted in my state of Kentucky. When you are in Washington, there is a tendency to look at concerns from an inside-the-beltway perspective, and I want to bring another prospective to the discussion. I want to share with you how hardworking citizens of this country are having their property rights and their health decimated by the actions of bad neighbors.

I also want to talk about a property owner who came very close to abusing the taxpayers of Kentucky using the takings clause. I want to talk about three counties in Kentucky: Bell County, Harlan County and McCreary County.

In 1983, a group of citizens filed suit against the City of Middlesboro and the Middlesboro Tanning Company of Delaware because of many years of pollution in Yellow Creek. In the mid-1970's, as a result of the Clean Water Act of 1972, the City of Middlesboro was given federal money to upgrade its sewer treatment plant. The upgrade was completed but the plant was never able to adequately treat the waste stream it received from the Tanning Company. Essentially, the chemicals discharged by the Tanning Company destroyed the bugs in the biological treatment facility that the U.S. taxpayers had paid to construct. The Middlesboro Sewer Treatment plant was effectively dead on arrival. For the next eight years, nothing seemed to be working to solve the problems. My clients and I filed a tort claim against the city and against the Tannery. You'll be interested to know that Count 15 of our complaint alleged that the actions of the City of Middlesboro in polluting Yellow Creek had destroyed property values of property owners downstream and constituted a taking under the U.S. Constitution under the concept of inverse condemnation, a concept that is, frankly, alive and well in Kentucky and across the nation. I didn't need any statutory amendment to make that allegation. From my perspective, the Kentucky and U.S. Constitution work perfectly well to give me that cause of action without the need for legislative enhancement.

We settled the case with the City of Middlesboro in 1988. The Tannery filed for bankruptcy protection. It took several years to get the Tannery and its owners back before court. On January 28, we began a two week trial. Our proof included an assessment of the impact this pollution had had on 300 some properties downstream from the sewer treatment plant and the Tannery. Our appraiser, using multiple regression analysis comparing property values on this creek with property values on control creeks in other parts of Bell County, found a significant property decline and determined the damages that had been suffered by property owners downstream to be in the amount of $1.4 million.

Unfortunately, these actions by irresponsible landowners did not stop with lowered property values. There is another more fundamental reason why we went to trial in January and why I am here today. When clean water was placed on the sediment from Yellow Creek, and fish eggs were put in the water, the sediment in Yellow Creek was sufficiently toxic that the water killed most of the fish eggs and, of the fraction of fish eggs that survived, a high percentage of those eggs resulted in deformed fish, fish that had spines shaped like corkscrews or were L-shaped and in some cases the fish were two-headed with one body.

Mothers and grandmothers testified about the children that they had given birth to or that their daughters had given birth to. Children that were born without fingers or in some cases born without complete spines and with gross and fatal deformities. We had testimony about higher than expected incidences of leukemia and a cluster of strange

sounding diseases such as Kawasaki disease, Graves disease, Wegners disease and Krones disease, affecting the very young as well as middle age and older residents. At the close of proof I asked the jury to return a verdict to create a medical monitoring fund to provide a permanent level of enhanced health supervision in order to try to minimize the consequences of the chemicals these people had been exposed to. I requested the jury create a medical monitoring fund of $6 million. The jury heard evidence that the Tannery had ignored its obligation to keep toxic materials out of the sewer treatment plant since 1971 and that there was technology available if the Tannery had elected to use it that would have provided adequate treatment so that these materials would not have entered the environment. The Tannery elected not to install that technology. I asked the jury to award punitive and exemplary damages against the Tannery in the amount of $4 million. The jury returned a verdict of $4.1 million punitive damages and $11 million in medical monitoring for a total verdict of $15.1 million.

In Harlan County, as a result of a random well survey done in the community of Dayhoit in 1989 as part of the Safe Drinking Water Act requirements, the state of Kentucky discovered a plume of contaminated groundwater at that time believed to be about 2 miles in size, that contained vinyl chloride, tri-chloroethylene and di-chloroethylene. As a result of this discovery, we learned that a certain industry had been improperly disposing of solvents for a 20-year period; that it had no permits to discharge; and yet it was routinely dumping spent solvents in a floor drain where they would flow into the groundwater that was the drinking water supply for the community

of Dayhoit in Harlan County. This area has been designated a Superfund site. The industry that is determined to be responsible is now hard at work trying to clean up the contaminated groundwater plume. But as a result of the litigation I was involved in, that industry has recently compensated adjoining property owners for property damage in an amount that exceeds $2 million.

There is another perspective coming from McCreary County. I filed as amicus curiae in litigation in Kentucky involving the takings clause in the Committee on Natural Resources vs. Stearns Coal and Lumber (1984). Stearns won a verdict of over $9 million against the Commonwealth of Kentucky aimed at the designation of Rock Creek as a Kentucky Wild River.

During the period of the alleged taking, Stearns continued its timber operations, its five-year oil lease on over 9,000 acres, its ten-year lease to the Commonwealth of Kentucky of 10,000 acres as public hunting and wildlife areas and another 37,000 acres to an oil company. In that period, Stearns sold 12,000 acres to the U.S. Government to be a part of the Big South Fork Recreational area. Stearns was never out of possession of the land it owned.

The Kentucky Supreme Court reversed the trial court findings and stated that the designation of Rock Creek as a Kentucky Wild River did not constitute a taking. We hear horror stories about the abuse of government vis a vis a property owner. The Stearns case reflects one case of potential abuse by a landowner of the public and the

taxpayers of Kentucky.

The citizens of Bell, and Harlan Counties lost their loved ones, their health, and their property values due to irresponsible actions of their upstream neighbors. Three months ago, the U.S. House of Representatives passed H.R. 9, the Job Creation and Wage Enhancement Act. In addition to draining the federal budget, increasing litigation and expanding federal bureaucracy, this bill will make more victims out of innocent people like those who suffered in Kentucky.

The takings provision of H.R. 9 is quite clear – it mandates payments for government actions that are not now Constitutional takings. The takings provision is based on a flawed interpretation of constitutional rules, on a radical premise that has never been a part of our laws or tradition. That is that a private property owner has absolute right to the greatest possible profit from their property, regardless of the consequences of the proposed use on other individuals, other peoples' property, or the public at large.

Under our Constitution, the courts have balanced the rights of property owners with the rights of the public good – the rights of neighboring homeowners and the general public. The U.S. Supreme Court has repeatedly found that takings claims must be determined on a case-by-case basis. In evaluating a takings claim, the courts generally consider the public purpose of the regulation, its economic effect on the property owner, and the owner's particular circumstances and expectations. The Supreme Court has ruled that compensation usually must be paid only if a regulation renders property

completely valueless, but not even then if that regulation is consistent with State property laws, nuisance laws, or guards against grave threat to life or property.

H.R. 9 ignores the need to look at the facts of each case and directs that all property owners who experience the impact of a 20% decrease in valuation, on any portion of the property -- no matter how small the portion -- receive payment. This is directly contrary to eighty years of Supreme Court decisions that disallow a percentage test and require the alleged losses to be calculated over the entire property. Under H.R. 9, a landowner could demand payment from U.S. taxpayers if half an acre out of a 100 acre plot was declared a wetlands unsuitable for development, even though the other 99 1/2 acres could be developed in a variety of very profitable ways.

H.R. 9 requires taxpayers to purchase outright all or part of an affected property, at the owner's option, if the value is reduced by 50% or more, even if the rest of the property can be used in highly profitable ways, even though the purchase does not serve any public purpose.

The bill would not only compensate losses an owner has actually incurred, as when an owner wants to build a structure and is denied a permit, but also requires payments when no actual loss has happened or would happen. Under this bill, an owner can demand payment up front, as soon as a regulation is in place, even if the regulation may not presently impact the property at all because the owner has no intention of developing, or has other options they might choose or they have no plans to do anything

with the property for years. The cost of using tax dollars to pay these speculative claims is unimaginable.

Supporters of H.R. 9 attempt to say that the bill is budget neutral because all payouts come directly from the budgets of the regulating agency. My state of Kentucky has lost 81% of our original wetlands and we experience devastating floods. The U.S. Army Corps of Engineers has an operating budget of about $3.6 billion each year, half of this used to maintain levies, dams, etc. In 1993, the takings component of the Hayes wetland bill, H.R. 1330, was estimated by the Congressional Budget Office as costing between $15 and $45 billion. If the Corps is required by H.R. 9 to spend their budget paying land speculators not to develop wetlands, they will not have the funds available to protect citizens of Kentucky from flooding out. So rather than using their budgets to carry out the mission they were given by the U.S. Congress, our agencies will be forced to give this money to land speculators and big business.

For these reasons and others, the National Governors Association, the National Conference of State Legislatures, the National League of Cities, the National Institute of Municipal Law Officers and the Western States Land Commissioners, which represent local elected officials, all have passed resolutions opposing takings bills. In addition, takings bills have been rejected in most states, even Representative Shadegg's home state of Arizona by a 60% to 40% margin. Why, because the hardworking taxpayers of Kentucky, Arizona and the rest of the U.S. know that your property rights end where your neighbor's begin.

We hear a lot of talk about property rights. I am concerned whenever anybody only wants to talk about rights without in the same breath talking about responsibilities. Every property owner has property responsibilities that come with property rights. In same cases these responsibilities are ethical and not legal. They come in my opinion from our God-given mission to be stewards of His Great Creation.

The earth is the Lord's, and the Fullness thereof - Psalm 24.

When we talk ownership, we all should be a little more humble. We did not make the land and give it fertility and beauty and living things. Our Creator did -- and as he covenanted with Noah and with every living thing after the flood that he would not destroy again. (Genesis 6:18).

Some of our responsibilities as landowners are both ethical and legal. These laws - such as the Endangered Species and the Clean Water Act -- help insure that even those who are not ethical stewards will meet some level of responsible stewardship. It is dangerous to forget the responsibilities that come with property rights. This is what I fear supporters of H.R. 9 have done.

STATEMENT OF JAMES S. AYER

Honorable John Shadegg, Chairman
Private Property task Force
U.S. House of Representatives
Committee on Resources
Washington, DC 20515

Dear Committee Member:

I am a five generation native of Siskiyou County California. I have been in real estate sales for 16 years and a very active leader and member of many grass roots committees and organizations, such as the Siskiyou Bioregional group, Klamath Alliance for Resource and Environment and E.N.O.U.G.H.. Siskiyou County is a county adjacent to the Oregon border that has developed because of it's farming, ranches, mining and forest products industries. We are extremely proud of our contribution to America's economy, our love of the land and the family environment we have fostered for generations. These days our unemployment rate typically hovers around the 20% level and in some of our communities - much higher; due to, in large part the suffocating level of rules, regulations and guidelines that are destroying our mechanism for making a living.

Fully sixty five percent of our land mass is controlled directly by governmental agencies leaving 35% in private ownership. Because there are so many problems that are created for private property owners due to direct or indirect government controls, I will attempt to highlight only a few.

1) On March 11, 1994, the Keeper of national Register and historic Places Jerry L. Rogers declared over 235 square miles of the land comprising Mt. Shasta down to the 4,000 foot level, as eligible for listing under the national Historic Preservation Act of 1966 (NHPA) as amended october 1992, as a national Historic District under the qualifier - "Ethnic Heritage: native American."

Of the 150,000 acres of land involved in the national Historic District eligibility designation, approximately 99,200 acres are within the boundaries of the Shasta-Trinity national Forest created in 1905. In 1926, the Secretary of Agriculture designated 29,260 acres of the mountain within the Forest as the Mt. Shasta Recreation Area. In 1976, about 8,000 acres at the summit,(14,162 foot elevation), were designated as a National natural Historic landmark. In 1984, 38,560 acres from about the 8,000 foot level to the summit were further designated as a Wilderness Area.

Downhill ski facilities were in operation at the Mt. Shasta Ski Bowl from 1957-1978. In addition, the Mt. Shasta Ski Park, located on a lower elevation section of private land, opened

for business during the 1985-86 season. Studies for the proposed redevelopment of the original Ski Area were delayed pending final wilderness allocation in 1984. An environmental impact statement on the project was completed in 1988. Despite environmental activist appeals, the Record of Decision selected an alternative involving development of skiing on 1,950 acres of national Forest land, plus adjoining private lands with a potential to serve up to 4,800 skiers at a time.

A decision on subsequent appeals required the USFS to complete a supplemental environmental analysis. Following completion of this document and a Record of Decision in 1990, several lawsuits were filed objecting to the redevelopment of downhill skiing. The U.S. District Court then directed that the 1990 Record of Decision be subject to administrative review (appeal).

The issue of the historic preservation of native American or Indian cultural values was then raised. In the spring of 1992, the U.S. Forest service (USFS) requested comments from a list of "interested persons". Additional ethnographic review was also required by the State Historical Preservation Office. A USFS consultant interviewed 39 American Indians to ascertain Mt. Shasta's mythological and cosmological significance.

In October 1992, amendments were made to NHPA Section 101(d)(6)(A) and (b) to provide consideration for eligibility under the National Register of Historic Places of (A) "properties of traditional religious and cultural importance to an Indian tribe...": and (B) consultation on proposed "undertakings" with "...any Indian tribe...that attaches religious and cultural significance to properties described in subparagraph(A).

The Shasta-Trinity national Forest submitted documentation to the Keeper of the national Register of Historic Places recommending designation of the native American Cosmological District on Mt. Shasta encompassing the 8,000 foot contour at the summit of Mt. Shasta and the approximately 5 acre Panther Meadows. The larger mountain area was recommended for the "Multiple property" category under the Register, where additional historical or cultural sites would be later identified on a project by project basis.

The "Keeper" found the original submission of the documentation insufficient, and requested copies of reports the USFS withheld from public disclosure under the provisions of Section 304 of the NHPA. The new documentation was submitted in December 1993. On March 11, 1994, the lands comprising Mt. Shasta down to the 4,000 foot level, (including 50,000 acres of privately owned land comprised of more than 1,000 parcels,) were determined as eligible for listing in the Register. According to a letter from the "Keeper," documentation submitted by the USFS does not support the multiple properties indicated that the entire mountain was significant and the property, most appropriately, should be classified as a district. The eligibility determination was based on the entire mountain's significance to native American ethnic heritage, "for its association with the cultural history and cultural identity of several American Indian groups."

During this time period mentioned above we formed an organization called E.N.O.U.G.H. (Enraged Natives Opposing Underhanded Governmental Hanky-Panky). The area communities felt they had not been informed about this complete government blanket of control over them. The proposed designation also included the water system of two local community and portions of two railroads and a ski area. After tremendous involvement and outcry of the public the keeper raised the designation to the 8,000 level with the possibility of lowering it again in 4 years! Several environmental groups are working toward that end.

Several items should be noted: property sales were almost unheard of within this area during this time span. Those properties that were in escrow saw cancellations almost without exception which in turn affect value! It should be understood that the area now has been found eligible for designation under the NHPA for mythological and cosmological reasons and must be treated by all agencies "as if" it has been designated. This law directly aids the environmentalist in their battle to stop the replacement of a ski area on Mt. Shasta that had been in operation for 20 plus years. This area had been agreed to by Sierra Club and others and designated by congress for the reestablishment of downhill skiing under the leadership of Alan Cranston (D-CA). Years of appeals and millions of dollars in studies by the Forest Service and we may be further away than ever to establishing a business that will create hundreds of jobs and $21,000,000 per year for the area economy (a very great help). The NHPA was never intended to lock up vast tracts of land under the guise of "simple recognition only."

2) Another area of great concern is the continual assault upon the forest products business through the ESA. A prime example is Happy Camp California, in Siskiyou County. Happy Camp was a thriving little town whose only real economy was growing trees and supplying products to other areas. Because of the Environmental groups use of the spotted owl the only mill closed - 85 families are unemployed. Most of their total wealth is tied up in their homes. Homes which cannot be sold to anyone! After all, who wants to live in a dying town? This nightmare has been occurring on a regular basis to other towns such as Hilt, Hornbrook, Seiad Valley and Montague.

3) The next example is over the wetlands issue. A large portion of the town of Mt. Shasta California was built on a swamp in the 1800's. Some of our only area of commercial growth potential lie in these areas of adjoining grass lands. Because of the ESA and NHPA we are forced to compete for tourist dollars and we need motels restaurants, etc. Any development of this kind has been stopped because these areas of private ownership have been declared as wetlands with no compensation offered to the owners. Literally millions of dollars in property value have been lost to say nothing of untold tourist dollar revenue.

4) We find the government is continually competing with us for private land ownership. The BLM and others are seeking out our best ranches and farms with water rights. The typical scenario is to offer a much greater purchase price to the owner than current market value would dictate. The owner can't hardly refuse. Now the land is under government control and yet another private property is taken off the tax rolls. This in turn causes still greater grief to an already floundering county budget. A county I might add that would be flourishing if allowed

to manage its own area resources and remove the federal government from the equation altogether.

5) In the 1970's the Fish and Wildlife service tried to poison and eradicate a sucker fish in Klamath reservoir. Now in the 1990's they want to save it. The plan has involved numerous ranchers and farmers who depend upon water for their corps. They are withholding the water for a trash fish. No water, No crops. No value left to their land...It's that simple. Generations of hard working Americans are left to struggle in an artificially created depression.

As can be seen, many of the laws, rule and regulations tend to be indirect in their affect on property values to the casual observer, but to the people involved, the people who's lives are devastated because of them the correlation is all too direct! When thousands of acres can be controlled for mythological or cosmological reasons, when entire towns can be obliterated because proported numbers of certain critters are in decline, and when the retirement plans of countless thousands are destroyed because of artificial land devaluation, it's time to change the National Historic Preservation Act, the Endangered Species Act, Wetlands Legislation, etc., etc., etc.,

Sincerely,

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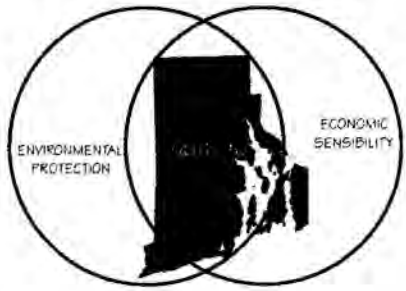
Testimony of Brian Bishop
founder, RI WISEUSE
to: Task Force on Property Rights
House Committee on Resources
June 13, 1995

RI WISEUSE



I have thought for three weeks about what to say in three minutes that might change our country. I'm not used to having a singular voice here in Washington although I'm a veteran of collective expression.

You see, I cut my teeth on impacting government in the 60's when I asked my parents to be excused from a boy scout meeting so I could march in the 1969 Moratorium against the Vietnam War. In this way I have something in common with Bill Clinton. Well, I don't know if he was a boy scout. But this isn't about knot tying nor am I here to dance on the graves of brave soldiers or brave demonstrators, celebrating the final ruminations of Robert McNamara on the subject. The reason I retell this time in my life is what I learned in those formative experiences which was to question authority. I never let go of that lesson. Mr. Clinton, as many of my compatriots, has instead chosen the path of becoming authority. That is a rational pursuit for those who felt that the existing order was unresponsive.

The thing that saddens me about this administration's response to the growing movement of which I am a part is that they treat it with the same paranoid fascination that Richard Nixon visited upon the opponents of his Vietnam policy. Substitute 'Global Warming' for the 'Domino Theory' and the rhetoric of the two eras is almost identical. Witness the way we, as property rights activists,are stereotyped as corporate shills is pitifully similar to the red baiting invited by being an opponent to the Vietnam War. It is based in the same false logic. There are communists opposed to the war ergo those opposed to the war are communists. There is industry opposed to bureaucracy ergo those who oppose bureaucracy are corporate toadies. Of late its been popular to utilize the same illogic to link the property rights movement to the militia and the militia to Oklahoma city.

I understand the frustration and powerlessness that one feels in the face of the federal government. I have felt it for years, but I, as the vast majority of us, have chosen to organize a political campaign rather than a military one. To listen to Bill Clinton, I am a voice of hate, and should go home because I might incite someone. Its true, I do hope to incite people, members of Congress.

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I don't come from a board room spouting the industry line or from a bunker chanting mantras against the new world order. I don't view the loss of Property Rights in this country as the result of conspiracy but as the product of neglect. One can readily imagine the enormity of this neglect when one personally experiences having the rug pulled out from under them by government, but it is seldom an experience that one heralds for inevitably their fellow citizens are made to believe that such individuals are greedy environmental criminals. My crusade has been from door to door to hear the stories of people who don't have anyone else to tell them to. These are the stories I have to tell you. They come from living rooms and kitchen tables around New England where we suffer the excesses of a daunting array of federal authorities from the National Historic Preservation Act to the National Park Service, but the loss of property rights and respect for the individual citizen is, to us, synonymous with the Army Corps of Engineers.

In theory, I am a federal criminal for building 75 ft. of driveway twenty miles from any major waterway. Doesn't it seem a problem to the members of congress that through attempting to micromanage every piece of skunk cabbage in the country from Washington, DC we have created a whole new cadre of federal criminals. My own case took place for the most part in the courts of the local and state bureaucracies but don't fool yourselves into thinking that the intransigent attitude of local bureaucrats are not motivated by the federal government's posture or that the Army Corps may not at their whim , selectively prosecute an individual in my position for the chilling effect it might have on others. The convoluted overlap of local authority and that of the Army Corps is traditionally played off one against the other. For instance in the *Loveladies Harbor* case in New Jersey you have the state department of Environmental Protection issuing a water quality certificate for a project and then entering the Army Corps 404 process opposing the very same project. Adoption of federally mandated standards through state administration of Sec. 404 is simply a disguised assault on the 10th amendment where no clear and compelling issue of interstate commerce is at the nexus of such a permitting regime.

Quite honestly, I thought my efforts in Southern Rhode Island would be heralded as a model by environmentalists. When development threatened the area surrounding my farm, I didn't rail against it, I went out and put together a small group of friends to buy nearby acreage and develop it into homesteads without the high class nature and high price tag that inevitably leads to criticism of farm uses once upscale subdivision is established nearby. I happily invite people to move to my community and recognize that our proximity to urban centers means we have just as much of an obligation to provide affordable housing as we do to provide open space. My concern was that farms all too often suffer the 'airport' effect, inherent when people move near an airport and then complain about the noise. Farms experience this same phenomenon relative to appearance, smells, and noise; essentially every farm practice is suspect to those unfamiliar with them.

Those of us who are actually part of rural culture understand that you do not preserve it by preserving land. You do it by protecting the individuality and enhancing the diversity of people, activities and lifestyles in rural areas. Instead federal, state and local policies are moving us towards a monoculture of unparalleled proportions where their are two uses of rural land, subdivision or untrammeled wildlife habitat and nothing inbetween.

To fight this trend, I formed the equivalent of a food-coop to buy nearby land. Just as a food coop would buy 50 lbs. of flour and give each member 5 lbs. at the wholesale price, we bought 160 acres and gave each member 20 acres at the wholesale price. This meant low cost and low density, normally mutually exclusive concepts. The original owner of the parcel agreed to finance all the individual lots sales so that the compendium of bootstrappers I had assembled could purchase the lots and build houses themselves relying on sweat equity. Normally, owner financing of development projects requires lots to be paid off as they are separated from the whole, thereby eclipsing those who do not qualify for traditional financing.

While I admit to a considerable degree of naiveté in such matters, I could never have imagined in my wildest dreams the 4 year trial I would endure at the hands of bureaucrats empowered by the concept that the sky is falling. Each compartmentalized authority operates in a complete vacuum as to the landowners prerogative and those of other

bureaucratic authorities. The end result is that I am destitute, on the verge of loosing the farm I sought to protect. I can't pay my taxes, my mortgage is so far in arrears I get a stiff neck from trying to see how far behind I am.

My case, an argument over 750 sq. ft. of the upper lobe of a wooded swamp was referred to the Army Corps by state officials. One might think it is good news that I was not drugged before a federal tribunal, but actually, I discovered, these are strictly luck of the draw decisions. The corps already had a whipping boy in Rhode Island, an unfortunate 5th generation Rhode Island farmer by the name of Bill Stamp whose farm was declared an industrial park by his town in the 60's. The resulting increase in taxation from $4000 a year to $78,000 a year forced Mr. Stamp to develop the land as an industrial park. Undaunted he purchased another farm in southern RI to keep his family's heritage in farming, but following state permit approvals of his industrial subdivision, the Army Corps charged him with violating federal law for not having obtained 404 permits. This action came on the heels of the *Riverside Bayview Homes* decision which vastly expanded Corps reach over wetlands unassociated with any navigable water. Bill like most Americans was caught completely unawares by another layer of federal bureaucracy which was heaped on top of an already excessive set of state regulations. The area subject to the Corps action was a cornfield nowhere near any remotely navigable waterways. That was 8 years ago and Bill is still fighting today. Just as myself, his new farm is threatened by the legal and interest expenses inherent in these processes.

And speaking of fighting the Army Corp for 8 years, this is a copy of a Corp memo about a fellow named Gaston Roberge. John DeVillars, Region I EPA administrator who engaged me in debate at a recent demonstration told me 'not to believe everything I read', referring to Newspaper accounts of this memo. Meeting me in Rhode Island, how could Mr. Devillars expect that I would have a copy of the memo in my hand. How could he have known that only weeks before Gaston Roberge's was one of the living rooms in which I sat. I got to wondering if Mr. DeVillars and his crowd might have done the same wallpapering job down here in Washington, trying to dismiss this memo as non-existent or unimportant, so I brought a copy of the actual memo in case there might be any debate over what it said or what it meant.

Of Roberge the memo suggests quote, "this would be a good one to squash and set an example". This really says little about Gaston, but speaks volumes about the Army Corps and their enforcement methods. They singled Roberge out with little regard for the merits of the case and with the clear intent not of enforcing the law, but of having a chilling effect on those who might propose to develop in the area. This is so clearly a violation of Roberge's rights to due process and equal protection that every Corps official involved in that case should be on trial for civil rights infringement. Instead the one on trial was Gaston Roberge.

It was never any secret to us that such appalling attitudes were rampant at the Corps of Engineers, but this memo should make it quite clear. I believe this committee will have the opportunity to personally interview Mr. Roberge and I won't dwell on the facts of his case, but suffice it to say that even after winning a settlement from the Corps of almost 350,000 dollars, Gaston looked across the room at me and said 'my lawyer told me I was entitled to much more and might well win it if I pursued this for years more. But I have gone to bed with this every night for eight years. I woke up every morning with it for eight years. It has been hard to think of anything else. No one can imagine what it is like until they have gone through it. Anyone who thinks I am lucky because I got some money from the government does not know my story."

With no prompting, Marinus Van Leuzen offered an identical sentiment regarding waking and retiring with his Army Corps battle for 8 years. A man who escaped Nazi persecution in Holland, Van Leuzen joined the allies and served in the Merchant Marine during the war and finally emigrated to Texas where he now finds himself persecuted by the Army Corps instead. This gentleman had the temerity to tear down what is, in the Gulf Coast vernacular, a "Bait Camp" and what was in reality a shabby collection of buildings and outhouses and build a home on a 1/3 acre lot along the Texas coast which he has owned for years. For this crime he's been forced to erect a billboard of shame, and to set aside from his retirement income to provide for moving his house. His case is complex and this epistle were it twice the length could not adequately describe the twists and turns. It is clear that

Mr Van Leuzen continued to work on his home in willful defiance of an order of the Corps to cease, but he did this because he believed the Corps had previously found his site to be Uplands. The subtleties of changing definitions coupled with the attitude of Corps enforcement personnel coaxed him into this belligerent behavior, but even were there no equities, the treatment he has received is unwarranted. Being stubborn is not illegal, its human.

Professionals at the Corps demonstrated again their inability to act in a professional way. Instead, emotions based on Van Leuzen's intransigence ruled the day, for no amount of reason could have resulted in such deliberate and vindictive attempts to humiliate and break a 75-year old gentleman whose major crime was building a retirement house on his own property. Can there be any doubt that this strategy had at its Corpse the same squash 'em and set an example theory which was expounded in the Roberge case.

The question of whose sins Van Leuzen was paying for was starkly presented when government witnesses testified at his trial that 1/5th of Galveston Bays wetland areas had disappeared since the 1950's. This of course has nothing to do with Van Leuzen, but is typical of what's wrong with bureaucratic philosophy. If wetland or habitat have been lost in an area, the ones paying to protect what is left should not be the property owners who still own wetlands and habitat, but the ones living on the wetlands or habitat that have disappeared, which is pretty much all the rest of us, it is society. It should surprise no one that when government fails to recognize the absurdity and inequality of such a strategy some individuals react with civil disobedience. This has been the response to civil rights violations throughout this country's history.

Those who have become active trying to engage the political process before it results in the legal wranglings described above are treated no better than the ostensible clean water criminals I have described. Witness the letter written by a National Park Service Division Chief to Senator Robert Smith's office about Cheryl Johnson who also testifies here this morning. Ms. Johnson formed grassroots opposition to 'wild and scenic river' designation and for her commitment and effectiveness had the privilege of being branded an 'anti-democratic' force for the very act of participating in the democratic process. This type of personal vendetta carried out by a federal employee illustrates the lack of professionalism endemic in the ranks of bureaucrats who are unable and unwilling to distinguish their own goals from those of the legislation they implement. You can and should fix the Clean Water Act to Get the Corps out of our backyards. But there is always another bureaucracy waiting. Whether its the history police or the skunk cabbage patrol or the habitat hounds we are always just a heartbeat away from slow death by economic strangulation. Only legislation which holds these departments accountable for property they effectively take will force federal employees to adhere to proper standards of conduct. While existing law does not preclude compensation and in fact compels it, so many years of preliminary appeal prior to having a ripe 'takings' claim are required that the vast majority of people are not afforded their basic civil rights by the current process. Property Rights Legislation is not about making up new things that a property owner might be compensated for, it is about seeing that they are compensated for 5th amendment takings. For the 5th amendment is indeed a hollow guarantee if only those who can afford its implementation are protected.

And despite all this talk of money this is not about dollars, but about sense, common sense. We don't believe the constitution protects our property value to the penny, in fact we believe it does no such thing. We know that it protects our right to us that property if we are not engaged in the conduct of nuisance. If we pave a parking lot we must accommodate the runoff. If we build a house we must build an appropriate septic system. But to suggest that developing our property is in and of itself a nuisance if society covets its undeveloped attributes makes a mockery of the purpose of having government and shared responsibility in the first place.

What I can truly testify to is the intangible impact of federal regulation. Environmentalists suggest that market based analysis of their efforts is improper because of intangible benefits of a clean environment they may not be adequately valued in economic terms. No one is suggesting that all environmental protection can or should be free market, but that it should be fair to those whose property is essentially being extracted from the free market for its values. Certainly our regulatory regimes should not discourage free market solutions. As someone who worked

18 hours a day for 10 years of my life to conserve 240 acres of open space in the country's second most densely populated state. I can tell you what I have lost to regulation, my drive, my stamina and my hope. As a renaissance man who raised buildings, raised forests, raised crops, shared this bounty of open space with the community and worked off the farm to support this effort without a cent of public funding. I have never faced a more demoralizing factor in my struggle than the government itself. What I have lost can't be measured in monetary terms. Yet I am portrayed by congressmen as desiring to be 'paid for polluting'. Aides to my own Senator are suggesting that the trials of people like myself are fabricated.

You are welcome to walk in my shoes anytime. Your staffs are welcome to walk in my shoes. Anyone who can go away from that experience thinking I am an industry apologist waiting to be paid for polluting is welcome to vote against us and work against realistic compromise, but please don't participate with the media in feasting on our inexperience and lack of professional representation in Washington to undermine the truth of what we have suffered. We don't have lobbyists other than ourselves. We don't have an effective way to participate in the drafting of legislation unless you make a purposeful effort to include grassroots at the table. In the absence of this representation, traditional lobbies on these issues have participated and this participation is then held up as evidence that we are their pawns. This is not true. We must inevitably yield to the beltway to solve these problems. You are my only hope to regain the composure and motivation which made me a steward of the land. If I loose you to the false gods of environmentalism, I am doomed as are millions like me for whom I speak.

For practical and philosophical reason, I urge you to concentrate on crafting a compromise of the House and Senate proposals which does not concentrate on the percentage of value trigger, but on the equitable standards arising from Supreme Court decisions such as Lucas (codifying that the police powers apply to nuisance, not to aesthetics or some amorphous sense of the public good) and Dolan (which suggests that conditions for permits need be related qualitatively and quantitatively to the nuisance to be mitigated). If we can gain access to the meanings of this body of law in an administrative process which may begin concurrently with primary application denials, or approval with excessive conditions, there is hope! I recognize that diminishment of value threshold triggers may have been an inherently responsible effort to provide for an effective 'de minimus', but these efforts have been carefully gerrymandered in the public opinion mills to make the aims of 'takings' legislation appear as an agenda of greed when in fact they are quite clearly a matter of principle, equity, individual sovereignty and the only hope to end the threat that environmentalism ironically poses to those of us who seek a life of individual stewardship and celebrate our relationship with the environment in which we are privileged to live.

Roberge Memo

ROUTING AND TRANSMITTAL SLIP

Date 1/27/97

To (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. Rich Roach		
2.		
3.		
4.		
5.		

Action	File	Note and Return
Approval	For Clearance	For Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

Rich—
I haven't assigned an application number to this. I think Wellman, acting on behalf of Roberge, is trying to sneak this one past you guys. Roberge would be a good one to squash and set an example. Old Orchard is heating up these days. Let me know what's going on
Thanks!

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

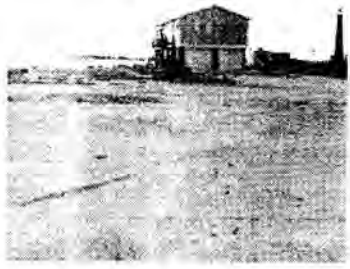
FROM (Name, org. symbol, Agency/Post)	Room No.—Bldg.
Jay Clement MPO	(formerly: the May Ag Reclamation

OPTIONAL FORM 41 (Rev. 7-76)

Van Leuzen Property

Before

After



After Sec. 404

Brian Bishop, RI WISEUSE

PUBLIC TESTIMONY
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
Tuesday, June 13, 1995
Submitted to: John Shadegg, Chairman
Private Property Task Force
Copies Provided: 75

Five Minute Summary Testimony to be given by Georgiana A. M. Murray
2175 Ridge Road West, The Dalles, Oregon 97058
Subject: National Scenic Act, Public Law 99-663
Enacted November 17, 1986 by the U.S. Congress
Created Bi-State Commission (Oregon and Washington) known as
Columbia River Gorge Commission
Affects Portions of 6 Counties in Oregon and Washington
(Clark, Skamania, Klickitat in Washington)
(Multnomah, Hood River, Wasco in Oregon)
Purpose of Act: To preserve cultural, scenic and natural resources.

Factual Occurrences in Chronological Order...

In July of 1990, my spouse, R. J. Murray and myself purchased a 20.50 acre parcel in Wasco County, Oregon (T2N R12E Sections 23 & 26, W.M.), which was zoned Forest Farm 10 Acre minimum by Wasco County, and the Columbia River Gorge Commission was operating under the Interim Guidelines, with the property designated into the General Management Area jurisdiction under the Act. The parcel would fall into an Agricultural 160 Acre minimum under the Gorge Commission re-zone with all land use development applications being processed by their staff, except for farm use buildings, which had a land use review process via the U.S. Forest Service.

The previous use of the land which was cut from a parent 2,000 plus/minus acre parcel via the re-routing of a county roadway had only been a temporary holding area for cattle on a temporary basis, because the culvert for movement of the cattle to the parent parcel was inadequate as the cattle refused to use this method of gaining access to the parent parcel, and the parcel had consistently low productivity of vegetation, because of the amount of rock, and could not sustain two beef for more than one month during the highest yield period. The parcel had not been used for this purpose for a few years prior to the enactment of the National Scenic Act (1986). Fences were down in areas when the property was purchased. There was testimony from the owner of the parent parcel of these facts at administrative hearings.

In 1992 Mr. Murray excavated areas of this land to create a more gentle sloping of the land and to cover rock areas with soil. He piled up rock, saving the over burden; to create leveled off areas for the purpose of making a barn site and a flat area for the purpose of drilling an irrigation well. He planted drought resistant trees to enhance the

curb appeal of the parcel; planted orchard grass to prevent soil erosion and to determine the ability of the parcel to have such vegetation. He planted hybrid poplar trees as a wind break and to enhance the back of the property. He down sized the high bank on one side of the property for vehicles to see each other coming around a curve that is hazardous for winter driving. The property was being enhanced and gained appeal by the comments received of those viewing the property who traversed the road on a regular and seldom basis.

The first development application through the Columbia River Gorge Commission was to place a non-farm dwelling on the parcel. This application was denied because it was deemed a conversion of farm land. The decision was appealed to the Commission, and the decision of the Director was upheld on appeal.

The second development application through the Columbia River Gorge Commission was to divide the property into two 10.25 acre parcels since the County zoning was Forest Farm 10 Acre minimum. The application was denied because it was deemed a conversion of farm land. The decision was appealed to the Commission, and the decision of the Director was upheld on appeal.

The third development application was through the U.S. Forest Service to build a barn on the property. The application was granted, as long as the barn was in conjunction with farm use.

The fourth development application was through the Columbia River Gorge Commission to quarry the property. The Commission did not grant a decision within the time frame allotted under their rules. They asked for more time, and Mr. Murray would not grant an extension. They rendered a denial based on the fact that Mr. Murray had to accomplish a cultural resource study. Mr. Murray appealed on the basis that he had the right to the land use by default, and that there were no cultural resources on the property based on a Forest Service contracted Archaeologist who viewed the property as part of the process of a land use decision required by the Columbia River Gorge Commission. The decision of denial is dated June 25, 1993.

On June 7 and June 11, 1993 Mr. Murray made arrangements to exchange previously piled rock on this property for soil on his property outside the Scenic Area. The first part of the exchange would be accomplished before the soil would be returned to the property. On June 25, 1993 the same first stage scenario was occurring. Approximately 10:00 p m of that date, Mr. Murray learned by delivery via the Sheriff's Department, that a Restraining Order, requested by the Columbia River Gorge Commission, at a hearing Hood River County Circuit Court at 7:00 p.m. on that evening of June 25, 1993 for mining without a permit had been granted. All movement of rock for soil exchange was halted by Mr. Murray upon this notification. No notice of violation was received by Mr. Murray, until a later the appearance in the Hood River Circuit Courtroom for a Preliminary Injunction. The restraining order was granted by the Court without the knowledge of Mr. Murray, and with no opportunity for Mr. Murray to appear, with or

without counsel in his behalf. There were no requests directly by the Commission directly to Mr. Murray via any other method, to stop the operation, or to give warning of their intention to seek a Restraining Order.

The Gorge Commission followed through with a hearing for a Preliminary Injunction again in Hood River County with a Circuit Court Judge Pro-tem. The Judge waived all the Uniform Trial Court Rules, and Rules of Civil Procedure for the Gorge Commission and Plaintiff Intervenor, Friends of the Columbia River Gorge. The Judge ruled against Mr. Murray on double hearsay evidence and false affidavits. Mr. Murray represented himself.

When Mr. Murray subpoenaed the District Court Judge to determine if the illegible initials on the Preliminary Injunction, were in fact a signature by this Judge, the Court ruled against him thereafter, at one point calling him a "cultural resource terrorist", for the factual accounts which have been described in the aforementioned paragraphs.

In July of 1993, in a two day window of opportunity, (between the time the Judge ruled on the Preliminary Injunction and the notification thereof to Mr. Murray); Mr. Murray did more farming on the parcel, notably plowing with a D-6 Cat with a clearing blade. The ground was subsequently planted to orchard grass.

The Gorge Commission staff, responding to a call from a neighboring property owner, filed affidavits with the Court, that Mr. Murray was mining, removing material, loading trucks and trailers with this D-6 Cat, called by the Commission staff, a "front end loader". The trucks and trailers were in fact a group of pick-up trucks with horse trailers for the weed patrol. The Commission staff called the Judge in Salem to have a Contempt of Court Hearing. The Judge, via speaker phone, telephoned Mr.. Murray. The first utterance Mr. Murray heard was the voice of Larry Watters, Counsel for the Columbia River Gorge Commission saying: "Your Honor, this is a hearing for Contempt of Court". "Mr. Murray, having not been properly served, but it doesn't make any difference, he is on the phone". At this time, Mr. Murray told the Court, that he is "a Wasco County citizen, this concerned Wasco County land, this is a Wasco County case, and Wasco County has a courtroom, and if they wanted to talk to him, they could come to Wasco County", and hung up. The Judge gave advice ex-parte to the lawyers. This was on Thursday. On the following day, Friday, everyone was so sure of themselves, there was a hearing in Circuit Court in Wasco County. Mr. Murray was not there. He had not been served. He had no knowledge of a hearing. He had no knowledge of the charges pending, nor why. At this time, the Judge gave the lawyers some more ex-parte communication. He advised them that this was a civil contempt, that they could not ask for jail time, they could not ask for equipment to be confiscated and they could not ask for punitive penalties. Subsequently, Mr. Murray was served papers three times for Contempt of Court with slight variations because of the lawyers incompetence and the Judges' collusion to continue with the farce.

In a subsequent Columbia River Gorge Commission Administrative Hearing, Mr. Murray was fined $2,500 administratively for "mining without a permit".

After six months of Circuit Court jurisdiction litigation, with the Archaeologist contracted from the U.S. Forest Service refusing to testify in State Court based upon their own affidavits against Mr. Murray, and the Director of the Columbia River Gorge Commission not showing up twice under lawful subpoena; the Judge told the Gorge Commission attorneys, and Intervenors attorney, Friends of the Gorge attorney and Warm Springs Indian tribe attorney, that they didn't have a case. There had been evidence that Mr. Murray was farming, not mining. The Plaintiffs asked for a dismissal and the Judge granted it.

The Gorge Commission and the Intervenors filed for a permanent injunction. The trial was held on the 13th and 14th of January 1993. The first piece of business was a Motion in Limine; that there was to be no discussion of archeology or artifacts. This Motion was granted. During the course of this trial, one of the archaeologist volunteered to testify against Mr. Murray, after previously refusing to testify for Mr. Murray, under the pretence that if they did so, they would receive disciplinary action through the authority of someone at the U.S. Forest Service Headquarters in Washington, D.C.

Mr. Murray had an inexperienced industrial accident attorney representing him. After the main trial he represented himself. During the trial, the Judge became a participator instead of a facilitator by testifying from the bench against Mr. Murray, during a telephone conversation for Contempt of Court. The Judge subsequently found in favor of the Plaintiffs for a permanent Injunction, A money judgment for an archeological survey was granted, and the Judge ruled that Mr. Murray could never use his property in perpetuity except two small leveled off areas with minimal ground disturbance, where the barn is supposed to be. In spite of the Judge ruling for the money judgment for the survey, Mr. Murray was not entitled to a jury trial on this issue.

Mr. Murray is now looking for a qualified attorney for malicious prosecution, an inverse condemnation takings issue, violation of civil rights and civil racketeering against the plaintiffs.

A second property owned by Mr. Murray in the General Management Area, had a land use application for division of land. The application was denied on a cumulative effect. The U.S. Forest Service had recently purchased land contiguous to this parcel, and the Director of the National Scenic Area, U.S. Forest Service, Hood River, Oregon was present at the Commission Appeal Hearing. He had to have knowledge of the property acquired, but left the meeting, and did not give evidence to support the appeal that there would be no cumulative effect, because the U.S. Forest Service owned land on three sides of the parcel, with the fourth side enjoying residential use on a five acre division of land basis, which occurred after the National Scenic Act when into effect, for the benefit of a title company who provides title insurance work for the U.S. Forest Service, National Scenic Area office in Hood River, Oregon. This has now become the second parcel with

highly diminished developmental capabilities owned by Mr. Murray in the National Scenic Area.

What makes this so bad is Mr. Murray is 68 years old, an ex-policeman, an ex-veteran, and believes in the principle of the Gorge legislation. To Mr. Murray, this is comparable to the Pope telling the Priest, there is no God. He has always recognized the law, and has a high regard for adherence. His farming activities, which included moving of rock material was in strict conformance with the Oregon State Department of Geology and Mineral Industry, as the National Scenic Act does not speak to mining in General Management, only in Special Management; whereas it can occur for the benefit of building of roadways for logging. The effort to obey the law to this degree, and the lack of regard for the truth and blatant falsification for the purpose of selective enforcement by the Columbia River Gorge Commission has taken a toll on his health, with medication necessary for stress.

Respectfully submitted,
To: John Shadegg, Chairman, Private Property Task Force

Georgiana A. M. Murray
Georgiana A. M. Murray

CRZLR, Inc.
P.O. Box 16 Maiden Rock, WI 54750
Tel/FAX 715-448-3213

Working together along the corridor to protect:

Agriculture
Agri-business
Industry
Land owners
Local economies
Local government
Recreation
River users
Small businesses
Timbering

as well as

Culture
Flora and fauna
Heritage
Scenic beauty

Testimony to
Private Property Rights Task Force
of the Committee on Resources

In Opposition to Designation of the
Mississippi River Heritage Corridor

Presented by
Marilyn F. Hayman, President
Citizens for Responsible Zoning & Landowner Rights, Inc.
June 13, 1995 - Room 1324 Longworth Building

Mr. Chairman, Members of the Committee, thank you for giving me an opportunity to express the very explosive situation being created in the Mississippi River Valley by burgeoning federal regulations.

MISSISSIPPI RIVER [redacted]

One third of the agricultural land in Iowa, nearly 7,000,000 acres, is threatened. Regulations are destroying the 1906 Iowa Drainage District System. Farmers are being prevented from upgrading their systems. Mr. Gunn is typical. He paid drainage assessments of $26,000, but is prevented from planting 35 acres --- nearly 22% of his productive land.

Dr. Dennistoun, former Ag Professor, says one-quarter to one-third of Minnesota's best crop land could be designated as wetland by current standards. How can farmers afford to pay taxes on lands they cannot farm?

Voyageurs National Park has been designated as a Wilderness, closed to all but a hardy few. Lodges, guides and outfitters were put out of business in the surrounding 53,000 acres, further eroding the economy of surrounding communities.

St. Croix Wild and Scenic River in Wisconsin was once a narrow corridor. National Park Service ownership has grown from1000 to nearly 60,000 acres and has systematically eliminated private property. Now, a push to control development ---and subsequent land values --- in the *entire watershed*.

One couple with a residential lot, paid taxes for 20 years, but cannot get a building permit. Their lot does not meet standards passed *after* they purchased the property.

The Corps has proposed a plan to raise the Missouri River four feet each spring, then lower it, each fall. Farmland in Missouri and Iowa would be flooded during planting season. The barge season would be shortened by a month, when grain is being shipped.

The flooding of '93 generated plans to remove levees. David McMurray, an Iowa farmer, observes a double standard. Highly productive agricultural land can't meet demanding cost/benefit ratios being used, but cost is not an issue for environmental projects. *"As a matter of practice, levee improvement is not possible unless it is a levee for a wildlife refuge."*

Those eager to restore the 2.25 million acres of tillable land in Illinois, Missouri and Iowa, ignore the fact this land is someone's home, their heritage, their livelihood. Their Right. John Robb, an Illinois farmer gives strong argument for reconstructing levees.

Everywhere, owners of waterfront property are particularly vulnerable. Control of water controls property use and value.

The Mississippi National River and Recreation Area (MNRRA) is 72 miles of the River at Minneapolis/St. Paul. The National Park Service was the lead agency in creating the plan. Industry was originally supportive, but discovered their interests were shut out when the guidelines and management plan were written.

They formed a Stakeholders Coalition with ag groups which also were ignored. They worked to moderate the plan, but are apprehensive of how it may be implemented. Much depends on the interpretation of the people in charge. To quote the professor, *"There are enough loopholes, the government can do what it wants to."*

The River is a dynamic economic force, moving massive amounts of goods from as far as North and South Dakota. The Coalition is concerned future restrictions on fleeting facilities would severely limit barge traffic. MNRRA favors alternative methods of transportation.

One member noted a state agency document which envisioned elimination of locks and dams. This is heard more and more frequently from reliable sources. It has already been proposed commercial navigation on the Missouri River should be ended within the next decade.

MNRRA will create continuous open space along the entire 72 miles of the River. The goal is to restore the shoreline and adjacent bluff areas *"to a more natural*

Now, we're dealing with a new proposal to create the 2500 mile long Mississippi River Heritage Corridor. MNRRA is the "first segment." Again, agriculture and business were ignored in favor of tourism. This monumental plan would effect tens of millions of people, hundreds of millions of acres and mega-BILLIONS of dollars in economic production.

One organization alone the Freight Forwarders of New Orleans, carries goods worth $4 billion per year along the Lower Mississippi River

Speaking about the timber industry, Stan Petzoldt noted, "We are talking about hundreds of billions of dollars worth of timber which the commission chose to ignore in its report."

This "preserve and restore" philosophy can be used to shut down the timber industry here, just as was done in the West. Pulp and Paperworkers know their jobs are on the line

The Commissioners have said they intend to recommend designation, although there is overwhelming opposition to the Corridor and they haven't held public hearings.

At one Commission meeting Bill Phillips explained, *"We are pioneering a new way of government where government doesn't have to put money into a project, just give its blessing by way of designation."* In the Midwest we call that stealing.

We don't want any part of it.

The list you have of those **opposing** designation of the Mississippi River Heritage Corridor includes Governor Tommy Thompson of Wisconsin. It represents an estimated 7000 businesses and 12,000,000 people

We also have nearly 12,000 signatures of people who do not want ANY agency to interfere with their private property. They weren't gathered through an expensive media campaign. They were gathered by ordinary people at meetings and family picnics, who drove their Chevys and Fords hundreds of miles to let neighbors know what bureaucrats were planning.

These three large books contain copies of the petitions

Finally, a letter to the Park Service, one of hundreds in opposition to the Corridor, obtained through Freedom of Information. It says, simply

> " I was in Vietnam and fought for land I dident *(sic)* own!
> This is my land and I **WILL FIGHT** for this one !!
>
> P.S. We will take care of our own land. "

Please, help us in this war against our property rights in the Midwest. Thank you.

RESOLUTION

Whereas: **Designation of a Mississippi River Heritage Corridor would have a serious impact on property rights and on the ability of people to use their land, and**

Whereas: **Economic development and the unique natural and human resources of the corridor are already being adequately addressed by the states, federal government and existing regional organizations,**

Therefore be it Resolved:
We oppose designation of the Mississippi River Heritage Corridor.

++

We are aware the following individuals and organizations have already expressed their opposition to the Mississippi River Heritage Corridor proposal:

Wisconsin Governor Tommy Thompson
11,000+ Signatures on Petitions
Against the Corridor (IA, MN, WI)
WI All Terrain Vehicle Ass'n (WATVA)
Lake States Lumber Ass'n
Iowa Wood Industries Ass'n
MN County Boards:
Houston, Winona, Fillmore, Goodhue, Wabasha
WI County Boards: Vernon, Crawford, Pierce
IA County Board: Allamakee
National Federal Lands Conference
Private Land Owners of WI (PLOW)
Blue Ribbon Coalition
MN Agri-Growth Council
Anderson-Tully Co.
MI-WI Timber Producers Ass'n (TPA)
Intern'l Freight Forwarders and Customs
Brokers of New Orleans
IL Ass'n of Snowmobile Clubs
Environmental Conservation Organization (ECO)
Black Hills Women in Timber
National Hardwood Lumber Ass'n (NHLA)
Guttenberg Industries, Inc.
Abel Island Resort
Esmann Island Ass'n
Elmed Incorporated
Illinois Agri-Women
Cenex/Land O'Lakes Agronomy Co.
Protect America's Rights & Resources
Harry R. Schell Sawmill Sales & Supplies, Inc.
Tri CLub River Improvement Ass'n. (IL)
Property Rights Foundation of America
Concerned Citizens Coalition (AR)
Sho-Me State Heritage Landowners
Louisiana Forestry Ass'n
National Waterways Conference, Inc.
Pulp & Paperworkers Resource Council
American Environmental Foundation
Eagan Valley Rangers Snowmobile Club
Louisiana Cotton Producers Ass'n
American Medi-Matic, Inc.
Arkansas Forestry Ass'n
National Cattlemen's Ass'n
Minnesota Farm Bureau
Wisconsin Farm Bureau
IL County Farm Bureaus: Ogle and Adams
WI County Farm Bureaus: Pierce and Grant
CRZLR, Inc.
Land Improvement Contractors Ass'n
MN LICA IA LICA IL LICA
Lake States Resource Alliance (LSRA)
Iowa Drainage District Ass'n
B & L Construction & Excavating
Ass'n of WI Snowmobile Clubs
Alliance for America
MN United Snowmobilers Ass'n (MNUSA)
South Side Boat Club - Quincy IL
WI Trappers Ass'n
Mississippi Valley Hunters & Fisherman's Ass'n
WI Women in Agriculture
WI Muck Farmers Ass'n
Duluth Area Ass'n of Snowmobile Clubs
East Perry Lumber Co.
Battle Island Area Landowners Ass'n
Brower Sales and Leasing
Livingston Lumber Co.
WI Floodplain Ass'n
Karl Hausner Farms
River Warren Research Committee
Illinois Ass'n of Drainage Districts
Citizens for Private Property Rights (MO)
Lorenz Chiropractic Offices
Specific policy relating to the Heritage Corridor
has been adopted by the following three:
American Farm Bureau Federation
Illinois Farm Bureau
Iowa Farm Bureau
Mississippi Federal Timber Council
Pennsylvania Landowners Ass'n
Southern Forest Products Ass'n (SFPA)
Southeastern Lumber Manufacturers Ass'n
Mississippi Forestry Ass'n
Tennessee Farm Bureau Federation

Cheryl Johnson,
New Hampshire Landowners Alliance
PO Box 221, Campton, NH 03223
603-726-4025

To be delivered on
June 13, 1995

Testimony before House Committee of Resources Task force on Private Property Rights

The New Hampshire Landowners Alliance began in 1991 as a loose coalition of small town residents who opposed the nomination of the Pemigewasset River – better known as the Pemi – to a state river protection program. Folks objected because of a proposed land management plan that would lead to state control of their property.

Unfortunately, we were too weak to stop the designation. We decided, however, to organize and continue our fight for land rights.

We soon discovered Public Law 101-357 – the Pemigewasset River Study Act of 1989 – which created a three year National Park Service study to see if the Pemi could qualify as a Wild & Scenic River.

The project manager, Gary Weiner, invited me to participate on the Study Committee. I accepted, telling him clearly that I could support a study that would benefit the communities, but that, due to the proven negative impact on property rights of the Wild & Scenic Rivers Act, I would oppose designation.

After one meeting I realized the committee was actually a designation advocacy group!

For the next year and a half, the committee gathered monthly and discussed the river. Weiner would write up his version, bring it back to the committee, and ask for comments. One participant's summation was, "I feel like we're all in a play, and they give us one page of the script at each meeting."

Two aspects of the study are worthy of your attention.

The first: The NPS made Cooperative Agreements with the Society for Protection of New Hampshire Forests (CA 1600-1-9017) and the Merrimack River Watershed Council (CA 1600-1-9001). Paid $10,000 and $27,000 respectively, the conducted surveys, inventories, and workshops. However, both groups also were overt advocates of designation. Additionally, Weiner revealed that the NPS intended to establish long-term relationships with both groups if designation occured.

How could these groups render an unbiased performance in this supposedly objective study if they were, number one, getting paid, and number two, looking at future financial support from the agency to which they reported?

Obviously, they couldn't. A 1993 internal memo from Merrimack River Watershed Council president, Ralph Goodno, to his board proves the point. He wrote, "Our involvement is on two levels. First, we are a technical cooperator to the National Park Service (NPS) and the ... Study Advisory Committee ... We are also an independent advocate for the study, but have ***played down any role as an advocate in order to maintain the appearance of objectivity.***"

"In addition to the public outreach ... a coalition has been formed funded by the Merck Fund through the Appalachian Mountain Club. This coalition's purpose is to counter act the wise use group [the NHLA] in New Hampshire. ... [A] paid community organizer is working in each of the Pemi communities to rally support for designation. This work is being coordinated ... through the Society for the Protection of NH Forests and a working committee, including our staff person, Dijit Taylor."

When confronted with this blatant conflict of interest, Weiner said that there was nothing in the contracts that obligated the groups to be objective.

The second aspect: All of the NPS employees involved in the study – Gary Weiner, his boss, Drew Parkin, and his assistant, Jamie Fosburg – were outspoken in their support for designation and publicly attacked opponents. They wrote letters to local papers, and on at least one publication, Fosburg referred to opponents of designation as "anti-environmentalists." Mr. Weiner once suggested that another member and I should resign from the committee because we were not "open-minded." He then said that if we published his comments, he would deny them!

The conclusion: Our congressional delegation promised they would not introduce a designation bill without strong local support, so the Pemi River towns voted by secret ballot at their 1993 town meetings. Six out of seven towns voted overwhelmingly against designation.

Public Law 101-357, approved in 1990, states that "The study ... shall be completed and the report thereon submitted not later than three years after the date of enactment of this paragraph." Now, nearly five years later, the NPS has not released the final report, in spite of pressure from Senator Bob Smith, Congressman Bill Zeliff. They also refuse to release the draft report completed by Weiner in 1993.

In response to Senator Smith's request for information, Drew Parkin replied with a wildly accusatory letter. He wrote, "It is my understanding that your call ... was prompted by a request from Mrs. Johnson of the New Hampshire Landowners Alliance. *She has made similar requests of me that ... I have refused to answer.*"

Concerning our efforts he wrote, "Over my career ... [s]eldom have I observed such a display of *viciousness, hate, and dishonesty* as I have witnessed in the Pemi Valley." He described opponents of designation as a "minority of people who see the world through glasses clouded by *ignorance, avarice, and obsession with non-existent conspiracy.*"

He declared that the final report will "*point out that these [town] votes were heavily influenced by the fear and intimidation instilled upon voters by study opponents.*"

The votes were by secret ballot!

We feel that the heavy-handed tactics of the National Park Service justified our difficult fight to prevent the Wild & Scenic designation of the Pemigewasset River, and our proved our distrust of federal regulators to be wee-placed.

Testimony of Alice Menks, President of Virginians for Property Rights
Prepared for the Hearing Before the
Task Force on Private Property Rights
Resources Committee
June 13, 1995

It is an honor to be here before you today, and I appreciate the attempts of this bi-partisan task force to look into property rights issues for consideration in legislation. The "Takings" Bill, HR 925 is a step in the right direction, but the Tauzin amendment narrowed the scope so much it left out the bulk of property rights problems of the people I know. We have problems mainly from the National Park Service and their programs such as Wild and Scenic River designations, greenways, greenline parks, Historic designations, and heritage corridors. The same kinds of abuses that wetlands and endangered species can cause are caused by the National Park Service, and we in the property rights movement want you to be aware that these areas need relief through legislation as well.

I first got involved in working for protection of property rights in 1991 when I discovered my property was being studied because it was within a 50 year old so-called "authorized boundary" of Shenandoah National Park that extends five miles beyond its present day actual boundary. I learned very quickly that dealing with government agencies such as the National Park Service can be very intimidating to the average landowner. Through the Freedom of Information Act, we uncovered documents where the Superintendent of Shenandoah National Park was discussing with the Conservation Fund options to control properties surrounding the park by inverse condemnation, easements, and more. I was concerned enough to connect on a national level with the Alliance for America and there met many others who had incredible horror stories about their dealings with the National Park Service. I made it a personal goal to work with every ounce of my being to keep these problems out of my community. However, even as I am testifying to you at this moment, the National Park Service is studying my property and that of my neighbors. Representative Bliley's bill, HR 1091 is an attempt to address some of our concerns by removing the outrageously large "authorized boundary" and make the boundary of Shenandoah National Park its current day size. We are aware this will not preclude any further park expansions, but they will at least have to go through Congressional approval if his bill passes, and we take some comfort in knowing potential future expansions would be open to the light of public scrutiny and not take place behind closed doors with private groups like the Conservation Fund. Thousands of landowners in the eight counties surrounding Shenandoah National Park could breathe a collective sigh of relief if Representative Bliley's bill passes, so I urge your support on it. It is not easy living next to what I consider a "sleeping dragon" that could awaken any time and devour my community. I know many landowners around the Richmond Battlefield areas have similar problems and would appreciate your support on HR 1091 as well.

As I worked to protect my own neighborhood, I came in contact with other people across the state of Virginia who were having run-ins with the National Park Service, and thus my friend Leri Thomas and I wrote the book, *Us vs. NPS*. I would be happy to furnish a copy to anyone who requests it. In compiling research for *Us vs. NPS*, I found that many property rights abuses occur in the historic preservation arena as well. Property owners can suddenly find their property with an historic designation against their will and may have to come

under restrictions that require more costly materials than they can afford or fines if they don't comply. Landowners supposedly don't get listed on the National Register without a chance to opt out, but the current system automatically slaps them with an "eligible" for designation which results in the same problems as an actual listing, but none of the benefits. I personally know a farmer who had permits to build 3 houses on the edge of his farm to allow him to retire and keep most of his farm intact, but couldn't because he was within a 21 square mile area designated the Brandy Station Civil War Battlefield. Does a battlefield really need to be the size of Manhattan Island to be appropriately commemorated? All the properties in this area have a cloud over them where landowners are unsure what they can and can't do with them.

Just last week I spent an afternoon at a Section 106 hearing by the Corps of Engineers for another property in the Brandy Station area. Any time a Federal permit is required for a landowner, the federal agency involved must have a Section 106 review of the history of the area. The landowner, Mr. Lazor, is trying to get a wetlands permit on less than an acre and even though the Corps is basically satisfied the wetlands effects will be mitigated, the Historic preservationists are using the 106 process to drag Mr. Lazor's project out and hopefully "starve" him out. Preservationists regularly use a whole toolbox of stalling tactics by trying to find a wetlands, and if that doesn't work, find an endangered species, and if that doesn't work find some history, and on and on. Congress meant well when it wanted to protect history and so on, but the process is being abused by extremists who want to obstruct any development and want to circumvent local decisions and kick them up to a federal level where everyone gets frustrated and hopefully backs out. My observation has been that preservationists want to preserve everything for the so-called public good but at the individual landowners' expense. If something is for the public good, the public should pay, not the individual landowner. We the individual landowners can't afford to pay for the expensive archaeological surveys, wetlands experts, and ad nauseam they want us to pay for, and we certainly don't have the means to pay for all the legal help we need to stand up for our rights. Please help us!

SUBMITTED JUNE 26, 1995

RESTATEMENT, AMENDMENT AND SUPPLEMENTAL
TESTIMONY
OF
MARGERY B. PINKERTON

HEARING BEFORE
THE
TASK FORCE ON PRIVATE PROPERTY RIGHTS

COMMITTEE ON RESOURCES

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 13, 1995

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM MARGERY B. PINKERTON.

I live with my husband and my two sons in the County of Henrico, Virginia, east of Richmond. The year my first son was born, my husband and I were building our home next to my parents' home - on a part of the property where I grew up.

My older son was an infant when I and my family discovered from an article in our newspaper that our and our neighbors' properties were to become a National Park. The legislation had passed the House of Representatives and was being considered by the Senate when the article was published. That same deceitfulness of the National Park Service to propose a park - without consulting with or at least informing the property owners who were to be removed from their homes (or the local elected officials) - has been my experience with them since that initial "introduction". It has been a constant series of oppressive and authoritarian actions, unresponsiveness and deceit.. (Thank you for the "Freedom of Information Act"!)

That initial introduction was in 1980 - and my then-"infant son" is now 15 years old. *I need my life back* - to concentrate on being a mother - and not a defender of my Constitutional private property rights! - The ones that are "guaranteed"!

The time limit placed on my addressing you here today does not allow me to share with you the details and the chronology of my "experience" with the National Park Service, so I will use my allotted time to share a variety of related abuses of authority that I and my neighbors and friends have been forced to experience at the hands of a bureaucracy which to too well funded - and out of control.

Because I intend to dart from one related topic to the next, please know that I will be happy to address any questions you may have on any area which I did not explain thoroughly enough for your satisfaction.

My purpose in testifying here today is to put a human face on the pain and cost inflicted by the regulations and procedures of a federal agency, and to open a door to cast a little light into "that darkness" which is the regular course of doing business for the National Park Service, Department of the Interior.

Please remember that the Private Property Rights legislation recently passed by the House (the passage of which I am extremely pleased), does not address my area of concern, - but, also please remember - that the legislation authorizing the determination of property as "historic" by the National Park Service (The National Historic Preservation Act of 1966), allows the Park Service to be poised to inflict an inestimable amount of abuse on private property-owning citizens, and local and state governments. It could prove to be the greatest, existing, uncontrollable threat to local land use, and to "states rights"!

THE "NATIONAL HISTORIC PRESERVATION ACT OF 1966", AS AMENDED, DOES NOT REQUIRE "REAUTHORIZATION" AND WILL NOT BE COMING BEFORE YOU FOR SUCH REVIEW— UNLESS YOU TAKE SPECIFIC ACTION TO CHANGE THAT LAW, THIS DICTATORIAL AGENCY WILL CONTINUE - AND IT WILL EXPAND ITS REIGN OF TERROR OVER PRIVATE PROPERTY OWNERS IN THIS, THE GREATEST CONSTITUTIONAL REPUBLIC IN THE WORLD!

Unless and until you take such action, the National Park Service and its special interest enthusiasts will continue to use this law and its regulations to lock up land and steal value from the individual private property owner. (Recommendations for relief: amend law to remove authority to designate property as "eligible" over the objection of property owner; restrict its actions and power by cutting its Budget.; also, NPS land could be returned to the states and/or local governments.)

My Civil Rights have been violated! I have the right to be free and to own property. I have the right not to be discriminated against., and to have the opportunity to improve my life and that of my children; to make free and voluntary use of my time - my life. However, to stay ahead of the publicly-disseminated information on the Park Service's attempt to steal my and my neighbors' properties, I do not have the time to continue to protect my family from this attack *as well as* adequately manage my household, mother my children, care for my aging parents and take on additional legal work. *This* Constitutional Private Property Rights "case" is "all consuming".

I was informed by a reporter recently that our "detractors" called us "greedy". I continue this fight out of necessity! My less than 3 1/2 acres is the most valuable asset my husband and I own, and it is the largest investment I have in both money and emotional attachment. It is my life-long home! It is the only home my children have ever known.

Please, understand the extended pain I and my family (and my neighbors with children) have suffered! I want a "home" for my children to come back to! - Not just a house we were forced to move into after they have left for college! I have been trying to work toward and visualize the future for me and my children - and caring for my parents - for many years now! No one should have to endure this uncertainty at the hands of the federal bureaucracy and its manipulative special interest support groups! - But they do. Thousands of people all over the nation are suffering this constant worry and over-extendedness because they are being manipulated by the regulations of the National Park Service and other federal agencies.

The cost in human and family terms - in lost dreams, hopes, plans, loss of time together, and in other sad families who are no longer together because of the inability to deal with the intense and extended stress - is inestimable.

As in my family, the moms are usually the ones who must set their children and other responsibilities and friendships aside to fight the inflexible, federal bureaucratic empire because the fathers are fighting to make a living for their families and cannot afford to take time off at the drop of a hat when a new piece of information is uncovered or a public meeting is called at the last minute.

The cost in terms of expenses in telephone, fax, mail, copying and paying the charges of FOIA's, costs of travel, hotel rooms - all non-deductible, but still due and payable, has been lost in disbelief of the reality of this situation we find ourselves.

Hearings several years ago in Virginia brought out testimony that made clear that national designation of "eligibility" of property as "historic" - a decision which is made by one employee of the National Park Service, the "Keeper of the National Register" - EVEN OVER THE OBJECTION OF ALL PROPERTY OWNERS - affects the value of private property. Having attended all of the hearing conducted by the state, the testimony given, almost without exception, showed individual cases of dramatic reductions in value (although not usually local tax assessments who want and need all the funds they can collect) of land and/or contracts lost because of such historic designations by the National Park Service. FAMILIES HAVE LOST TREMENDOUS AMOUNTS IN THE SALE AND/OR USE OF THEIR PROPERTIES. THEY CONTINUE TO DO SO AT THE HANDS OF THESE FEDERAL AGENCIES WHICH ARE OUT-OF-CONTROL.

Owners have even been told by letter, that with their property, having been included in a historically eligible district, they can do anything they want with their property with "private money" - as long as it does not change the "character or use" of the property. They were told they could <u>not</u> sell a lot off of their family farm for a house, raising the money with which they intended to retire, because that would be a change in the "character or use" of the land.

The testimony also showed that the regulatory reviews that are required cost great amounts of money and time, forcing at least one business which had the funds to fight, finally into bankruptcy.

Further, the Park Service used to protest when we suggested that trying to purchase such designated property with funds from VA or FHA loans would trigger regular reviews because it is "public money". They used to protest when we would suggest that an attempt to connect up to a water or sewer system which was constructed partially with federal funds would also trigger such a review. They no longer protest! Today, actions and reviews due to historic designations or "findings of eligibility" trigger time-consuming and costly reviews - which have not been required in the past - even though the legislation was originally passed in 1966. It is only within the past several years that the Park Service has begun to flex its authoritative muscle so as to reign such terror over individuals and their communities. This legislative authority has been in place for many years, but was not used - what has so suddenly changed to make the Park Service exercise this authority so that the citizens of these United States should not also fear the passage of another bill authorizing the Park Service to recognize "Heritage Areas"? PLEASE THINK THAT LEGISLATION THROUGH! EITHER OF THESE BILLS BEING CONSIDERED HAS THE POTENTIAL OF BEING ONE OF THE GREATEST THREATS TO LOCAL LAND USE CONTROL AND PRIVATE OWNERSHIP!

In 1980 when we learned about the unannounced National Park Service scheme to make a park on our land, we began what has become a much too frequent and costly procedure - sending "Freedom of Information Act Requests". Through these requests, in the early 1980's we discovered that the National Park Service had entered into a contract with a non-profit group named the "Natural Lands Trust". Under this contract information was to be gathered to assist in the acquisition of our property. Among other pieces of information contracted to be provided - like local tax map parcel numbers, names and addresses of property owners, type and length of ownership and whether the property was owner-occupied or not - was a particularly violating piece of information to be ascertained and provided to the National Park Service. The Park Service HAD CONTRACTED WITH A NON-PROFIT CORPORATION, THE "NATURAL LANDS TRUST" - TO PROVIDE INFORMATION ON THE "INCOME LEVEL" OF EACH PRIVATE PROPERTY OWNER WITHIN THEIR PROPOSED PARK BOUNDARY!!! For what legitimate reason would the National Park Service of the United States of America have need for information concerning the "income levels" of the private property owners"? I really wish someone would pursue this! Even the attempt to gather such information must require the invasion of individual privacy!

Another incident in which a FOIA was "informative" was when the present Superintent of the Richmond National Battlefield Park denied in a public meeting that she had any intention of acquiring property to expand the Park, or a "wish list", or that she had made a request for funds to do so. By a prolonged and exhaustive series of FOIA requests, we received a copy of a letter from my superintendent of the Richmond National Battlefield Park to the American Battlefield Protection Program, dated less than a month before the meeting where she had denied any acquisition intention or requisition for funding, etc., wherein the superintendent

had, indeed, specified that she was requesting certain funds for the acquisition of property for the Park, and $4,000.000.00 for the construction of new headquarters facilities!!!

Having to pursue obtaining this information was an abuse of the private citizen, and the intentional deception by federal employees should not be tolerated.

Because the Superintendent's denial of a desire or plan to acquire funding and properties for the expansion of the park took place at a meeting the Park Service conducted as part of what they were billing as the final approval of a "Cooperative Agreement" (a very dangerous and deceptive, if benign-sounding, arrangement) with the local and state governments to protect the Civil War battlefields around Richmond.. It is significant to point out that the document that the Park Service had prepared was not available to the general public until they walked into the meeting that evening - unprepared! THIS IS THE GENERAL PROCEDURE FOR THE NATIONAL PARK SERVICE AND ITS REGULAR TREATMENT OF THE PUBLIC! Having been given a copy a few days in advance by begging, I was able to have several folks review it with me - and what we found was a "cooperative agreement" which deferred most decision-making about the use or improvement of private property (and public roads and service facilities and their maintenance and improvements) within the vast areas identified as "battlefields" - to the National Park Service! MY local government was not even aware of this document's details, because they were obscured by cute pieces of vague and flowery wording. Not willing to give decision-making authority over tens of thousands of acres in my end of my county to the National Park Service (including such road construction, improvements, repairs; new development; water, sewer, and gas extensions, etc.) my county withdrew from this agreement and repudiated its original Memorandum of Understanding which precipitated the document. (The document stated that it was the result of numerous "public" meetings, but when requested by a FOIA to provide the names of the attendees, which the Park Service routinely gathers at its hearing and meetings, they stated that they did not have that information. Having spoken with someone who was in attendance at one of those meetings, he stated that he did place his name on an attendance list, and that the purpose of the meeting stated, did not in any way reflect the purpose of the document prepared pursuant to those alleged public meetings. I found that this also is typical procedure for the National Park Service, after sharing information with others from around the nation on this subject.)

"Private", non-private groups like the Conservation Fund and the Association for the Preservation of Civil War Sites, Inc. (APCWS) are of special interest in that they function more like land-acquisition arms of the National Park Service. They also work hand-in-hand on other projects where the unsuspecting private property owner and local government might not otherwise suspect NPS involvement.

Mrs. Frances Kennedy, wife of the present National Park Service Director, Roger Kennedy, was in my neighborhood a few years ago speaking about the fact that the Richmond Metropolitan area had just been selected to be the premier national

"greenways project". Indeed, it seemed my county had requested to be considered for the selection along with other neighboring counties, wherein the Park Service was to "facilitate" the designing of a greenways system in the area. Being suspicious of the incestuous relationship between the Park Service and the Conservation Fund in other sites around the nation, I and my father began attending the meetings on the "Metro Richmond Greenways Project".

During the process, questions about funding were attempted to be ignored. However, the questioner, (not me) was persistent and demanded an answer. The NPS employees finally admitted that the project was fairly well funded by the Park service and that additional funds could be acquired from NPS as well as groups like the Conservation Fund. Indeed, representatives of the Conservation Fund's administration were in attendance and participated in the meetings - causing me great suspicion.

When discussion turned to how the rights-of-way over the mostly privately-owned property would be acquired, it was suggested by a local public official that the local governments would simply demand that when a property owner came to get a permit for any improvement to his property, that he would be required to give that land for the greenway! Well, of course, now we know by DOLAN that this approach would have been unconstitutional! - But they were going to try it!

The final "greenways" maps - created by what was being sold to attendees and the press as a "local initiative" and only facilitated by the NPS, was stamped with "National Park Service" and its logo - and noted on the face of the maps, was that the maps had been prepared by the "Natural Lands Trust"! The same group which had been contracted to find out my income-level!

The final map, which my local government refused to endorse, created public-use "greenways" over every roadway, riverbank, stream bank (even though they were often through the middle of farm fields and yards, etc.), every gas line, water line, sewer line and electrical line, every alleyway - it is harder to name the sites indicated as "greenway" areas than to name those that were excepted! - And almost all of these "greenways" proceeded through privately owned property. This was not of concern to the group creating this potential monster! It was a National Park Service monster, being made to appear to have been created by the public, with the public's support! The only "public" I ever saw in attendance was my Daddy! The remaining "invitees" were all special interest groups such as local parks to be connected by "greenways", hikers, bikers,, Sierra Club, local and state government employees etc.. Some "public initiative". I never did discover the true purpose of this project., except that it was somehow connected to the NPS General Management Plan for the Richmond National Battlefield Park - because the draft document my county repudiated makes reference to them, and a "Heritage Commission" (sound familiar?) which would have been created to oversee the control of both the park regulatory authority over all adjacent and "viewshed" private property, as well as the greenways connecting all park units.

Another curious relationship exists between the National Park Service and the Association for the Preservation of Civil War Sites, Inc. Whereas the Association appears to have its monetary supporters, it also has a connection to the Park Service which demands investigation.

The original Executive Director/President of the Association for the Preservation of Civil War Sites, Inc. was a gentlemen by the name of A. Wilson Greene. I learned from the Association's travel offer documents that Mr. Greene had been a National Park Service ranger at the Fredericksburg Battlefield Park, thus making the headquarters of the Association in Fredericksburg for personal convenience, I suppose. The document also states that Mr. Greene was "on leave" from the Park Service to serve in this capacity!

What does "on leave" mean to us, the American taxpayers? Was Mr. Greene continuing to accumulate retirement? - Receive life and health insurance benefits?

Were we, the taxpayers, subsidizing the non-profit Association for the Preservation of Civil War Sites, Inc. twice - once because it avoids paying taxes and has been give its non-profit, publicly supported status, and second because we subsidize the benefits its Executive Director/President received?

Mr. Greene recently left as President of the Association for the Preservation of Civil War Sites, Inc., remaining as a "trustee". The new president of the Association for the Preservation of Civil War Sites, Inc., was also reported to be "on leave" from his Park Service employment at the Harper's Ferry unit of the National Park Service, having grown up in Sharpsburg, Maryland; and now the headquarters for the Association for the Preservation of Civil War Sites, Inc. is being moved to a house in downtown - Sharpsburg. The purchase of the new headquarters is being facilitated with ISTEA funds reported to have been requested legitimately by the local government,. Something sounds, again, incestuous, here!

Does Mr. Dennis Frye still work for the National Park Service, or is he an independent employee, working to save battlefields? Is - and was - the Association for the Preservation of Civil War Sites, Inc. so inextricably associated with the National Park Service as to simply be an arm it created for itself, at our expense, to acquire property for the Parks expansion onto the remaining private property held in this country?

Another question about who actually funds this organization came at a public meeting called by the Association for the Preservation for Civil War Sites, Inc. to announce that they were going to be studying the battlefields around Richmond for the Park Service. In response from persistent questions from the attendees, it was discovered that the Association was receiving a $50,000.00 grant, pursuant to a Memorandum of Understanding with the National Park Service, to acquire the services of someone to research and prepare the documents and maps identifying the battlefields. Why was money paid to the Association? Why did the Park Service not contract for these services directly? How much money did the Association receive for "brokering the deal"?

Worse yet, with the property owners in my community, knowing full well the results of national historic designations and/or eligibility, the Memorandum of Understanding between the National Park Service and the Association for the Preservation of Civil War Sites Inc. called for all identifications of battlefields to be "reported" on National Historic Registry forms! All properties would be ready for ANY ONE OR ANY ENTITY, with or without the owners permission or consent, to submit all those properties for national historic designation! (That information was elicited from Mr. Greene as the result of intense questioning.)

With groups like this subsidized and perhaps simply extensions of the National Park Service, and with their mega-million dollar budget and staff, it is impossible for the individual private property owner to defend himself against these career robber barons. They have time - and our money on their side.

We are helpless to continue to protect our Constitutional rights without your help.

My fight for the freedom to own my land began 15 years ago. It intensified in 1989, and continues today, as I await the answer to my most recent Freedom of Information Act requests for copies of the Draft General Management Plan of the Richmond National Battlefield Park and its Environmental Impact Statement . No doubt, as usual, they will exercise their right to an extension, and if possible, find some way to deny it to me until the night it is laid of the table "for public comment". In that way, no one will know what they are commenting on. That is the intention. That is the darkness within which the National Park Service operates.

In 1989, the Park Service proposed my and my neighbors' properties as a National Historic Landmark. Thankfully, knowing how to read government "goobleygook", we knew we could stop the designation with affidavits from the owners saying they did not want to be designated. Lying deep within the regulations, however, was the fact that even though all private property owners could object, the "Keeper of the National Register of Historic Places" could still find the property "eligible", triggering all of the same regulatory procedures. It was the "gottcha". So we researched the battle and prepared to "do battle" with the Chief Historian of the National Park Service and the History Areas Committee of the National Park Systems' Advisory Board in Washington, D.C.. When I informed the Chief Historian that we were coming to D.C. to show that the research proved that the Park Service had mislocated the battlefield, I was informed by the Chief Historian that it would not be necessary for us to come, that he was prepared to remove me and my neighbors south of the road because our houses "so compromised the integrity of the battlefield" that it no longer met the exacting criteria! We went anyway.

Although quite rude, the Committee decided after hearing both my and Daddy's statements, to make no recommendation to the full Committee which was to meet the following month in Altoona, PA. This was getting costly.

In Altoona, I was refused the opportunity to speak! I protested and was informed that they would not be taking up the matter at this meeting. When I inquired when they would be, I was told that it may be at their next meeting. I asked where that was scheduled to be and was told California! I quickly responded that I could not afford to go to California, could they please delay it until they at least get somewhere on the East coast. The Chairman responded that they would not. Wherever they were when they decided to consider it, I would have to be there, or lose my right to address the Committee! No citizen should be treated in this manner and "exercised" by its government officials- elected, appointed or staff.

The National Park Service has never returned directly to designate my and my neighbors' properties. Instead, they have identified areas so enormous as "battlefields", that they include the proper site and the wrong site - they want it all! They have always wanted my property and they will not back off! Facts do not matter - their original purpose is still alive. And still I do not have my life back.

You may be interested in knowing that a "battlefield" is defined by these folks at the Park Service as including not just where the battle occurred and men fought and died, but where they marched, formed, moved camped -name it, it is all significant in their book of government lands expansionism! The National Park Service knows no limits! They have never been placed under any restraint. Please restrain them, now.

I want you to know that the Richmond National Battlefield Park has a presently authorized boundary of about 250,000 acres! Although it owns, at this time, only over 750 acres.

The unusually unfair aspect of the Park's enabling legislation is not only the obscenely-large boundary (as at Shenandoah National Park) but that the Secretary of the Interior was given the authority to accept donated property anywhere within the "authorized boundary", and WORSE YET, the authority to acquire property by condemnation WIT H DONATED FUNDS - also anywhere within the "authorized boundary".

Consider the opportunities of abuse of such authority! They can create an "inholdler" and reduce the value of that property to the point where no one but the Park Service would have any use for it! That is counted in their statistics as a "willing seller-willing buyer" arrangement! How much further from the truth could it be?!

The National Park Service wants my property, and they want to move their headquarters out of its present location in the City of Richmond. Its purpose is clear and unwavering. They have kept the same focus for over 15 years. One day my parents will die - my Daddy's been quite a fighter with me. When that happens, is that when they are planning to come after me directly again? Will they use their well-funded federal power to force me out when I am most vulnerable? Must I wait?

Should I continue to fight for my Constitutional Rights?

I really don't believe anyone should have to live and suffer through what my family and I have had to deal with - but I know they do - every day - all over the United States, also at the hand of the Department of the Interior and other regulating agencies of the federal government.

Please support Congressman Bliley's H R 1091 to grant my extended community of thousands of private property owners around Virginia relief from the tyranny of the unchecked authority of the National Park Service. This bill was created to calm the constant fear of this dictatorial exercise of power over the citizens around the Shenandoah National Park and the Richmond National Battlefield Park. It is a start.

Next, trim the budget so that this governmental private property-devouring agency will not be able to expand further and injure more families and individuals. Offer the National Park Service Lands back to the states and local governments. Rewrite the National Historic Preservation Act, removing it tyrannical powers - especially the authority to designate property as "eligible" for the National Historic Register over the objection of any property owner.

- And please, help us by supporting all, good, Constitutional private property rights legislation to come before you, to guarantee the protection of all the liberties guaranteed in our Constitution and Bill of Rights.

NOTE:

I have received a written response to my Freedom of Information Act Request for a copy of the draft "General Management Plan/Land Protection Plan" for the Richmond National Battlefield Park which states that I should receive it by June 30, 1995. Any information in that document which I think might be of interest or concern to the Chairman of this Task Force, I will forward to him under separate cover.

Thank you for the opportunity to amend and expand my initial remarks.

Supplemental documents which were referenced in my oral testimony will accompany my amendments to the transcript.

[The attachments were placed in the hearing record files of the committee.]

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Testimony before House Committee on Resources
Task Force on Private Property Rights
June 13, 1995

Conventional wisdom holds that the current dispute over private property rights results from legitimate differences between individuals who own property and government officials who feel it their job to protect public values. This wisdom is dead wrong. Much of the bitter conflict is driven by in depth consortia of government agencies and environmental organizations, with wealthy, privileged foundations providing much of the direction and funding support. These consortia have vast public and private resources at their beck and call, resources which are largely hidden from public scrutiny and are unaccountable to the public. The Northeast's Appalachian Mountain Club can give us closer insight into their structure.

Forest Service / Appalachian Mountain Club Consortium

For over 100 years the AMC has operated a system of huts in the White Mountains to provide overnight lodging for hikers. Fees were kept at a bare minimum necessary to keep the huts operating. The Forest Service, in recognition of this public service, allowed the club free use of Forest Service land.

20 years ago, things began to change. The AMC entered the political arena as an advocate for a wide range of environmental issues. Executives were added at substantial salaries. Overnight fees were increased, and profits diverted to corporate overhead. The huts today throw $3.5 million annually of which only slightly more than half is used to operate them. Foundations provide substantial additional funds for specific initiatives. The original purpose of the AMC has steadily receded into the background, now serving largely as a cash cow for management's new mission of professional advocacy.

The Forest Service did not merely ignore this diversion from the club's stated purpose, it actively condoned it, cooperating with the AMC for its own parochial interests. A memo of a 1992 Annual Meeting of the Forest Service and the AMC stated, under the heading of Corporate Relationship **Lobbying.

> "More an opportunity to exhibit the strength of the partnership than a negative concern, we need to be more coordinated in our interests so that the AMC's high regard in Washington can be used to lobby for funding for Forest needs as identified by USFS staff, for whom lobbying is prohibited."

Northern Forest Lands Initiative

In the late 1980's, the AMC formed a consortium of 24 environmental groups to promote "greenlining" of the Northern Forests as a part of the Forest Service Northern Forest Lands initiative. "Greenlining" is a political action which identifies a specific region (usually one with low population density and a weak political structure) and imposes strict land use strategies on its peoples and communities so that they have less property rights than those outside.

Federal legislation had already been drafted when the local people within the 26 million acre, 4 state Northern Forest region realized what was going on and organized to fight it. It was a grueling 4 year fight which pitted grassroots citizens groups against $4 million of their own tax money in a rigged process. To the extent it woke us all up, it may have been worth it.

Androscoggin River Dam Relicensing

The AMC joined with a number of environmental groups to oppose the Federal Energy Regulation Commission's relicensing of James River Corporation's power generation facilities along the Androscoggin watershed. Environmentalist demands included dedication of a conservation easement over all James River owned lands abutting the project. The near unanimous support of the relicensing by local communities mattered to them not one whit.

During their intervention process, the AMC questioned the impact of the relicensing on the local municipal sewage facilities, though the effluent from these facilities actually met the standards for clean water. At the same time the **drinking water** at most of the AMC's public facilities was in gross violation of these standards, being many fold more contaminated than the municipalities' sewage effluent. The coliform bacteria count at one hut was listed merely as TNTC - too numerous to count.

Penobscot River Dam Relicensing

Great Northern Paper Company operates the country's largest private hydro power system, consisting of a series of reservoirs and power generating installations along Maine's Penobscot River. Continued operation of the system is vital to the economic viability of its Maine paper making facilities. The Company has spent millions of dollars on FERC's relicensing process and has met all State of Maine standards.

The AMC and other organizations have intervened, demanding conservation easements on all land abutting the reservoirs. They even demanded that FERC force eminent domain powers on Great Northern to condemn that land it does not own, including public land owned by the State of Maine. The FERC staff has incorporated this demand in one of its options for license renewal.

Though FERC rules require only that the project meet state clean water standards, EPA and Department of the Interior have intervened in support of the environmentalist position. This prompted the Counsel to the City of Millinocket, location of Great Northern mills, to complain to Congressman Baldacci, accusing these agencies of "conspiring" with dam relicensing opponents.

Other AMC Interventions

The AMC has intervened in many other instances. The Loon Mountain Ski Area, located in New Hampshire's White Mountain National Forest, planned to expand, bringing a needed economic boost to the area. The AMC complained that the lease fee was insufficient (though it was using the same National Forest land for free and siphoning of profits to fund such intervention activities). It also complained of the water diverted from local rivers for snowmaking, knowing full well that such snowmaking was vital to the economic viability of the venture.

The AMC intervened in the planned expansion of Middlesex School in Concord, Massachusetts. Middlesex is an old, respected secondary school which wished to build new facilities on its own land. The Town of Concord is located more than 100 miles from any AMC public facility and more than 100 miles from any portion of the Appalachian Trail.

The Foundation Connection

One must wonder what possessed the Appalachian Mountain Club to oppose expansion of such a venerable suburban educational institution. Obviously the organization has interests far beyond those disclosed to the general public.

During the Northern Forest Lands debate, we found that environmentalist actions were being funded in large part by grants from powerful foundations. One particular grant, from the Jessie B. Cox Foundation, gave $300,000 to several groups including the AMC to "promote greenlining in the Northern Forest". At a stormy session in 1994, Northern New Hampshire local, county, and state officials demanded that the AMC make the grant documents public. The AMC refused.

Evidence of other foundation grants for Northern Forest greenlining and other repressive environmentalist activities continually surfaces, but we are powerless to ascertain the true structure of what we are fighting. The fact that the whole structure is funded with tax exempt and tax deductible money makes things even more outrageous.

AMC Hut System Permit Renewal

The Forest Service permit for the AMC hut system expires this year. The AMC's activities have so poisoned relations with northern New Hampshire's residents that Coos County has appropriated $25,000 merely to insure that local concerns are fairly considered and that the receipts from the hut system are not siphoned off and used contrary to local interests.

Rather than respond to these local concerns, the AMC has stonewalled them. It has gone so far as to solicit young children to serve as boosters, using "almost free" outings to their headquarters in Pinkham Notch to indoctrinate them. An article in a New Hampshire paper described the activity,

"The youngsters are the students of Matt Ferguson, an outdoor enthusiast who works for the National Wildlife Federation and has passed on his passion to his students.

In October, he and two of his students traveled to Pinkham Notch to hammer out arrangements for this trip. Several AMC workers volunteered their time to teach students about the mountain and **in exchange**, Ferguson said, **the sixth graders will put that knowledge to work for the AMC.** (emphasis added)

'The AMC will be going through a re-permitting process later this year and our class will be taking part in the public hearings,' he said"

The success of this indoctrination can be seen in the attached letter.

Rural Communities and Their Landowners Need Relief

The AMC, Forest Service, Foundation consortium described here is but one of many across the country which are bringing immense wealth and power to bear against the interests of rural communities and their constituent landowners. We are heavily outgunned. As soon as we expose one environmentalist initiative for the repressive concept it truly represents, another pops up, often funded and promoted by the same or a slightly reshuffled consortium.

These consortia are fueled with tax exempt and tax deductible monies, augmented with funding from public resources such as the profits from the AMC hut system which has free use of public land. We have a hard enough time fighting such wealthy, privileged interests without having our own tax dollars turned against us.

According to the IRS tax-exempt groups represented 10.4% of the entire U. S. economy in 1990, up from 5.9% just 15 years earlier. Even after allowing for schools, churches, museums and the like, this represents an enormous loss of tax revenue. Congress should review these special tax privileges. It's time these people paid their fair share.

Many of the activities of the non profits are hidden from public view. Publicly held corporations have more stringent disclosure laws than non profits. Tax exempt and tax deductible status is a privilege which carries with it the responsibility to act in the public interest. The public can not hold these organizations accountable if the public does not know what they are doing.

Foundations in particular, with their aggregate wealth in the **TRILLION DOLLAR** range should be singled out for intense scrutiny. Some foundations today are acting more like Theodore Roosevelt's "Malefactors of great wealth" than philanthropic institutions. Many foundations act blatantly in the narrow parochial interests of their managers rather than in the public interest.

Rural communities will continually face threats to their way of life until some standards of accountability are forced on this privileged structure of government agencies, environmental institutions, and foundations. Congress should act forthwith to establish such standards.

Summary of Annual Meeting of USFS/AMC
Lacopia, NH. May 14, 1992

Attending: USFS; Cables, Myers, Therrien, Durham, Hockinson.
AMC; Falender, Blackmer, Torrey, Cusha, Canagrande

The meeting focused on two groups of agenda topics. First, we reviewed progress since our meeting last year, including identifying areas where we were succeeding in our partnership and areas that need more work, emphasis or discussion. The second group addressed the issues and needs surrounding repermitting of AMC facilities on the Forest.

A paper on partnerships served as the centering document for the tenor of the meeting. The paper describes ideal partnering behavior. We tried to evaluate, whenever possible, whether behavior in each particular situation was the type of partnering for which we are striving.

Note: The list below includes both items that were seen as examples of success and concerns. "Concerns" will be preceded by **. "Successes" are unmarked.

Review of Progress and Areas of Concern

Corporate Relationship

**Lobbying-More an opportunity to exhibit the strength of the partnership than a negative concern, we need to be more coordinated in our interests so that AMC's high regard in Washington can be used to lobby for funding for Forest needs as identified by USFS staff, for whom lobbying is prohibited.

**USFS Presence-We need to continue the high priority emphasis placed on Forest recognition in all aspects of AMC work done on the Forest, including marketing pieces, on-site signing and inter-agency work relationships .

**Growth Philosophy-A perception exists that we may be at cross purposes when AMC is perceived as striving to increase use when the USFS may see the need to limit certain types of use or areas of use. We need to have a common understanding of our joint approach to managing growth.

Backcountry Management

Search and Rescue-The Search and Rescue Working Group has successfully improved the direct involvement of USFS in SAR beyond the Cutler River drainage area. AMC has been a key player in making this group work, and Forest recognition is occurring here on a regular basis.

Mountain Leadership School-MLS has continued to train group leaders on the Forest. It seems that this program could be expanded upon to provide more of an overall training program for a wider market of outfitter guides.

Deerfield Community School

66 North Road • Deerfield, New Hampshire 03037 • (603) 463-7422 Peter J. Sweet, Principal

May 5, 1995

Mr. Mike Waddell
45 Alpine Street
Gorham, NH 03581

Dear Mr. Waddell

My name is Zach Bloteau. I am a sixth grader of the Deerfield Community School. I have called you a few times to talk about the Appalachian Mountain Club's special use permit and you were very helpful.

I write to you to tell you my opinion of the special use permit and ask if you would be so kind to write me your opinion.

I am aware of what is going on with AMC's special use permit so hopefully that will save you some time of not having to explain it to me. My opinion is that AMC is doing a great job of helping people in need of rescue and providing shelter, as well as educating people about our environment. Most of all, from my point of view, the AMC is one of the kindest non-profit organizations in the East.

Our sixth grade class camped at the Pinkham Notch Visitor Center during February 15th, 16th and 17th. AMC was very nice and let us camp for almost free. Our teacher, Mr. Ferguson, talked to a man who works for AMC and made a deal. AMC let us camp for almost free in exchange for my class helping the environment and spreading the news about AMC and what they do for the environment. I just hope that the AMC gets their permit back this year so other schools will also be able to camp at the base of Mount Washington and other mountains in the East.

If you would be so kind as to write back to me and tell me your opinion about the permit. When I talked with you on the phone I got the impression that you oppose the AMC and I would appreciate if you could take the time to write back and tell me why.

Sincerely,

Zach Bloteau

Accredited By: NEASC New England Association of Schools and Colleges, Inc.

June 13, 1995

continued testimony of Bill Burgess for House Of Rep. Committee on Resources.

I have included a photo collage that will put real faces on the land managers of our private forest lands. These pictures show the family faces that have been the forest stewards, past, present, and hopefully the future,for the last 100 years. The photo also represents growing timber in our forest in age groups that reflect the ages of the managers.

Also, I am presenting three articles which portray the hypocrites in the environmental organizations. The first article shows the president of the Wilderness Society, Jon Roush, logging 400 mbf of his own timberlands after he had been to court to block a Bitterroot National Forest Timber Sale. The second article shows Northwest Regional Director of the Sierra Club, William Arthur, cutting and selling to foreign exporters 20 loads of logs from his land, at the same time the Sierra Club is suing the U.S. Forest Service over its management of the nearby Colville National Forest. In article three you can see the leader of the extreme environmental group, Oregon Natural Resource Council, Andy Kerr. While calling for a zero cut on National Forest Lands, he is moving into a 2500' custom log home consisting of logs, hefty wood beams and structural timbers.

These are but a few examples of the hypocrites in the environmental organizations that are shutting down and locking up our public lands. At the same time, they are taking advantage of the system they live in, and conducting the same activities that they are pursuing through frivolous lawsuits into our liberal court system and halting all National Forest management.

Thank you very much for the opportunity to testify.

Burgess Logging Family Trees
Five Generations of Family Logging Heritage
W.O. "Bill"
1898 - 1985
W.T. "Bill"
1924 -
W.E. "Bill"
1949 -
W.P. "Bill"
1979 -

THE PROPERTY RIGHTS FOUNDATION OF AMERICA, INC
P.O. Box 75, Stony Creek, New York 12878 - 518/696-5748

The right to own private property is a fundamental American freedom that guarantees personal liberty and promotes economic prosperity.

How Federal Laws and Regulations
Affect the Value of Privately Owned Property

Testimony of

Carol W. La Grasse
President, Property Rights Foundation of America, Inc.

U. S. House of Representatives
Committee on Resources
June 13, 1995

Farm, Home and Church Lands Unusable - Owners Bear the Losses and Costs

The devastation of the personal life on an elderly man, the blockage of redemption of a 130-year old family farm, and the financial drain on a protestant denomination establishing a mission church illustrate how private porperty owners bear the losses and costs resulting from federal laws and rules for protection of the environment.

The 130-year old farm of Bart Dye in Shoals, southwestern Indiana was seized by the Farmers Home Administration in 1984. Mr. Dye and other farmers in Martin County had suffered from grave difficulty obtaining the usual operating funds after they successfully opposed the expansion of the Hoosier National Forest into his county in 1977. After the 1983 drought, 14 farms were taken down by FmHA in that county.

Mr. Dye went to court with farmers from North Carolina to challenge the FmHA's procedures when they blocked him from regaining his farm, but ultimately the federal court ruled that the FmHA had sovereign immunity. In 1991 he was granted the right to lease his land, which had deteriorated greatly under FmHA management, inluding the collapse of a 150-ft bridge, a building down, 18 miles of fence wrecked and pasture gone to weeds.

He had been trying to obtain a buy-back, but in 1991 FmHA stated that this would depend on his agreeing to terms under the 1990 farm law and Endangered Species law mandating that the Secretary of Agriculture impose environmental easements to protect habitat and wetlands. The easements to protect bald eagles and Indiana bats never seen on his farm and river mussels had no basis in biological assessment. The easements would leave the use of his land to the whim of the Fish and Wildlife Service.

Because of the potential easements, the farmer has drained his equity leasing his farm for five years rather than applying his payments toward a mortgage. Ironically for this hardworking, courageous farmer, this procedure, which has encumbered or transferred to environmental agencies over one-quarter million acres of farmland, demonstrates the operation of a "friendly" federal agency, the FmHA, to work against farmers.

The wetlands easement law, which was unsuccessfully challenged in federal court by another farm family, Myron Miles in Oregon, needs to be repealed, and a voluntary conservation program substituted. Farmers need a means of redress so that those who drained their equity in lease payments because of the easements can apply them to buy-back. The taxpayers need relief from a program which, like the Resolution Trust program to virtually donate lands to environmental purposes, gives the FmHA assets of inventory farms up for environmental preserves instead of letting farmers buy them.

Marinus Van Leuzen, an elderly Texas veteran in Port Bolivar, likewise found himself trapped by a federal environmental bureaucracy, but his was an enforcement effort under the US EPA, Corps of Engineers and Federal District Court, rather than the supposedly friendly agencies like the US Forest Service, Fish and Wildlife Service and Farmers Home Administration.

He placed his pre-built home on his high and dry 0.4-acre parcel he had owned for 25 years that was part of a parking area and decrepit bait camp. While he was finishing off the grading and slab, he was ordered to stop by the Corps of Engineers. He sought to comply, but was told by authorities that it was virtually impossible to get a permit. He completed the work and was brought to court.

The Federal judge disregarded clear evidence that the Corps of Engineers had previously designated the land as "upland" suitable for deposit of dredged material. For a crime against the planet, so Federal Judge Samuel Kent said, he sentenced the elderly veteran, who had fled the Nazis from Holland and fought 7 years in World War II, to a fine of $350 per month for 8 to 12 years totalling to $50,400, a giant 20-ft apology billboard beside his home on a state highway, and the restoration of the wetland. His house is to ultimately be removed.

The Corps of Engineers carried out the sentence. Mr. Van Leuzen was forced to create a moat around his house, 2 to 3 feet deeper than the surrounding ground, which then filled with stagnant fresh water rather than salt water. Mr. Van Leuzen now lives in a house surrounded by a moat.

His estranged wife, whom he had tried to protect from the stress of the prosecution, just sued for divorce because she is afraid the federal government will attach her assets.

The office of Mr. Van Leuzen's Congressman, Representative Steve Stockman, has informed me that even if the Clean Water Act is revised under current proposals, Mr. Van Leuzen's sentence would not be remitted. Legislative proposals would work to affect takings and classifications, but not already-imposed sentences, leaving an innocent man like Mr. Van Leuzen with no justice.

Churches are not exempt from financial t ribulations caused by wetlands rules. A Free Will Baptist mission church in Waldorf, Maryland, just south of the Beltway, was recently established n a 3-acre parcel of seeming dry land of ample space for the buildings and parking. But the Army Corps of Engineers decreed that about 35 percent of the property should be off limits to construction to save another supposed "wetland." The denomination, which had already spent $155,000 for the parcel, was forced to buy an additional neighboring tract for a parking area at a price of $45,000 this year.

According to The Reverend Murray Southwell, who is the Chairman of the Maryland State Association of Free Will Baptists Home Missions Board, "This added cost has been a heavy financial burden on this small missions church and the Missions Board."

It is one thing to believe in and practice environmentalism and to legislate environmental protection. The point where property rights advocates depart these days from people who lay exclusive claim to the name "environmentalist," is where the environmental law and its imposition override constitutional protections of human rights, especially property rights. Idealistic causes should not be used to trample fundamental rights. Judge Kent's fanatical ruling that Mr. Van Leuzen's filling of 0.4-acre was comparable to the genocide of the American Indian is an ideological assault on individual rights. The Farmers Home Administration betrayal of a family farmer for the expansion of a National Forest and the imposition of environmental easements denies the American tradition of private land ownership. It is only natural that governnent actions that infringe on property rights cause personal hardship. If these sorts of actions by government are allowed to be repeated over and over enough times, the American system of private land ownership and freedom will be history.

THE PROPERTY RIGHTS FOUNDATION OF AMERICA, INC
P.O. Box 75, Stony Creek, New York 12878 - 518/696-5748

The right to own private property is a fundamental American freedom that guarantees personal liberty and promotes economic prosperity.

How Federal Laws and Regulations Affect Private Property

Contacts

1. Bart H. Dye, RD #3, Box 274, Shoals, IN 47581 (812) 388-6606

Mr. Dye cannot buy back his 130 year old family farm which was arbitrarily seized by the FmHA because the agency mandates he accept US Fish and Wildlife Service "potential habitat" and "wetlands" easements that prevent secure use of his farm.

Agencies: Farmers Home Administration, US Forest Service, Fish and Wildlife Service.

Law: Agr Law 7 USC 1985(g), Endangered Species Law, law establishing Hoosier National Forest.

2. Marinus Van Leuzen, Box J, Port Bolivar, TX 77650 (409) 684-8107

This veteran, now 74 years old, sentenced to $350/mo fine for 8-12 yrs, "restoration" of "wetland" as moat around his house, and giant apology billboard on Texas highway.

Agencies: Corps of Engineers, US EPA, Federal Districe Court-Galveston.

Law: Clean Water Act

Contact: Kenneth McCasland, 1602 Post Office, Galveston, TX 77550 (409) 762-9358 (friend of Mr. Van Leuzen)

3. Waldorf Free Will Baptist Church, 4030 Old Washington Road, Waldord, MD.

The church had to buy a costly additional parcel of land for $45,000 for parking for their mission church because 35 percent of the original $155,000 parcel was delineated as wetlands.

Agencies: Corps of Engineers.

Law: Clean Water Act.

Contact: Rev. Murray Southwell, Chairman, Maryland State Association of Free Will Baptists, Home Missions Board, Bloss Memorial Free Will Baptist Church, 716 N. Barton Street, Arlington, VA 22201. (703) 527-7040.

The Washington Times

COMMENTARY

* SUNDAY, MAY 21, 1995 / PAGE B3

DAVID LITTMAN

Farmer snared in thicket of regulation

"No man's life, liberty or property are safe while the Legislature is in session." (1866)

-Gideon J. Tucker 12th New York Surrogate reports.

Actions speak louder than words, especially when individual property rights are at stake. The moment of significant action has arrived. Just this month, the U.S. Congress passed possibly the most far-reaching regulatory reforms in history — a moratorium on new regulations, combined with cost-benefit and risk provisions that would become required documentation prior to passage of new regulation.

What better way to speed passage of such reform than to highlight for the American people and the press the outrageous property "takings" by government that have caused the current revolution? Revolution? Yes, just ask Bart Dye, an Indiana farmer, whose property — a 150-year-old family farm — is threatened by federal agencies that now claim one-third of his land for wetlands purposes.

Mr. Dye, who lost his farm to hostile Farm Home Administration (FMHA) foreclosure, is now eligible to buy it back. But, the farm currently is rendered virtually worthless because the FMHA wants to impose Fish and Wildlife Service habitat easements on the land. Mr. Dye's plight is compounded by the fact that banks will not lend to him for seed, operations, or equipment as long as one-third of his tillable land has been effectively confiscated, in favor of habitat for other species. Never mind that a citizen-taxpayer's rights are superseded by those "protecting" a bat (whose habitat is fluid enough to change from one month to the next) or the Bald Eagle (which has been removed from the Endangered Species list).

Nor is Bart Dye's experience unique, except for his tenaciousness. Today, more than one-quarter-million acres of farmland alone in this country have been encumbered or transferred to the Fish and Wildlife Service by the FMHA under the "conservation" program. This alone costs farmers an imputed income loss of $120 million annually if the farms are like Mr. Dye's.

Another example of the heavy and discriminating hand of government is the case of Marinus Van Leuwen. Mr. Van Leuwen, also the brunt of a "wetlands" enforcement, now lives in a man-made swamp embellished by a giant apology billboard, while the federal government garnishes $350 per month from his investment income.

Congress has a perfect opportunity to call these productive citizens to testify before committees. Their stories, and many more, deserve to be in full view of the public, and subject to complete scrutiny by the press and the bleeding hearts of Hollywood. It is high time that America's productive and creative citizens have a public forum where they can face the bureaucrats who torture them and let the voting population of the nation begin to referee what's going on.

The U.S. Code of Rules and Regulations, already more than 131,000 pages, is estimated to be costing the economy nearly $600 billion annually. New "regs" are proliferating at a rate of 1,000 per year. Another 4,300 new statutes are under consideration by the present administration. Again, as Bart Dye can testify, even the statute regarding FMHA-supervised "assessments" for wetlands is not interpreted or applied consistently or fairly from state to state.

To be credible, legislatures and courts must offer redress and restitution to individuals and families whose property has been unjustly taken or impaired by government. Lawmakers, not agency heads in executive departments, should be making the laws and monitoring their efficacy. And what use is a court system that refuses to enforce the intent of the Constitution? Judicial activism in the name of protecting property rights is a perfectly legitimate and, indeed, a vital court function. The time for congressional hearings has come.

Unless a farmer like Bart Dye can recover his property intact, with full farming rights, the American people will have entered a more sinister era than ever could be expressed by the earlier quotation: "No man's life, liberty or property are safe while the Legislature is in session" — a quote that coincidentally is the same age as the family lands that Mr. Dye seeks to save.

David L. Littmann is chief economist for Comerica, Inc.

IPI Insights
Inside: Time to Consider Distributed Government
The Newsletter of the Institute for Policy Innovation April/May 1995

When a Cut is Not a Cut

Confusion over the School Lunch Program is Just the Tip of the Iceberg

by Dean Stansel

House Republicans recently proposed to replace the spending on the federal school lunch and breakfast programs with a block grant to the states and to limit the rate of growth in that funding. Opponents to that proposal went ballistic, labeling it a cruel and heartless spending "cut" and an attack on defenseless children. Rep. Dick Gephardt (D-MO), the House Minority Leader, protested the proposal, saying, "it is immoral to take food from the mouths of our children."

Despite opponents claims to the contrary, the school lunch reform proposal actually called for spending 4.5 percent *more* on the program in FY 1996 than in FY 1995. How can opponents claim that a 4.5 percent increase is a cut?

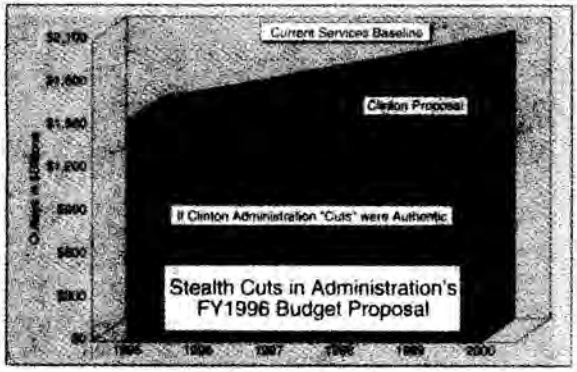
Alas, in the wonderland of Washington, D.C., the term "spending cut" has a very different meaning than it does in the real world of mortgage payments and college tuition. Thanks to the federal budget process, when politicians claim to be cutting spending, *what they really mean is that they merely will be increasing spending a little less than they had originally planned.* Thus, because the 4.5 percent increase in school lunch spending was smaller than the 5.2 percent increase proposed by the Clinton administration, that increase is called a "cut."

This misleading phenomenon stems from the Congressional Budget Act of 1974, which requires the annual production of a "current services budget." The current services budget provides an estimate of how much spending will be needed in the coming year to provide the *same level of government services provided in the previous year.* Those estimates serve as an inflated "baseline" from which claims of cuts in spending are made.

For example, say a program received $100 million last year and the current services estimate for the coming year is $106 million. If Congress votes to spend only $104 million, they will call it a $2 million *cut*, when in reality the American taxpayers will be forced to ante up $4 million more for that program than they had the year before, with no review provision to evaluate whether or not the program is worthy of continued support at all.

The controversy over the school lunch reform proposal was just the latest of many examples of the deceptiveness of current services budgeting. For instance, at a February news conference announcing his $1.6 trillion budget proposal for FY 1996, President Clinton stated, "My budget cuts spending, cuts taxes, cuts the deficit." Most Americans would likely conclude from such a bold claim that the spending, revenue, and deficit figures being proposed for FY 1996 were *lower* than those for the previous year (FY 1995). However, one must turn no

In This Issue . . .



further than page 2 of the President's mammoth budget document to learn the truth. In spite of its claims, in FY 1996, the President's budget proposed to:

- Increase spending by $73.2 billion,
- Raise revenue by $69.1 billion, and
- Allow the deficit to rise by $4.2 billion.

In fact, the President's proposal would increase spending by $366.4 billion over the next five years, pushing the budget over the $1.9 trillion mark by the year 2000. Only by comparison to the current services budget baseline can a $366 billion spending *increase* be labeled a *cut*. [see above]

In addition to injecting dishonesty into the annual budget debate, current services budgeting also helps to maintain the existence of outdated programs. The current services estimates assume that all programs are to continue to function at "the same level as the current year without a change in policy." Essentially, Congress has codified the assumption that each and every program will continue to receive funding, and has as much as put government spending on autopilot. As a result, it is far more difficult to terminate programs that have completed their missions or outlived their usefulness.

In a nutshell, current services budgeting has created a pro-spending bias that makes it more difficult for budget growth to be restrained, and has defrauded the American taxpayer of billions of dollars:

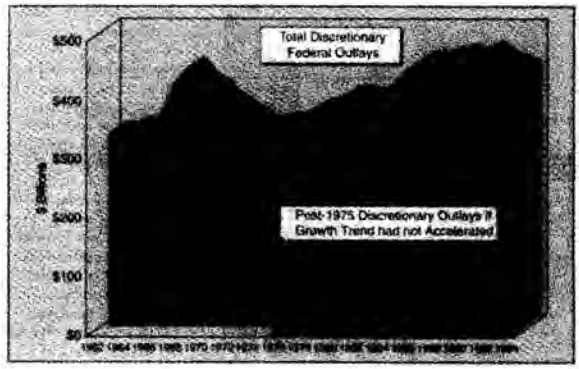
- Since current services budgeting was implemented, real annual discretionary spending growth has tripled. [below]
- During this same period, Americans have seen their real annual income growth nearly cut in half.
- While current services budgeting has provided each and every program with an automatic "cost of living" adjustment, American taxpayers have seen their incomes barely keep pace with the growth of inflation.

In order to reverse the growth of government and return honesty to the federal budget process, Congress should put an end to the charade of current services budgeting.

- Congress should immediately discontinue the practice of current services baseline budgeting.
- Congress should, instead, begin using a zero-baseline budget process, thus requiring every program to stand or fall on its own merits each year.
- Congress should follow the lead of many state governments and pass *sunset legislation*, which automatic terminates all programs and regulations after five years unless Congress votes specifically to continue them.

Because of current services budgeting, the federal budget process is fundamentally dishonest, and is structurally opposed to the goal of reducing the size of government. Discontinuing the practice of current services baseline budgeting would begin to restore honesty to the federal budget process. Furthermore, along with implementing a zero baseline budget process and enacting sunset legislation, this would make it easier for those politicians who are serious about cutting spending to comply with the voters demands for a smaller, less intrusive, and less expensive government.

Dean Stansel is a fiscal policy analyst with the Cato Institute, and a frequent author for IPI.



It's Time to Consider Distributed Government

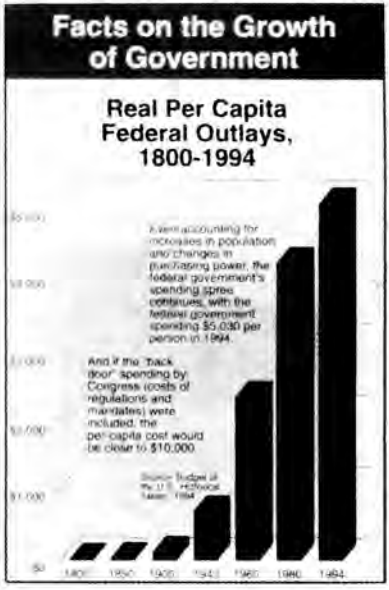
By Philip M. Burgess

Former Education Secretary Lamar Alexander has proposed a different kind of term limits. Let's call it "session limits," a reform that would limit to six months the time each year Congress may be in session, barring a national emergency.

Though often dismissed as a campaign gimmick, session limits is a serious policy initiative, advanced as a way to change the self-absorbed, hothouse "culture" of Washington.

Targeting the culture is the key. As shown by experience with corporate reengineering, changing the culture of the organization is a prerequisite to achieving real change in performance.

Alexander's plan would help change the culture because it would change the perspective of lawmakers—as members spend more time at home living among their constituents and working at a business that must pay the taxes and abide by the regulations Congress imposes. The result: Alexander's plan would yank away one leg of the "iron triangle"—the relationship between Congress, bureaucrats, special-interest groups—and much of the Washington-based media—to expand the role of the federal government into the lives of Americans.



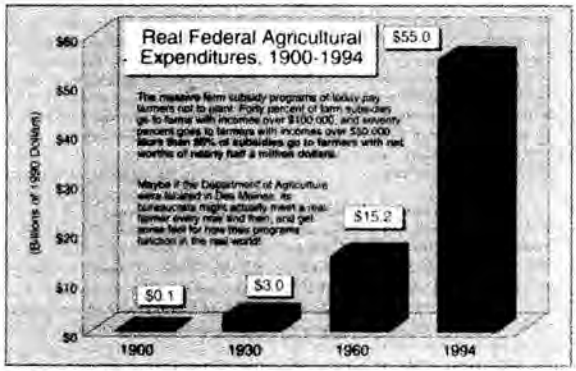
Another piece of the solution: Move federal agencies out of Washington to get more executive branch bureaucrats closer to the people. The telecommunications revolution makes this possible. Preservation of representative government makes it desirable. Ensuring accountability makes it essential.

There are many benefits to getting the government out of town: Better sharing of the wealth of government payrolls, cheaper office space, and higher living standards for federal employees relieved of Washington area pathologies—including high real estate prices, high crime and bad schools.

But the most important reason for moving executive branch agencies out of Washington is to immerse public servants in the culture of grassroots America, help insulate them from the enormous power of special interests now concentrated in Washington, and make them more tuned in to the people they are supposed to be serving. If the agencies move to the hinterland, then the lobbyists have to make a choice: concentrate on the career politicians and congressional staffers in Washington, or concentrate on agencies in the hinterland.

It's time to bring government to the people. The Department of Agriculture is supposed to serve the farmers. So, put it in Des Moines or Omaha or Kansas City, close to farmers and farm businesses—or in California, America's No. 1 agricultural state.

The primary purpose of the Department of the Interior is to manage federal lands. So, put it in Denver or Salt Lake or Reno—or perhaps Anchorage, Alaska, where most public lands are located. The Treasury Department deals with the financial markets headquartered in New York City. So move Treasury to the Big Apple. Department of Energy bureaucrats would do better in Dallas or Tulsa or Casper, Wyoming or Las Cruces, New Mexico—closer to the oil and coal deposits and nuclear waste sites.



Moving federal agency personnel to live with people whose lives are affected by the rules and regulations they make serves two useful purposes: First, a move would make agencies more accessible to ordinary citizens. It's a lot easier for a Minnesota farmer to do business in Des Moines than it is in D.C., and a lot cheaper, too.

Even more important, a move would give agency staff an opportunity to go to lunch with working Americans—and generally immerse themselves in a workaday culture, where people live their lives without worrying about "who's in, who's out; who's up, who's down"—to quote Bill Clinton's description of Washington from his inaugural address.

With distributed government, public employees would be informed by the *Rocky Mountain News*, the *Des Moines Register* or the *Atlanta Constitution*—rather than relying on daily doses of political correctness as promulgated by *The Washington Post*. By separating lobbyists from the bureaucrats and *The Washington Post* from the process, the "iron triangle" would be bent into a pretzel. Fresh ideas would replace the "big government" smog that hangs over the nation's capital.

So send the Department of Labor to Chicago or Detroit, Health and Human Services to Atlanta or Boston, Housing and Urban Development to Philadelphia or Baltimore, the Immigration and Naturalization Service to Laredo or El Paso. Put NASA in Houston or Huntsville, Alabama, and the Environmental Protection Agency in New Orleans.

Though some agencies should remain in Washington—e.g., Defense and the State Department—imposing buildings on the Mall, emptied by departing bureaucrats, can be turned over to the Smithsonian to display more of the nation's many treasures now locked up in warehouses.

How do we get there from here?

Moving federal agencies out of Washington is an idea Congress must approve in principle. But it cannot be left to Congress to implement in detail, lest we see a pork festival to end all pork festivals.

Fortunately, there is a model to follow—the Base Realignment and Closure Commission (BRAC) used by the Department of Defense to consolidate or shut down military bases in the post-Cold War era. To avoid making tough choices itself, Congress authorized the president to impanel a special commission to make the decisions for it. Congress then accepts—or rejects—the entire package of BRAC recommendations by a simple up or down vote.

Now is the time to try for distributed government. People don't want more government; they don't want reinvented government; they don't even want better government. People want smaller and more user-friendly government.

Customers in the enterprise economy are making similar demands. That's why the private sector is using new telecomputing technologies to decentralize operations, to get managers closer to the customer and to link networks of far-flung offices and workers in high-performance systems of distributed work.

So, distributed government should work. Everything from cultural trends to real estate economics supports distributed government. We should take advantage of new telecomputing technologies and the information superhighway to change the culture of government by moving government away from the old, centralized, Industrial Age model to a more modern, decentralized and responsive way to do the people's business.

Surely, a government of the people, by the people, and for the people should be spread among the people.

Philip M. Burgess is president of the Denver-based think tank Center for the New West.

IPI Insights

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Editor and Publisher Tom Giovanetti

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When Big Government Comes Knocking on Your Door

by Carol W. La Grasse

Some of our federal regulatory agencies have gotten out of control, and have begun to ignore basic property rights. Citizen abuse from federal agencies, particularly in the name of environmentalism, has added a menacing dimension to life in the United States.

"Friendly" entities like the Farmer's Home Administration (FHA) now maltreat citizens by working with environmental agencies. The FHA seized the 120 year-old Indiana family farm of Bart Dye without due process, and is now imposing Fish and Wildlife Service wetland and wildlife habitat easements which make the farm worthless to Mr. Dye, who is seeking to buy back the farm. Over one-quarter million acres of farmland have been removed from farming under this FHA program.

The oldest assaults of property rights on behalf of environmentalism have been by the National Park Service. How extreme is this agency? In July 1991, for being a passenger on the old Denali Highway in Alaska without a newly-required permit, geologist Steve Hicks was arrested by the Park Service in Montana. From there he was taken and transported in leg irons to Alaska for trial and conviction.

The National Park Service has shut down all traditional gold mining in the new and expanded national parks in Alaska, and (contrary to the pledges of Congress) made it impossible for the miners to be compensated. But one of the most dramatic horror stories about regulatory abuse is the fate suffered by a Texas resident.

Marinus Van Leuzen is a World War II veteran who fled Holland ahead of the Nazi advance and joined the U.S. forces. But a federal judge in Texas declared that Mr. Van Leuzen committed a crime against the planet comparable to the "genocidal treatment of this continent's indigenous peoples." Mr. Van Leuzen was sentenced to a fine of $350 a month for 8-12 years, totalling up to $50,400, and was required to ultimately remove his home from property he has owned for over 20 years. The judge decreed that Mr. Van Leuzen's property never be occupied by human structures again, forever, that his lawn be excavated and that his four-tenths acre parcel be converted to a swamp, at his own expense.

And for Mr. Van Leuzen's "attitude" of disregarding the law, the judge sentenced the old man, who was widely respected in his community, to erect a giant billboard of apology for his "crime." The billboard still stands beside the state highway near the old man's home, subjecting Mr. Van Leuzen to a level of public humiliation from which rapists and child molesters are spared. (below)

Mr. Van Leuzen's crime? Federal Judge Samuel B. Kent accused Mr. Van Leuzen of filling in "a fringe marsh in a tidal cove." In reality, the old man simply built his modest home on a lot where a decrepit bait camp was formerly situated, with a parking lot on ground sufficiently solid that heavy beer trucks routinely made deliveries there.

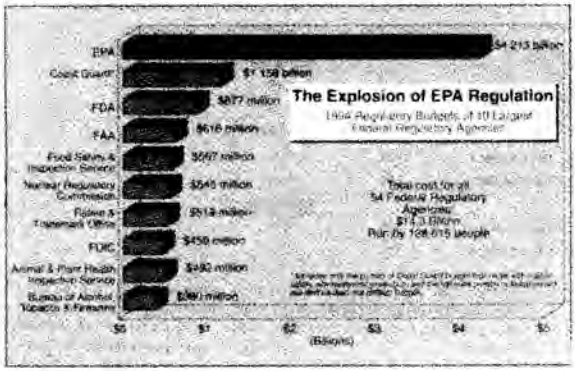
For this crime, Judge Kent declared, "Attitudes like Defendant Marinus Van Leuzen's are beyond selfishness. Unchecked, they are the seeds of national suicide."

To mete out the harsh punishment, Judge Kent disregarded proof that the charges were trumped up. Instead, he used "attitude" to justify the punishment that he admitted "might seem draconian." The modest house where Mr. Van Leuzen lives is now surrounded by a man-made, stagnant, fresh-water moat.

The case of Marinus Van Leuzen is but an extreme example of the type of things that have happened all over the country, as an army of unelected bureaucrats have made a frontal assault on the property rights of American citizens. Government regulation has become an unelected fourth branch of government, and regulators have gone beyond meddling in the affairs of private citizens and have begun to ruin their lives.

Environmental regulation is particularly costly, not only to personal freedom, but also to the economy. One simple but revealing statistic is the explosion in EPA spending in relation to other regulatory agencies (see next page).

This growth in environmental regulation has come cloaked in the rhetoric of clean water, clean air, and a safer environment for our children. And who could be opposed to such noble goals? But since when are the goals of a clean environment and private property rights mutually exclusive?



Ted Forstmann, head of an investment firm, calls the state's promise of security seductive. "However, the gentle Government that promises to hold our hand as we cross the street, once on the other side, refuses to let go," notes Forstmann, adding that the most significant recent domestic development is the "takeover of American life by Government."

Thankfully, the Congress recently passed an element of the House Republican "Contract With America" designed to compensate property owners whose property values are destroyed through environmental regulation. But the assault on private property by environmental groups and government regulators shows no sign of letting up.

Environmental attacks on private property through such mechanisms as wetland and wildlife habitat protections have become so repressive that between 600 and 800 grassroots property rights and wise use groups have sprung up in defense.

It is time for the citizens to rein in government regulation, and to reassert their rights to private property. It is time for states to protect the interests of their residents by dusting off the Ninth and Tenth Amendments. And in this era of limited resources and burgeoning federal budget deficits, it is time for the EPA and other environmental bureaucracies to be significantly curtailed, both in terms of agency spending and abuse of citizens.

Carol La Grasse is President of The Property Rights Foundation of America, Inc., in Stony Creek, NY.

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Tax Action Analysis

Who's Cooking the Books?

When House Republicans claimed that the tax cuts contained in their "Contract With America" would help reduce the deficit by boosting economic growth and increasing government revenue, critics charged that they were "cooking the books." But according to a recent report by Gary and Aldona Robbins, it is government forecasters who should be re-evaluating their forecasting methods.

Recent deficit reduction efforts have given government forecasters virtual veto authority over tax and spending issues. And according to *Cooking the Books: Exposing the Tax and Spend Bias of Government Forecasts*, government forecasting methods are seriously flawed, and in need of revision.

Current government forecasting methods leave much to be desired:

- Six out of seven multi-year deficit forecasts made between 1986-91 underestimated the deficits, some by as much as *500 percent*.

Economic Outlook at the Start of 1981: Government and Private Forecasts

	Reagan	CBO	Private	Actual
Nominal GNP				
1980:4 to 1981:4	11.0%	12.8%	12.0%	9.5%
1981:4 to 1982:4	13.3%	14.1%	13.8%	2.6%
Real GNP				
1980:4 to 1981:4	1.4%	2.2%	2.1%	0.1%
1981:4 to 1982:4	5.2%	4.0%	4.8%	-1.5%
GNP Deflator				
1980:4 to 1981:4	9.5%	10.3%	9.7%	9.4%
1981:4 to 1982:4	7.7%	9.7%	9.1%	4.4%

- The fiscal year 1991 budget, issued before the 1990 budget summit, contained a five-year forecasting error of $1 trillion.

The chart below demonstrates that since forecasting became a formal part of the budget process with the Congressional Budget Act of 1974, both government spending and the resulting budget deficits have increased dramatically.

Dynamic vs. Static Analysis

Current forecasting practices ignore the possibility that lower taxes might lead to higher employment and economic growth. Such *static* forecasts do not account for the effects that changes in tax policy might have on the economy.

By ignoring the economic potential of changes in tax and spending policies, static forecasts are biased in favor of higher taxes, spending, and deficits. A static estimate of a tax increase will *overestimate* the actual tax revenue and lead to a larger than expected budget deficit. And a static estimate of a spending increase will *underestimate* the actual cost and lead to a larger than expected budget deficit.

To bring government forecasting more in line with economic reality, government forecasters should incorporate dynamic analysis into their evaluation of alternate policies. Dynamic analysis acknowledges that changes in tax policy affect incentives to work, save and invest, and incorporates these effects into economic forecasts.

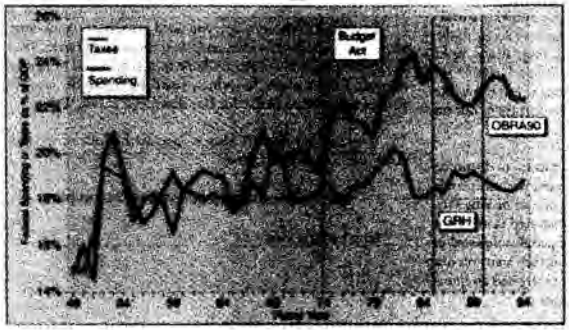
About those Reagan Deficits . . .

Critics claim the Reagan-era deficits are proof that tax cuts result in *higher* deficits, rather than deficit reduction, and that the deficits of the 1980s are a repudiation of dynamic forecasting. But the Robbins demonstrate that the infamous "Rosy Scenario" forecast was shared by four major private forecasting models, and a CBO report issued in 1981 predicted even higher real growth and price inflation.

In fact, inflation dropped twice as fast as expected, and it was this rapid drop in inflation that caused the bulk of the forecasting error. Neither dynamic forecasting nor "supply side" or "trickle-down" economics caused this shortfall. Thus:

- A budget based on any of the major forecasts at the start of 1981 would have produced the same results. All would have been considerably wrong on the deficit. (table above)

Scorekeeping and Deficits: Spending and Taxes as a Percent of GDP



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Parting Shots

Travel Ports of America, a New York company that owns truck stops in seven states, acquired in 1988 an option on a site on Interstate 90, halfway between Buffalo and its headquarters in Rochester. It planned to build a new $6 million facility, which would generate 125 full-time jobs.

Then the New York state government, hungry for revenue to cover its out-of-control spending, doubled the diesel fuel tax. The result: truckers bought dramatically less diesel fuel at Travel Ports' five New York stops. Says the company's president, John Holahan, "We would have to be insane to expand here." Travel Ports will open its new facility, all right—100 miles west in neighboring Pennsylvania.
-Reader's Digest

Bad news for investment newsletters comes from the National Bureau of Economic Research in Cambridge, Mass. Fewer than 25% of such letters achieve higher returns than an investor would have gotten by buying and holding a passive portfolio, says a study for the research group.
-Wall Street Journal

Senate Social Security Subcommittee Chairman Alan Simpson (R-WY) intends to investigate the $86 million in federal grants the AARP received last year. Simpson calls the AARP "33 million people united by a love of airline discounts." Rather than speaking for the elderly, Simpson believes, the AARP is running a discount travel, insurance and pharmaceutical business. Those sorts of activities, he notes, generate more than half the organization's income. Most surprising: despite the fact that the AARP is an organization that politicians haven't dared to cross, Simpson is up for reelection in 1996.
-Business Week

So much for the single life. Population Association of America President Linda Waite reports that marriage reduces stress, improves health and increases wealth. Married couples are financially better off because they are more likely to pool their resources and invest their money. Married men, moreover, tend to make more money than their single brethren. And demographers also find evidence against unwed cohabitation: Couples who live together before marriage have a higher divorce rate, probably reflecting the lack of a long-term commitment from the start.
-U.S. News and World Report

Official figures show that in Florida handgun homicides dropped by 29% between 1987 and 1992, the first five years of that state's right-to-carry a concealed weapon statute.
-The Economist

Contraband cigarettes held no more than 2 percent of the total cigarette market in Canada until 1991, when the government imposed a value-added tax and increased the federal cigarette tax by 146 percent. After the tax increase, however, the price differential between cigarettes sold in Canada and those in the U.S. soared to more than CDN $35 a carton.

The result was an invitation to organized crime. Mohawk Indians from tribes along the U.S.-Canada border, biker gangs, and Asian Triads smuggled cigarettes across the border in boats, airplanes, trucks, vans, legitimate courier companies, and snowmobiles.

The smuggling, along with outright defiance of the tax by ordinary citizens, alarmed politicians. In February the federal and five provincial governments made deep cuts in cigarette taxes, which essentially eliminated cigarette smuggling in Canada.
-Reason

STATEMENT OF WALLACE MCGREGOR

Testimony submitted by Wallace McGregor, G.E., MBA, Manager, Northwest Explorations, owner of the Orange Hill patented claims located within the Wrangell-St Elias National Park.

At issue in the inholder private property rights conflict with the National Park Service is bureaucratic bad faith. The problem goes deeper than the management of the National Park Service. It is a problem that permeates the federal bureaucracy.

My experiences in matters of federal agency bad faith relating to the Orange Hill patented property date back to the days well before the passage of ANILCA when the lands in the area were first designated D-2 Land. At the time, the Orange Hill copper-molybdenum deposit was under active exploration. A request was made by the Interior Department for information on our access route in to Orange Hill to be used in considering the boundaries of the D-2 Lands. We complied with the request. When the boundaries were published I was appalled to find that the information had been used to gerrymander the boundary along the Nabesna River to enclose our access route within the lands to be withdrawn. In retrospect, I have reason to wonder why I was surprised.

By the time the D-2 Lands were established, I had been conducting exploration on the eastern flanks of the Wrangell Range for a number of years during which time I had gathered a wealth of information on the mineral resources of the region. In the course of the investigations I developed a close professional working relationship with the Alaskan staff of the U. S. Bureau of Mines. As a result, when the decision was made by the Interior Department to conduct a mineral evaluation of the D-2 Lands, I was approached to carry out the assignment on contract. I agreed to do so. The evaluation, including information drawn from my confidential files, was completed and submitted to the Bureau in 1977.

Some time after submitting the report, I received a telephone call from an upper echelon U.S. Bureau of Mines official in Washington, D.C. asking that I delete the conclusions that a potential existed within the D-2 Lands for the discovery of significant economic mineral resources. I was told that if the conclusions could not be deleted, the report would not be published. My reply was that I could not change my conclusions. Since the report had been submitted to the Alaska Branch with approval and forwarded to the Washington office, the call was clearly initiated by instruction from upper Interior Department management unbeknown to the Alaska Branch personnel. The threat was carried out. A request for the report by Colorado Senator Armstrong during the height of debate over ANILCA was met with an Interior Department decline of knowledge about the existence of the report.

The extent of my field experience in Alaska during the sixties and seventies and my knowledge about the geology of the state made me aware of the detrimental impact of ANILCA on the mineral resources of the state. My concerns were great enough to cause me to become involved in the fight to change some of the provisions of the Act to make it acceptable before its passage. Under the auspices of the Coalition for Responsible Mining Law, of which I was president, a number of conferences were held in various western states to publicize the adverse impact of the Act on Alaska's ability to develope its mineral resources. The Alaskan Congressional delegations and their staffs were invited to the meetings and some participated.

To the credit of Senator Stevens and Representative Young, they acknowledged the problems we were attempting to address. However, their position on the bill was to get the bill passed. Once the bill was passed, they assured us, the problems would be rectified with follow up legislation. Fifteen years later, we have yet to see a bill introduced that comprehensively addresses the inholder issue or the matter of compensation for the takings that have occurred under ANILCA.

My experience in dealing with the National Park Service management, can best be described as a series of stonewalls and disinformation. The NPS management has developed a culture of incredible callousness to the property rights of inholders. One would have to be very naive to accept on face value information provided by NPS personnel. To illustrate why I consider information from NPS as subject, at best, to interpretation and why I view their actions to be tactical stonewalling rather than helpful and forthright, I cite the following examples.

As a matter of background, the Orange Hill deposit was under exploration by U. S. Borax & Chemical Corp. at the time ANILCA was passed. The moratorium on exploration imposed by NPS necessitated invoking the force majeure clause of the exploration contract. In 1985, after five years of extending the agreement with U.S. Borax and Chemical Corp under the force majeure clause, the agreement was terminated by mutual consent based upon the conclusion of the parties that a near term favorable resolution of the right to mine was unlikely. History confirms the correctness of the conclusion. Upon termination of the agreement, it was the unanimous decision of the Northwest Explorations management committee to seek avenues of settlement with the NPS that would provide for a non-cash exchange of properties.

The first response from an NPS manager on this approach was an verbal proposal that we assign the property to the NPS as a gift. Such a response could be seen as a good faith opener for serious negotiation but it proved not to be the case. Nothing of a serious or good faith dialogue could be developed. Failing to open serious negotiations with the NPS, we attempted to initiate

exchange talks with the Forest Service and Bureau of Land Management and discussed our dilemma with the staff of the Congressional delegations to no avail.

When the Record of Decision was published in 1990, we made a great effort to get the NPS to start the appraisal process. We offered to provide all our data to an appraiser the NPS would select, and repeatedly requested their cooperation. As in all other instances, there has been no movement on the part of NPS. Stonewalling is the best way to describe the treatment we have received.

In due course, we learned that Cities Service Minerals had arranged a non-cash asset exchange with the NPS relating to the Cities Service patented claim holdings enclosed within the Glacier Bay National Park. (I will be pleased to provide you with a full disclosure of the correspondence relating to the inquiry but the salient points of the correspondence will give you a taste of how NPS disinformation works.) In a letter dated December 11, 1990, I made a request under the Freedom of Information Act for,

> "information relating to mineral properties within national parks that have been bought by the National Park Service or exchanged by the National Park Service for properties of comparable value." I am specifically requesting information on the terms of settlement negotiated with Cities Service in exchange of properties within the Glacier Bay National Park."

The NPS reply, dated January 29, 1991 stated that

> "the number of documents that respond to your request is considerable. They include the following transactions: ...." The letter then cited five transactions, with no values mentioned and all of which were donations.

The letter then went on,

> "The Alaska Regional Office and Glacier Bay National Park and Preserve have no record of an exchange involving Cities Service and Glacier Bay National Park. In compiling the above list, we did not review the documents for non-releasable material."

An interpretation of this artful subterfuge is -- We (the NPS) are not going to disclose what you want without making you go to an enormous amount of work and expense. Why don't you do what everybody does? They donate their inholdings to the NPS. As for the Cities Service transaction, we hope you take on face value our information that no such agreement exists and forget the idea. If you find that there was the transaction you requested, hey, we told you we did not do a complete review.

I do not mean to make light of the NPS position. In fact, I not only take the NPS management position very seriously, I am concerned that they carry out their policy of disregarding private property rights with impunity. This problem of bureaucratic credibility will have to be dealt with before any real progress can be made in resolving the inholders dilemma and due compensation for takings is made.

What is more, I have no reason to believe that the necessary change in the attitude of the NPS management will take place by any means short of Congressional action to induce the change. To carry out the change, Congress will have to lead by example and must do so quickly. If the process were to begin today, it will be years before the compensation will be forthcoming. A generation of time will soon have passed. For some, time has already run out to be equitably compensated for the takings which took place with the passage of ANILCA.

As for me, a promise made fifteen years ago, remains to be kept. The action of Congress required, is to direct the NPS to carry out, without delay, the acquisitions of all claims as stated in the NPS Record of Decision dated August 21, 1990 and to provide the funds for such acquisitions by means of a specific appropriation dedicated solely to compensation to property owners of inholding within the National Parks created by the enactment of ANILCA.

Respectfully submitted,

Wallace McGregor
N 10018 Huntington Rd
Spokane, WA 99218
(509) 466 1082

June 11, 1995

Before the

U.S. HOUSE of REPRESENTATIVES

COMMITTEE ON RESOURCES

Private Property Task Force

The Honorable John Shadegg, Chairman

Submitted by The Oregon Cattlemen's Association
June 13, 1995
Washington, D.C.

Mr. Chairman, Members of the Committee:

The purpose of this testimony to the Task Force hearing is to relate impacts of the Endangered Species Act on both our resources and our people. We thank Congressman Shadegg and the Committee for their interest in our views regarding the effect of the Act on people in our industry and their intent to address our concerns in future legislation. For the first time since the passage of the Act we feel there is a real opportunity to get the awful burden of its rules off the backs of the people who live and work and husband the public and private natural resources of this great country.

Because we have worked within the confines, or, as we view it, under the oppression of, ESA for many years now we have had many occasions to conclude that we are NOT going to be able to feasibly continue to produce livestock by harvesting native forage on public and private lands unless the Act is changed.

It is now obvious that many of our Congressmen and Senators who voted on the original bill to adopt the ESA did not have a clear understanding of its potential for budget busting, for taking of private property outright or through regulation, and for actual species and habitat loss because the law provides the means to gridlock any kind of management at all. It also provides the means to draw political conclusions about scientific questions. They now publicly state they would not have voted for it had they known it would bring us to this tragic point.

We have read that Section 7, the consultation requirement in the act that has caused our industry people so much grief, was "drafted by a legislative aide, an avid environmentalist, in a form to avoid it being recognized as a substantive road-block statute" that we now know it to be. That must be changed.

We know that you know that the costs of the ESA are in multi-billions of dollars and are accelerating, that the program costs are totally out of control and that no rational decisions about allocation of available resources for endangered species can be made under the law as it is now written. The very substantial costs imposed on the private sector, or losses to communities, are never included in the figures used for listing species and recovery plans. The total cost of recovery seems irrelevant because in the 20 plus years since the inception of the Act "not a single endangered species has legitimately been recovered and delisted as a result of the ESA" according to the National Wilderness Institute in a study entitled *Going Broke* published in 1994. NWI publications are available to you and we believe are an excellent source of factual information on which to base a decision to change the ESA.

Specific changes needed in the ESA have been given you from the Coordinating Council of which National Cattlemen's Association is a member and which we strongly support. Those changes have been included in some of the re authorization bills. Our intent is to relate how the Act has become impossible to deal with for our industry people in North Eastern Oregon and how our economy will be in grid-lock, our ranches and families and communities at risk, and the threatened and endangered salmon forever lost unless some balance, reason, and verifiable science is injected into the process. We offer the minimum amendments required.

In Northeastern Oregon we see up close and personal a very important strategy of the preservationist groups which is, of course, enabled by the ESA. They are attempting to dictate land management through the courts, nit-picking fine points in the law in order to immobilize land use or management. Some groups buy land and act as a conduit, at tidy profits, to get the purchased land into federal ownership. Some have lists of private land they want the government to buy or regulate in order to "protect" it for future generations. Usually the same groups are the harshest critics of government land management. Even so, the message they send is that government ownership is good and protects land resources and private ownership is bad and destroys resources.

They promote the perception to their public that the mere act of listing a species somehow protects it and if its not listed it is doomed.

About the time the Snake River and Columbia River salmon were listed the Oregon Cattlemen's Association, with partial funding from the Department of Environmental Quality in Oregon, began our Watershed Workshop Program specifically for our ranchers on sub-watersheds whereby we hold workshops aimed at total landscape management of our own ranches and stimulating awareness of how they fit into the whole. It gives a new perspective to people in management positions in a non threatening atmosphere because it is put on with the help of experts in the land management business (ranchers), and University people, selected for their academic integrity. The program has been extremely successful because after the initial meeting the ranchers continue to meet and have speakers and work on plans and gather history of their own combined sub watershed. One reason it is so successful, we believe, is because it does not attempt to tell anyone what should be done, or must be done but rather shares ideas from other areas that have been beneficial. The scientific principles thrown in are probably the most helpful and the most trusted because they essentially validate what we have always known or sensed to be true. We can actually see some very positive changes in attitudes and practices concerning watershed and ecosystem management. One of the most important being that some agencies in Oregon are learning that the management of private land may be best left to the private land owner. Some have learned that we are very aware of our responsibility to our land, our water, our families, of how they fit into to a more global picture and that our care and nurturing of them will assure they are sustained into future generations just as they have been from past generations.

We strongly believe that the OCA Watershed Workshop Program, put on with so little money, will, in the end do more to save endangered species, and endangered resource jobs and endangered communities and families, than all our money spent by the Federal Government and all the laws and rules and court cases, all the governments written plans and environmentalists appeals of plans, combined. We have a track record of success, the ESA has not.

Still preservation groups continue to vomit lies, attempting to scare the public into donating money to their organizations as the last hope for saving the planet from the exploiters of the public lands and resources, the greedy land barons who are interested only in despoiling the land and water while taking massive profits. Who will tell our story, that most of the wildlife spend most of their lives on private land and have increased hundreds of percent because of us not in spite of us, that the average annual income of the cattle rancher is about $23,000, that we feed 120 people besides ourselves on a sustained basis and that we invariably leave our land to the next generation in better condition than we received it? The American people can be glad that those involved in agriculture still are in touch with the responsibility that freedom brings. That is why the ESA seems such nonsense to us. We protect all Gods creations, appreciate them for what they are, care for them, nurture them; we do not worship them. We seem to do what we do not to amass fortunes but rather, like our forefathers, to fulfill our faith.

Plato argued that good people do not need laws to tell them to act responsibly, while bad people will find a way around the law. This particular law was passed and rules made at the behest of the elite, they pretend a procedure for protecting threatened and endangered species but it has succeeded only in humiliating and intimidating honest people while providing cover and protection for their own twisted agenda.

Now is your opportunity to evaluate the accomplishments of the act. Over the past 20 years we have seen created a symbolic alter where-upon we've placed listed species and before which we've built the sacrificial fire upon which we heaped tons and tons of money; countless working hours and volumes of paper plans; tens, perhaps hundreds of thousands of productive jobs; businesses, communities, families and individuals. It is time to deny the elitists the laws that extend the reach of the government, and thus the increase of their own powers, to abridge our freedom.

The preservationist groups have a vested monetary interest in threatened and endangered species. Make no mistake they do have a vested interest because they have spent a lot of money to raise money so their leadership can prosper. They put out tons of bogus reports extrapolated from bogus models designed by pseudo scientists in order to scare the average citizen; but the average citizen is beginning to catch on causing desperation in the ranks of the preservationist groups who are having to compete for the same dollars. This desperation is causing more radical behavior, witnessed by the increased activity of the Earth First! eco terrorists who are supported by many other main stream preservationist groups. Their members are suspected of killing cattle, burning ranchers property, ruining water systems, bombing Forest Service offices, spiking trees, because they have advised in writing how to do these things and justification for doing them. They are no less an abomination than the people who bombed the Federal building in Oklahoma City!

Now that "habitat conservation plans" (HCP) have been a failure, having caused more problems than they have solved the newest term is "ecosystem management" on a grand and non-voluntary basis (unlike OCA's program). This prospect leads to more centralized natural resource planning and exposes landowners to even more restrictions and less predictability and control of their own property. It is a bad, bad idea!

Probably the most expensive and far reaching listing of an endangered species is that of the salmon in the Pacific Northwest. It will likely be the most visible species whose extinction will be expedited by political and judicial process. Our fear is for the other casualties who will accompany the salmon. At risk is the entire economy of the state of Oregon; fishing, ranching, agriculture, mining, timber and their supporting businesses. Agricultural business alone, including its processing, and other support services totals about $10 billion a year. Farmers and ranchers employ about 100,000 people, more than all our high tech industry combined. Of the over 200 commercial products raised by Oregon agriculturists, 50 of which gross over a million dollars, cattle and calves is the highest grossing commodity with sales of $389 million, some $40 million higher than the second place commodity.

Remembering that about 60% of Oregon is in public domain, on which the cattle industry relies for grazing, Add to that the stockmen's vast holdings of private land and it is no stretch to say the cattle industry has a profound interest in the who, how, and what efforts are made to save the salmon. The pastures and rangelands we use and own are some of the least disturbed most natural lands in the country and provides habitat for many species both listed and abundant and yet the current laws provide nothing but disincentives to us who have the greatest opportunity to protect the species. It does not recognize our contribution nor that property rights and protection of the environment are complementary goals.

We strongly believe that verifiable science is the salmon's only hope. Instead we see opinions by decision makers being changed as a result of phantom research and no new data. The decision to do spills at the Columbia and Snake River dams may be the tragic example. National Marine Fisheries Service reversed its long standing policy on gas supersaturation without benefit of change in the data base, now saying that allowing an increase of supersaturation from 110% of barometric pressure to 130% is acceptable, even though in 1971 NMFS own scientists said, along with state fisheries specialists, that gas supersaturation would virtually eliminate salmon from the Columbia River within a few years unless something was done quickly. An appointed task force proposed a limit of 110% and by 1976, 5 years after adopting the limit the problem was over. Last year the NMFS Scientific Review Panel in their report said "Effects above 110 percent are uncertain but in the direction of damage. More recent reviews suggest that more stringent levels of TDG are advisable for full protection."

Never the less NMFS now call for spills and will place this years salmon runs at risk. Worst of all no estimation of in-river smolt mortality from Gas Bubble Disease was made in the 1994 experimental spill and probably won't be done. Scientific experts on GBD are pleading with NMFS to implement adequate monitoring measures now that the spills are taking place so that the fishes deaths do not go undocumented. It is hard to miss the legions of gulls gorging on baby salmon stunned by their plunge over the opened spillways of the dams.

The spills of an additional 30 feet will cost between $8 and $12 million in lost hydropower generation, according to a Clearwater Power Company spokesman. The fisheries service says this increase will improve threatened Snake River fall Chinook survival by 40% which if true will mean that for each additional salmon saved the cost will be $1 million.

Livestock permitees have been put on notice in some forests that their ten year permits expire at the end of 1995. They are warned that environmental assessments must be completed before permits can be reissued. "A part of the process involves determining the potential impacts on species that are proposed or listed as threatened, endangered or sensitive: such as bull trout and salmon." Then, of course, the product must be made available to public review and appeals and administrative reviews, etc. and the inevitable gridlock that ensues. Unless the law is changed our future becomes dimmer and dimmer.

Margaret Thatcher's words would apply when she was discussing the responsibility that goes with freedom and societies without moral foundations: " They would do well to look at what has happened in societies without moral foundations. Accepting no laws but the laws of force, these societies have been ruled by totalitarian ideologies like Nazism, fascism, and communism, which do not spring from the general populace, but are imposed on it by intellectual elites." It is no leap logically to add environmentalism to that list.

In the spirit of eternal vigilance as a price of freedom we ask that you change this awful law and others like it, or repeal it, in order to restore the blessings and responsibilities of freedom to us all.

To summarize the minimum reforms needed should you decide to re authorize and reform the act rather than repeal it, in our opinion, would be:

1. Base listing decisions, including delineation of critical habitat, solely on verifiable science and including fulfilling sufficient data requirements and an economic analysis prior to listing a species.

2. Protect private property by incorporating appropriate legislation (Like the Pombo bill) into the act.

3. Rewrite Section 7 so that "take", including "harm", or "alteration of habitat", etc, must be verifiable scientifically and that the burden of proof is on the appropriate agency. Incorporate language that allows legitimate ongoing activities to continue until harm can be verified. Delete it as a road-block statute.

4. List only true biological species. Delete "sub-species and distinct populations" from the language and delist those so classified that have been already listed. Allow for the scientific decision to not list a species based on the determination that such species is irretrievably lost. Include economic analysis in the decision so that costs of heroic efforts are known before the decision is made.

5. Insure that legitimate ongoing activities continue until the listing is completed including the delineation of critical habitat and the recovery plan.

6. Include the public in plan preparation and provide that the agencies may not place more stringent conditions on landowners than they do themselves.

7. Delineate all critical habitat when listing species. (In the salmon listing the ocean was omitted even though most of their lives are spent there. Many scientists believe that's where the major difficulty lies barring their recovery.)

8. Eliminate the provisions allowing citizen lawsuits against private landowners.

9. Enfranchise local elected officials and local citizens to protect endangered species and their habitat through incentives. At the local level the motivation to save a species should supplant the economic threat that now exists when one is found.

10. Eliminate the provisions for "emergency" listings by the Secretaries. In cases where an emergency has be requested it must be shown that the species is not adequately protected elsewhere or no emergency will be granted. Such cases will be dealt with locally, will be incentive based rather than punitive.

11. Require law enforcement actions to come from the local jurisdictions.

Numbers 3 and 5 should eliminate the need for the failed "habitat conservation plans".

Again, thank you, most sincerely,

The Oregon Cattlemen's Association
Mack Birkmaier, President
Sharon Beck, Endangered Species Committee

Enc. An "Environmentalists Anonymous" letter to the editor that is a familiar malady predominantly afflicting urbanites. The good news is more and more are seeking cures..

Environmentalists Anonymous: The Making Of A Peoplist

The more research I reviewed, the more I realized that environmental concerns had been blown way out of proportion — the more I realized that my own senses are a more reliable source of information than the media or the loudest scientists.

LETTER TO ED: John Doe

Hello. My name is John Doe. I am a reformed environmentalist. My sojourn on the other side was not entirely my fault. I grew up in a household where I was allowed to be routinely abused.

My parents allowed contemporary literature to be brought into our home, such as Silent Spring. It reported, as if it was a fact, that DDT was the scourge of the earth.

True, I had never seen a bird sick from DDT. I had never even seen a crumbling egg shell, whether it had been caused by DDT or something else. But I was under the control of adults, like my school teachers, who told me that this was so. So, I believed.

They neglected to tell me that birds in laboratory environments had to be fed huge unrealistic quantities of levels of DDT found in the wild. Neither did they give much significance to the fact that DDT, by controlling the population of mosquitoes, had saved millions of lives by sparing people around the world from malaria. Soon, they said the mosquitoes might become acclimated to DDT.

My folks also abused me by subscribing to Newsweek which told me that Lake Erie was pollution dead for the coming century.

True, I had never been to Lake Erie. And little did I realize that, somehow, Newsweek had forgotten to tell the fish in Lake Erie, which continued to reproduce, grow, and populate the lake. Nevertheless, I believed.

So, based on the information I had, I was an environmentalist concerned that the environment continue to support people.

But then I had a life-changing experience. I became responsible for analyzing the results of environmental R & D. Every place I turned, I saw that many of my counterparts were analyzing data from a most curious perspective. The question they posed of data was not, "What is nature trying to tell us?", but rather, "How can a preconceived notion of environmental apocalypse be teased from these otherwise reassuring data so that the next grant can be justified?"

Despite the bias in the community of analysts and scientists, however, truth often came out (I helped in my small way) and, invariably, when it did, causes for concern were set aside [Ed. note - but the regs were not set aside.] After seeing alleged apocalypses debunked one after another, from acid rain to Alar to dioxin, I perceived a panern.

The more research I reviewed, the more I realized that environmental concerns had been blown way out of proportion — the more I realized that my own senses are a more reliable source of information than the media or the loudest scientists.

The real problems for people are not so subtle that we can experience them only vicariously through the pages of a book, or magazine, or that we need some environmental "expert" telling us what to think. The real problems are there to be seen by all who have eyes.

They are in the inner cities, where the dismal results of the schools and a host of government-subsidized pathologies have created a generation of angry, frustrated people.

They are in the damaged human dignity of backwoods Appalachia.

They take the form of young parents who, across the entire country, struggle against the system itself to raise their kids to be solid citizens who will, in their turn, contribute to society.

At last, I realized that I am not so much an environmentalist as I am a peoplist! The problems we face and the progress we make has to do with meeting the material, social, and spiritual needs of people.

Thank God for the wisdom of our Nation's founders who recognized that a political system which maximizes liberty is the system best suited for addressing our social and material welfare. With centuries of progress, millions have benefited and countless millions more are eager to join in.

And thank you for reminding us of the threat that environmentalism poses to our liberty and welfare. As you noted, throughout history, tyranny found success when it could redefine itself as "virtue." Today oppression - which is the compelling of people to do without, both socially and materially - is being redefined as the "virtue" of environmental conservation.

We must reveal the deception and let everyone know that peoplism, much more than environmentalism, is virtuous.

[Ed. comment - WOW!! John Doe, you have made me a peoplist too!] Source: ENVIRONMENT BETRAYED, Jan 1994 Pg 3

I am a Democrat. I will spend all the money I can. Representative Jean Wagenius speaking to the Minnesota House Environmental and Natural Resources Committee.

Source: The Warren Report, 4/14/94.

Founder's Forum

The Need For Predator Control

By R. A. "Dick" Mader, Founder, Abundant Wildlife Society of North America

I have been a rancher my entire life. The only time I've not lived on a ranch was when I served in World War II.

Now I've studied many things but never medicine. If I was to go to writing and telling doctors that they simply didn't know what they were doing or talking about, most would say I'm balmy or my elevator doesn't go to the top and rightly so!

President Dwight Eisenhower once said that it was easy to be a farm expert when you're one thousand miles from the farm, have never lived on a farm, and your only tool is a pen or pencil!

The recent Campbell County coyote hunt brought these things to mind as the propaganda press quoted letters from people who have never lived on the farm!

At Abundant Wildlife Society of North America, we get information from many sources. Some of the most interesting are from college students and professors. One college girl wrote, "I've studied coyotes in Wyoming and I know that they mainly follow fence rows and eat mice!" Now this is something, we who have lived with coyotes and predators all our lives, never knew! We were told of a lady professor who made a speech on coyotes to a group. Her speech contained this, "There is not one documented case where coyotes ever attacked livestock." Isn't this amazing?

Interesting enough, I've personally counted 43 lambs killed by coyotes in one night back in the 1930's when everyone knew you had to control predators.

I wonder how many turkey hunters know that turkey hunting in northeast Wyoming is all but a thing of the past? Yes, the turkeys, thanks to eagles, coyotes and foxes, are all but finished off. Expect our sorry, incompetent, bureaucratic WY Fish & Game to announce sometime in the next year that they have winter killed! *[Ed. note: The Wyoming Game and Fish have already released one news release stating turkeys and whitetail deer winter killed in the Wyoming Black Hills area.]*

Now, the predators have taken over it all. We fed 149 turkeys at our ranch the winter of 1989-90. This year we had 31. A few years ago, I took a picture of 2 hens that came in with over 25 young. In 1992, not one young turkey came in. In 1993, 2 young turkeys showed up.

See Forum, page 4

Appalachian Mountain Club

Response to the House Committee on Resources Task Force on Private Property Rights June 23, 1995

Andrew J. Falender
Executive Director
Appalachian Mountain Club

On behalf of the Appalachian Mountain Club, I would like to thank the Committee for the opportunity to respond to the June 13 testimony of David W. Guernsey of Kingfield, Maine.

The Appalachian Mountain Club is a non-profit conservation and recreation organization with 65,000 members throughout the Northeast United States. We were founded in 1876, and our earliest activities were in the White Mountains of New Hampshire, where our members built trails and shelters, placed registers on mountaintops, drew panoramas and maps of the region's ranges, and recorded scientific observations.

We are proud of the work we have done over the course of our 119-year history of living and working in the White Mountains, and throughout the Northeast. We welcome constructive and open dialogue with the public, and for that reason we were dismayed that Mr. Guernsey chose to attack our organization in his testimony to the Committee without extending even the basic courtesy of engaging AMC in dialogue first. His testimony consists of unsubstantiated and frequently reckless assaults on AMC's work and reputation.

AMC: A Long History of Stewardship and Advocacy

Contrary to Mr. Guernsey's assertion that our role as an advocate for environmental protection is a modern-day addition to our recreational activities, promoting "the protection, enjoyment and wise use of the mountains, rivers and trails of the Northeast" has been central to our mission from the very beginning. At the turn of the century, when White Mountain forests were being heavily burned and logged, AMC members helped lead the successful effort to provide protection by creating the White Mountain National Forest through the Weeks Act of 1911.

Today, we introduce hundreds of thousands of people each year to the outdoors through our backcountry huts, roadside lodges, visitor centers and camps. We offer hundreds of educational workshops sessions each year on topics such as natural history, outdoor safety and leadership, basic trail maintenance, teen adventure programs, nature camps for young children, canoeing, hiking, cross-country skiing and avalanche safety. Our trails program teaches basic trail maintenance and construction skills, organizes and leads trails crews, and dispatches teams of volunteers to public lands across the country to perform trail work. AMC conducts scientific research on endangered alpine plants and mountain air quality, and engages in search and rescue missions in the mountains.

We hope the Committee will be curious about the fact that in his extensive testimony Mr. Guernsey failed to find a single redeeming quality about our organization. I am enclosing a copy of our 1994 Annual Report to give the Committee a broader perspective of our organization and its members.

AMC-U.S. Forest Service Partnership

AMC over the years has developed extensive partnerships with the U.S. Forest Service (USFS), National Park Service (NPS), state natural resource agencies such as the Massachusetts Department of Environmental Management and New York Department of Environmental Protection, businesses and corporations such as L.L. Bean and Eastern Mountain Sports and other nonprofits such as land trusts. Of all those partnerships, our work with the USFS is the oldest and, in many ways, most valued.

The Appalachian Mountain Club has worked in partnership with the USFS since 1911 (with formal permits since 1939) to provide backcountry management, environmental education, public information and conservation in the White Mountain National Forest (WMNF). The result is that this public-private partnership brings services and programs to the public that taxpayer-funded government programs alone would be unable to provide.

Under permits with the USFS, AMC operates seven full-service backcountry huts (an eighth hut, Lonesome Lake, is in Franconia Notch State Park), Pinkham Notch Visitor Center, Joe Dodge Lodge, the Camp Dodge Volunteer Center and a series of backcountry shelters in the White Mountains. The AMC's huts are open to the public and are staffed with professionals trained to conduct search and rescue operations and provide information on everything from hiking routes, weather and safety to the local ecology and geology. At Pinkham Notch, the AMC provides public services such as search and rescue for lost and injured hikers, volunteer training and management, natural history school and day programs, a hiker van shuttle, public meeting space, extended information hours, meals and lodging and public parking and rest-room facilities.

In 1994, AMC's accomplishments in the White Mountains included:

- More than 1,500 middle-school children attended AMC's Mountain Classroom and spent two to four days at Pinkham Notch and the huts studying field sciences and natural history.
- More than 1,300 children became Junior Naturalists through our fun and educational program for children 6 to 12.
- Approximately 500,000 National Forest visitors received trail, safety and other information and services from the AMC's facilities.
- Some 6,000 visitors attended evening lectures through the year while more than 1,700 participated in workshops ranging in length from half a day to two weeks.
- Volunteers and staff, trained in search and rescue technique, coordinated or assisted in 64 search and rescue missions in the White Mountains.
- Volunteers and staff spent about 30,000 hours building and maintaining more than 300 miles of trails in the WMNF, including 110 miles of the Apalachian Trail.
- Research on the forest included assessing hikers' health, monitoring air quality and preserving endangered alpine species.

AMC Invests More Into Services on WMNF Than it Generates in Revenue

Mr. Guernsey makes inaccurate statements about the financial performance of these operations. Unlike for-profit permitees on national forests, such as ski areas and timber harvesters, AMC, as a non-profit, re-invests revenues earned within the WMNF back into our operations and programs in the forest. In fact, AMC invests far more into the WMNF than it earns on this public forest.

In 1994, the Pinkham Notch Visitor Center, the eight huts, and all other AMC activities in the White Mountains generated $3,438,000 in revenues. In the same year, the AMC spent $4,203,000 to run and support those White Mountain operations and programs -- services for the national forest and its visitors that did not require one cent of taxpayers' money. Thus, our activities in the White Mountains in 1994 resulted in a net loss of $765,000. This loss was financed from membership dues, contributions, endowment income, grants and other revenues from AMC activities in other parts of the Northeast.

If we were to include in this accounting a conservative estimate of the value of efforts by AMC volunteers in the WMNF (60,000 hours in 1994 at the minimum wage of $5.18/hour), who, among other contributions, help build and maintain trails for the public to use, then at least another $310,000 would be added to this overall AMC investment. This brings the total to more than $1 million of "subsidy" to the WMNF and its visitors in 1994.

We believe that this financial information demonstrates AMC's longterm commitment to public service and stewardship, a commitment which reflects our role as a non-profit permitee on public land. AMC is audited annually by the independent public accounting firm of Coopers & Lybrand and we have made our certified financial statement as well as detailed internal records available to the public.

AMC Advocates for Resources to Adequately Manage WMNF

Mr. Guernsey alluded to AMC's lobbying for funding for forest needs. Because we work to encourage responsible stewardship of the WMNF, we do advocate, fully within the limits placed upon us as a 501(c)3 tax-exempt organization, for funding and other resources to adequately manage and maintain the forest. We believe the information we bring to Congress helps our representatives understand the interests of our members.

Northern Forest Lands Initiative: Citizens Call for Land Protection

During the spring of 1994, more than 2,000 citizens came to "listening sessions" Council throughout New England and New York on the 26-million acre Northern Forest sponsored by the Congressionally-mandated Northern Forest Lands. The members of the Council were carefully chosen by the Governors of the four Northern Forest states to represent all interests in the region, including the forest products industry, environmentalists, property rights activists, local interests and government. AMC was but one of many participants, such as the James River Corporation and the New Hampshire Land Owners Alliance.

This exciting process of citizen involvement in guiding public action revealed that *development* (subdivision of forest land, degradation of shorelines and ridge tops, scattered vacation homes, loss of timber base and loss of species and habitat), *poor forest practices* (clear-cutting, herbicide use, highgrading, excessive logging road construction) and *economic decline* (job loss, few opportunities for future generations, paper industry dominating local economy, and raw log exports) were foremost among citizen concerns. In all, 77 percent of the speakers said we must take strong action to conserve the Northern Forest.

As noted in *A Forest at Risk*, featuring highlights from 20 listening sessions, what emerged was a citizen vision "of people working on the land in ways that preserve opportunities for their children and grandchildren -- where respect for the environment reflects the understanding that a healthy Northern Forest is the foundation of a healthy Northern Forest economy." The key components of that vision included:

- Acquiring public land.
- Improving forest practices.
- Diversifying and strengthening local economies.
- Changing tax policies to support land stewardship.
- Guiding development toward existing communities.
- Working collaboratively as a region.

Protection of the Northern Forest will not happen without the commitment and participation of the communities which are part of these special lands, and it is in that

spirit that AMC has pursued working with those citizens who spoke so eloquently at the listening sessions realize their vision.

Hydro Dam Relicensing: Assessing a Public Resource

AMC has been active in the relicensing of a number of hydroelectric dams on rivers in northern New England, and Mr. Guernsey makes reference to two of those cases: the Androscoggin River and the Penobscot River. The relicensing process is an opportunity, set out by Federal law to fully maximize and protect the public benefits of these public resources, to find an equitable balance between using rivers to provide renewable energy sources while protecting instream flow values (fisheries, recreation and aquatic biodiversity), watershed protection and water quality.

This is important because as a public resource, healthy rivers contribute to the quality of life of people who live near them and help diversify the local economy through increased outdoor recreation and tourism opportunities. The Federal Power Act of the 1920s set the terms for hydropower development: 1) The private sector would develop hydropower, and be awarded 30-50 year licenses for individual dams; 2) with a long-term license, the dam owner will have amortized his cost, while making a profit from the public resource; 3) the public would own the dams at licenses' end, and the river's uses would be reconsidered at that point.

During much of this century, rivers were open sewers due to pollution, and consequently public interest in rivers was low. After the Clean Water Act passed in the 1970s, rivers like the Androscoggin emerged again as a worthwhile public resource. In 1986, with increased public interest in the "cleaner" rivers, the Electric Consumer Protection Act (ECPA) was enacted, requiring *equal* consideration and mitigation/enhancement for energy conservation, fish and wildlife, recreation, navigation in the licensing/relicensing of hydropower.

In the case of the dams along the Androscoggin River owned by James River Company and Public Service Co. of New Hampshire, we saw the possibility of a win-win outcome. The chance exists to ensure the balance between power generation (James River's dams will produce $620 million in electricity over 30 years) and the other public values important to both the environment and the local economy; provide better protection for the river's ecosystem without significant economic hardship to the James River Corporation; and achieve a positive settlement which put dollars into environmental mitigation rather than lawyers and court costs.

When our critics seemed to be succeeding in making AMC the issue rather than ensuring a healthy, open public debate on the environmental and economic issues, and James River Corp. declined to participate in negotiations, we changed our approach. We're focusing our protection efforts on this stretch of the Androscoggin River through local communities rather than continuing to pursue the case through a federal agency process. We're as committed as ever to protecting the river and improving recreational access, and we remain disappointed with the FERC decision on these licenses. But given

our strong connections to the local communities in the Androscoggin Valley, we feel we'll be more effective working directly with citizens in the community who share our goals.

The experience on the Upper Androscoggin is in dramatic contrast to the settlement agreement which will likely lead to the relicensing of dams operated by New England Electric System (NEES) along Deerfield River which flows through Vermont and Massachusetts. Thanks to the far-sightedness of NEES, this precedent-setting agreement establishes a new model for environmental protection and collaborative resolution. By working together, public agencies, environmental organizations and NEES reached a negotiated settlement, saving time and legal fees and ensuring protection of this public resource for future generations. NEES will provide mitigation for the environmental impact of its dams through substantial recreation or fishery improvements and land protection. The environmental groups, including AMC, and agencies will support a new, 40-year FERC license for NEES' eight hydropower facilities.

Loon Mountain Ski Area

AMC spent many years working on the Loon Mountain expansion project, as Mr. Guernsey notes, and raised concerns about such issues as the impact of water withdrawal from local rivers, increased traffic and the need for a Forest-wide analysis of all ski area expansion in the WMNF.

What he doesn't say is that AMC recognized that Loon and the USFS conducted an Environmental Impact Statement with extensive public input and a highly participatory Joint Review Process. We are on record as stating that even though we did not have all our concerns satisfied, we felt that a reasonable process had been followed and, consequently, AMC is not in opposition to the project. We look forward to continuing to work with the state of New Hampshire, USFS and Loon to bring to resolution, as quickly as possible, the concerns about traffic and water quality which may result from the expansion of Loon Mountain's operations as well as other potential ski area expansions in the WMNF.

Foundation Support Helps Fund AMC Work

As with many non-profit and for-profit organizations, AMC relies on support from foundations and corporations to supplement our ability to finance operations and programs through membership dues, program fees and lodging and guidebook sales. We are proud of our ability to attract support from a range of diverse sources; a complete list of those supporters in 1994 is printed in the enclosed Annual Report.

AMC Hut Permit Renewal: An Opportunity to Improve a Strong Partnership

The 30-year permit under which AMC operates our facilities on the WMNF expires in October of this year, and a permit renewal process is underway. We think the permit renewal process provides a valuable opportunity for the AMC to listen and share information with people in many communities and with the users of the WMNF.

Mr. Guernsey indicates that some northern New Hampshire residents have not been happy with our conservation activities, and therefore they have become critics of our permit renewal. It's important to understand how our non-profit constitution influences our approach to managing the facilities under this permit, perhaps making us different than a for-profit concessionaire on public land. We are not a hotel chain and we do not offer backcountry accomodations merely to provide a room with a view. Rather, consistent with our long history, we are a recreation and conservation organization, and that means that we have an obligation to care for the White Mountains. But we also accept that we have not always succeeded in communicating with our neighbors about the reasons supporting our conservation work.

As part of trying to do a better job as a member of this community, we are pursuing a course which includes:

- Informal talks with Berlin and Gorham officials, including local selectmen, and James River Corp. executives, to determine what type of constructive relationship might help us advance common interests in shore line protection, water quality, energy efficiency, recreational access and river flows.

- Through a newly-launched Androscoggin Valley Community Conservation Project, working with local communities to develop collaborative strategies for protecting the natural resources upon which these communities rely.

Mountain Classroom: Teaching Students About the Outdoors

In his discussion of the permit renewal process, Mr. Guernsey refers specifically to the participation of the Deerfield Community School sixth grade in AMC's Mountain Classroom Program this past winter, and sees inappropriate collusion at work.

We are very proud of our Mountain Classroom Program, which this past year brought 1,500 Middle School students to the WMNF for multiple overnight visits. Our educators work with each school teacher to offer environmental education curricula in forest ecology, stream study, geology or weather forecasting. We believe our project is a model program which has received rave reviews from students, parents, teachers and administrators.

The Deerfield sixth grade did indeed receive a reduced rate for its three-day Mountain Classroom program in recognition of the trail work that these students have done for the Deerfield (NH) Conservation Commission and in an effort to allow all the children to participate regardless of their ability to pay. This is consistent with a number of scholarship and discount programs that AMC makes available to young people and those of low-income. (The students paid the same rate of $36 per student for three days and two nights of lodging and meals that all school groups are charged, but the education expense of $34 per student was waived.) The experience included animal tracking,

winter ecology, a showshoe day hike, snowshelter building, storytelling and a Mount Washington trivia quiz show based on a field guide that the students put together.

The letter the Committee has received from one of the sixth graders reflects nothing more than a youthful exuberance that connects our ability to offer such a program with our continuing involvement in the WMNF.

In conclusion, I want to again thank the Committee for providing AMC with a fair opportunity to respond. I hope any member of the Committee who has any questions, concerns or comments will contact me directly. Thank you.

# # #

P. O. Box 552
Kingfield, ME 04947
207-265-2049
June 20, 1995

The Honorable Richard W. Pombo
1519 Longworth House Office Building
Washington, DC 20515

Dear Congressman Pombo:

Attached please find the complete memorandum of the 1992 meeting between the U. S. Forest Service and the Appalachian Mountain Club which you requested during the June 13 hearing of the Task Force on Property Rights.

The first two pages are a cover letter from the AMC's Executive Director suggesting that a simplified environmental analysis be used for the AMC's repermitting process. The AMC, of course, has been none too shy about demanding others spend millions on a complete Environmental Impact Statement no matter what. The Executive Director goes even further, suggesting that the Forest Service bear some cost for the environmental work even though the AMC gets the permit for free. I would note that the AMC permit expires on October 29, yet the USFS has yet to release information on the process used to consider repermitting.

The minutes of the meeting proper start on page 3, which is the page attached to my testimony and which contains the section on AMC lobbying "as directed by USFS staff, for whom lobbying is prohibited."

The last topic on the bottom of page 5, extending to the top of page 6, discusses the "partnership" of the USFS with the Northern Forest Alliance (a consortium of 24 environmental groups) in the areas of land acquisition and "to leverage AMC's and USFS approaches to improve an already strong land protection strategy." Note that the local communities and their constituent landowners whose land is being thus "protected" are denied any say in the matter.

You asked for any information I had regarding grants from the USFS to the AMC. I pass on the following, rather sophisticated scheme as I understand it:

In 1990 the USFS paid $40,000 for a map display of the White Mountain National Forest, a striking piece of work, sure to draw many tourists. The display was placed in the AMC's Pinkham Notch hut, which is on National Forest land. The AMC then constructed retail space around the display, selling a range of goods going far beyond the "minor commissary items" allowed in its permit. The AMC raked off an additional $100,000 in the first year, yet paid nothing to the Forest Service. Rather than question the situation, the Forest Service moved a new booth into the building, further contributing to the tourist traffic.

This is but one further example in a situation which seems increasingly ripe with corruption. If you require further information, please feel free to call me. Alternatively, you might call Senator Fred King, 603-246-3321 or Mr. Mike Waddell, who worked for the AMC for a number of years, at 603-466-5149.

Once again I want to thank you for your support of property owners in the hearings. It really means a lot to know someone in government finally cares.

Very truly yours,

David W. Guernsey

APPALACHIAN MOUNTAIN CLUB
FIVE JOY STREET BOSTON, MASSACHUSETTS 02108 617-523 0636

June 19, 1992

Rick Cables
Supervisor
White Mountain National Forest
Federal Building
719 Main Street, Box 638
Laconia, NH 03247

Dear Rick:

Here is the packet of information we promised resulting from our meeting on May 14. The minutes of the meeting cover the breadth and depth of issues discussed but, of greater importance, I think they also reflect the openness of the discussion and our mutual commitment to this joint mission. I hope you are as pleased as I am with the substance of this status report on our partnership.

As promised, I have given more thought to the unresolved strategic issues for the repermitting process. Here are my recommendations:

1. In order to fulfill the roles as described in the enclosed "Facility Roles" paper, Camp Dodge, Hermit Lake and the shelters should be on a 30 or 40 year permit, with cost-sharing provisions similar to those we have discussed for the huts and Pinkham. For Camp Dodge, a shorter time-line would dampen our interest in the types of investments needed to create a volunteer backcountry training center as we have envisioned. For Hermit Lake and the shelters, the shorter term puts all of our resources into permit renewal preparation rather than into long term programmatic improvements. In each case, the public's best interest will be better served with longer term agreements.

2. I believe that our organizations need to prepare for the possibility that an EIS may be necessary, but I also believe firmly that the environmental issues surrounding the repermitting of these existing facilities can be addressed adequately through an EA. I recommend that Mike Torrey and other key AMC staff people meet with Dick Pierce and Steve Fay and other appropriate USFS staff to analyze the environmental

issues that a NEPA analysis will need to address and to develop a strategy to undertake this analysis. We should be using the strength of our partnership to fashion a plan that achieves our joint mission, as described in the Memorandum of Understanding. Again, I believe that a thorough EA can do an excellent job of examining the environmental issues of the repermitting. Whether it can or can't, I remain solidly committed to fully explaining our goals, objectives and operations to the public, completely answering any and all questions that are raised.

3. We feel it would be very much to our mutual advantage to separate the permit renewal process from the forest plan review. The specific pros and cons are listed in the attached description of our meeting. The proposed deadline for completing the process is the end of 1994, which would give us a year of flexibility in the event we encounter delays.

4. I feel very strongly that the costs for completing the external analysis should be equally shared. I said during the meeting that if we are serious about seeing this as a partnership, than we must share the risks and costs as well as the rewards. Every goal and objective toward which we work in this partnership is for the public's benefit and every dollar of our revenues is circulated back for the public good.

If you are interested and your schedule allows it, I will stop by on my next trip to or from Pinkham. I'll ask Martha to give Lillian a call. After we speak, I'll have Mike Torrey keep in touch with Buzz to work out the details on the timeline and the tasks for the whole process.

I hope to see you soon.

Sincerely,

Andrew J. Falender
Executive Director

7/1569.doc

Summary of Annual Meeting of USFS/AMC
Laconia, NH. May 14, 1992

Attending: USFS; Cables, Myers, Therrien, Durham, Hockinson.
AMC: Falender, Blackmer, Torrey, Cunha, Casagrande

The meeting focused on two groups of agenda topics. First, we reviewed progress since our meeting last year, including identifying areas where we were succeeding in our partnership and areas that need more work, emphasis or discussion. The second group addressed the issues and needs surrounding repermitting of AMC facilities on the Forest.

A paper on partnerships served as the centering document for the tenor of the meeting. The paper describes ideal partnering behavior. We tried to evaluate, whenever possible, whether behavior in each particular situation was the type of partnering for which we are striving.

Note: The list below includes both items that were seen as examples of success and concerns. "Concerns" will be preceded by **. "Successes" are unmarked.

Review of Progress and Areas of Concern

Corporate Relationship

**Lobbying-More an opportunity to exhibit the strength of the partnership than a negative concern, we need to be more coordinated in our interests so that AMC's high regard in Washington can be used to lobby for funding for Forest needs as identified by USFS staff, for whom lobbying is prohibited.

**USFS Presence-We need to continue the high priority emphasis placed on Forest recognition in all aspects of AMC work done on the Forest, including marketing pieces, on-site signing and inter-agency work relationships .

**Growth Philosophy-A perception exists that we may be at cross purposes when AMC is perceived as striving to increase use when the USFS may see the need to limit certain types of use or areas of use. We need to have a common understanding of our joint approach to managing growth.

Backcountry Management

Search and Rescue-The Search and Rescue Working Group has successfully improved the direct involvement of USFS in SAR beyond the Cutler River drainage area. AMC has been a key player in making this group work, and Forest recognition is occurring here on a regular basis.

Mountain Leadership School-MLS has continued to train group leaders on the Forest. It seems that this program could be expanded upon to provide more of an overall training program for a wider market of outfitter guides.

Interpretive Plan-Nearly complete, we should see more on-the-ground results from this plan on the Forest in general, and for the purpose of this meeting, for AMC operations. The close working relationship with Walter Graff has been especially successful, with the addition of Rob Burbank expected to be another step in the right direction.

**Pinkham Notch Opportunity Area-The USFS recognizes that it has not yet completed this important OA, and that AMC facility staff have been inadequately involved.

**Merchandising-There is at least a perception problem with the types of merchandise and the appropriateness of increased retail sales by AMC. A complaint has been received by a local retailer questioning AMC's activities, and USFS District level employees have lodged similar complaints, although no specific concerns have been communicated to anyone within AMC. In addition, we have not yet agreed on a clear set of guidelines that assist AMC and USFS in deciding where the lines of acceptable merchandising are drawn. One reason cited is the longstanding vacancy at Andro that is now about to be filled. AMC will provide a draft merchandising policy (attached) that will serve as a basis for addressing both the internal and external perception issues, as well as begin to define and draw out the specifics from both groups.

**District Recognition-There is a general concern that not enough recognition is given to the role of the Districts in managing the AMC permits and the forest.

**Tuckerman Initiative-Clearly, the USFS was taken by surprise by AMC's membership outreach campaign tied to Tuckerman. The perceptions created by this effort also influence perceptions on merchandising, growth and purpose of AMC's work on the forest. In it's most basic form, this is an example of the need for a strong relationship with the District, again hampered by the vacancy in the District Ranger position. In it's more complex form, it's an example of a need for both organizations to understand each other's different strategies for reaching current users of the resource and an opportunity to see a whole effort become more effective as a result.

Environmental Education

School Visits-By the end of 1992, we estimate over 2,500 overnights by schoolchildren will have occurred on the Forest, the majority of which have been subsidized by revenues from other AMC operations, specifically overnight charges and merchandising.

Facilities Emphasis-We continue to strive to overlay an environmental education ethic on all of AMC's facilities on the Forest (as well as those outside of it). Examples of this effort:

Employee Orientation-Public Affairs staff from the forest are very significantly involved in the more comprehensive orientation program for AMC front-line staff. AMC will arrange visits to District offices to get a feel for District operations.

Naturalists-Forest personnel are trying to work into busy schedules involvement in the AMC Naturalist program.

Naturalist Training-Forest personnel are participating in AMC's training program for volunteer naturalists.

Conferences and Workshops-Forest personnel have been jointly sponsored and participated in workshops and conferences held at AMC facilities such as the National Interpreters Association and the Interpretive Training Institute.

Cost Share at PNVC-The Washburn Map and computer link with the Obs. for weather are two of many improvements that have occurred as a result of this agreement.

Junior Naturalist Program-Nearly 500 children participated in this new program in 1991, with higher goals for 1992. A new workbook and increased recognition for the participants are key additions to the plan this year.

Recycling, composting, solar-Working with district offices on design and approvals of these systems has yielded exemplary systems for both practical applications for the backcountry and to demonstrate conservation opportunities for visitors.

Public Information

Integrated Information-Close working coordination between AMC and USFS is going well and will continue to be emphasized.

Enhanced Information Flow

New Alliances

More AMC Resources-AMC has increased funding in this area, including expanding the number of staff available to allow staffing behind the trails information counter during the busy periods during the summer, and the hiring of a full-time Public Information Coordinator (Rob Burbank).

**USFS Resources-The Forest has not been able to acquire the resources to allow allocating District personnel to Pinkham Notch as planned.

Tuckerman Initiative-AMC has been able to contact a significantly higher number of Tuckerman users with the outreach campaign. Over 3,000 information cards have been distributed. The barbecues have helped slow people down long enough to allow some active education to take place. The volume of people is, however, too large to allow the current mix of resources to contact enough of them.

Note: The following topics were discussed in less detail.

Land Use/Conservation-In general, we were pleased with the partnership results of five examples: Wildcat Commission, Northern Forest Alliance, Land/Water Withdrawal, Glen House ("perhaps the best example of how we

should be working in the future"), and acquisition in general. There was little discussion on these topics. However,

**Land Protection-Better described as an area needing more attention than a negative concern, USFS staff see an opportunity to leverage AMC's and USFS approaches to improve an already strong land protection strategy.

**Who Talks Policy-USFS staff cited "water withdrawal science" versus "water withdrawal policy" as an example of a need to understand who within AMC makes and represents policy statements.

Research-Again, we cited examples that were working well (water withdrawal, Alpine Zone, and air quality) and focused on shortcomings.

**One Right Answer-Cited as a problem for both staffs, we recognized the tendency of research scientists to try to reduce problems to "one right answer", when there may be a non-science approach to consider as well.

**Recognition/Personal Relationship-This area overlaps into the trails area, and revolves around one particular project with wide reaching implications. Clearly, we have significant personality conflicts between members of our staffs, as well as between staff and volunteers who are of great value to the Forest.

Trails

White Mountain Trails Day-This event is continuing to grow in scope and numbers of involved volunteers.

350 Miles and AT management- It always helps to remind ourselves that a large volume of trail is cared for as a result of the working partnership.

Trail Head Protection-Recent increased efforts are beginning to focus this work and gaining in potential.

**Backcountry Skills Center-We have not yet articulated the vision for the Camp Dodge based program that has such large potential for the Forest.

**Appreciation of Volunteers-See "Recognition/Personal Relationship" above. The Franconia Ridge Project was cited as an example of a project where behavior is damaging the valuable contribution of volunteers and the AMC/USFS partnership.

Facility Permit Issues

Camp Dodge, Hermit Lake, Shelters

Role of Facility-In order to resolve the type of permit or agreement and to define the partnership between AMC and the USFS, we need to determine the role of each facility or facility group. AMC will take the lead on proposing a role for the above.

Type of Agreement-Once we have agreed on the role of the facility, we can decide which of the following types of agreement are appropriate to legalize the arrangement: 1) Permit, 2) Coop Agreement, 3) Memo of Understanding, 4) Challenge Cost Share

Huts and Pinkham

Role of Facility-See the above item of the same name. Once defined, we will have the basis for moving ahead. AMC will take the lead.

Timeline Strategy-The major issue centers on whether the best overall strategy is to renew the permit before the next Forest Plan or as a part of the Forest Plan. There are numerous positives and negatives with each choice. The outcome of our discussion is a resolve to study further the pros and cons and make a decision within the near term. The role of the facilities, as well as the AMC's role in the larger issue of the Forest plan, are critical pieces that need to be better understood before a decision can be made on this strategy. We seemed to be leaning toward completing the process before the Forest Plan for the following reasons:

1. AMC will be able to be a non-biased participant in the Forest Plan if permit renewal is out of the way.

2. The Forest Plan process will be underway concurrent with AMC permit renewal process, and the two can still be coordinated and conducted with the Plan in mind.

3. The permit can be cancelled at any time by the USFS.

4. It is unknown if there is a legal mechanism to allow a temporary permit to be issued between the time the current permit expires (10/29/95) and the time a new Forest Plan would be final (appeals process included).

5. AMC is confident that it can withstand the NEPA process and come out of it successfully.

6. Delay will be a significant detriment to continued capital improvements, program development and raising funds to support them.

A major downside item is that, done outside of the Forest Plan process, the AMC will stand alone and thus may attract more public scrutiny than if AMC's permits were just one of scores of issues within a larger Forest Plan context.

Term-The AMC continues to seek the longest possible term available under law. The current permit runs 30 years, while ski area permits run 40 years.

Costs-AMC has a major concern with the message that would be sent if AMC were to pay 100% of the cost of third party involvement. Even as a project of the partnership, perhaps we should begin assuming a 50-50 cost sharing, and evaluate our approach to costs with this starting point. AMC feels strongly that AMC is not just like Loon Mountain. Every goal and objective toward which AMC works is for the public's benefit and every dollar AMC generates is circulated back into these goals and objectives. For these reasons, AMC strongly believes that the arrangements cannot be assumed to be the same for AMC's permits as for for-profit ski area permits.

Public Involvement Strategy-Together, we must develop a public involvement strategy for this process.

The Appalachian Mountain Club will operate a variety of facilities in the White Mountain National Forest which will serve as integrated activity centers for conservation, education and recreation, offering the public a mix of recreational access and information, accommodations and education. All facilities will be models of backcountry management and protection and will provide for on-site implementation of US Forest Service and AMC conservation, information and education programs and projects. A spectrum of lodging and meals options will be offered in this system, from open shelters and tent sites with no meal options to full-service huts and lodges.

Pinkham Notch Visitor Center

The facilities at the Pinkham Notch Visitor Center will be developed and maintained to achieve three primary objectives:

1. To provide visitors to the White Mountains with a variety of informational, educational and recreational services that will enable them to better achieve a safe and enjoyable backcountry experience;

2. To implement a comprehensive education and outreach program that promotes and enhances the appreciation, understanding and wise use of our natural resources.

3. To provide a base of operations for AMC Facilities, Research, Trails, Education and Conservation Programs and support functions.

Hut System

Each of AMC's 8 backcountry Huts will serve as an integrated activity center for conservation, education and recreation, providing visitors to the White Mountains with a variety of informational, educational and recreational services that will enable them to better achieve a safe and enjoyable backcountry experience. From these locations, AMC will implement a comprehensive education and outreach program that promotes and enhances the appreciation, understanding and wise use of our natural resources. Exemplary waste, water and energy systems will be developed and installed to minimize the impact of backcountry travelers on these delicate sites, becoming a critical part of the overall education and conservation mission of the AMC. The huts will maintain maximum availability to the general public. A mix

of self-service and full-service lodging options with multi-tiered rate structures will be seasonally available to allow people of various economic means to experience these natural areas.

Hermit Lake Shelter Area

Hermit Lake Shelter Area will serve as an integrated activity center for conservation, education and recreation, providing visitors to Tuckerman Ravine with a variety of informational, educational and recreational services that will enable them to better achieve a safe and enjoyable backcountry experience. From these locations, AMC will implement a comprehensive education and outreach program that promotes and enhances the appreciation, understanding and wise use of our natural resources. Exemplary waste, water and energy systems will be developed and installed to minimize the impact of backcountry travelers on these delicate sites, becoming a critical part of the overall education and conservation mission of the AMC. Low-cost shelter-type lodging or tenting on platforms will be the only overnight options. No food service will be provided.

Shelters

Shelters will serve as integrated activity centers for conservation, education and recreation, providing visitors with informational, educational and recreational services that will enable them to better achieve a safe and enjoyable backcountry experience. From these locations, AMC will implement a comprehensive education and outreach program that promotes and enhances the appreciation, understanding and wise use of our natural resources. Exemplary waste, water and energy systems will be developed and installed to minimize the impact of backcountry travelers on these delicate sites, becoming a critical part of the overall education and conservation mission of the AMC. Low-cost shelter-type lodging or tenting on platforms will be the only overnight options. No food service will be provided.

Camp Dodge

Camp Dodge will continue to serve as the base for AMC and Forest Service seasonal volunteer trail programs and as a center for trail building and maintenance and other backcountry skills training. It will provide simple classroom and workshop space, a base of operations for volunteer trails programs and basic meals and lodging for trails volunteers and leaders. It may also provide lodging for USFS and AMC seasonal staff.

STATEMENT OF

the

RAILS-TO-TRAILS CONSERVANCY

Submitted by

MARIANNE W. FOWLER
Government Affairs Manager

to the

House Resources Committee
Private Property Rights Task Force

June 27, 1995

The Rails-to-Trails Conservancy (RTC) thanks the U.S. Congress' House Resources Committee Private Property Rights Task Force for the opportunity to rebut testimony delivered by Mr. Richard Welsh of the National Association of Reversionary Property Owners (NARPO) at a June 13, 1995 presentation of witnesses. We regret that since rail-trails were a central topic of that hearing and RTC is the national leader of the rail-trail movement we were not invited to testify publicly. Any explanation you might provide for the reasons for our omission would be appreciated.

The Rails-to-Trails Conservancy is a national non-profit conservation organization founded in 1985 for the purpose of identifying, preserving and converting abandoned rail-corridors into a nation-wide network of public trails -- to be held in the nation's infrastructure of rail corridors until such time as they might once more be needed for rail service. We were organized in direct response to the call for help in protecting rail corridors that arose from local communities after Congressional deregulation of the rail industry in the early 1980's and the resultant abandonment of thousands of miles of once active corridor. We are now an organization of 70,000 members who have helped build 700 rail-trails totaling over 7,000 miles of protected corridor.

The U.S. Congress has been an invaluable partner in the preservation of rail corridors. In 1983, recognizing the staggering loss of right-of-way mileage, it enacted section 8(d) of the National Trails System Act. This provision has become popularly known as the "rail-banking" statute and it is this program that Mr. Welch devoted much of his testimony to attacking.

Mr. Welch is correct in saying that he has fought unsuccessfully for over ten years through 30 legal cases to destroy railbanking. Although he continues to contend that railbanking is an illegal taking under the 5th amendment, the failure of NARPO to successfully challenge railbanking in court is a strong indication that the courts do <u>not</u> feel that any constitutional rights are affected when corridors are railbanked. Certainly it is this record of collective judicial wisdom that Congress should look to in reviewing railbanking, not the NARPO testimony. Appendix 1 of this document is RTC's analysis of the courts' interpretations on this issue. We are prepared to let the legal record speak for itself; it strongly supports RTC's position that railbanking is <u>not</u> a taking under the 5th amendment to the Constitution.

1400 [illegible]
- Suite 300
Washington, DC 20036
[illegible]
[illegible]

Mr. Welch is dangerously incorrect in his assertions about the financial exchanges in both the Burlington Northern rail corridor acquisition in Washington state and the Katy Trail transaction in Missouri. NARPO's figures entered into testimony before the U.S. Congress are simply wrong. In fact, RTC bought five corridors, including tracks, ties and ballast, from Burlington Northern for $3,352,000. RTC transferred these corridors to public agencies at the following prices:

Sedro Wooley to Concrete (*Skagit County*):	$ 98,000
Arlington to Darrington (*Snohomish County*):	$550,000
Yelm to Tenino (*Thurston County*):	$200,000
Chehalis to South Bend (*Lewis & Pacific*):	$720,000
Lyle to Goldendale (*Klickitat County*):	donation

A total of $1,560,000 in public funds was expended, not the $4.5 million Mr. Welch claims. Of that amount, only $400,000 was financed with the state's allocation under the Intermodal Surface Transportation Efficiency Act (ISTEA), again, not the $1 million proclaimed by Mr. Welch. RTC's modest profit, $148,465.82 (before internal expenses), came through the resale of the salvage. No public money was involved. Private money from a private salvage company purchased RTC's interest in the tracks, ties and other salvageables.

The sale price from RTC to the state of Washington and its local governments was well below the appraised value in every circumstance (the average was about 50% of appraised value). Indeed, state and local agencies are prohibited from paying more than appraised value so it is not possible for RTC to bid up the price artificially for its benefit. In addition, RTC made a $50,000 grant to the state of Washington with the Klickitat corridor since the state had no money immediately available with which to begin development. In every instance, the public agency acquiring a corridor in this transaction did so at a huge bargain. Just ask them.

The 200 mile long Katy Trail in Missouri, which crosses the state in tandem with its legendary river, was a donation from Ted Jones, a private philanthropist. Mr. Jones and his family also donated $2 million for the development of the trail. Of course Missouri used some of its flood relief money for restoration of this trail. It is a key transportation link among many of the communities it serves and has become an enormous economic benefit to them. Perhaps Mr. Welch should direct his objections to how Missouri restored its state following the Great Midwestern Flood to Senators Bond and Ashcroft, both strong supporters of the Katy.

Mr. Welch's third point of testimony, again a transaction in the state of Washington in which he was apparently personally involved, has nothing to do with the railbanking statute and is thus not germane to the topic of this rebuttal.

The Rails-to-Trails Conservancy remains committed to its mission of enhancing America's communities and countrysides by converting thousands of miles of abandoned rail corridors, and connecting open space into a nationwide network of public trails. The railbanking provisions of the National Trails System Act are a key tool in accomplishing this mission and we will fight to keep them intact so that we can meet the challenge of preserving the 10,000 more miles of rail line projected for abandonment before the end of the century.

If the Task Force doubts the source of our inspiration and loyalty, we would refer you to the attached letters (Appendix 2) addressed to Congress from rail-trail users across the country. These men, women and children are constituents we share.

Thank you.

[The attachments were placed in the hearing record files of the committee.]

January 3, 1994

Mr. Evan Zantow
355 W. Franklin Street
West Salem, WI 54669

Dear Mr. Zantow:

I appreciate your interest in the concerns of Anderson-Tully Company as they pertain to the study being conducted by the Mississippi River Corridor Study Commission. Our company has been associated with the Mississippi River and its resources for over 100 years, and it has been with much interest that we have followed the work of the Study Commission. To say we have much at stake when considering the resources of the region is an understatement.

Our foremost concern with any study is the impact of the study recommendations and subsequent legislation upon private property rights and the possible erosion of values of the landowner. Our forests are among the most productive in our nation in economic and ecological values. We make it our business to know these values, and have developed a long-term plan to enhance and protect their productivity. Over the years, we have seen bureaucratic initiatives with a goal of regulating the use of our forests. We are very much concerned that the Mississippi River Corridor Study Commission recommendations may eventually result in similar attempts to regulate the use of company properties, or restrict management practices so as to limit the economic and ecological values of our forests.

From where do our concerns arise? Your report! We are concerned that the National Heritage designation may allow the National Park Service more involvement in the Valley. They appear to have little regard for private property rights. Recently, the National Landmarks Program was suspended when the Inspector General found 2,800 cases where property rights of private landowners had been infringed upon.[1] The Study's recommendation to nominate properties for inclusion to the National Registry of Historic Places may subject owners within the designated Heritage Corridor to similar infringements.

The recommendation of the Commission to develop long-distance trails would impact company forests. This would result in a change in land use from the production of forest products. Access to and supervision of the trails would have impacts on the designated and adjacent properties. Public access presents liability and safety issues, particularly when hunting season and harvest activities are progressing.

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[1]Congressman Charles Taylor (RNC)

ANDERSON-TULLY COMPANY
P.O. BOX 28
MEMPHIS, TN 38101
901 576-1400
FAX 901 526-8842

"Coordination between species management programs and river valley uses needs to be improved."[2] We manage 42 different commercial tree species. Our forest management positively impacts multitudes of other species, plant and animal. What would this recommendation mean to Anderson-Tully Company? I can visualize the U. S. Forest Service and the U. S. Fish and Wildlife Service becoming involved in decisions concerning the management of company forests in the Valley. I would put our programs and policies against any other for effectively and efficiently managing bottomland ecosystems and any intrusion by others could result in a serious loss of values associated with our forests.

"Monitoring of the river's ecosystem should be improved and increased."[3] This statement could be taken as an endorsement for the National Biological Survey (N.B.S.). I might add that the recent discussion on Capital Hill swirled around private property rights when the N.B.S. was brought before the House in October. After debate, the House of Representatives passed the strongest pro-private property rights amendment in many years in an effort to ensure government monitoring of ecosystems would not negatively impact the rights of the private landowner. Ecosystem monitoring is a very sensitive subject for private property owners and your open-ended recommendation may well lead to an unneeded increased government presence in the affairs of our company.

"Efforts to retain river valley wetlands need to be increased."[4] We certainly agree with this statement as we have enhanced wetlands through active management for over a century. However, many consider the harvest of forest products from wetlands to be equivalent to the destruction of the wetlands and their functions. They view the definition of the verb "retain" as a means to keep in a fixed place or condition. I am convinced to retain wetlands in a fixed condition in an ecosystem as altered as the lower Valley is impossible. You should be recommending the enhancement of the system through the re-establishment of wetlands which have been altered or destroyed.

While you may not be able to fully appreciate our position, I would suggest you step into our shoes when evaluating government initiatives. My career with the company has spanned over 20 years. During this period, we have seen laws passed by Congress which were predicted to have little impact on private lands eventually strip the landowner of his ability to receive traditional benefits from the property. We have opposed the condemnation of wetlands for mitigation under the Water Pollution Control Act. We have fought to maintain the silvicultural exemption in the Clear Water Act, which is necessary to manage our forests in an ecologically sensitive manner without regulatory interference. We have been involved in a successful effort through the Black Bear

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[2]Interim Report Mississippi River Corridor Study, pages 10-11.
[3]Ibid., pages 10-11
[4]Ibid., pages 10-11

Conservation Committee to reduce the negative impact of the Endangered Species Act on the private property owners. We face a government initiative, the National Biological Survey, which recommends the use of "volunteers" to collect data. These "volunteers" are not required to notify us of their presence, or intentions. The data collected may not be available for review by the landowner. I might add that all of these efforts have started with a study which stated the purpose was not intended to have the impact on the traditional uses of the properties that the promulgation of the law resulted in. I trust this will help you to understand our concerns.

In summary, it appears unpatriotic to oppose the designation of the Mississippi River as a National Heritage Corridor; however, your recommendations leave many unanswered questions to the vast majority of property owners within the Valley region. The implementation of these recommendations should not be given to another government agency whose existence is perpetuated by such studies, and whose authority can be self-generated by the intrusion of self-defined regulatory ingress. The Mississippi River Corridor Study Commission should strongly support economic incentives that would allow our system the opportunity to produce the desired results. Your recommendations appear to embrace a regulatory approach that will be counter-productive to the future value of the region. Therefore, without more definitive constraints to the path this designation may take, the Anderson-Tully Company stands opposed to the National Heritage Corridor designation for the Mississippi River Valley.

If I can be of further assistance, do not hesitate to call.

Sincerely,
ANDERSON-TULLY CO.

Tony R. Parks
Vice President - Land Manager

TRP/yr
cc: Parnell Lewis
Martin Lewis
George Arnold
Don H. Castleberry
Frank Davis
H. Dan Derbes
Don Ammons
Gene Hollenstein
Claude Jenkins

International
Freight Forwarders & Customs Brokers Association
of New Orleans, Inc.

WORLD TRADE CENTER · SUITE 1132 · 2 CANAL STREET · NEW ORLEANS, LA. 70130 · (504) 525-7201

March 2, 1995

Mr. John W. Hoesterey
Mississippi River Corridor Study Commission
Post Office Box 40214
Baton Rouge, Louisiana 70835-0214

affiliated member of

Dear Mr. Hoesterey,

Our *Association* comprises 55 member firms, large and small, national and international. The efficient and expeditious handling of freight in international ocean commerce, both import and export, is our forte. Thus, we view with concern the U. S. Congress-initiated study to determine the feasibility of creating a ***Mississippi River National Heritage Corridor*** stretching from the mouth to its headwaters, encompassing counties adjacent to both banks. If the final aim is to achieve Federal designation under the stewardship of the **National Park Service** with its doctrine of "restore and preserve," this ***Association*** is vehemently opposed to such designation.

The towns and cities along the Mississippi evolved as trading centers and have relied on the River and its tributaries for their economic well-being since the early days of this Republic. Returning to a "pristine," "bucolic" state will wreck havoc on the industries dependent upon the River, leading to inverse condemnation, a land lockup resulting in losses of jobs, revenues and eventual ownership of property. We cannot roll back the clock to Jeffersonian self-sufficient communities with small farmers and tradesmen exchanging goods and services, not dependent upon the outside world.. Today we live in a global economy. No one can predict with any certainty what the future may hold *vis a vis* new methods of employing the River for the benefit of domestic and international trade. A designation as proposed could seriously hamper future economic development which may see undreamed of technologies, modes of transport and infrastructure

development along the River that might prove inimical to any future guidelines set down by a "Heritage Corridor" designation.

New Orleans' area economy is directly impacted by international commerce along the lower Mississippi to the tune of nearly $4 billion a year. Many area jobs are symbiotically tied to activity along the Mississippi. We therefore feel another layer of Federal control over this natural highway would seriously endanger in the near term, the future economic viability of our industry. The River should be put to its highest and best use, creating meaningful employment for river-dependent communities. Entrepreneurs and risk-takers will be willing to tackle new technologies to further harness the transportation resources of the Mississippi, but only absent a Heritage Corridor designation. Otherwise, we may see a withering of a vital industrial activity in this area. In conclusion, we strongly oppose any designation that would threaten the long term viability of our industry.

INTERNATIONAL FREIGHT FORWARDERS & CUSTOMS BROKERS ASSOCIATION OF NEW ORLEANS, INC.

John T. Hyatt

John T. Hyatt
Chairman-Political Action Committee

cc: Louisiana Congressional Delegation

Southern Pine Region
Pulp & Paperworkers' Resource Council

CO-DIRECTORS: DON WESSON AND KELLY STALLINGS, P.O. BOX [illegible] McGEHEE, AR 71654 / PHONE (501) [illegible] / FAX (501) [illegible]

May 19, 1995

Honorable Jay Dickey
230 Cannon Building
1st & Independence S.E.
Washington D.C. 20515

Dear Jay:

I am writing this letter in response to 2 bills that soon will be up for Mark Up. These Bills are:
HR 1280- Technical Assistance Act of 95
HR 1301- American Heritage Area Act of 95

As you are aware, The Pulp & Paperworkers' Resource Council is very much against the Mississippi River Heritage Corridor. We along with several other groups who are undersigned, feel like these 2 Bills mentioned above could, and would be another avenue for these people to take to pass the Heritage Corridor.

We feel like the Mississippi River Heritage Corridor would:
1. Have a Serious Impact on Property Rights and on the ability of people to use their land;
2. Future development of The Great River Road may require zoning restrictions, tying up private land without compensation;
3. We feel like Economic Development and the Unique Natural, and Human Resources of the Corridor are already being adequately addressed by the States, Federal Government, and existing Regional Organizations.

I feel this whole Corridor Study is being fueled by 3 "Groups" of people
1. Department of Transportation- To put more money in their budget and gain control
2. Department of Tourism- To put more money in their budget and gain control
3. Environmental "Green" Organizations- To gain control. This group is sitting idly back, waiting for legislation to be passed, so they can jump on board with the blessings of the Secretary of the Interior.

None of these groups take into, or care about the 100 of thousands of people who live and work directly along this river. They do not care about the Farmers, Ranchers, Loggers, or other workers. All they care about is Control of Power and the Mighty Dollar.

So please Jay, if there is anything you could do to help us along the Mighty Mississippi stop this Corridor, and the passing of these 2 Bills, We the Undersigned who are Representing thousands of working class Families, wish to thank you for your help.

Respectfully yours,

Donald R. Weston
Pulp & Paperworkers' Resource Council
112 Starwood
McGehee, Ar. 71654
501-222-3502
501-877-3360 Fax

Louisiana Forestry Association
C.A. "Buck" Vandersteen
318-443-1713 Fax

Mississippi Forestry Association
Steve Corbitt
601-334-4937 Fax

National Hardwood Lumber Association
Shelly Hicks
901-382-6419 Fax

UPPER MISSISSIPPI FLOOD CONTROL ASSOCIATION

ORGANIZED 1954

RT 1 BOX 264
GLADSTONE IL 61437
309-637-2351
FAX 637-2215

May 18, 1995

Opinion-Editor
Des Moines Register

The May 14 editorial, "Upper Mississippi barges and economic reality", is an opinion which deserves another viewpoint for comparison.

The DNR biologist who have declared that the Mississippi River is filling with silt are right, and any boater or fisherman will agree. However, sport fishing in the Mississippi is doing quite well, thank you.

The largest Amateur Bass Tournament in America was held this year, April 18-22, on the Mississippi, at Quincy, Illinois. This recreational event was made possible largely because of water quality improvements on our major rivers, thanks to great improvements in sewage and industrial waste treatment.

The DNR biologist and environmental activists have not proposed a solution to the sediment problem, except, to remove the Dams and levees and buy out all the bottomlands. A step back 150 years is not politically possible not to mention the cost.

The 2.25 million acres of tillable land along the navigable portions of the Mississippi, Missouri, and Illinois Rivers would cost $4 billion, not including buildings. Then there is the cost of flood proofing the highways and railroads. If the EPA and FWS cost for de-construction is as expensive as their additional cost to new construction who knows how much it would cost to remove the 31 Dams. Then there are hundreds of miles and millions of tons of channel training structures.

The five main rail lines that carry freight to the coast, 3 Gulf and 2 Pacific, could not keep up with the excess not hauled by barges in 1994. A solid stream of trains and trucks just to haul what the barges haul now. What happens when freight increases? How could one new line to St. Louis make a difference? How many new rail lines would it take? How many overpass bridges? The Missouri Highway Department says, that highway maintenance for 1 truck is the equivalent of 1,000 cars.

If the Midwest can hold our share of the market, our bulk grain shipments will double in the next 15 years. The Midwest farmer has certainly demonstrated the ability to increase production, all he needs is the infrastructure to deliver.

The improvement of diets and increasing populations around the world will dramatically increase the demand for food. At the International Policy Council on Agriculture, Conference, Joachim Rathke, German Oil Millers Assoc., said grain needs in importing countries will double in the next 15 years. Weimin Li, Chinese Academy of Agricultural Sciences, said bulk grain imports by his country will double by the year 2000.

The IPC Conference concluded that the world must: Increase the productive capacity of the world's best farm land; improve key infrastructure to ensure that the food grown reaches those who need it; adopt policies that facilitate agricultural trade. The issue is really of strategic defense, those that are hungry will fight for food.

The world is very quickly developing along their waterways. Europe has just completed a multi-billion dollar project to move large barges, on the Rhine and Danube Rivers through the heart of Europe, from the North Sea to the Black Sea, and announced $26 billion in new projects. China has announced a $12 billion flood control, navigation, and hydro project. South America has announced the Tiete-Parana Waterway project which will create $20 billion of infrastructure construction in the next 5 years, bring 5 million tons of new soybeans to the world market, and reduce transportation cost by 5 fold.

The issue is how can we afford to restore our major Midwest rivers. The sediment and sand must be removed and placed on the levee system. The improvements in flood control will assure navigation, create appropriate development along the waterways, protect habitat from flooding, and restore habitat and recreation in the river.

The Netherlands, who have 60% of their country protected by levees, have had flooding problems, 93 and 94, along the Rhine and Maas Rivers. After careful consideration they have decided the floodway capacities must be increased. On the Rhine which is leveed, material will be dredged from the river and placed on the levees with additional material from adjacent to the levees. The Maas River which is not leveed will be dredged to deepen and widen the floodway, 100 miles and 143 million tons.

The cost to clean our navigable Midwest rivers is $2 to

$3 billion, a fraction of the abandonment plan, and will mean 100's of billions in future economic benefits. If we continue to slug it out over whose fault it is and refuse to develop a viable plan, the condition will continue to deteriorate, and you and I will never enjoy a cleaner river.

Let us not forget the U.S. Army Corps of Engineers who have not defended their work very well, but deserve our salute for maintaining this vital system despite an unrelenting rhetorical attack by the environmental industry.

John A Robb
Chairman
Upper Mississippi Flood Control Assoc.

MERRIMACK RIVER
WATERSHED COUNCIL

MEMO

TO: Merrimack River Watershed Council
Board of Directors
FROM: Ralph H. Goodno
RE: Briefing paper on the Pemigewasset River
Wild and Scenic Study
DATE: January 29, 1993

OVERVIEW

As you know from past meetings and our publications, the Council is involved in the study of the Pemi River as a possible federal Wild and Scenic River. Our involvement began when we participated in meetings and citizen organizing to support the designation of the river as a "study river" several years ago. Being designated as study river requires an act of Congress and was accomplished with support of seven river communities about two years ago.

Today, our involvement is on two levels. First, we are a technical cooperator to the National Park Service (NPS) and the Pemi River Study Advisory Committee for the study. Our work is primarily in public outreach including preparing newsletters and designing and carrying out a public survey for the study. Under our agreement with NPS, we have received financial support for these efforts through our Cooperative Agreement. We are also an independent advocate for the study, but have played down any role as an advocate in order to maintain the appearance of objectivity.

Our obligations to the NPS have been completed since their budget was cut and we expended all the funds provided to us on their project. The work we are now doing is more advocacy related with our position being an active advocate for completion of the study and broad public understanding of the recommendations and the nature of the federal Wild and Scenic Rivers program.

However, we are now faced with the need to consider our position as to whether the River should be designated under the federal program. Although the study has been rushed and is really not complete, the New Hampshire Landowners Alliance, among others, have pushed the seven communities to include an article about designation in the warrants for their March town meetings. The votes to be taken at these meetings have become critical since people will be asked to either support or oppose

694 MAIN STREET, WEST NEWBURY, MA 01985-1206 (508) 363-5777; FAX (508) 363-5880
54 PORTSMOUTH STREET, CONCORD, NH 03301-5486 (603) 224-8322

designation. If enough communities vote it down, the NPS will not recommend designation to Congress and we will have temporarily lost the opportunity of receiving protection and resource assistance to carry out additional planning and protection work on this river. If MRWC is going to take a position on designation, now is the time to do so.

STUDY STATUS

The NPS provides direction and staff assistance to an advisory committee which is established by NPS to assist in the study. The committee is comprised of town delegates as well as representatives of riparian landowners, business interests, civic groups, and recreational interests. Other agencies at the regional, state and federal level also participate. Also the team includes a group of technical cooperators, some of whom receive financial support for specific tasks. These include MSWC, the NH Office of State Planning, Society for the Protection of NH Forests and regional planning agencies.

During the last two years, the team completed the following work tasks:

1) Database of riverfront landowners.
2) Public survey of riparian landowners, users and other interested residents and visitors.
3) Preparation of river corridor map series for each community.
4) Evaluation of the river to determine whether the natural resources qualify the river for protection under the program.
5) Evaluation of current levels of protection of the river values which designation would protect. This included a review of each town's regulations and other land use practices.
6) Development of a management plan, making recommendations for action to increase protection. This plan includes specific actions, who should carry them out, and suggests where federal assistance should be available to carry out these tasks.
7) Public information meetings, publications, press coverage and outings.

These products have been made available to communities and other interested parties. Meetings have also been held on a regular basis for deliberation by the Advisory Committee, including receiving input from the public. The Committee has recommended language of a warrant article to each community, requesting a ballot vote in March.

CURRENT CLIMATE

This Wild and Scenic Study was requested by the communities. At the same time, the Pemi River Council presented a proposal to nominate the river as protected under the state of NH River Management and Protection Program. That nomination was received by the state River Management Advisory Committee (RMAC) which is responsible for making a recommendation to the Commissioner of the Department of Environmental Services. The Commissioner then submits the proposal as a piece of legislation for consideration by the NH General Court.

This process was accomplished prior to beginning the Wild and Scenic Study. However, this process was very difficult and debate heated due to concern by some landowners and business interests. One result was the formation of the New Hampshire Landowners Alliance (NHLA), a group formed to fight state designation. Presumably their objection focused on the provision which would disallow dams in the protected river segments, including killing the proposal to rebuild the hydroelectric facility at Livermore Falls.

The NHLA is now actively fighting designation under the federal program. They were ask to sit on the project Advisory Committee and have done so. Affiliated with the national wise use movement, they have used every tactic to stop or slow down the study process, convince landowners to close river access points, and provide misinformation about the ramifications of federal designation through the media and directly to landowners and anyone who will listen. They have also held rallies, bringing in people from around the country to talk about the NPS and their bad experiences with the federal government. Also, a new group, Friends of the Pemi has formed to oppose the designation. This is a small group of business people who support increased hydrodevelopment.

In addition to the public outreach work that the Council continues to do, a statewide coalition has been formed funded by the Merck Fund through the Appalachian Mountain Club. This coalition's purpose is to coordinate actions to counteract the wise use group in New Hampshire. Similar coalitions are being formed in other northern New England states. A statewide coordinator is in place and a paid community organizer is working in each of the Pemi communities to rally support for designation. This work is being coordinated in New Hampshire through the Society for the Protection of NH Forests and a working committee, including our staff person, Dijit Taylor.

THE NEED

Organizations of all types are now being asked to take a position on designation. These not only include MRWC, SPNHF, NH Audubon, AMC and others, but also sporting groups, garden clubs, conservation commissions, other civic organizations and businesses supported primarily through tourism. Everyone expects the Council to support designation, but we have not taken a position except in support of completing the study.

It is my recommendation that the Board vote to support designation. However, we may want to include caveats to that support which will align us with local communities and expressed concerns of landowners. These caveats include:

1) There will be no federal acquisition of land as a result of designation as a Wild and Scenic River.

2) There will be no increased federal land management in the river corridor as a direct result of designation.

3) There will be federal support in the form of technical assistance and funding to carry out additional research and protection measures at the local, regional and state level.

4) That current local authority over land use be maintained.

We are prepared to answer questions at the meeting. If you want further discussion or have specific questions you need answered before our meeting, please don't hesitate to contact me or Dijit Taylor (603-224-8322).

United States Department of the Interior

NATIONAL PARK SERVICE
North Atlantic Region
15 State Street
Boston, Massachusetts 02109-3572

IN REPLY REFER TO:

May 18, 1994

Ms. Jennifer Murphy
Office of Senator Robert C. Smith
332 Dirksen Senate Office Building
Washington, DC 20510

Dear Ms. Murphy:

This letter is in response to your inquiry to Mr. Jamie Fosburgh of my staff regarding the status of the Pemigewasset Wild and Scenic River Study. It is my understanding that your call to Mr. Fosburgh was prompted by a request from Mrs. Johnson of the New Hampshire Landowners Alliance. She has made similar requests of me that, due to my past experience with her, I have refused to answer. Nonetheless, I am pleased to provide this information to you. I will also take the opportunity to provide you with my impressions of the activities of Mrs. Johnson and the New Hampshire Landowners Alliance.

Expenditures

The National Park Service originally estimated that the study would cost $250,000 and could be completed in three years. Between FY 91 and FY 93 the National Park Service spent $220,447 on this project. This amount included cooperative agreements, salaries, office expenditures, overhead, travel, and miscellaneous expenses.

Study Products

The following products have been produced:

- Pemigewasset Wild and Scenic Study Committee Notebook (March 1992),

- A report on opportunities for connecting the river to downtown Plymouth (May 1992),

- study newsletters (June 1992 and January 1993),

- a public opinion survey (December 1992),

- an evaluation of existing river protection report (January 1993),

- a draft Pemigewasset River Management Plan (January 1993), and

- a draft Eligibility and Classification Report (March 1993).

Status of Study Report

The only products not yet produced are the draft and final study reports. A rough in-house draft was prepared prior to the departure of the Pemigewasset project manager for another position in July 1993. Our plan at that time was to complete the report in FY 94. However, the North Atlantic Region's FY 94 budget for its wild and scenic rivers division was decreased by over 40% from the FY 93 level while the work load remained constant. Given this decrease we were not able to hire a replacement for the project manager. To complete the report under these circumstances would have required diverting staff from other projects for which we are already stretched far too thin. Hence, the decision was made to put off completion of the report.

Mrs. Johnson has requested a copy of the in-house draft report. The report is not to the point where it is appropriate to release to the general public. Further, it is agency policy that reports of this nature must undergo policy review by our Washington D.C. office prior to release. Accordingly, I am not at liberty to provide a copy of the current preliminary draft to Mr. Johnson.

I should also mention that the timely completion of the study was delayed due to the antics of the Landowners Alliance. I estimate that our project manager was forced to spend at least half of his time addressing Landowner Alliance firestorms rather than working on the tasks necessary to fulfill the Congressional directive.

Study Opposition

Since the beginning of the Pemigewasset project Mrs. Johnson and the Landowners Alliance have been attempting to thwart efforts of the National Park Service to conduct this study as directed by Congress. I have watched as they knowingly spread falsehoods, maligned National Park Service staff, attempted to fix a public opinion survey, and intimidated those unwilling to accept their odd view of reality. I have been told of threatening late night telephone calls, damage to personal property of people daring to speak out for the public interest, and (on the Merrimack) threats of boycotts of local businesses. I myself have been threatened with bodily harm as has at least one of my staff. The "wanted" poster that Mrs. Johnson produced and which displayed a likeness

of the National Park Service project manager was particularly inappropriate and offensive.

Over my career I have worked in all parts of the country with all types of people on all sides of environmental issues. Seldom have I observed such a display of viciousness, hate, and dishonesty as I have witnessed in the Pemi Valley. There are, of course, many fine people in these communities. It is indeed unfortunate that they must be saddled with the anti-democratic antics of a minority of people who see the world through glasses clouded by ignorance, avarice, and obsession with non-existent conspiracy.

Conclusion

The National Park Service has made it clear from day one that wild and scenic designation will not be recommended if this is not in accord with the wishes of local communities. When released, the draft study report will specifically discuss town votes. It will also point out that these votes were heavily influenced by the fear and intimidation instilled upon voters by study opponents.

Given the other responsibilities of my division to ongoing projects that have viable possibilities to protect some of New England's important river resources, I cannot justify diversion of staff to complete the Pemi report at this time.

I welcome your comments regarding the tact that should be taken to complete this project. I also welcome your thoughts regarding how the National Park Service and the delegation might work together to conduct future studies of this nature when faced with forces, such as the Alliance, who wish to obstruct federal agencies in carrying out the directives of the Congress.

If you have any further questions, please feel free to call me at (617) 223-5130.

Sincerely,

Drew O. Parkin
Division Chief,
Rivers and Special Studies

cc: Donna Gamache
Office of Senator Robert Smith
50 Phillippe Cote St.
Manchester, NH 03101

MEMORANDUM

DATE: June 8, 1995

TO: Dwayne Gibson - House Resources Committee

FROM: Trudy Thomas

RE: Private Property Rights Task Force Hearing, June 13, 1995

Thank you for speaking with me today. As I mentioned in our phone conversation, I have not been directly impacted by the ESA, S-21, etc. However, as a native Californian and American Citizen I am indirectly impacted by these egregious Acts.

I represent individuals and organizations in our petition to rescind the Desert Protection Act, one of the biggest land grabs by the Federal Government, and have been working with the California Taxpayers' Network, Inc. on repeal of the now expired Endangered Species Act and the writing of a new, common sense ESA addressing and balancing the needs of the true endangered species, ***private property owners and their families***, along with the needs of other species.

On the issue of private property rights, I request we look at the question of ownership and jurisdiction. According to the Constitution, Article I, Section 8, Clause 17, the Federal Government's land acquisition is strictly limited. It has no business being the large land owner that it has become.

I am attaching with this memo the latest challenge from one of our co-petitioners to rescind the Desert Protection Act, Mr. Robert "Bo" Brown. The full notebook, **Petition Congress for Right of Redress: Rescind the Desert Protection Act,** is in the hands of: Congressman Duncan Hunter's L.D., Wayne Hickey; Congressman Don Young's Chief of Staff, Chris Fluhr; and Elizabeth Megginson there at the House Resources Committee.

As per Steve Hanson, I will also be representing *The Outdoor Channel*sm at the Media table for the June 13 hearing. We, at the channel, strongly support the Constitution and Private Property Rights through our issue-oriented programming and network with private property rights groups across the nation.

Thank you for the opportunity to attend the Task Force Hearing and submit this brief summary of my work.

Trudy Thomas, 41386 Magnolia Street, Murrieta CA 92562
Day Phone: (909) 699-6991 - *The Outdoor Channel*sm FAX: (909) 699-6313
Evenings: (909) 677-4761 FAX: (909) 696-9421

Robert R. Brown Jr.
11222 Colorado Dr.
Madera, CA 93638
(209) 674-0267

June 7, 1995

Bureau of Land Management
David Mc Ilnay, Realty Specialist
2800 Cottage Way
Sacramento, CA 95825
(916) 979-2840
(916) 979-2098 Fax

Re: PL103-433, Section 707(b)(1-4), Lists of Lands.

Dear Mr. Mc Ilnay,

The Desert Act mandates that the Secretary shall send lists of land classification to the House Committee on Energy and Natural Resources within six months of enactment. As of May 1, 1995 no lists required by law under Section 707(b) have been sent to the Committee. Both public and private interests suffer by the failure to disclose this information.

The Desert Act changes land use policy on million of acres within southern California. Precise information concerning land classification boundaries and impacts did not reach the public. An environmental group copyrighted the maps used by Congress; access to the citizen required paying substantial fees to a printing company. The Act gives preferential land exchange treatment to the California Teachers Retirement System. Curiously, Lanfair Valley map alterations occurred which give higher acquisition priorities to Catellus over citizens.

Secretary of Interior Babbitt on April 27, 1993 testified at the Senate Subcommittee on Public Lands his reluctance to "be required to prepare a list of every acre of land under Interior's jurisdiction that might fall into the broad categories of lands identified in the legislation." This intent contrasts with his desire under a National Biological Survey to confidentially catalog every parcel of land with attributes.

Can you specify date(s) complete lists of lands mandated by Section 707 of the Desert Act will be compiled? Can you make available all material compiled to date?

Sincerely,

Robert R Brown Jr.
Robert R. Brown Jr.

cc: Congressman Radanovich/Ellen Shepard
Congressman Lewis/Jeff Shocky
Assemblyman House/Jennifer Jacobs
Supervisor Marsha Turoci/Len Smith
East Mojave Property Owners Association/John Brown

PETITION CONGRESS FOR RIGHT OF REDRESS
RESCIND DESERT PROTECTION ACT (S-21/HR-518)

WHEREAS, the California Desert Protection Act, sponsored by Senator Feinstein, grants the California Teachers Retirement System explicitly and non-profit conservancies by practice, preferential land exchange schemes as a result of a governmental process that excludes residents, inholders and a nationwide backlog of property owners left in arrears; the California State Legislature cannot deny due process and equal protection to excluded groups by ceding jurisdiction of these exchange lands to the federal government . . . as required by the Enclave clause of the U. S. Constitution; nor can the federal government exercise the Property clause without prejudicing claims "of any state"; and

WHEREAS, the California Desert Protection Act unnecessarily withdraws an additional seven million acres and disregards activities and findings of a major study, summarized in a color State Wilderness map, as distributed by the Interior Department that defines "suitably recognized wilderness areas" under the California Desert Conservation Area Plan, as mandated by Congress and implemented and managed by the Bureau of Land Management since 1976; and

WHEREAS, the California Desert Protection Act requires Congress to authorize, without the capacity to appropriate the $1 to $3 billion necessary, the purchase of non-wilderness areas, promoted as wilderness and non-parklike areas to be maintained as National Parks, increasing maintenance and infrastructure backlog of existing parks or requiring increased annual appropriations; and

WHEREAS, the California Desert Protection Act conflicts with the existing General Plan of the affected counties, nor were the Supervisors of the affected counties offered opportunity for material input, nor were the elected U. S. Representatives allowed material input to Congressional subcommittees; and

WHEREAS, the California Desert Protection Act takes existing water rights "necessary for the purposes of the Act," but the California Constitution requires that any federal agency purchase of real property must conform to California law; and

WHEREAS, the California Desert Protection Act eliminates historic easements, rights-of-ways and private enterprises that severely limits custom and culture with regards to hunting, fishing, rockhounding, ranching, recreation and related activities affecting California citizens, visitors from other States and nations, which violates Police Powers assuring public health and welfare that cannot be suitably mitigated without substantial public expenditure for new infrastructure and facilities elsewhere in the State; and

WHEREAS, the California Desert Protection Act will cripple crucial present and future industrial operations that require commercial and rare earths minerals that are otherwise located only in China and effectively disenfranchises the individual miner/prospector/geologist/explorer who historically patents and initially operates America's raw material operations due to government's inability to underwrite the immense cost and the decades of effort required by the discovery process which will precipitate a cascading negative cycle of (1) reduced State and County tax revenues, (2) increased materials acquisition costs for public works projects (gravel, iron, etc.) and private industry (rare earths for color TV's, electric car batteries, sensitive government projects, etc.) (3) force adoption of incremental per-capita tax increases (4) that will further depress California's and the nation's already depressed economy; and

PETITION CONGRESS FOR RIGHT OF REDRESS: RESCIND DESERT PROTECTION ACT

WHEREAS, the California Desert Protection Act makes Congress appear to condone bad science, bad economics and bad law,

THEREFORE BE IT RESOLVED that we, the undersigned, formally Petition Congress for Redress of the above grievances before a Congressional Committee of competent jurisdiction, and

BE IT FURTHER RESOLVED that we, the undersigned, formally request from Congress a Committee of competent jurisdiction to direct the U. S. Attorney General to undertake an investigation and appoint a Special investigator who shall regularly and finally report its finding to the designated Congressional Committee for action.

SUBMITTED BY:

Riverside County	Fred Norris, County Republican Central Committee (909) 785-1514
	Trudy Thomas, County Republican Central Committee (909) 677-4761
San Francisco County:	Dehnert Queen, Small Business Development Corporation (415) 433-7497
Madera County	Robert Brown, East Mojave Property Owners Association (209) 674-0267
Los Angeles County	John Brown & Chris Brown, East Mojave Property Owners Association (818) 353-9283
Orange County	Don Fife, National Association of Mining Districts (714) 544-8406
San Bernardino County:	Lois Clark, East Mojave Property Owners Association (619) 733-4300

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AS OF MAY 10, 1995 ENDORSED BY:

1. *East Mojave Property Owners Association*
2. California State Assemblyman Keith Olberg, 34th District (Author of AJR6 calling upon Congress and the President to repeal the Desert Protection Act.
3. California State Senator Bill Leonard
4. California State Senator Don Rogers
5. California State Senator Ray Haynes
6. *California Forestry Association*
7. *Nevada Public Lands Alliance*
8. *Mother Lode Research Center*
9. Jean S. Klotz, Attorney at Law
10. Georgetown Divide Republican Women Federated
11. James and Margot Dent, San Jose, CA
12. James and Kathy McBrayer, Saratoga, CA
13. Sue McBride, San Jose, CA
14. *National Association of Mining Districts*
15. Holcomb Valley Mining District
16. Ruby Mining District
17. Lone Valley Mining District
18. Ord Mountain Mining District
19. Rand Mining District

PETITION CONGRESS FOR RIGHT OF REDRESS: RESCIND DESERT PROTECTION ACT
ENDORSEMENTS continued.

20. Beverage Mining District
21. Pacific Mining Associates
22. Trabuco Mining District
23. Alberhill Mining District
24. San Antonio Mining District
25. *American Land Rights Association*
26. Western Mining Councils, Inc.
27. Radamaker Mining District
28. Bear Valley Mining District
29. Emerson Lake Mining District
30. *Public Lands for the People (PLP)*
31. *National Outdoor Coalition (NOC)*
32. Gold Belt Springs-Hunter Mountain Mining District
33. South Park Mining District
34. Clairville Mining District
35. Goler Mining District
36. Acton Mining District
37. Weaver Mining District
38. Joseph Klaeger, Indio, CA
39. Peggy Neal, Coachella, CA
40. William Engstrom, Indio, CA
41. William Ptak, Indio, CA
42. COMTRANS - William J. B. Kerns, Houston, CA
43. *United Prospectors, Inc* - California
44. *United Four Wheel Drive Associations* - Felton, PA
45. *Indiana Four-Wheel Drive Association*
46. *California Off Road Vehicle Association (CORVA)*
47. *California Desert Coalition*
48. Pam Mahle, "Property owner in the California Desert"
49. Arnold R. Parker, Jr., "Private citizen, California"
50. *E.N.O.U.G.H. (Enraged Natives Opposing Underhanded Government Hanky-Panky)* - James Ayer, Chairman - California
51. Irwin & Reva Lee, Quartzsite, CA
52. Mark Americk, Modesto, CA
53. Doris McKinstry, CA
54. *Central States Federation of Metal Detector and Archeological Clubs*, Zeeland, MI
55. Billy Shivers M/Sgt. U.S.A.F. (Ret.), Longview, TX
56. Discovery Electronics - Ron Shearer
57. *East Texas Treasure Hunters Association*, Longview, TX
58. Frank Monez, San Jose, CA
59. Christopher Hunt, Cheverly, MD
60. David Lawrence, Knoxville, TN
61. *Middle Tennessee Christian Four Wheelers* - Bob Kirby, Hendersonville, TN
62. Jerome Brown, Vacaville, CA
63. Robert Dallezotte, Santee, CA
64. *Federation of Metal Detector & Archeological Clubs, Inc.*, Portland, OR

PETITION CONGRESS FOR RIGHT OF REDRESS: RESCIND DESERT PROTECTION ACT
ENDORSEMENTS continued.

65. George Weeks, CA
66. James T. Hann, Sacramento, CA
67. Terrence Crenshaw, Santa Clara Treasure Hunter Society, CA
68. Maxine Hayes for *People For The West*
69. *Taxpayers Association of El Dorado County* - Bernard Carlson, El Dorado, CA
70. *Blue Ribbon Coalition* - Don Amador, Idaho Falls, ID
71. Yamaha Kawasaki of Indio, CA
72. Charlie Brown, Loomis, CA
73. Martin Kelly, San Leandro, CA
74. *Southern Four Wheel Drive Association* - David Borum, Madisonville, TN
75. Russ Madsen, Lancaster, CA
76. James and Mary Cornwell, Walnut Creek, CA
77. Woody Woodworth, Coarsegold, CA
78. Bruce and Karen Emerson, Foresthill, CA
79. *California Taxpayers Network, Inc.* - Bonnie Kibbee, Alpine, CA
80. *Oregon Lands Coalition* - Jean Nelson, Portland, OR
81. Paladin Group, palm Springs, CA
82. Randy Pope, Alameda, CA
83. *Public Lands For the People "Multiple Use Without Abuse"* - Barret H. Wetherby
84. Jim Bagley, Mayor - Twentynine Palms, CA
85. Steven W. Pirkio, CA "citizen and taxpayer"
86. J. T. Marott, San Pedro, CA
87. JART Direct Mail - Art Jensen, CA
88. George and Nancy Rohrer, Hermosa Beach, CA
89. Ray Hunter, Sutter Creek, CA
90. Margaret Smith, Hesperia, CA
91. Dave Johnson, Grand Terrace, CA
92. **Riverside County Republican Central Committee, February 21, 1995.**
93. **California State Republican Party by unanimous vote, February 26, 1995 (State Convention Resolution No. S95-32.)**
94. **The California Republican Assembly (CRA) by unanimous vote, March 26, 1995 (State Convention Resolution No. 395.11)**
95. *American Rights Coalition*, Temecula, CA
96. Jim Williams, Costa Mesa, CA
97. Clayton A., Jan W. and Arthur Ray Terry, Apple Valley, CA
98. Donna Chisum, President of *California Association of 4-Wheel Drive Clubs, Inc.*, Bakersfield, CA for: Tom Chisum; Doug Hawley; P. Ganther; W. A. Hodges; Sandy Worley; Kim Millington; Everett E. C.; A. H. Adam; Terri Seawell; Marcia Skaggs; Monica Martin, Beth Hodges; Rebecca M. Lasiter; Gus H. Del Aliozar; Jason Martin; Margaret Rimmer; Robert C. Worley; Thomas R. Worley; Rod Bear; Fredrick C. Williams; Lynn R. Brown; Danny Aranjo;John Millington; Linda Sue Melton; Kathy Boriack; C. Krafelt; Heidi Anderson; David Soutes; Richard Lamb; James A. Walker; David and Janice Davis; Larry Rossiter; Richard J. Giotto; Al Blair; Anabela Lamb.
Also for these Northern California Citizens:
K. L. Napolitano; Douglas J. Sinclair - V.P., Capital City Mountain Goats; Margaret S. Douglas; David C. Douglas; Ashley R. Douglas; Karen Overton; Ken Fuchser; Carl Jacanell; Donald Spechler;

PETITION CONGRESS FOR RIGHT OF REDRESS: RESCIND DESERT PROTECTION ACT

ENDORSEMENTS continued.

Michael T. Moore; Amanda M. Moore; Barbara Kessler; Barry Yellin; Mike Teddmer; Kurt Elder; Art Mayne; Kenneth R. Carlson; Ray W.; Ed Dunkley; Charles M. Smith; Kathy Porter; Pat Bashore; Nellie Malloy; Cheryl Malloy; Vic DeLong

99. Roland "Eddie" Arnold, San Diego, CA
100. Robert W. and Faith Harper
101. Bonnie S. Ferguson
102. Philip E. Bender

* * * ENDORSEMENT AND STATEMENT * * *

REGARDING RESOLUTION TO PETITION CONGRESS
FOR RIGHT OF REDRESS:
RESCIND DESERT PROTECTION ACT (S21/HR-518)

Statement:_____

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Signed (Name/Title):_____

Date:_____

Print Name:_____

Print Address/City/Zip:_____

_____

Phone (Home/Office):_____FAX:_____

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RETURN BY MAIL TO: Trudy K. Thomas, 41386 Magnolia Street, Murrieta, CA 92562
Phone: (909) 677-4761 (evenings) or (909) 699-6991 (*The Outdoor Channel* - days.)
or RETURN BY FAX: (909) 696-9421

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