Upton	Weldon (PA)	Wyden
Vucanovich	Weller	Young (AK)
Waldholtz	White	Young (FL)
Walsh	Whitfield	Zeliff
Wamp	Wicker	Zimmer
Watts (OK)	Wilson	
Weldon (FL)	Wolf	

NAYS—151

Abercrombie	Gibbons	Olver
Ackerman	Gutierrez	Ortiz
Andrews	Hall (OH)	Orton
Baldacci	Hamilton	Owens
Barrett (WI)	Harman	Pallone
Becerra	Hastings (FL)	Pastor
Beilenson	Hayes	Payne (NJ)
Bentsen	Hilliard	Pelosi
Berman	Hinchey	Peterson (FL)
Bishop	Hoyer	Pomeroy
Bonior	Jackson-Lee	Rahall
Borski	Jacobs	Rangel
Boucher	Jefferson	Reed
Brown (CA)	Johnson (SD)	Reynolds
Brown (FL)	Johnson, E.B.	Richardson
Brown (OH)	Johnston	Rivers
Cardin	Kanjorski	Roemer
Chapman	Kaptur	Roybal-Allard
Clayton	Kennedy (MA)	Rush
Clement	Kennedy (RI)	Sabo
Clyburn	Kildee	Sanders
Coleman	Kleczka	Sawyer
Collins (IL)	LaFalce	Schroeder
Collins (MI)	Lantos	Scott
Conyers	Levin	Serrano
Costello	Lewis (GA)	Skaggs
Coyne	Lincoln	Slaughter
Danner	Lipinski	Spratt
DeFazio	Lofgren	Stark
DeLauro	Lowey	Studds
Dellums	Luther	Taylor (MS)
Deutsch	Maloney	Thompson
Dixon	Manton	Thornton
Doggett	Markey	Thurman
Dooley	Mascara	Tucker
Doyle	Matsui	Velazquez
Durbin	McCarthy	Vento
Engel	McDermott	Visclosky
Eshoo	McKinney	Volkmer
Evans	Meek	Walker
Farr	Menendez	Ward
Fattah	Mfume	Waters
Fields (LA)	Miller (CA)	Watt (NC)
Filner	Mineta	Waxman
Flake	Minge	Williams
Foglietta	Mink	Wise
Ford	Moran	Woolsey
Frank (MA)	Nadler	Wynn
Furse	Neal	Yates
Gejdenson	Oberstar	
Gephardt	Obey	

NOT VOTING—12

Bilbray	Dicks	Moakley
Bryant (TX)	Dingell	Stokes
Clay	Gonzalez	Torres
DeLay	Metcalf	Towns

□ 1055

Mr. LEVIN, Mr. POMEROY, Mr. VOLKMER, and Mrs. MEEK of Florida changed their vote from ''aye'' to ''no.''

Mr. ROTH changed his vote from ''no'' to ''aye.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mrs. COLLINS of Illinois. Mr. Speaker, yesterday I was on the floor talking and omitted voting on rollcall 184.

If I had been paying attention, I would have voted ''aye'' on rollcall 184.

PRIVATE PROPERTY PROTECTION ACT OF 1995

The SPEAKER pro tempore (Mr. QUINN). Pursuant to House Resolution 101 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 925.

□ 1058

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, with Mr. SHUSTER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, March 1, 1995, 29½ minutes remained in general debate. The gentleman from Florida [Mr. CANADY] has 14½ minutes remaining, and the gentleman from Michigan [Mr. CONYERS] has 15 minutes remaining.

The Chair recognizes the gentleman from Florida [Mr. CANADY].

Mr. CANADY of Florida. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. PORTER].

□ 1100

Mr. PORTER. Mr. Chairman, any honest person must admit that there have been instances of regulatory overkill in our Government. But this legislation is legislative overkill in the extreme. It will turn on the litigation tap with an absurdly low threshold for compensation of 10 percent. It will mean, Mr. Chairman, that every single regulation will be the subject of a lawsuit and every application of every regulation will be the subject of a lawsuit. Why would the lawyers not want to take it to court, roll the dice and see if they can get a recovery?

I take a back seat to no one in this Chamber in terms of my fiscal conservatism, and I cannot support this bill because it will create a new entitlement that will cost Government so much money that no Republican ought to support it.

I will be offering, Mr. Chairman, an amendment with the gentleman from Michigan [Mr. EHLERS], the gentleman from California [Mr. FARR], and the gentleman from Texas [Mr. BRYANT] that is the essence of legislation introduced in the Senate by Majority Leader DOLE as Senate bill S. 22. It is his answer to the takings problem. It is legislation that is based upon an Executive order issued by Ronald Reagan. Our amendment, like Mr. DOLE's bill, Mr. Chairman, leaves takings under the Constitution, where they belong, unless the agency fails to do a private property taking impact assessment before issuing any regulation. If the agency fails to do an assessment, then the Canady-Tauzin compensation scheme applies.

We should follow the Constitution, Mr. Chairman. It has worked very well for the last 200 years.

Finally, let me say that the Canady-Tauzin approach is a minority mentality approach. We are in the majority in this Chamber today and if there is a problem with the Endangered Species Act, let's change the act. If there is a problem with the wetlands law, let's change the law. But let's not write an entire new entitlement program that will cost the Government hundreds of millions of dollars in expenses. Let's instead support the approach that we will offer in our amendment that says let's look at the impact of a regulation on private property, let's ensure that the Government knows very well what it does, and let's then follow the Constitution which has served us well. If the impact statement is not done, we can then go to the approach offered by the gentleman from Florida [Mr. CANADY] and the gentleman from Louisiana [Mr. TAUZIN].

I urge Members to support the Dole approach to the amendment I will offer later.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. SMITH].

(Mr. SMITH of Michigan asked and was given permission to revise and extend his remarks.)

Mr. SMITH of Michigan. Mr. Chairman, the point is that we need to make some changes. There is a problem in this country where we have started passing on unfunded mandates to cities and counties to let them pay for our philosophy changes. This is also a problem where we are passing mandates on to individuals to let them pay for our philosophical changes, while we are taking away people's property, sometimes by poorly written laws, sometimes by poorly written regulations, sometimes by overzealous Government agents.

I am a farmer from Michigan. Let me share with you a couple of farm stories. A vegetable farmer was ordered to stop farming when two endangered species were discovered on his farm. The farmer was told he would be allowed to return to farming if he gave the Government 1 square mile of his property and a mitigation fee of $300,000. When the farmer refused this offer, he was fined $300,000. That was 10 years ago. The farmer is still fighting.

A family of cabbage growers cannot farm 450 acres of its farmland because the Army Corps of Engineers declared this acreage to be a wetland. Because of the prohibitive court fees, the family could not afford to challenge the decision.

Close to me, a couple of odd miles away from my farm in Michigan, a farmer had almost one-quarter acre within the boundaries of his otherwise tillable land but that small little strip with a couple of cattails, the farmer had to drive 2 miles around to get to the other side because that farmer was not allowed to plow through it or have

the penalties of losing his Federal farm program payments.

In closing, look, we have got a bill here. If it needs perfecting, we have got essentially an open rule. Let's come up with the amendments to make it better. The point is we have got to do something in this country because we are depriving a lot of people of their living because we are taking away their property.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I thank the gentleman from Michigan [Mr. CONYERS] for yielding me the time.

Members of the House, this debate was opened by a discussion of a case entitled Bowles versus United States. My friend the gentleman from Florida [Mr. CANADY] called that case to our attention.

I want Members to know a little bit more about Mr. Bowles. Mr. Bowles was a member, in fact an officer of a conservation group in Brazoria County, TX. He was one of the good guys. The group was designed to watch the Corps of Engineers so it did not give permits it should not give out. He was a member of the Texas Nature Conservancy, a good guy. He bought a lot in Brazoria County in a subdivision in 1980. In 1984 when he came to build on that lot, he was told he needed a 404 permit from the Corps of Engineers, a wetlands permit. In 1984, the corps denied him the right to build on his lot even though neighbors had built up next to him all around that subdivision.

He then filed suit in the Court of Claims. Ten years later, in March 1994, Mr. Bowles was finally awarded a judgment against the Government of the United States for the value of his lot. For 10 years our Justice Department, our Government, our Justice Department, fought him in court day and night telling the court we should not have to pay him or if we had to pay him, we should pay him some diminished value of his lot, something like what it was worth after the Government regulated it.

When Judge Loren Smith wrote the decision just last year after 10 years of litigation, Judge Loren Smith said, ''There must be a better way to balance legitimate public goals with the fundamental individual rights. Courts, however, cannot produce comprehensive solutions.''

Judge Loren Smith begged us to have this debate today, begged us to set down the guidelines for Government compensation of private citizens whose property is taken because of Federal regulations. Judge Loren Smith's call for us to act is a call upon all of us to protect, for little landowners like Mr. Bowles, who fought for 10 years and never got past the Court of Claims, for their rights under the fifth amendment.

Most citizens cannot get it after 10 years in the Court of Claims. Most have to go all the way to the Supreme Court, such as Mr. Lucas did from South Carolina. Others are struggling. In the Florida Rock case, it started in 1978, it has been in the circuit court of appeals three times and has been remanded to the lower court. Citizens cannot afford a $500,000 trip through the court system to find out whether the Government took their property, took their farm, took their subdivision lot, took their ranch, took their forestry lands. We ought to have a simpler system for citizens who cannot afford big lawyers, cannot afford to spend 10 years in court, cannot afford $500,000 of court fees. We ought to have a better way for citizens in our country to get their basic rights under the Constitution.

Remember what the court said in Dolan. This is a sacred right, a civil right under the fifth amendment.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. WAMP].

(Mr. WAMP asked and was given permission to revise and extend his remarks.)

Mr. WAMP. Mr. Chairman, I am compelled to take to the well today to speak about private property rights and the pending legislation, H.R. 925, because I believe few issues touch closer to the hearts of most Americans than their right to own their property. It is also the issue that is close to my heart, because I come from a real estate background—that is how I made my living before coming to Congress.

More importantly, it is one of the fundamental rights guaranteed to us by the Constitution, and I ran for Congress on a platform of upholding the Constitution, and, like the rest of my colleagues, took an oath upon taking office that I would uphold that Constitution.

I remind my colleagues of that oath and of the words immortalized in our Constitution, specifically amendments number 5 and 14:

> No person shall be deprived of life, liberty, or *property* [emphasis added] without due process of law; nor shall private property be taken for public use without just compensation.—5th Amendment (part of the Bill of Rights)

This sentiment is reiterated in the 14th amendment, extending that protection to our citizens from that actions of States:

> * * *nor shall any State deprive any person of life, liberty, or *property* [emphasis added], without due process of law (Section 1)* * *. The Congress shall have the power to enforce, by appropriate legislation, the provision of this article. (Section 5)

Clearly, the defining document of our Government seeks to protect the American Dream—to own property, to own land, to have a stake in something that is your own. Congress is supposed to make laws to protect that dream. Clearly, many of the laws Congress has made and the regulations that came out of those laws do just the opposite. H.R. 925, the takings bill, seeks to correct this situation, by treating regulations that render a person's property useless, unsellable, or even worse, into a liability, by treating those regulations as takings of private property and cause for compensation by the Government, as guaranteed by the fifth amendment. Such rules mean that the Government must think twice about the reclassification of land or other property, or at the very least compensate the owners—our citizens—when making those decisions.

Private Property: It is what separates us from those countries that pretended to be democratic, that pretended to be republics, that pretended to be representative, that pretended to be market oriented, that pretended, Mr. Chairman, to be free. I respectfully urge my colleagues to pass H.R. 925.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. I thank the gentleman from Michigan for yielding me the time.

Mr. Chairman, I came to talk a bit about the makings part. We are going to hear takings, takings, takings, but I think unless we pass my amendment, the taxpayer is going to be in the tub for a tremendous amount of money. Because what we forget is very often what the Federal Government is doing also increases the value of land by a significant amount.

There are many areas where I can talk about that. If you look at dredging harbors, if you look at propping up beaches, if you look at planting trees, if you look at creating national parks, building roads, creating accessibility, all of these things give the land around it a much higher value. Is it not interesting that we ignore that?

People will say to me, ''Oh, yeah, but then you tax the increased value.'' Well, the Federal Government does not get that. That is the State government. I think many of the times when what we are going to hear is a taking, we could also flip that and find it as a making. In other words, what the Government might be doing is making the person's property much more valuable.

But the person can say, ''Yeah, but I don't want to use it for that, I don't want to sell it for that. I want to instead be a shepherd and run sheep'' rather than sell the land for something else. So they sue for their lack of ability to run sheep.

That is really phony. You are going to pay for that and you have also got land that is incredibly enhanced.

One of the areas that I thought I would bring to mind is in particular farm subsidies. I do not know if people are aware of this, but it has been proven over and over that farm subsidies annually add $83 billion to $111 billion a year in land values in the United States. That is a lot of money.

Obviously there is a difference between $83 billion and $111 billion, but whichever number you want to pick, economists say that if we did away with farm subsidies that come from the

Federal Government, land properties would drop somewhere in that range.

Obviously it would be a disaster, because banks have money loaned on that basis and so forth. Farm subsidies enhance the average value of the average farm in America somewhere between $120,000 a year and $440,000 a year if you want to break it down to just the average farm in America.

□ 1115

I think it is pretty ridiculous not to recognize this part of it, and I think if we are not careful when we get all done we are going to have one more thing which causes the American people to pay, pay, pay and they never get anything back, and we are going to find just a few people are very enhanced by this, and a few taxpayers are going to be left paying the billions.

I urge Members to listen to this debate very, very carefully.

Mr. Chairman, we will be spending a lot of time talking about takings. But, makings is the other side of this issue. Makings are when actions by Federal agencies increase the value of private land. Makings should be included in the takings debate. See, in many takings cases, the taxpayer will be paying twice. First, to increase the value of the property so that it is useful, then again to compensate the property owner who can't do exactly what they want with it.

The Federal Government engages in myriad activities on a daily basis that increase the value of private property, or make money for private property owners. For example, the Government increases property values when it creates a national park or forest adjacent to one's property. Likewise, when the Army Corps of Engineers creates harbors and navigation channels, restores beaches, or shores up coastlines; the Bureau of Reclamation brings irrigation water at subsidized costs to agricultural property; the Federal Highway Administration provides subsidized access to property that was otherwise inaccessible and previously valueless commercially; the Bureau of Land Management issues permits to graze cattle on Federal lands and the possession of those permits increase the property value of ranches. Federal regulatory action also safeguards property values by agency action to halt or prevent contamination or other degradation to property caused by activities of neighboring property owners.

The largest and most easily quantifiable making that that Federal Government creates for private property owners is the agricultural subsidy program. The taxpayer spends $10 billion on farm subsidies a year, and those subsidies increase the value of farm property by 15–20 percent. Because farming is not as much a family business as it used to be, and is now largely a corporate endeavor, this puts deep pockets in the overalls of a small number of already well-endowed taxpayers.

In other words, farm subsidies make $83 to $111 billion in land values for the 2.9 million farmland owners in the country. And over half of the Nation's farmland is owned by a mere 124,000 property owners. However, the larger the farm, the larger the subsidy.

Let me state that in another way: Farm subsidies enhance the value of the average farm by $120,000 to $440,000. When the farm programs began, 25 percent of the U.S. population lived on farms, and their annual income was less than half that of nonfarm households. Now less than 2 percent of the population lives on farms, and the average income of farm households is now greater than nonfarm households. While the family farm has so far evaded total extinction, the bulk of agricultural business is no longer the picture painted in American Gothic.

Farm subsidies make $1.5 to $2 billion for farmland owners in my State of Colorado in enhanced farmland values. Prices in California are enhanced by up to $8.6 billion. Farmland owners in Illinois and Iowa made up to $7 billion, and in Texas up to $10 billion. In fact, in 7 of the 17 States represented on the House Agriculture Committee, farm subsidy payments from 1985 to 1994 represented more than a quarter of the total farmland value in those States. All due to Government action.

If that weren't enough, under the "swampbuster" provision of the 1985 farm bill, we already pay farmland owners not to farm on wetlands. Not plowing wetlands is a precondition to receiving farm subsidies. Farmers who receive subsidies and then want to be compensated for not being able to farm wetlands, are double dipping.

If, under H.R. 925, we compensate farmers for limitations placed on their farmland by Federal regulation it will be the taxpayers, not the farmer's cows that will be milked.

The taxpayer has already paid an average of $10 billion a year into a program that makes farming more profitable, and as a result increases farmers' property values. Now you're asking the taxpayer to pay the farm owner again for a taking based on inflated land prices that the Federal Government created to benefit the farmer?

The only taking going on will be the farmland owners taking their loot to the bank.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Idaho [Mr. CRAPO].

Mr. CRAPO. Mr. Chairman, I appreciate the opportunity to address this important issue. People in America understand that our Constitution protects private property. It was one of the basic principles that our Founding Fathers knew must be protected if our Nation and the principles upon which our Nation was built were to survive.

So they put into the Constitution a protection that when the government comes to take the property, the private property of a citizen, that it must compensate them.

What they did not foresee was a regulatory bureaucracy of the kind that we have today that would figure out a new way to get around that protection. Instead of simply coming and taking the property, our Federal regulatory agencies have now developed numerous ways to simply regulate it in a way that gives the benefit to the State of what they need from the private property without actually taking it.

We are seeing regulations grow rapidly that impact the ability of a person to use his or her own private property. In fact there is a joke that has been said that now the right of private property these days is the right to pay property taxes and to use that property in the way that the State or the Federal Government tells you that you must use it.

We certainly are not to that point yet, but we are moving to that point dramatically, and the purpose of this act is to reassert the important principle of private property rights protection.

This act, as has been said, requires that when the Federal Government, through its agency action, regulates private property in a way that reduces its value, that then the Government must pay the private property owner for telling them they must use their private property or not use it in a way for the social benefit of the good of the country, and it must compensate for that private property right.

I know today during the debate we are going to see an assault on this bill. That assault is going to take the form of those who would say that it is going to cost too much.

Frankly, we have agencies today that do not look at the cost to the private sector, to the private property rights owners and, yes, this act is going to require them to look at it. But I am confident that creative people will figure out ways to accomplish the purposes of the agencies under the law without disregarding private property rights. And if it becomes absolutely necessary, that no other alternative can be found, then let us use the private property rights provision in this act to compensate for whatever may be done.

There is also going to be a subtle but nevertheless an attack on the concept of private property, and some will be so bold as to say it is a dated, antiquated notion and we ought to proceed and let our society proceed to undercut the benefit of that principle. You will not hear that said so directly today, but you will hear many arguments like the ones just heard that suggest that we should pay for the benefits that are provided by government to people as well as the decreases in the values.

We have to recognize today that the principle of private property rights was one of the key principles upon which this Nation was founded, and recognize it is critical, and I urge all Members in the Chamber to support it as we proceed.

Mr. CONYERS. Mr. Chairman, how much time is remaining on this side?

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] has 6 minutes remaining, and the gentleman from Florida [Mr. CANADY] has 7½ minutes remaining.

Mr. CONYERS. I yield myself such time as I may consume.

Mr. Chairman, the simple fact of the matter is the takings legislation is a budget buster. We have already been told by the Office of Management and Budget that it will increase the deficit by at least several billion dollars during the fiscal years 1995 to 1998 alone.

The bill contains no provisions to offset the increased deficit spending.

It creates, in effect, a new entitlement program that will surely drive up the deficit just as we are trying to do the opposite. That is why we had to have so many waivers of the budget bill to even get this measure up on the floor.

It will require a whole new class of Federal officials to evaluate claims and will lead to much more bureaucracy, redtape, and litigations that will be borne by ordinary American taxpayers.

In effect, H.R. 925 is a reverse Robin Hood. Ordinary Americans will end up paying to enrich wealthy speculators and the 65 million homeowners would lose because their tax dollars would go to pay off speculators or also their property values would fall because of reduced health, safety, and environmental protection that would otherwise go to their communities.

The takings legislation is supported by the mining companies, the developers, the industrial polluters. It is opposed by 30 State attorneys general. Forty States have already rejected takings legislation and even 9 have gone as far as to adopt the assessment legislation proposed and similar to the Porter-Farr measure.

Please, let us not be fooled by the biggest ripoff in the Contract With America. We do not need takings legislation that goes too far, as this does.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I yield 1 minute to the gentlewoman from Washington [Mrs. SMITH].

Mrs. SMITH of Washington. Mr. Chairman, I think as we listen to the words today we have to listen very carefully, because we just heard that the takings legislation is a budget buster. Now let us think about that.

If they believe there is that much taking of American people's property that it is going to cost billions for the government to pay these property owners, we are basically standing here and saying that the government as we are standing is robbing the American people and violating the constitutional right to keep property, to own property which is unique in the United States.

We are a people that can own property free from the government taking it from us, or we used to be.

Now listen very carefully today. If they say that if we implement this bill it will cost billions of dollars, they have to also say very clearly that they are robbing the American people of billions of dollars every day and violating their constitutional rights.

Mr. CONYERS. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, we have two points of view here, one that the American people are being robbed, and the second one is that the 65 million homeowners are going to be diminished because their tax dollars are going to go out to pay speculators on their property values.

I think that the attorneys general in the several States and the others who have joined in opposition to this bill are really more aware of the fact that this is going to hurt property owners rather than help them.

Forty States have rejected takings legislation, 32 attorneys general have opposed it, and this measure is opposed with letters that have just come in from throughout the government. From the Environmental Protection Agency we have a statement in opposition. The Interior Department has weighed in. We have comments from others as well that we are going to make available to the Members as we come across them. The Department of Justice has now taken a position. So we know where the interests of the ordinary homeowners lie; they lie in opposition to this big ripoff for speculators, for polluters and for mining interests in America.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Chairman, I appreciate the gentleman from Florida yielding time to me.

Mr. Chairman, today is Texas Independence Day, a fitting occasion for us to consider the Private Property Protection Act of 1995. This bill stands for government accountability, freedom, and fairness, essential virtues for which our forebearers gave their lives.

As we consider this bill, it's worth remembering what this legislation does not do. It does not harm our ability to protect the environment. If someone thinks that preservation of the bald eagle, protection of the spotted owl, and conservation of certain wetlands are important, they ought to be important enough to pay for.

What is not fair is to ride roughshod over certain people's rights in order to obtain environmental benefits at zero cost. It's not right to ask individual landowners who own the property where the golden cheeked warbler may wish to, for example, to shoulder the entire costs of protecting the bird.

Private property rights are not about harming the environment. They are about fundamental fairness—asking the government to share the costs of public benefits.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Mississippi [Mr. TAYLOR].

Mr. TAYLOR of Mississippi. Mr. Chairman, I would like to engage the sponsor of the bill in a colloquy. I am particularly much aware of the Federal flood insurance program, since a good portion of my district was devastated during Hurricane Camille, after Hurricane Frederick. As the gentleman knows from the Federal flood insurance program, the government goes in and sets a minimum at which your house can be built, so many feet off the ground, so that the people of this country are not turning around and reimbursing the same people over and over every time there is a high tide.

It has turned out to be I think a very good program and it has helped people like myself to be able to live where I live, but also set some reasonable guidelines as to how I can construct my house. I think it is a two-way street.

My question is when the Federal Government, through the Federal flood insurance program, comes in and says your minimum structure will look like this, your minimal floor will be so many feet off the ground so as to prevent it from flooding every time there is a high tide, does that constitute a taking, because it has increased the cost of my building my house?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, that issue, I think, will be clearly addressed by the Tauzin amendment which limits the scope of the coverage of the bill to identified Federal programs, and the programs that are identified there would not include the Federal flood insurance program. So any concern the gentleman would have I think would be entirely eliminated by the Tauzin amendment, and that is one of the reasons we supported the Tauzin amendment. I think it eliminates some concerns about unintended consequences that this legislation might have, because we identify the specific programs that are affected.

Mr. TAYLOR of Mississippi. But for the sake of getting this on the record, it is not the gentleman's intention through this legislation to ask the people of Iowa, the people of Kentucky, all those people who live in areas that do not flood, to subsidize people for building houses at sea level, knowing that every time there is a heavy rain, every time there is a high tide, they are going to be going in changing all the carpets and sheet rock and everything?

Mr. CANADY of Florida. That is absolutely not our intention. The gentleman is absolutely correct.

Mr. Chairman, I yield 30 seconds to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding me this time. I want to associate myself with the remarks of the gentlewoman from Washington [Mrs. SMITH] who spoke just a few minutes ago and to add to her commentary the point that this is not about tax dollars going to speculators, as has been indicated by the other side, but rather, passage of a bill that will act as a deterrent to this rampant takings picnic on which the agencies have embarked over the past years.

So, in the long run, there will be less tax money used for condemnations and eminent domain when the agencies realize that they should not undertake the odious form of takings that we have suffered too long.

□ 1130

Mr. CANADY of Florida. Mr. Chairman, I yield 5 minutes, the remainder of my time, to the gentleman from California [Mr. POMBO].

(Mr. POMBO asked and was given permission to revise and extend his remarks.)

Mr. POMBO. Mr. Chairman, I thank the gentleman for yielding.

I would like to close out this debate on general debate on why this bill has come up to the floor in the way it has and why it is here at all.

Several years ago, as a cattleman in the Central Valley in California, I was faced with the frustrations of dealing with the Federal Government and the ever growing bureaucracy, and as I became more and more involved with what was going on with our Federal Government, I made the decision to come here and to fight for the property rights of the people that I represent and the people across this country.

Over the last 2 years that I have been here, I have pleaded and I have begged and I have tried to compromise on every piece of legislation that has come through here that affects private property. And it is being in the minority party and what at that time was the minority mindset in Washington, not across the country, but here, it was defeated time and time again, and in our dealings with people like the gentleman from Louisiana [Mr. TAUZIN], the gentleman from Texas [Mr. FIELDS], and the gentleman from Texas [Mr. SMITH], who carried those issues for years, we were defeated over and over again. And we would say, ''Look, if you guys do it this way, you are going to take away people's private property rights. You are making it almost impossible for someone to continue to farm, because their ranch is not worth anything anymore. You are forcing bankruptcies across this country because of the actions that are happening on this floor, because of the decisions that are made in the ivory towers in Washington that say that we know better than the people out in the States, that we know better than the people that are farming the land and ranching the land.''

Well, you do not know better. Because my family has been on the same ranch for four generations, and we take care of it. And part of my heritage is the wildlife that is on that property, and we take care of it, and you are taking that away from us through your regulations and your laws that you have passed in this place in the past several years.

That is why this country stood up and said, ''Enough is enough. If you take away someone's private property, you have got to pay them for that.'' Our forefathers understood that. That is why they put it in as a civil right in our Constitution that you cannot take away people's private property no matter what the goal.

Now, this bill, I admit, is a compromise. It is not what I wanted to do. I wanted to cover all private property, and I wanted to cover all Federal regulations. But I realize that we would not pass that. So we did compromise. We did narrow the scope.

The gentleman from Louisiana [Mr. TAUZIN] is going to bring up the amendment that narrows the scope. We compromised on what a threshold was. We compromised on what private property was. We narrowed this down dramatically, so that it only affected four major regulatory areas, and that it only had a threshold of 10 percent, because I contend that if you take away the value of someone's car, you ought to pay them for it.

I think that our forefathers were very clear about what they meant.

Now, we are hearing all of this talk about this is going to be a budget buster. In fact, I heard someone a few minutes ago say this is going to cost billions of dollars. Well, if it did cost billions of dollars, are you admitting that you are stealing billions of dollars worth of private property and not compensating for it? Is that what it is? Well, that is not OK. That is not all right.

If you take away someone's private property, you have to pay them for it, and you set up all the regulatory morass and all the judicial steps you want, it is still wrong, and we are trying to rectify that situation. We are trying to say that if you take away someone's private property, that you have to compensate them for it. It is a very simple concept that was grasped by our forefathers over 200 years ago that you cannot, as a tyrannical government, come in and take something away from an individual and not pay them for it.

This is probably the most important vote that we have in the Contract With America to me, and I believe that this has to pass, and it will pass.

I urge your support.

Mr. GEJDENSON. Mr. Chairman, I rise in opposition to H.R. 925 and urge my colleagues to defeat this ill-conceived measure. I want to thank the gentleman from Massachusetts [Mr. FRANK] and the gentleman from California [Mr. MILLER] for their efforts to point out the substantial flaws in this bill.

H.R. 925, as reported by the Judiciary Committee, requires the Federal Government to compensate any property owner whose property is devalued by 10 percent or more as the result of any agency action to limit its use in virtually any way. While the Federal Government has a special fund to pay compensation claims, this bill requires claims to be paid out of an agency's budget.

I have several concerns about this bill. First and foremost, it is at odds with the fifth amendment and decades of consistent Supreme Court decisions. I firmly believe that the Government must compensate property owners when it takes their property for public purposes as required by the fifth amendment. When we take a parcel of land to build a highway or for another project it is only appropriate to compensate the owner of that property.

However, the Supreme Court has consistently ruled that the right to compensation does not apply when the owner retains ownership of a parcel and can continue to derive economic benefit from it. The Supreme Court has ruled that compensation is required when a Federal action eliminates every conceivable use of a piece of property not just the most valuable possible use. In addition, the Court has held that a taking can only occur when the entire piece of property is affected not merely a portion of it. Furthermore, many lower courts have consistently ruled that a taking cannot occur if a landowner does not have a formal development plan at the time the restrictions are put into place.

Although some argue that the Court dramatically liberalized the definition of takings in the 1980's, a close review indicates that the major tenets remain unchanged. In Keystone Bituminous Coal Association v. DeBenedictis in 1987, the Court confirmed that the decision on whether or not a taking has occurred must be based on the effects of the action on the property as a whole. In the Lucas case in 1992, the Court reiterated the premise that a taking only occurs when all economic uses of a parcel are barred by a particular restriction. This bill sweeps longstanding precedent away and replaces it with a framework that the Supreme Court and lower courts have repeatedly rejected because it is at odds with what our Founding Fathers intended.

This leads to my second concern that the proponents of this legislation do not understand all its possible effects. They cannot tell us definitively what agency actions will or will not require compensation. The language of this bill is so vague and general that I believe it is impossible to determine which agency actions will be defined as working to prevent an identifiable hazard to public health and not require compensation. The bill does not define this concept and provides agencies with no guidance whatsoever. I believe that agencies will be so fearful of massive compensation claims that they will narrowly interpret this concept, thereby jeopardizing public health. The bill is purposefully vague to force agencies to constantly second-guess their actions and ultimately limit few activities.

Moreover, the bill's sponsors cannot tell us exactly how much it will cost the American taxpayer. The absence of accurate cost estimates is very disturbing to me especially as this body considers a multibillion rescission package which falls disproportionately on low-income Americans and a balanced budget amendment to the Constitution which could require us to cut the budget by more than $1 trillion over the next several years. While all these discussions about cutting government spending are going on, my Republican colleagues are moving forward with a bill that could cost the American people untold hundreds of millions of dollars. It is imperative that our colleagues understand that the costs of this bill will be borne by Americans coast to coast who will very likely be adversely affected by actions of other property owners. The vast majority of Americans will be required to pay a very small number of landowners not to take actions which could jeopardize public health, safety and the environment. It is outrageous to ask the American people to pay hundreds of millions of dollars to developers and large companies so that they won't take actions which put the public at risk.

Finally, this bill has the potential to undermine an agency's ability to carry out its statutory duties because it requires compensation from agency's budgets rather than from the existing government maintained compensation fund. The bill does not mention limiting compensation if it would adversely affect an agency's ability to carry out its duties. Instead, it would require an agency to shift funds from programs to pay unprecedented compensation claims. Claims against the Environmental Protection Agency could divert funds from efforts to protect air and water quality and clean up Superfund hazardous waste sites. Claims against the Department of Interior could reduce funding for our national parks and recreation areas. While the bill allows agencies to come to Congress for additional money, it is disingenuous to suggest that funds will be forthcoming as we are moving to slash Federal spending. Once again, these funding provisions demonstrate that this bill is a veiled attack on regulatory action of virtually any type. Agencies are being given the unmistakable signal that they will be penalized if they attempt to regulate land use.

Mr. Chairmen. H.R. 925 is a massive new entitlement for a select few and will be paid for by ordinary Americans who will ultimately feel the effects of allowing landowners to fill wetlands or mine habitat of endangered species. Finally, H.R. 925 is a budget buster purely and simply. If we truly want to protect the American taxpayers, we should defeat this measure.

Mr. FAZIO of California. Mr. Chairman, I am on record as being a strong supporter of private property rights. Private property rights are an integral part of the protections guaranteed to us all by the Constitution of the United States.

Each of us in this Chamber can point to examples in our own districts where property rights have been stepped upon by overzealous governmental intrusions. There must be a change.

As a strong supporter of property rights, it is ironic that this legislation has been so difficult to embrace enthusiastically.

We can debate whether the American people know or care about the details of the Contract With America. In my view, those details are not permeating beyond the beltway.

Setting that question aside, the sketchy nature of the contract is an advantage for proponents of the unamended bill because this bill is not the bill Republicans set forth in the Contract With America. Simply put, the bill, as brought to the floor, represents an extreme position, not the more reasonable position set forth in the Contract With America.

The bill is more extreme than the bill introduced by the Senate majority leader. It's more extreme than the position taken by Ronald Reagan in his 1988 Executive order. And, the bill is more extreme than the Contract With America in two fundamental ways.

First, the bill requires the Federal Government to compensate owners of private property whenever a Federal agency's action decreases the fair market value of their property by 10 percent or more. The Key here is the 10-percent figure.

On the other hand, the Contract With America called for compensation when the property value was diminished by one-third, which is 33 percent. The 33-percent figure in the contract was replaced with the 10 percent in the bill for purely political purposes.

The Republican leadership wants to set the mark so low that reasonable people who support property rights will have to give serious consideration to the impact of the 10-percent threshold.

Lowering the threshold to 10 percent flies in the face of two centuries of Supreme Court precedent. Both proponents and opponents of the bill agree that takings clause jurisprudence is too complicated and unclear. Nevertheless, the 10-percent threshold is not the answer. It was meant to force even the most staunch private property rights advocates like me to consider the crippling effect of the 10-percent rule.

Mr. TAUZIN from Louisiana is without a doubt the most adamant supporter of private property rights in this body. As a Member of the majority and now the minority, Mr. TAUZIN is recognized by Members of both parties as the leading advocate for property rights. Yet, even Mr. TAUZIN thinks that the 10 percent threshold is too restrictive.

Real reformers care more about giving small landowners regulatory relief than they care about political agendas. I want real improvement, not some purely symbolic act that is sure to die in the Senate.

Second, the bill differs from the Contract With America in the scope of the laws affected. The bill applies to any Federal law, not just those where there has been abuse. In contrast, the Contract With America was limited to the wetlands provisions of the endangered species act, the clean water act, reclamation law, and the farm bill.

Again, those of us who want real reform believe that we should focus on the laws that are the real source of the our constituents' frustration. The bill's shotgun approach misses the real target—the laws where abuse has occured.

I am glad that this House considered and passed the Tauzin amendment.

By passing the Tauzin amendment, this House sent a strong signal that we want real reform. As amended, the bill now requires the Federal Government to compensate owners of private property whenever a Federal agency's action decreases the fair market value of their property by 50 percent or more.

In addition, the Tauzin amendment limits the scope of the bill to the major laws that have been abused—the Endangered Species Act, the Clean Water Act, reclamation law, and the farm bill.

My constituents have placed their trust in me to be their voice on these issues. This bill still needs more work. We will have an opportunity to make needed refinements if the Senate passes a similar version of this bill and brings it back to the House for conference.

My vote here on the floor of the House of Representatives is a great honor and tremendous responsibility—one that I take very seriously. I am voting for final passage of H.R. 925 in support of the community leaders, farmers, small business owners, and individual citizens in my district who have expressed their frustration with regulatory burdens.

Mr. MINETA. Mr. Chairman, I rise in strong opposition to the bill H.R. 925, the Private Property Protection Act of 1995.

Mr. Chairman, I firmly believe that property rights is one of the most important constitutional guarantees we have as Americans. I am pleased to say that we currently have a balanced system that adequately safeguards those rights.

To protect property owners against unreasonable Government regulation, the courts have developed, over a more than 70-year span, an extensive body of law to address the issue of regulatory takings. They have generally taken a fact-intensive, case-by-case approach to determine if regulatory limitations are severe enough to warrant compensation for the owner.

The courts have concluded that Government regulation would have to result in an almost total elimination of value of the entire property before they would find that a taking has occurred. This is the current constitutional standard as established by the Supreme Court.

Under this bill, a mere 10-percent reduction in the value of that portion of the property which is affected by a regulation would trigger compensation. The 10-percent cutoff is one of many provisions that are fertile grounds for litigation, especially in view of the variability in appraisals. For example, the courts will have to determine whether the diminution was 11 percent or only 9 percent.

This drastic lowering of the threshold would encourage developers to deliberately propose the most damaging use of property just to receive payments in exchange for more responsible and still profitable use.

Proponents of this bill in committee even rejected an amendment that would preclude payment to an owner who, at the time of acquiring the property, knew or should have known that the use of the property would be limited by an agency action. So now large land speculators can go scouring the country buying up properties that are likely to be regulated, with the expectation of demanding ransom from the Federal Treasury. Why should we create this entitlement to pay fraudulent claims?

At the other extreme, the bill imposes unreasonable restrictions on the use of private property. It does so by subjecting a subsequent purchaser to limitations on land use even where the condition that gave rise to the limitation no longer exists, and the purchase price reflects that. And there is no requirement that subsequent purchasers be notified that the property they are buying is subject to a limitation that can be lifted only if a previous owner disgorges compensation he has received in the past.

The exclusions for uses considered to be nuisances under State or local law, or for regulations to prevent identifiable public health or safety hazards or damage to neighboring properties, are inadequate to protect public health and safety. Federal environmental laws are often enacted because not all pollution is unlawful or is a nuisance under State or local law. Why do taxpayers have to bribe polluters in order to stop their anti-social behavior?

The bill puts the Federal Government in the untenable position of having to pay compensation no matter what course it adopts. Denying a landfill permit to the owner of the proposed site would trigger compensation. But granting the permit may prompt nearby residents to assert taking claims based on reduction in their property value.

Implementing the provisions in this legislation would mean creating a whole new bureaucracy to handle the anticipated mountain of claims. Imagine the red tape.

In addition, substantial resources are required for endless litigation—for example, over such things as whether or not a limitation falls within the exemptions. These costs, when added to the costs of compensation, make the possibility of balancing the budget a true fantasy.

This bill, therefore, advances a radical new theory that would severely constrain the government's ability to protect public health and safety and the environment. It would create an entitlement for large property owners, tremendous windfalls for speculative developers, and perverse incentives for polluters. It would add layers of bureaucracy, realms of red tape, and enormous fiscal demands, without corresponding benefits.

That's why the National Conference of State Legislatures, the National Governors' Association, the National League of Cities, the Western Land Commissioners Association and 33 State attorneys general are all against this legislation.

Why are we not listening to the States, who strenuously oppose this legislation? States recognize that the Federal Government plays an important role in protecting citizens, and that the property rights of certain landowners must be balanced against the property and other rights of their neighbors.

As cautioned in testimony by the National Conference of State Legislatures, ''Compensation-type taking legislation not only has the ability to weaken the Federal Government's resolve to apply its laws, but it also has the ability to financially cripple the Federal agencies which implement such laws.''

We have been accepting States' views in considering other legislation recently. Why are States' views not equally deserving of our consideration today?

We should heed the States' advise and vote ''no'' on this bill.

Mr. EMERSON. Mr. Chairman, I rise today in strong support of both H.R. 925, and of the voices of private property owners that is being heard loud and clear by the conservative majority in Congress today. Clearly, the Fifth Amendment to the U.S. Constitution is one of the greatest liberties ever given to the free world. However, in recent years, private landowners have seen the Federal Government and radical ''preservationist'' groups infringing on private property rights protected by the Fifth Amendment.

The Fifth Amendment of the U.S. Constitution provides in part that ''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.'' Today, we continue to see a growing effort to make private property owners bear the burden and costs of government decisions—decisions that are ostensibly made in the interest of the public at large, but reach beyond the protection of public health and safety and other appropriate, historically sanctioned purposes.

Indeed, for too long, our private property protections have been eroded and our basic constitutional liberty—the protection of private property rights—has been undermined by a largely unelected, ivory-tower elitist class centered in Washington. Now, we have the opportunity to preserve our long-cherished liberties by supporting H.R. 925 and the Tauzin substitute.

The Supreme Court has recently shown outright support for private property right protections. Unfortunately, private land owners are still subject to harassment from elements of the Clinton administration. This very day, unelected government officials from the EPA and the Interior Department in particular, along with the Washington environmental lobby are pushing the ''communitarian'' approach to governing, making private property owners bear the burdens and costs of what are really subjective government land-use decisions.

Mr. Chairman, plain and simply, private property rights are the foundation for all economic progress and this premise must be maintained. Farmers, ranchers, small businesses, and related enterprises must feel secure in the ability to retain the fruits of their labors—not further frustrated by being forced to grapple with further regulatory burdens. Protecting these liberties for generations of Missourians and Americans to come is my goal that we can help achieve through successful passage of H.R. 925.

Mr. RICHARDSON. Mr. Chairman, as approved by a Judiciary Subcommittee last week, H.R. 925 would allow any landowner claiming as little as 10 percent diminishment in their property value as a result of a Federal Government regulation to sue the Government for damages.

The Tauzin amendment is even worse. It maintains the 10 percent level and adds a new provision that would force the Federal Government to buy property from landowners if a regulation diminishes the value of the property by more than 50 percent.

This blanket coverage in H.R. 925 will cost Federal, State and local governments billions of dollars in new taxes. American taxpayers just cannot afford this price tag.

H.R. 925 is a prime example of government bloat—it is a bureaucrats' job employment bill that jacks up costs, creates an even bigger government and increases red tape.

In short, Mr. Chairman, it wields a meat cleaver when a scalpel would be more appropriate.

This broad application of authority for landowners suits means that the Federal Government will be on the hook for billions of dollars in court fines from individuals who claim that any Federal regulation—even reasonable ones such as those that protect drinking water and clean air—has diminished the value of their property.

And of course, the people who would bear the brunt of this financial foolishness are the same people who elected us: the American taxpayers.

But passage of H.R. 925 will be a costly mistake for America for more than just budgetary reasons.

Takings means more than red tape, big government and bloated bureaucracy. It could also cost us basic protections that safeguard public health, protect workplace safety and ensure the value of our homes and our families.

For example, takings legislation could result in the weakening of Federal protections for safe drinking water, food inspection, and workplace safety standards, and would even affect local zoning regulations which protect the values of our homes and our property.

H.R. 925 replaces the Federal policy of ''the polluter pays'' with ''the people pay.'' The American people pay.

This takings legislation would require the Federal Government to pay people not to pollute.

For example, if a landowner decided to construct an incinerator on private property adjacent to a school or hospital and Federal regulations prohibited such construction, the Federal government could be forced to pay the landowner not to construct the incinerator because such a prohibition represented a diminishment of the value of his property.

This takings bill is supported by big business, big developers and big industrial polluters who have said by their support of this legislation that taxpayers should be forced to pay them to follow basic health and safety laws.

H.R. 925, does not explicitly limit compensation to property within the United States. It could require compensation for agency actions that affect property overseas.

H.R. 925 is not explicitly limited to property owned by individual American citizens. This could mean that H.R. 925 would require payments to domestic or foreign corporations. Not average Americans, not the little guy, but big corporations that are not necessarily even in this country.

H.R. 925 sets no limit on the amount to be paid for government limits on any individual property. This means that individuals could receive multiple compensation for different government actions on the same property.

H.R. 925 is not a remedy for small landowners and average Americans, its an entitlement program for big businesses.

Even if we add the Tauzin language to H.R. 925, and I don't believe we should, this legislation would force the American taxpayer to sign a blank check that could bankrupt the U.S. Treasury.

The Congressional Budget Office and the Congressional Research Service have both estimated the cost of payments due to government actions taken under the wetlands provisions of Section 404 of the Clean Water Act alone to be in the billions of dollars.

H.R. 925 is a solution in search of a problem. It should be renamed the Bureaucrat and Attorney Full Employment Act. It represents an assault on the Treasury that our pocketbooks cannot afford, and an assault on basic health and safety standards that our people will not stand for.

I urge a no vote on the Tauzin amendment and a no vote on this ill-advised sham reform legislation.

Mr. PACKARD. Mr. Chairman, for the past 40 years big government has ridden roughshod over our private property rights. The American people suffer the consequences as overzealous Federal bureaucrats administer costly, outdated regulations. Our Republican Contract With America works to restore our Founding Fathers' conviction that Government act to protect our rights—not to violate them.

Ownership of private property lies at the heart of the human experience. Burdensome and costly regulations assault private property rights. Government intrusion devalues land and infringes upon the fundamental right of private citizens to own land.

Our Republican regulatory reforms work to compensate landowners when they are denied the reasonable use of their land by overreaching Federal regulations. The Private Property Protection Act, H.R. 925, allows property owners to seek compensation when a Federal regulatory action has reduced the fair market

value of their property by 10 percent or more. This bill provides property owners with a more direct means of guaranteeing the constitutional right to compensation for property takings.

Private property owners have paid the tab for onerous Government regulations for too long. The regulatory burden will continue to rise if we do not act now. The Private Property Protection Act establishes a clear pay back procedure. It forces Federal agencies to prioritize their needs and makes them accountable to the needs of private property owners.

Mr. Chairman, the Private Property Protection Act ensures that landowner rights will be protected, not abrogated by Federal agencies. The new Republican-controlled Congress continues to work for a smaller, less costly, and less intrusive Government.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the bill is considered as an original bill for the purpose of amendment and is considered as having been read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 925

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Private Property Protection Act of 1995''.

SEC. 2. RIGHT TO COMPENSATION.

(a) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of that property has been limited by an agency action that diminishes the fair market value of that property by 10 percent or more. The amount of the compensation shall equal the diminution in value of the property that resulted from the agency action.

(b) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this Act shall not thereafter be used to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

SEC. 3. EFFECT OF STATE LAW.

No compensation shall be made under this Act if the use limited by Federal agency action is proscribed under the law of the State in which the property is located (other than a proscription required by a Federal law, either directly or as a condition for assistance). If a use is a nuisance as defined by the law of a State or is prohibited under a local zoning ordinance, that use is proscribed for the purposes of this subsection.

SEC. 4. EXCEPTION.

(a) PREVENTION OF HAZARD TO HEALTH AND SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this Act with respect to an agency action the purpose of which is to prevent an indentifiable—

(1) hazard to public health or safety; or

(2) damage to specific property other than the property whose use is limited.

(b) NAVIGATIONAL SERVITUDE.—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigational servitude.

SEC. 5. PROCEDURE.

(a) REQUEST OF OWNER.—An owner seeking compensation under this Act shall make a written request for compensation to the agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

(b) NEGOTIATIONS.—The agency may bargain with that owner to establish the amount of compensation. If the agency and the owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

(c) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement, the owner may choose to take the issue to binding arbitration or seek compensation in a civil action.

(d) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and appraisal fees. The agency shall promptly pay any award made to the owner.

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and appraisal fees. The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

SEC. 6. DEFINITIONS.

For the purposes of this Act—

(1) the term ''property'' means land and includes the right to use or receive water;

(2) a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action;

(3) the term ''agency action'' has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term ''agency'' has the meaning given that term in section 551 of title 5, United States Code;

(5) the term ''State'' includes the District of Columbia, Puerto Rico, and any other territory or possession of the Untied States; and

(6) the term ''law of the State'' includes the law of a political subdivision of a State.

The CHAIRMAN. The bill will be considered for amendment under the 5-minute rule for a period not to exceed 12 hours.

No amendment to the committee amendment in the nature of a substitute made in order as original text shall be in order unless printed in the portion of the CONGRESSIONAL RECORD designated for that purpose in clause 6 of rule XXIII before the commencement of consideration of the bill for amendment. Those amendments will be considered as having been read. Second degree amendments offered to the Canady amendment, if offered, are not required to be printed in the RECORD and must be read unless they happen to be so printed.

Pending the consideration of the amendment in the nature of a substitute printed in House Report 104–61 by the gentleman from Florida [Mr. CANADY] and before consideration of any other amendment thereto, it shall be in order to consider the amendment printed in that report by the gentleman from Louisiana [Mr. TAUZIN] or a designee.

Are there any amendments to the bill?

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA

Mr. CANADY of Florida. Mr. Chairman, I offer an amendment in the nature of a substitute made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment in the nature of a substitute offered by Mr. Canady of Florida: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Private Property Protection Act of 1995''.

SEC. 2. FEDERAL POLICY AND DIRECTION.

(a) GENERAL POLICY.—It is the policy of the Federal Government that no law or agency action should limit the use of privately owned property so as to diminish its value.

(b) APPLICATION TO FEDERAL AGENCY ACTION.—Each Federal agency, officer, and employee should exercise Federal authority to ensure that agency action will not limit the use of privately owned property so as to diminish its value.

SEC. 3. RIGHT TO COMPENSATION.

(A) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of any portion of that property has been limited by an agency action that diminishes the fair market value of that portion by 10 percent or more. The amount of the compensation shall equal the diminution in value that resulted from the agency action.

(b) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this Act shall not thereafter be used contrary to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

SEC. 4. EFFECT OF STATE LAW.

No compensation shall be made under this Act if the use limited by Federal agency action is proscribed under the law of the State

in which the property is located (other than a proscription required by a Federal law, either directly or as a condition for assistance). If a use is a nuisance as defined by the law of a State or is prohibited under a local zoning ordinance, that use is proscribed for the purposes of this subsection.

SEC. 5. EXCEPTIONS.

(a) PREVENTION OF HAZARD TO HEALTH OR SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this Act with respect to an agency action the primary purpose of which is to prevent an identifiable—

(1) hazard to public health or safety; or

(2) damage to specific property other than the property whose use is limited.

(b) NAVIGATION SERVITUDE.—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigation servitude, as defined by the courts of the United States, except to the extent such servitude is interpreted to apply to wetlands.

SEC. 6. PROCEDURE.

(a) REQUEST OF OWNER.—An owner seeking compensation under this Act shall make a written request for compensation to the agency whose agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

(b) NEGOTIATIONS.—The agency may bargain with that owner to establish the amount of the compensation. If the agency and the owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

(c) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement as to the right to and amount of compensation, the owner may choose to take the matter to binding arbitration or seek compensation in a civil action.

(d) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and other arbitration costs (including appraisal fees). The agency shall promptly pay any award made to the owner.

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and other litigation costs (including appraisal fees). The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

SEC. 7. LIMITATION.

Notwithstanding any other provision of law, any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations.

SEC. 8. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to limit any right to compensation that exists under the Constitution or under other laws of the United States.

SEC. 9. DEFINITIONS.

For the purposes of this Act—

(1) the term ''property'' means land and includes the right to use or receive water;

(2) a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action;

(3) the term ''agency action'' has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term ''agency'' has the meaning given that term in section 551 of title 5, United States Code;

(5) the term ''State'' includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States; and

(6) the term ''law of the State'' includes the law of a political subdivision of a State.

Mr. CANADY of Florida. Mr. Chairman, I rise in support of my amendment in the nature of a substitute to H.R. 925.

Supreme Court Justice Joseph Story many years ago stated that, ''One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature and the rulers.''

Section two of my substitute amendment establishes the general policy that no Federal law or agency action should limit the use of privately owned property so as to significantly diminish its value. It sends a clear message from Congress to Federal agencies that we aim to be a good government in which justice is fairly administered, and therefore, are determined that private property not be subjected to the will or caprice of any agencies.

The threshold diminution in property value required for compensation in my amendment is the same as the threshold in H.R. 925, but my amendment provides that the diminution in value applies to the portion of the property affected by the agency action.

My amendment also clarifies that the payment of compensation to a property owner must come from the appropriations of the agency whose action resulted in the limitation on the use of the property.

If the agency does not have sufficient funds to compensate the owner, the agency head is required to seek the appropriation of such funds in the next fiscal year. Contrary to the claims of some opponents of the bill, it does not create a new entitlement. This point is made clear beyond any doubt by the language of section 7 of my amendment. That section states unequivocally that ''any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations.''

The payment provision is vital to the legislation because it will force agencies to recognize that when they limit the use of an owner's property, there are economic consequences. Agencies will have to weigh the benefits and costs of their actions carefully—paying close attention to the impact of those actions on individuals and the general public. Agencies also will be more accountable to Congress, and therefore, will be more likely to carry out the true intent of the statutes they are charged with enforcing—rather than continually extending their bureaucratic reach.

The amendment also contains a provision which explicitly provides that nothing in the act ''shall be construed to limit any right to compensation that exists under the Compensation or under other laws of the United States.'' This makes abundantly clear that bill will not supplant remedies that are currently available to landowners.

Mr. TAUZIN will offer an amendment to my substitute amendment. Most importantly, Mr. TAUZIN's amendment will limit the scope of the bill to actions carried out under specified regulatory programs—namely, the Endangered Species Act, wetlands protection provisions, and particular programs that affect the right to use water.

Together, my amendment and Mr. TAUZIN's amendment form a bipartisan compromise on the Private Property Protection Act. The compromise places the threshold diminution in property value required for compensation at 10 percent of the portion of property affected, but also allows a property owner to force the Federal Government to buy the portion of property affected outright if that portion's value is diminished by 50 percent or more.

Members on both sides of the aisle who are committed to the protection of property rights support the compromise legislation. It provides a workable way to ensure that property owners receive compensation when federal regulation causes a significant reduction in the market value of the owner's property.

I urge my colleagues to support my substitute amendment.

Mr. Chairman, I believe this is long-overdue legislation. This legislation is being brought to this floor now after many years, after languishing in this Congress without so much as a hearing in the Committee on the Judiciary. We are moving on this because this is important to the people of America. It is important to vindicating individual rights, and I would urge my colleagues to support my substitute amendment as well as the Tauzin amendment as we move forward with consideration of this legislation.

AMENDMENT OFFERED BY MR. TAUZIN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA

Mr. TAUZIN. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment. The text of the amendment is as follows:

Amendment offered by Mr. TAUZIN to the amendment in the nature of a substitute offered by Mr. CANADY of Florida: In section 3(a) after ''agency action'' the first place it appears insert '', under a specified regulatory law''.

Add at the end of section 3(a) ''If the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, the Federal Government shall buy that portion of the property for its fair market value.''.

In section 4, strike the first sentence and amend the second sentence to read ''If a use is a nuisance as defined by the law of a State or is already prohibited under a local zoning ordinance, no compensation shall be made under this Act with respect to a limitation on that use.''

In the heading for section 8, strike ''Rule'' and insert ''Rules''.

At the beginning of section 8, strike ''Nothing'' and insert:

(a) EFFECT ON CONSTITUTIONAL RIGHT TO COMPENSATION.—NOTHING

At the end of section 8, insert the following:

(b) EFFECT OF PAYMENT.—Payment of compensation under this Act (other than when the property is bought by the Federal Government at the option of the owner) shall not confer any rights on the Federal Government other than the limitation on use resulting from the agency action.

In section 9, after paragraph (4) insert the following:

(5) the term ''specified regulatory law'' means—

(A) section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(B) the Endangered Species Act of 1979 (16 U.S.C. 1531 et seq.);

(C) title XIII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.); or

(D) with respect to an owner's right to use or receive water only—

(i) the Act of June 17, 1902, and all Acts amendatory thereof or supplementary thereto, popularly called the ''Reclamation Acts'' (43 U.S.C. 371 et seq.);

(ii) the Federal Land Policy Management Act (43 U.S.C. 1701 et seq.); or

(iii) section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

Redesignate succeeding paragraphs accordingly.

Mr. TAUZIN. Mr. Chairman, members of the committee, the statement of administration policy on the bill before us reads as follows: ''The administration strongly supports private property rights and is continuing to implement regulatory reforms that will provide relief to property owners.'' It goes on to say, ''H.R. 925, as reported by the Committee on the Judiciary, would impose,'' and it goes on to say, ''an arbitrary compensation requirement that is unacceptable and extreme.''

Let me say I agree with the position of the administration, at least insofar as it is stated in this policy. The bill, as reported by the Committee on the Judiciary, is, indeed, an extreme version of the private property rights bill that I and many other Democrats in joining with my great friend, the gentleman from Texas [Mr. FIELDS], and many Republican colleagues have been fostering for many years now as a bill to be brought to the floor of this House. It is extreme because it covers all Federal agency regulations, and it is written in, I think, an unworkable fashion.

I am pleased to join with the gentleman from Florida [Mr. CANADY] today in announcing that we have resolved our differences of opinion with regard to the bill reported by Judiciary, that the amendment I now offer will do several very important things.

First of all, it will limit the scope of the bill. It will no longer cover all Federal regulatory actions that may amount to takings. It will now cover only those Federal regulatory actions undertaken pursuant to two, and actually three, if you consider water rights a separate issue, three kinds of regulatory takings.

The two are the two that we have been discussing for many years, endangered-species takings, a proposition this House debated on the Desert Protection Act, and overwhelmingly said they wanted to ensure that property owners were fully compensated when endangered-species regulations took away the value of their property.

And, second, the wetlands regulations under either the 404 Corps of Engineers Clean Water Act regulations or the wetlands regulations under the sodbuster provisions of the Food Security Act.

And, last, the bill, the amendment, will focus the bill on the last area of takings covered by the bill, which will be takings of water rights. It is important to note that water out west is as important, in fact, much more important a property right than land is out east, and that this bill recognizes that and makes clear that Federal regulatory actions which diminish the value and take a person's water rights away are considered a taking which can be indeed, arbitrated and compensated under this bill.

It is important to note with this amendment we will be scoping down the bill to the two general areas that the bill has generally focused on for many years, wetlands takings and endangered-species takings as they affect land and water.

□ 1145

Second, the bill does a very important thing. It says that under the Republican version of the bill this year that we have agreed upon, when a compensation is made for only a partial taking, 10 percent or more of the value of the affected land or the water right, when a compensation is made for a partial taking, the government does not become a co-owner with the property owner in that proceeding.

The government simply has the rights which are guaranteed under the statutes that created the regulatory authority to insist that the owner not use land in the ways that, indeed, amounted to the taking of that value of the property.

The third change we make is another very important one. I call my colleagues' attention to it, particularly those who have been concerned about the bill's original overreach. It clearly says that even though you may have a wetland, even though you may have a piece of property that is affected by Endangered Species Act, if under State law you cannot already use that property because under State law or city or local zoning laws you cannot, or because it is declared a nuisance under State law, then you will not be entitled to compensation for that which you could not do anyhow under legitimate zoning or nuisance authority.

Finally, the amendment will provide that when the diminution of value reaches that magical point of 50 percent or more, when the government owns more of your property than you do, when the government has more than 50 percent devalued the property you own, has told you that you cannot use it so much that the government now owns more of a right in that property than you own, when it reaches that point, as we had in our original bill, the owner will have the option to say to the government, ''All right, you got me, you have taken my property. Compensate me. Here is the title.''

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am rising in opposition to the amendment, but I want to engage the gentleman from Louisiana [Mr. TAUZIN] in a discussion because I think he overstated what the bill will look like if his amendment is adopted, and understated its effect.

Hr said, ''I believe that if something is prohibited by State law, it would not be compensable.''

But that is what the underlying bill says. His amendment would restrict that. His amendment would say that if it is restricted as a nuisance under State law, it would not be compensable but anything else restricted by State law would be compensable.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding.

The problem is that under the original bill reported by the Committee on the Judiciary, the committee reported a bill that covered all Federal regulations, and the Committee on the Judiciary also contained an exception saying that, as to all these Federal regulations, there had to be an exception for State laws that also regulated in those areas. Since we have toned the bill down, if you will, focused it on wetlands and Endangered Species Act taking, the courts have said that in these

wetlands and endangered species taking areas, the exception is—to compensation—is nuisance or zoning laws. That is the court's interpretation. That is what this amendment does.

Mr. FRANK of Massachusetts. I take back my time to say that the gentleman clearly finds the court's interpretation is inadequate because this bill goes beyond the courts. The gentleman is entitled to do that. But having decided it is way beyond what the courts have said, you cannot come back and say, ''Oh, but this policy, we didn't do it, we are just carrying out what courts did.'' But the fact is, and the gentleman has confirmed what I said, under the bill as it was reported out of the committee, the Committee on the Judiciary, in these areas, the compensation is denied if anything is illegal under State law.

If the gentleman's amendment is adopted, things that are illegal under State law could still be the basis for compensation unless they were illegal as nuisances. So if the State has outlawed something for reasons other than it is defined as a nuisance, it is entitled to compensation. By State law now. And it is very clear, and the law says on page 2, the underlying text of the bill, ''No compensation shall be made under this act if the use limited by the Federal agency action is proscribed under the law of the State.'' The gentleman's amendment would strike that. It would leave in the part that says, ''If the use is a nuisance as defined by the law of the State.'' So to there is a clear narrowing here of that exemption.

Mr. TAUZIN. I thank the gentleman. Again let me try to explain: The original bill also was broader, the exception was broader under the original bill because the original bill was broader. The original bill covered every Federal regulation.

Let me make one point if I can.

Mr. FRANK of Massachusetts. On this point.

Mr. TAUZIN. On this point.

Mr. FRANK of Massachusetts. But would the gentleman agree that this, in fact, narrows the exception?

Mr. TAUZIN. Yes, it narrows it as the bill narrows the focus——

Mr. FRANK of Massachusetts. No. I take my time back to say this. That is simply inaccurate, for this reason: The original bill did not say if it is against the law in all these other areas and if it is a nuisance in the wetland and environmental area.

What the gentleman has done is to narrow the scope of the law as it applies to the areas which would still apply because without that language, without that language, any State law violation would lead to no compensation even if it was under the Federal Wetland Act or Federal Endangered Species Act.

Under the gentleman's language, if you are proceeding under the Wetlands or Endangered Species or the agricultural subsidy program, anything that violated State law would not defeat the claim for compensation unless it was a State law that defines it as a nuisance.

Mr. TAUZIN. Will the gentleman yield further?

Mr. FRANK of Massachusetts. Yes.

Mr. TAUZIN. The problem is, if we do not straighten out this language as we straighten out the bill's focus, if I can make the point, Federal regulatory law in wetlands and endangered species areas can be and is, in fact, duplicated on the State level, in many cases. It is duplicated, in many cases, because some States carry out the Federal policy.

The point is, if under the court decisions you are only losing your right to use the property as a result of these wetlands and endangered species regulations, it should not matter that the State has duplicated those regulations. You ought to still be entitled to compensation.

Mr. FRANK of Massachusetts. Reclaiming my time, the gentleman's explanation is a very interesting one, and someday I will figure out what point he was explaining because it is not the issue I raised. The issue I raised is this: It says in the underlying bill with regard to wetlands and endangered species, if it violates State law, you do not get compensation, and the gentleman changes that. The gentleman's amendment says if it violates State law under the guise of a nuisance, you do not get compensation, but any other violation of State law will not defeat the claim for compensation.

Mr. TAUZIN. Will the gentleman——

Mr. FRANK of Massachusetts. No. I think we have made that clear enough. The gentleman has acknowledged that. He can discuss later and defend it later. But I think the point is clear.

The other problem I have with the amendment is this: In 1985, Congress said——

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has expired.

(By unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 1 additional minute.)

Mr. FRANK of Massachusetts. Mr. Chairman, since I yielded a good part of my time, I would like to make this one further point. Under the gentleman's amendment, one of the programs that will survive for compensation is if you have got property and you fill in a wetland or do something else that might be contrary to general conservation policies today, you lose your right to subsidy under the Agricultural Subsidy Program.

What the gentleman from Louisiana's amendment would do would be to restore that right. If, in fact, you have a piece of property that is ruled a wetland or otherwise, the Agriculture Department and others say should not be worked and you change the land and then plant on it, the gentleman from Louisiana says you can be eligible for a subsidy.

So we are not only talking about taking away the value, we are talking about the owner taking conscious action which enhances the value of the land in the nature of a Government subsidy.

Telling people they ought to be able to go and make these changes so they are eligible for agriculture subsidies seems to me a mistake.

The amendment in 1985 said they could not do that, the amendment passed under Ronald Reagan and the Republican Senate, as well as a Democratic House. I think that is a mistake.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has again expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 30 additional seconds.)

Mr. FRANK of Massachusetts. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman.

The bill is designed to compensate for lost value as a result of changes or applications of Federal regulations on the land. It does not compensate for loss of subsidy.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has again expired.

(By unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 30 additional seconds.)

Mr. FRANK of Massachusetts. It clearly does. The value of the land would include your right to get a subsidy. If, in fact, that were not the case, why would you be trying to put it back in?

The fact is, if you are able to get Government subsidies in the tens of thousands of dollars for your crops per year, that land is more valuable. Clearly, what we are doing here is restoring peoples' rights to get back into a subsidy program. I think that ought to be clear. It is different from making them whole.

Mr. TAUZIN. If the gentleman would yield——

Mr. FRANK of Massachusetts. Whatever time I have.

Mr. TAUZIN. The point is, regardless of what the value of the land is and how it is calculated, loss of a subsidy does not trigger the arbitration proceeding under this bill.

Mr. FRANK of Massachusetts. It is taken into account. It does not trigger it, but it, in fact, will be taken into account, and land that gets an agriculture subsidy is worth more.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Tauzin amendment.

(Mr. FIELDS of Texas asked and was given permission to revise and extend his remarks.)

Mr. FIELDS of Texas. Mr. Chairman, first of all, I want to compliment my colleague from Louisiana, Mr. TAUZIN, for his continued work in what I consider to be one of the most important areas that this Congress will address

during this contract period, because we are talking about a basic constitutional right that was not only envisioned by our forefathers but written into the Constitution.

I compliment my friend from Louisiana, and I also compliment our friend from Florida, Mr. CANADY, for his work because what he pointed out earlier was exactly the truth, that until there was this new majority, we did not have an opportunity to bring this type of legislation to the floor for debate.

So I am thankful we have the opportunity today to discuss issues that are extremely important.

I also point out, Mr. Chairman, there is a letter from the leadership, the Republican leadership, dated today, addressed to all our colleagues, saying, ''We are writing to express our support for the Tauzin-amended Canady substitute.'' That is signed by all the leaders.

Mr. Chairman, you can talk about a lot of things in this particular debate, and sometimes you can lose, with the clouds and the smoke that are thrown up by those who do not want to see change in the private property rights area. So I think it is instructive to look specifically at some of the cases.

Last night, after I addressed the House on the floor, I got a fax from Ms. Nan Robbins, in Paris, TN, not one of my constituents.

But Ms. Robbins says, ''Thank you for your support of the Private Property Protection Act. I watched C–SPAN tonight with some encouragement. I am a victim of the 404 Clean Water horror story. I wish I could tell all of my story to the entire Congress. I did send a letter to Billy Tauzin. Again, thank you for your support of the small, low- and middle-class people who cannot spend big bucks fighting government.''

Well, the story of Ms. Robbins is one that the entire House needs to know. Here is a lady and her husband who owned 39 acres within the city jurisdiction of Paris, TN. They sold their property. They were told by the city officials there in Paris that they had to go and get a permit from Corps of Engineers. The Corps came out and walked the property with Mrs. Robbins—her husband is disabled and could not accompany them—and that bureaucrat said that they had wetlands.

Now, this is after property around Ms. Robbins had been filled. Now, that statement was made last March. To this particular time, Ms. Robbins has yet to get her permit. The sale of her property has been stopped.

I hold out to the entire House, Mr. Chairman, this is the type of abuse that we are trying to stop with what I think is good commonsense legislation.

Again I want to applaud the gentleman from Louisiana for what he has been able to do in working with those of us on this side of the aisle who have an interest.

I would ask the question: Are we returning with this legislation to what our forefathers originally intended, and that is the protection of private property rights and the enjoyment of the same, with this legislation? The answer is: Absolutely. The question is: Are we gutting major laws, such as the Endangered Species and Clean Water? The answer is: Absolutely not.

What we are doing through this legislation is forcing bureaucrats to make proper decisions. We are forcing cooperation and consultation with that private property owner.

Again I want to applaud the gentleman from Louisiana and applaud the gentleman from Florida for their efforts.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding.

In the little time the gentleman has left, I want to say a word about JACK FIELDS. He has been the principal cosponsor of this bill for many years. He was chiefly responsible for getting over 150 Members to sign a discharge petition on this effort last year.

JACK, all of the country, all of the property owners of America who are looking forward to this day, deeply appreciate the gentleman's great work.

Mr. FIELDS of Texas. I appreciate the comments of the gentleman from Louisiana.

□ 1200

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it may come as a surprise to Members of this body, but I really had contemplated whether to support this bill. I thought that we were engaged in a populist effort to get to a point where we were compensating the American people for the diminution in value of their property that the Federal Government was causing by laws and regulations. That is where the bill starts. That is where Mr. CANADY's substitute starts. I thought I was going to be able to come with a straight face and consider, do I support this, and consider the possibility of voting for this bill.

Now I come with the gentleman from Louisiana, Mr. TAUZIN's amendment, and we get to what this bill is really all about. It is not about compensating Americans whose value to their property has been diminished. It is about doing away with legislation and regulations that my colleagues in this body do not like, because it seems to me that we have now sold out if we adopt this amendment offered by the gentleman from Louisiana [Mr. TAUZIN], the whole underlying purpose of the bill, to compensate the American people for agency actions and regulations that diminish the value of their property.

Look, America, at what is happening. This amendment will only deal with the Clean Water Act and the Endangered Species Act. That is all they are trying to do, is undercut these regulations under these laws.

So when you hear Members on this floor talk about is this a budget buster, it is not about busting the budget if you amend the bill as has been proposed. It is about forcing the agencies that enforce these two specific pieces of legislation, forcing them not to promulgate any regulations that will effectuate those laws.

Mr. Chairman, I would say to my colleagues I do not know how we can start with one purpose, which is a healthy, genuine purpose, to compensate the American people, and sell out the whole idea to wipe out two pieces of legislation, the Endangered Species Act and the Clean Water Act, and then go back and tell the American people ''We were up there fighting for you.''

If you believe in compensating the American people for diminution in their values, then you believe in compensating them regardless of whether it is done by the Clean Water Act or the Endangered Species Act or any other act that we pass in this body

So we have come to the point where we fleshed this thing out, we brought it out in the open now. At least we know what this bill is all about. It is our political opportunity to do away with these two pieces of legislation. And we are so gutless in this body that we will not, even with the new majority having the votes, they say, they will not bring these bills up and deal with them directly. They will say, ''Oh no, it is not us. It is some agency over there across Washington that we are beating up on. It is the agency over there.''

Understand, Members of this body, that no agency has written any regulations that are not pursuant to a piece of legislation.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. Mr. Chairman, I do not know of any agency in the Federal Government that is over there writing regulations, unless they are writing those regulations pursuant to statutes that we passed in this body. And if we do not like the regulations that they write pursuant to our statutes, then we ought to change the statutes. We ought to have the guts to stand up and say ''We do not like the Clean Water Act, we do not like the Endangered Species Act, and we are going to do away with them,'' rather than coming and telling the American people that somebody else over there on the other side of town has done something that we do not like, even though they are acting pursuant to the authority that we gave them.

This is the ultimate opportunity, political opportunity, to pass the buck and beat up on some Federal agency that is doing exactly what we authorized them to do, and we ought to reject

this amendment and either accept the underlying bill on the principle that it stands for, or vote it down. Do not pass the buck. Have the heart to do what you want to do up front with the American people.

Mr. LAUGHLIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is fitting that we gather here in Washington on the Potomac River on the 160th anniversary of the date that a group of Texans gathered at Washington on the Brazos in Texas to declare our independence from a repressive government in Mexico.

Five years ago the gentleman from Louisiana, my good friend, Mr. TAUZIN, and the gentleman from Texas, my good friend and colleague, Mr. FIELDS, and I filed a bill to protect the private property rights of the owners who had their rights taken from them in wetlands areas. So I think it is fitting that we are here at Washington on the Potomac on the anniversary of the Texas Declaration of Independence. So I rise in support of the Tauzin-Laughlin-Peterson-Fields-Danner amendment to the substitute that limits the scope of this legislation to a few specific regulatory laws.

The Framers of our Nation clearly recognized the need for protection of property rights as they laid out the foundation for American democracy. Furthermore, they understood the vital relationship between private property rights, individual rights, and economic liberty. Despite this, the rights of property owners have been progressively eroded away by actions of our Federal Government.

The most notable examples of the takings of landowner property values can be exemplified through restrictions imposed by its endangered species and wetlands regulations, which this amendment specifically addresses.

Under this amendment, the measures of compensation would apply only in cases involving restrictions on property imposed by Federal agency regulations contained in the clean water wetlands permitting program, the Endangered Species Act, swampbuster and sodbuster provisions, and the rights to receive and use water under the reclamation acts, Federal Land Policy and Land Management Act, and Forest and Rangeland Renewable Resources Planning Act.

Furthermore, this amendment is necessary because the courts are crying out for Congress to clarify this area of law. As Chief Judge Loren Smith of the Court of Federal Claims has stated in the case of Bowles versus the United States last year, ''There must be a better way to balance the legitimate public goals with fundamental individual rights. Courts, however, cannot produce comprehensive solutions. They can only interpret the rather precise language of the fifth amendment to our Constitution in very specific factual circumstances. Judicial decisions are far less sensitive to societal problems than the law and policy made by political branches of our great constitutional system. At best our courts sketch the outlines of individual rights. They cannot hope to fill in the portrait of wise and just social and economic policy.''

Mr. Chairman, I would hope that our colleagues would join me in supporting the amendment and provide private property owners with decision capability to employ their own lands. Just as the founders of this country understood in the Constitution and as the founders of the Republic of Texas understood of the importance in this Nation of private property rights, citizens all over America today are saying, ''protect us from our own government. We want to exercise control over that property that we paid tax on.''

Indeed, young men and women for over 200 years have served in the military forces and at times on the battlefield to protect these private property rights that we in Congress and Washington on the Potomac River should understand and protect today.

I urge support of this amendment.

Mr. GILCHREST. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. I am one of those veterans that fought overseas to protect property rights, but I think that this particular amendment and this particular bill overall goes a long way in changing the concept of the fifth amendment, because if people's property is taken away for the public good, then those people should be compensated.

But there is another side to the story that I do not think is entering the picture enough here this morning, and that is the value of certain Government regulations in the Endangered Species Act to protect biodiversity, and the value and the function of wetlands as far as a filtration tool holding on to problems so there are not floods.

I would not stand here and say there have not been problems with these two regulations. There are real horror stories that have to be corrected, especially in the West, whether it is a grizzly bear that ate somebody's sheep and the person was not compensated, whether it was a flood because they found an insect in the ditch and did not let anybody clear the ditch and the flood caused damage to people's homes, or wetlands, there are horror stories. But I do not think we should change the fundamental dynamics of the fifth amendment to the Constitution. We can correct these horror stories. And there are horror stories that happen, in the committees of jurisdiction.

Now, what is not being emphasized here——

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I just want to underline the point the gentleman made. You are going to be hearing about horror stories all day. As the gentleman is pointing out, this bill is not aimed at correcting horror stories. This bill affects those programs where they work exactly as they are supposed to. That is the central point. It is not the horror stories that are under attack here, it is the workings of these statutes exactly as they are being affected that is at point here.

Mr. GILCHREST. Mr. Chairman, reclaiming my time, I want to give some concrete examples of what these particular regulations, what the Endangered Species Act, for example, can do for us, some concrete examples to give you some understanding of the value of natural resources and why they should not become extinct.

According to Dr. Susan Mazer, who is a scientist in California:

> No scientist would have predicted, prior to their analysis in the laboratory, that the Pacific yew tree would prove an effective remedy for cancer, that the periwinkle would be a potent remedy for Hodgkin's disease and leukemia, that yams would be the source of oral contraceptives, or that bacteria from deep sea thermal vents would lead to the discovery of DNA fingerprinting, a critical source of evidence in forensic criminology.
>
> In the case of the rosy periwinkle, a road side weed (we laughed at the snail darter) parents of children with leukemia do not laugh at the road side weed, children have an 80-percent chance of being cured or have long term remission as a result of the medicine extracted from this plant. It is also important to note that the agent in the plant that cures the disease cannot be synthesized so we need to continue to have a healthy supply of the plant.
>
> Other plant sources have been used for drugs which control tissue inflammation, Parkinson's disease, antidepressants, antibiotics, as well as other life-saving, anti-cancer agents. Cyclosporin is a complex molecule discovered in an obscure fungus, a powerful immunosuppressive agent, it is the basis of the organ transplant industry today.

Doctor E.O. Wilson commented in a paper recently published:

> Many disease organisms, such as a malaria parasite and staphylococcus bacteria, are acquiring genetic immunity against conventional therapeutic agents, and new antibiotics must now be sought elsewhere, most likely in little known species of plant, fungi, and insects if we do not extinguish them first.

☐ 1215

Dr. Elliot Norse, a chief scientist for the Center for Marine Conservation, reminds us that when an astronaut goes into space, that astronaut has to carry with him a life support system in the cold void of that infinity. Planet earth is in that cold void of infinity. And unless we protect those resources which sustain life for us, then the quality of our life overall is going to be degraded.

This is not the right forum to correct the problems in the Endangered Species Act or the wetlands. Those things can be done in committee.

I urge a ''no'' vote on the amendment.

Mr. PETERSON of Minnesota. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support and am happy to cosponsor this amendment. I want to first of all congratulate the gentleman from Louisiana [Mr. TAUZIN], the gentleman from Texas [Mr. FIELDS], and all the others that have worked on this legislation for the last number of years to bring it to this point.

I would like to point out that there are a lot of Members on our side of the aisle that have been working on this for some time. I also would like to point out that, Mr. Chairman, that I do not agree that we want to undermine some of these statutes. I come from the point of view that the bill that was originally put together by the other side was too extreme. I think this amendment brings us back to where I am more comfortable with.

For those of you that, and I do not want them to take this the wrong way, because I am from Minnesota, a State that is controlled by the Democratic Party, and we have takings legislation in front of our legislature right now. I would just like to point out, we have the majority leader of the senate, the speaker of the house, some of the more liberal members of the Minnesota Legislature. And they have a measure I would like to read to my colleagues here.

It says that property owners can bring an action against the State for loss of value of 5 percent or more of their property or $1,000. And if the reduction is that amount, it requires the State to purchase the entire property at its fair market value. So you can see that we have in Minnesota something going on, if you want to call it extreme, it is more extreme than what we are talking about here in this legislation.

Mr. Chairman, we are not against wetlands. I am someone who has had a long history in conservation. I support wetlands legislation. The problem is, we have a system that is kind of run amok, that has too much power, in my opinion, on the side of the Government, that has left ordinary folks in a position to have to hire lawyers and go through the court process to protect their private property rights, which is something that we ought not to be doing in this country.

What we are doing here is bringing this back to the areas where the problems are. And that is, with the Clean Water Act 404 permit area, the wetlands area, the farm bill and the Endangered Species Act and the water rights issues out in the West.

I think that this amendment, although if I had a chance to write this the way that I would do it, it would not be exactly the way this amendment is put together, but I think that we can live with this. I think that it will be workable, and it will give us a chance to get started to change the way that we deal with what is happening out there in terms of putting these regulations on private property.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Minnesota. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, I wish to join with the gentleman from Minnesota, the gentleman from Texas, who spoke earlier and others, in very strong support of this amendment. This is one time when I have to leave my other friends within the Democratic Party, because of instances like the gentleman says, it has been alluded to here, there have been too many abuses.

Some people have said, why do not you just correct the basic law? I do not think that is going to solve the problem because the problem is basically, the way I see it is, is that the people that are actually making the regulations in this instance do not have what I call common sense.

I have got farmers out there in farmland that have less than an acre plot that have been designated as wetlands, swamp lands. The only time it gets wet in that field is when it rains and then it drains off or when there is snow melts and then it drains off. We have not seen any ducks on this land. We have not seen any waterfowl on that land for I do not know how long, ever.

And in another instance, I see that the gentleman from Massachusetts is over on this side. Another thing that concerned me, back when we were working as chairman of the forestry subcommittee and agriculture, we were working on the Northwest and the problems of the Northwest having to do with the spotted owl, what became apparent to me was that as that spotted owl left the Federal jurisdictions and went over to a private forest, that private forest had an endangered species in it. And the value of that forest was, before it may have been a life savings for somebody, just went down. And that person lost their whole livelihood as a result of that endangered species flying over there and making a nest in that area, at least potential.

The value of the property, at least we had testimony on it from some of the property owners out there, diminished.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. PETERSON] has expired.

(By unanimous consent, Mr. PETERSON of Minnesota was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. Mr. Chairman, if the gentleman will continue to yield, what concerned me is that basically what we have seen taking place is that people who have worked hard to have this property are now seeing it diminished in value or almost taken completely, not quite taken, so it is not actually a taking in the sense of the amendment, due process and all that, as far as the court is concerned. But they have lost a hunk of their money and they are hard-working taxpayers and it should not be right.

I agree with the gentleman, we need wetlands. We have wetlands. We have them all up and down the Mississippi. We have plenty of ducks, and we have got waterfowl. We have got goose hunting places in the State of Missouri, in the district of the gentlewoman from Missouri [Ms. DANNER]. We have plenty of room for that. So we support that.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Minnesota. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for his comments and point out, the courts have said that a partial taking of your property is a taking under the Constitution. The court in Florida Rock, for example, said nothing in the language of the fifth amendment compels this court to find a taking only when the Government divests the total ownership of the property. It says the fifth amendment prohibits the uncompensated taking of private property without reference to the owner's remaining property interest, and it cited an example.

Indeed, if the Government took only 5 acres and left the property owner with 95, there would be no question that the owner was entitled to compensation for the parcels taken, plus even severance damages attributable to the remaining tract. The gentleman is right, partial takings should be compensable.

Mr. PETERSON of Minnesota. Reclaiming my time, I would like to close by saying that we have got some problems with the wetlands act. I ask everybody to work with us to try to get at some of these issues like the type one wetlands that the gentleman from Missouri was talking about. But this legislation is something that has been needed for a long time. I, again, commend the gentleman from Louisiana [Mr. TAUZIN], the gentleman from California [Mr. CONDIT], the gentleman from Texas [Mr. LAUGHLIN], and all the others that have been working on this for many years. I ask support for this amendment.

Mrs. SMITH of Washington. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support this bill and especially the amendment before us. It does not go as far as I would have liked to have gone, but I want a bill out of this area. We need a bill out of Congress.

In our area, we have the spotted owl. The constitutional interpretation right now is that if an owl flies and lands on your land, that owl gets all of your land and you are not compensated. That is unacceptable.

Currently in Washington we grew and use today more of it, timber, as a crop. Predominantly it is grown by mom and pop and small groups of small family operations. They grow it generation after generation so that they can make

sure that they pay for their own retirement. They pay for their own children's college, and they take care of themselves like good Americans do.

The problem is, right now, with the Endangered Species Act, is that an owl can land. The owl gets thousands and thousands of acres of buffers around where the owl landed, and there seems to be no reasonableness to the law that says these folks just cannot use their land. The owl gets the land. They get nothing. And they are left with no recourse.

The important thing about this is it focuses at least on those people. It does not overturn the State laws. It does not overturn local land use laws. But it does say that if we are going to allow the Endangered Species Act to take these people's property, and we are not talking about big, wealthy folks, we are talking about my neighbors, that they have to think about it and compensate them.

The other interesting thing in our State, we found out that the owl is a critter that is growing or was quite prolific to begin with. They now know there are twice as many owls as they thought there might have been to begin with, when they decided to allow the owl to be an issue in licking up our forests.

So what this amendment does is it brings some reasonableness back in. I commend the gentleman for this amendment, because it gives my family some hope.

Mr. Chairman, I yield to the gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Chairman, as a member of both the Judiciary Committee and the Budget Committee, I would like to enter into a colloquy with the gentleman from Florida, the floor manager of this bill, regarding the intended budget status of this bill.

In sections 3 and 6 the bill would mandate Federal payment to an owner whose property had been adversely affected by Government regulations, however section 6(f) and 7 of the bill specify that the obligation to pay and the source of any payment under this bill is limited to available discretionary appropriations.

My question for the gentleman is this: Is it your understanding that the limitation on the obligation to pay and the source of payments in section 6(f) and 7 supersede the mandatory language contained in section 3 and 6, and thus any obligation pursuant to this bill would be fully subject to the availability of discretionary annual appropriations?

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman yield?

Mrs. SMITH of Washington. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, yes, it is my understanding that the language of sections 6(f) and 7 does limit the obligation to pay and the source of any payment under this legislation to discretionary annual appropriations, notwithstanding any other provision in the bill.

It is our intention to help compensate property owners for the harmful effects of Government regulations, not to create an uncontrollable entitlement.

Mr. SMITH of Texas. Mr. Chairman, if the gentlewoman will continue yield, following up, does this mean that a judge, in a case brought by a property owner under the provisions of this legislation, would be constrained from awarding payment from what is known as the ''judgment fund'', which is beyond the control of the congressional appropriations process?

Mr. CANADY of Florida. Mr. Chairman, if the gentlewoman will continue to yield, no—I do not believe that the ''judgment fund'' would be an available source of payment as a result of a court order.

As the gentleman knows, section 6(f) of this substitute clearly states that payments under this legislation are to come from an agency's annual appropriations, and if the agency that issued the regulation in question does not have sufficient funds to satisfy the property owner's claim then the head of that agency must seek the necessary funds in its budget request for the following year.

Mr. SMITH of Texas. I thank the gentleman for that clarification.

Mr. DEFAZIO. Mr. Chairman, I move to strike the requisite number of words.

I would like to engage the author of the primary amendment in a few questions here, if I could.

As I understand it, the Tauzin amendment does not change the portion of the gentleman's substitute, which would require when a specified regulatory law diminishes the fair market value of that portion or any portion of a property by 10 percent or more; is that correct?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, that is correct.

Mr. DEFAZIO. Mr. Chairman, if I could ask a couple of hypothetical questions, if I had a 100-acre tree farm and the restrictions apply to 1 acre, that would be, if it took more than 10 percent of that 1 acre, that would be mandatorily compensable?

Mr. CANADY of Florida. Mr. Chairman, if the gentleman will continue to yield, that is correct, assuming that there was a right to compensation and that particular circumstance was not subject to any of the other exceptions under the bill.

Mr. DEFAZIO. Mr. Chairman, I am going by the four statutes referenced by the gentleman from Louisiana [Mr. TAUZIN]. If it was one tree on the 1 acre, on the 100 acres, and I could not harvest that tree because of Federal restriction, if I lost, if by being required to have that tree stand, I would lose 10 percent or more of the value, I would be compensated for that one tree?

□ 1230

Mr. CANADY. Let me say this, I think that is a situation we really would not see arising.

Mr. DEFAZIO. I am going to get to an actual example, if I could. One other example, and then I will explain. This is a little off track, so bide me here.

I am curious, does the gentleman support the constitutional amendment to ban the desecration of the American flag?

Mr. CANADY. If the gentleman will continue to yield, I do not believe we should protect the desecration of the flag.

Mr. DEFAZIO. There is an amendment pending to ban the desecration. Does the gentleman support that?

Mr. CANADY. Yes.

Mr. DEFAZIO. Reclaiming my time, Mr. Chairman, I want to go to an actual example, the bald eagle, one of the few successes we can point to under the Endangered Species Act.

The requirements in my part of the country were practical and simple. You had to leave one tree. You had to leave the nest tree. You could have 100 acres of land, but you had to leave one tree to recover the bald eagle. It has now recovered. That is a live and living symbol of the United States of America. I think it was worth saving the bald eagle.

The gentleman wants to save the textile symbol of the United States from desecration. That is the American flag. I want to save a living symbol, and that is the bald eagle. Under this legislation, we would have had to compensate every single person who saved one tree, one tree. Is that too much to ask?

I do not believe that is an unwarranted intrusion. Ten percent is an absurd threshold. Ten percent of any portion of your land, that is 1 tree out of 10, you get compensated. That is not right.

This is something that is taking the relief that is needed too far to hamstring and follow another agenda. This is the big developers' agenda. This is not going to help the little people of my district who have been having problems with the Federal Government.

This is going to take the developer who has a 10,000-acre development and is required to leave a little riparian strip, which in my State we have all agreed to do, but if he is required to do that under Federal aegis, it will be compensable action, even if the State law would have required and the Federal law would have required it.

Mr. Chairman, let me talk about the realities of appraisals. How do we get to 10 percent? We hire an appraiser. I tried to purchase a piece of property in my district with a willing seller. I got an appropriation to do it. The willing seller came up with an appraisal of $2.2 million.

The Forest Service, the purchasing agent, came up with a price of $750. They were at loggerheads. Even though I could have saved this, I had an appropriation, I could not get an agreement.

I said ''How about we agree that the Forest Service and the owner choose another appraiser, and they will do that.'' They did that. Now we got a third appraisal. Do Members know what it was? $1.5 million. I had the owner with an appraiser at $2.2 million, I got the Forest Service with an appraiser at $600,000, and then we got the neutral appraiser at $1.5 million.

How are we going to say, under this bill, 10 percent variance in the value is compensable? All you have to do is hire two appraisers and the Federal Government has done nothing, and you are going to find a 10- or 20- or 30-percent variation. Therefore, I could just say because the Federal Government exists that I am compensated, because I have two appraisers that say ''Well, the Clean Air Act,'' no, that is not right, we have eliminated it from the Clean Air Act, but any other acts covered here make this a compensable action.

This goes too far. What this situation cries out for is reauthorization of the Clean Air Act, a reauthorization of the Endangered Species Act, with needed reforms and amendments.

It requires a rifle shot, not a 10-gauge shotgun filled with 00 buck. That is what we are doing here, blowing a hole through these laws so we will not even be able to save the bald eagle next time it is endangered, or some other bird.

That I think is a worthy thing. If we are going to save that symbol, let us save a living symbol.

Mr. HAYWORTH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS of Texas. Mr. Speaker, the eagles must be different in the Northwest than they are in Texas, because I have had two specific examples with abandoned nests. We are not even sure that the nests that were abandoned were eagles' nests.

In the one example I used last night, a road was stopped. Finally, the property owners had to mitigate by putting in an easement in perpetuity 4 acres, not just one tree.

The second specific example, across the lake an abandoned eagle's nest, so people were told, stopped the cutting of 100,000 dollars' worth of timber. Nobody was able to prove that an eagle was there. Someone said it was an abandoned eagle's nest; 100,000 dollars' worth of timber. That is not one tree.

I appreciate the gentleman yielding to me.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. HAYWORTH. I yield to the gentleman from Louisiana, on the other side of the aisle.

Mr. TAUZIN. Mr. Chairman, we need to correct the RECORD whenever we hear misstatements. The fact of the matter is the eagle was saved not under the Endangered Species Act, it was saved under FIFRA, Federal Insecticide and Rodenticide Act, which banned DDT. That is what saved the eagle, No. 1.

No. 2, the gentleman who spoke and said this bill is aimed at the the Government because the Government is there, whether it does something to your property or not, is absolutely wrong. This bill does not trigger compensation until the Government agency acts to regulate someone's property and diminishes the use of that property. Then the action is triggered. Then you go to an assessment of whether or not it has lost 10 percent or more value.

Finally, Mr. Chairman, let me refer back to what the court said here on partial takings. The courts have held that even relatively minor physical occupations are compensable, and it said that logically the amount of just compensation should be proportional to the value of the inherent interest taken as compared to the total property, but partial takings are compensable.

I thank the gentleman for yielding.

Mr. HAYWORTH. Mr. Chairman, I thank the gentleman and the author of the amendment from the great State of Louisiana.

The CHAIRMAN. The time of the gentleman from Arizona [Mr. HAYWORTH] has expired.

(By unanimous consent, Mr. HAYWORTH was allowed to proceed for 3 additional minutes.)

Mr. HAYWORTH. Mr. Chairman, before leading the Continental Army into the Battle of Long Island in 1776, Gen. George Washington told his troops:

> The time is now near at hand which must probably determine whether Americans are to be freemen or slaves; whether they are to have any property that they can call their own; whether their houses and their farms are to be pillaged and destroyed * * *

Two hundred and eighteen years later, Americans are again fighting for the right to have property they can call their own. Their enemy? Ironically, the same Government originally created to give people the freedom to own property. Government bureaucrats, acting without accountability, make decisions which, in effect, destroy households, farms, and businesses.

Currently, all landowners are unwillingly entered into a random sweepstakes drawing to select who will foot the bill for intrusive Government regulations. In this sweepstakes there are no letters from Ed McMahon informing them they have won a million bucks. Instead, landowners receive nasty grams from the likes of the Fish and Wildlife Service or the Environmental Protection Agency informing them that they own Mexican spotted owl habitat, and if they use it they could go to jail.

When Michael Rowe had finally saved up enough money to add an extension to his one-bedroom home on his 20-acre ranch in Winchester, CA, he was informed that his permit could not be approved because his property was in a kangaroo-rat study area. His only option would to hire a biologist at a cost of almost $5,000. If the biologist found a single rat, development of the property would be illegal and could result in a Federal prison sentence and up to $100,000 in fines. The good news? If the biologist did not find a single rat, the Rowe family could develop their property if they paid the Federal Government nearly $40,000 to purchase a rat reserve elsewhere. In essence, the home was destroyed by Federal regulators before it even left the drawing board.

In supporting this legislation, we in Congress have the opportunity to reaffirm what Locke referred to as the ''root of all liberty''—the right to own property.

This legislation requires the Federal Government to compensate landowners for an action by a Federal agency that reduces the value of their property. In simple terms, this legislation means: If the Federal Government deems it in the national interest to curtail a landowners use of his property then the Government, not an individual landowner, should pick up the tab.

Opponents claim that with the passage of this legislation we will see the end of 25 years of important health, safety, and environmental legislation. As we heard in a preceding speech, in a hypothetical, my colleagues on the other side know that the only thing that will end is decades of casting easy votes that might appease their special interest constituencies without having to consider the consequences. Some of these folks truly tremble at having to make the choice between what is truly in the national interest, and what is only in their narrow best interest.

Mr. Speaker, I urge my colleagues to support a return to the constitutional protections of private property.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. HAYWORTH. I am happy to yield to my good friend, the gentleman from North Carolina.

Mr. WATT of North Carolina. I thank the gentleman for yielding, Mr. Chairman.

Mr. Chairman, I simply want to inquire whether the gentleman was supporting the amendment of the gentleman from Louisiana [Mr. TAUZIN] or whether he was not supporting it. I could not tell from his statement.

Mr. HAYWORTH. I thank the gentleman for letting me clear this up.

I will end my remarks by saying I rise in strong support of the Tauzin amendment, and in strong support of the legislation.

Mr. MILLER of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. I do so mainly in one very specific case, and that is, the amendment as it is currently written includes the act of June 17, 1902, and all

acts amendatory thereto and supplemental thereto, properly known as the Reclamation Act.

This is an act written in 1902 where the Federal Government engaged in massive subsidies to landowners throughout the West to help settle the West and bring the lands into productive capacity by extending water subsidies to them.

In the State of California, the Federal Government has spent some $8 or $9 billion building canals and shipping water from the far north to the south, and the same is true in Arizona and elsewhere.

What this amendment would now do is take what we basically have, which are contract rights with the growers, and say ''if you sought to amend those, that could be adjudged as a taking.'' These people have a right to subsidize water based upon a contract, but now what you are doing is taking a contract and turning it into an entitlement. You are taking a contract which says and gives us the right to withhold water from those people in years of drought, as we have in California, over the last 6 or 7 years to say ''We are going to hold back 30 percent of the water for next year, or for the health and safety of the State, for drinking water supplies to metropolitan areas.''

Now, what you are saying is if this is a diminution of 10 percent of your land, which clearly it is, you have a right to compensation and to a taking. You are withdrawing the rights of the Federal Government and the right, more importantly, of the people of the State of California to manage the water supply within their State, because you are taking a contract, even if you shorten the contract, and in the new law we just said we want to go from 40-year contracts to 20-year contracts so we can manage the water supplies in the State of California on a more contemporary basis, in light of our population growth, the change in our economy and the need for water in our cities and suburbs for economic growth.

If we took that 20-year contract and made it a 10-year contract, that would somehow be a taking in the next law when that contract runs out. I think we have an unintended consequence here that locks us in, not only to billions of dollars in subsidies, but also locks us into a situation where we are now elevating what is a basic contract, and at the end of the contract, ''You have no right to that, we can do with the water what we want,'' but that was the agreement, now elevating that into a taking if we do not extend the water.

The reason that is so important is that we have areas in the West where we have massive competition between agricultural interests and the urban interests, in Utah, in Colorado, in Arizona, and in California. What this law does is locks these contracts in now under the provisions of taking.

I would like to ask the author of the amendment, the gentleman from Louisiana, what is his understanding of this act as it pertains to the Reclamation Act of 1902?

Because as I read it, if we change the level of the subsidy, if we change the contract's terms, if we withhold water because of the drought or we reallocate water from the agricultural interests to the urban interests or from the urban interests to the agricultural interests, that those people all have a right to a taking under this provision, if the value of their land is diminished by 10 percent.

Mr. TAUZIN. If the gentleman will yield, Mr. Chairman, the understanding is that no diminution of subsidy triggers the action to compensation. Subsidies are not a regulatory act under this bill. It is a change in the property ownership, a change in the right to own or the value to own that triggers the action under this for compensation under the act.

Mr. MILLER of California. Currently the growers have a 40-year contract. If the Government, and the new term was changed from 20 years or 10 years, and the banks decide that you do not have a bankable interest, as some growers speculate the banks would say, is that a diminution of the property values?

Mr. TAUZIN. No, contractual changes are not. Agreements are not. It is only when the Government mandates a change, a regulation, that diminishes the value or subtracts from the property right that triggers the action for an arbitration and compensation under the bill.

Mr. MILLER of California. Let me ask in another case. We have a situation where irrigated lands, where water is brought to those lands under contract, and in some instances we have had to tell growers in the past, and very likely are going to have to tell them in the future, that they cannot irrigate of some of their lands because of toxic runoffs that have caused problems, both with the environment and with health.

If we tell those growers that they cannot irrigate those lands under that water, are we under the purview of the gentleman's bill?

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has expired.

(By unanimous consent, Mr. MILLER was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. Mr. Chairman, I yield to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, under both the bill and the amendment we proposed, if the use is proscribed for reasons of toxic runoff, nuisance, all those kinds of issues, then it is not a compensable diminution of use. It is only when the use is proscribed for purposes of, as we claim, ESA, wetlands protection, or changes in the ownership or value of the water right.

Mr. MILLER of California. In this case the toxic runoff, the reason it was stopped at one point, and it may have to be stopped again in the future, is because of its threat to the water quality in the San Francisco Bay delta.

☐ 1245

Mr. TAUZIN. I understand. If the gentleman would further yield, there will be an amendment on the floor later on to apply the entire Clean Water Act under this bill. I will oppose that amendment for that reason. We have limited it to the wetlands protection of section 404, to the sodbuster wetlands provisions and to the water rights provisions as regulations in those acts we describe would affect the ownership or value of that water right.

Mr. MILLER of California. Can I ask the gentleman another question. Again the runoff from these lands cause duck hunters and others a great deal of consternation because of the impact it has had on the water fowl.

If it goes to the quality of the water in those wetlands, in protected wetlands or in private wetlands, is it covered under your provision?

Mr. TAUZIN. I would have to yield to the author of the main amendment. There was a provision as I understand that if the use is designed to prevent damage to neighbor's property as opposed to protection of a wetland or to protection of an endangered species, that that is an exempted use under the bill. If you would yield to him, I think we can get a clarification on that.

Mr. CANADY of Florida. If the gentleman would yield, I just bring your attention to section 5 of the substitute amendment, which provides a specific exception. It says that ''no compensation shall be made under this Act with respect to an agency action the primary purpose of which is to prevent an identifiable hazard to public health or safety, or damage to specific property other than the property whose use is limited.''

This is in here to deal with any sort of circumstance in which there is a hazard to public health or safety.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(By unanimous consent, Mr. MILLER of California was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. Can the gentleman or the gentleman from Louisiana explain to me why, then, the Reclamation Act is included as one of the laws under this provision?

Mr. TAUZIN. I would be happy to tell the gentleman. Because it is one of the acts that has the potential of regulation to limit the value or the actual right to own water in the West, and because it has that potential, it is included as a regulatory action that could diminish the value indeed of an important property right.

Mr. MILLER of California. Without being argumentative, that sounds exactly contrary to what the gentleman just told me, because all of the water delivered under the Reclamation Act is delivered by virtue of contract. We

enter into a contract for a specified period of years. If that contract is not renewed, you have no rights.

It sounds to me that we are bootstrapping people who now have a contractual right into a position that if that contract is not renewed, that somehow you have a takings, because the land is not worth upkus.

Mr. TAUZIN. If the gentleman will yield, the contract is a contract between the private property owner, the water right, and the Government.

If the Government by regulation changes that contract without the agreement of the owner, that indeed would amount to an action to trigger activities under this bill. If, however, the contract is followed, no one has lost any rights, there is no trigger to compel an arbitration for compensation.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Idaho.

Mr. CRAPO. I think it is important to look at the section in the bill that describes the right to compensation we are talking about here, in section 3 of the bill.

It creates the right of compensation to an owner of property whose use of any portion of the property has been limited by an agency action. We are talking about situations where an agency has limited the use of property, and that is defined in the statute.

Mr. MILLER of California. Let me reclaim my time and then see if the gentleman can answer. The agency, in this case the Bureau of Reclamation, tells people that they cannot have 30 percent of their water supply or in a dire drier year, they can only have 30 percent, they lose 70 percent, the use of their land in dry land farming is gone.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(At the request of Mrs. SCHROEDER and by unanimous consent, Mr. MILLER of California was allowed to proceed for 2 additional minutes.)

Mr. CRAPO. Will the gentleman yield?

Mr. MILLER of California. Yes.

Mr. CRAPO. The definition of use of property is defined in the statute to say, when the use of property is limited by an agency action, if a particular legal right to use that property no longer exists because of the action.

You are talking about a contractual relationship between the United States and between an individual landowner, or in some cases between those who are participating in a reclamation project.

The change of the terms of a contract under the terms of that very contract is not going to be a limitation on use that results from an arbitrary or an independent action by an agency that limits the use of that property.

Mr. MILLER of California. I find it very suspect that this law is now included when it is so narrowly drafted and the rights are handed out based only on contract.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I am concerned about the Colorado River Compact. What effect does this have on that? Does this have an effect on things like the Colorado River Compact, which has been around for a very long time?

Mr. MILLER of California. That is exactly the question, because the Bureau of Reclamation administers that the Reclamation Act guides many of the contractors to that compact. As the gentlewoman knows, in Arizona we have contractors who are going bankrupt, we are trying to reallocate water, and there are people who had expectations but really cannot afford the water. The question is now, are we creating a compensatory act by not giving them the water and giving it to the city of Tucson or to the city of Phoenix?

That is exactly the problem. I worry about ulterior motives here in the inclusion of the Reclamation Act because I do not know why it would be included when these are contractual relations except that I understand there are a number of people who are very unhappy with the reforms that were passed overwhelmingly on a bipartisan basis in the last Congress and signed by President Bush that would now like to roll back those reforms where we have just entered into an agreement between the State of California, the municipalities, the environmental organizations, and the farm organizations about the usage of water. Some people would like to see that undone.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(By unanimous consent, Mr. MILLER of California was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. I think that those of us who would now understand and appreciate the historic relationships in multi-State compacts, especially those of you who are from the upper reaches of the Colorado, you are now laying over the top of reclamation law, law that has been on the books since 1902, you are laying over the top of that a whole series of actions that conceivably people can come in and ask for compensation when in fact what they are getting from the Government is a huge amount of subsidies and rights that basically have a genesis in contractual relationships.

Water usage is changing so dramatically in Arizona, New Mexico, California, and Nevada, we have gone from 70 percent of the people in Nevada now use 10 percent of the water, but 70 percent of the water goes to 10 percent of the people. Those equations are changing. They just changed in Utah by a vote of the people, but now the question of whether that can be carried out and the implementation of that is drawn into question by this amendment.

I would hope that at some point we could just strike the reclamation law.

Mr. TAUZIN. If the gentleman will yield, I would say again to the gentleman that if the contracts the Government makes with those owners of water rights are upheld and the contracts are not violated by the Government, nothing triggers this act.

It is only when by Government regulation the rights of an owner to water under those contracts are changed without their consent, are regulated and changed, in other words, the contract violated by the Federal Government. That is when the trigger occurs, that is when the owner would have a loss of value of property he was entitled to under that contract.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Minnesota.

Mr. VENTO. I thank the gentleman for yielding and the gentleman from Louisiana for his explanation.

I have been looking through the language of the underlying substitute in the amendment to try and decipher the language. It suggests here that anytime there is a qualification of use. Of course if the landowner agrees to the qualification or the ownership of the water in this case who owns the water right agrees to it, then apparently there is not any problem. But the issue is that very often this is not agreed to.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(At the request of Mr. VENTO and by unanimous consent, Mr. MILLER of California was allowed to proceed for 5 additional minutes.)

Mr. VENTO. If the gentleman from California would continue to yield to me, this really speaks to the issue of any type of qualification in terms of the use.

I might point out to my colleagues who think they recognize the qualifications of use that occur because of a development such as the salinization or other types of problems in terms of irrigation of land, that is one possibility, or you may have, for instance, if you are taking this water off of a national forest, which is included in here, the entire Forest Planning Act is included as a possibility, or off of the public domain lands, the BLM lands, the entire FLPMA law is included in this amendment in regards to water as I understand it, any time you are taking that water off national lands, you are dewatering that for other purposes, there may be exceptions in California. Sometimes it is coming from other private land. But anytime you would qualify the use of that because you may make a determination that it is having an adverse effect on that, even though somebody had that right, anytime you qualify it or, for instance, even during the year it changes and it has an effect in terms of at the water

right that is on, you would have a problem here in terms of what is going on.

Mr. MILLER of California. I appreciate the remarks. I think he makes a good point. I appreciate that this is in contract law, but let us remember what we are talking about.

In parts of Arizona, and a good portion of California, we are talking about people who have received hundreds of millions of dollars in subsidies from the Federal taxpayers, in some cases to grow subsidized crops. Kind of an insanity.

These same people have spent millions and millions of dollars to prevent any change from taking place in the reclamation law in this Congress. Finally, 2 years ago, we were able to defeat that effort and pass reclamation reform.

These are the same people now who are suing the Government, suing the State, suing everybody to hold onto their rights, and what is their allegation? Their allegation is everything we want to do is in violation of their contractual rights. They have a compensatory action if in fact they can show it is a violation of their rights.

But basically what these people have done is sought to delay the implementation of any reforms in the California water system. Just as recently as a couple of months ago where all of the cities got together, all of the environmental groups got together, many of the agricultural groups got together, all of the economic community in our State said that we have to change the way that we allocate and use water in the State of California.

We have the same handful of people that got this amendment inserted into this provision of law saying they did not want to go along. No matter how good we think it is for the welfare of California, no matter how important they said it was because they said they would lower the bond ratings of the State of California if we could not reallocate our resources, we have some obstructionists there that think that what they had as a contractual right to a limited subsidy is now a God-given right and now what they want to do is under this amendment make that an entitlement. They want to make that subsidy an entitlement that we cannot in any way change whether it is because of drought, whether it is because of population, whether it is because of changing economic circumstances in that State.

The fact was this land was not worth spitting on until the Federal Government came along and plowed billions of dollars of taxpayers' money, and we would just like to be repaid. Then they can do whatever they want with the land.

Mr. FIELDS of Texas. Mr.. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I would just like to point out to the gentleman, I think many of the things he is saying are valid. It is a valid discussion that we ought to have here on the floor.

But I just want to say to the gentleman that it was not my intent or others to try to get involved in your particular water fight. I am here today supporting a Tauzin amendment.

Mr. MILLER of California. I understand that. I commend the gentleman. I think this is a very important discussion. This discussion has been delayed too long on the issue the gentleman from Louisiana [Mr. TAUZIN] has raised.

But why is the reclamation act struck into this legislation? We are talking about a very narrow act for a very narrow group of people.

Mr. FIELDS of Texas. If the gentleman would yield to me, we have had private discussions about the excesses, and it is the excesses that I think bring us here today: The fountain darter in Texas that has abrogated our water rights as a State, the vireo and the warbler that has taken an entire area of central Texas and said you can't cut cedar, the abandoned eagles' nests that have shut down roads and shut down the cutting of forests. To me that is the reason we are here.

Mr. MILLER of California. Let me reclaim my time, and I have a great deal of respect for the gentleman.

That is not what this is about. This is about the excesses where a State and its population reach a consensus and whether or not you are going to provide a tool in this legislation so that people can obstruct that and obstruct it on the fallacy that somehow they have some value in their property that is there because of what they do as opposed to the billions of dollars in subsidy that flow down that canal every year from Shasta Dam down to Tulare Lake.

The fact of the matter is they do not have those rights, and my concern is we are now about to put the taxpayer of this country on the hook based upon very narrow interests that have rights under their contracts and now they are trying to bootstrap those into additional rights. I would hope we would oppose the amendment for that purpose.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words.

What a stimulating debate. I was just absolutely excited to watch that debate go on, and I hate to step in, what I hope is not the end of the debate, but I am not sure that I follow it in the right schedule of things in this debate, because my statements are in support of the bill and in support of the amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. If the majority whip would get us more time under this restrictive rule, we could extend the debate more, so we would be glad to accommodate him if he would only get us a little more time.

Mr. DELAY. I think we have had a lot of time on this bill and it has generated a very stimulating debate.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I just want to make the point following the gentleman's debate on this issue before you make your statement in support of the bill, and that is that again we are not saying that the parties cannot contract water supplies any differently than they have contracted today. We are saying contracts are valid and contracts ought to be honored.

All we are saying in our provision is if the Federal Government invalidates a contract, violates it by depriving someone of water that they were guaranteed under the contract and if that supply of water is interrupted and it devalues their property, that is a taking under the fifth amendment.

You and I might like to agree to reallocate land values around the country or landownership around it. We do not have that right under the Constitution. If this Government takes land and property from people under the fifth amendment and violates a contract that entitles them to land or water, it is a taking of property, and that is all our bill provides for, the compensation for that taking. I thank the gentleman for yielding.

□ 1300

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield to me?

Mr. DELAY. I am glad to yield to my good friend and neighbor from Texas.

Mr. FIELDS of Texas. Mr. Chairman, I have great admiration for the majority whip, but in terms of sequencing I think he is coming at exactly the right time, because he has been the champion of regulatory reform, and as the gentleman knows and I both know in our area of Houston, TX it is the Corp of Engineers and U.S. Fish and Wildlife Service that is making determinations as to how people can use and even enjoy their property. That is absolutely wrong and it is those excesses we are trying to stop. And I think the sequencing is perfect, and I look forward to the gentleman's remarks.

Mr. DELAY. I appreciate the gentleman making those remarks about what is happening with the Corp of Engineers and the Fish and Wildlife Service in Houston. It reminds me we have been working now for 2½ years to build a golf course in Lake Jackson, TX where the Fish and Wildlife are claiming that footprints from cows are wetlands and we have to identify every footprint on this piece of property before we can get a permit. Footprints of cows are wetlands, it is just amazing to me and it is the reason we are coming together to try to pass this bill and try to bring some common sense to what is going on around the country.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I am glad to yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I wonder if giraffe prints would also be considered wetlands? Just an aside remark.

Mr. DELAY. I think giraffes are an endangered species in America and if you find a footprint it will probably be on the endangered species list.

The CHAIRMAN. The time of the gentleman from Texas [Mr. DELAY] has expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. DELAY was allowed to proceed for 3 additional minutes.)

Mr. DELAY. Mr. Chairman, in recent years the issue of property rights has been hotly debated, as a growing movement of property owners at the grassroots level feel that their rights are being seriously infringed upon. Some have characterized this movement as greedy, comprised of people who have no interest in the public good. I would like to go back to the beginning of the debate and bring some historical perspective into this discussion.

In 1772, Samuel Adams set out to ''state the rights of the Colonists * * * as men, and as subjects; and to communicate the same to the several towns and the world.'' He began his task with the declaration that:

> The absolute rights of Englishmen and all freemen, in or out of civil society, are principally personal security, personal liberty, and private property.

Throughout the succeeding revolutionary period, these three rights were time and again recalled—life, liberty, and property. It was only in drafting the Declaration of Independence that Thomas Jefferson altered the phrase to read, ''life, liberty, and the pursuit of happiness.''

In later years, Jefferson explained why he chose those words. ''A right to property,'' he said, ''is founded in our natural wants, is the means with which we are endowed to satisfy those wants.'' To Jefferson, the pursuit of happiness and right to private property were inextricably linked. One could not be attained without the other.

Two centuries later, the institution of private property has lived up to Jefferson's expectations. America's agricultural productivity, leadership in medical and engineering technology, and wealth of entrepreneurial opportunity can all be tracted to the incentives inherently created by private property rights.

Unfortunately, however, numerous battles are being waged at this time because of the continued infringement by government on private property. Although the fifth amendment to the Constitution requires fair compensation to a property owner when the Government takes his land, courts have interpreted that provision narrowly and many property owners are not being adequately compensated.

For example, the Wall Street Journal describes the case of Marj and Roger Krueger, who spent $53,000 on a lot for their dream house in the Texas Hill Country. But they and other owners were barred from building because the golden-cheeked warbler was found in ''the canyons adjacent'' to their land.

Further, a current law with respect to regulatory ''takings'' is unclear, requiring courts to resolve claims without set standards.

It doesn't make sense that a person is compensated when the Federal Government wants to build a highway through his front yard, but is not compensated when the Government prohibits him from farming on his land because it is determined that a wetland needs protection. In both cases, private use of one's land is being sacrificed for the public good.

We can argue the merits of whether land should be used for one particular purpose or another, but everyone should agree that one person should not have to shoulder the full costs of achieving a particular goal, whether it be environmental protection or improved infrastructure. Further, a person is not greedy when he asks not to have to bear the entire burden.

The Canady-Tauzin substitute will set clear standards for Federal agencies to follow under the Endangered Species Act, wetlands, and water rights. In this way, property owners will be guaranteed fair compensation when their land is either restricted in use or reduced in value.

Ownership of property is a right protected by the Constitution, a precious right which should not be infringed upon except in the most grave of situations. When such situations arise, let us live by the tenets of the Constitution and grant property owners the compensation that they are due.

Mr. Chairman, I ask Members' support for the bill. I ask Members' support for the Tauzin amendment and I ask Members' support to stave off any amendments to the bill.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. VENTO. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I wanted to just direct my attention to the gentleman from Texas [Mr. DELAY], and I want to say we accept him as an able spokesman for his point of view, but certainly not as an editor to Thomas Jefferson's prose on the Constitution. But I do say he is persuasive in terms of his point of view.

Mrs. SCHROEDER. I thank the gentleman from Minnesota.

Mr. Chairman, I rise and come to the well because I am terribly concerned about what this does on the Colorado Water Compact. Earlier this year there were meetings in Colorado that were reported in the press, and I am trying to put this in the clearest way we know. The Colorado Water Compact has been around for almost 90 years. We are obviously upstream and there are many States downstream that count on us to send allocations to them, and as Members heard the gentleman from California speaking, California has been way overusing their allotment, Nevada has now got all sorts of problems, they want more water and so forth.

The person who was in the State from Nevada was saying this would be a wonderful thing for Nevada because they could then go tempt Colorado water people to sell water to Nevada, which means our State then would not have any water. They could sell it to the highest bidder.

Here is the problem, the way I read this, is there is nothing that the Secretary of Interior could do that would be right. If the Secretary of Interior would move to stop private water owners from selling their property and in the State of Colorado a water right is considered a private property right, if they move to stop them from selling that right to a Nevada or a California, then the property owner would be able to get the Federal Government to pay all of that.

If they did not intervene and they allowed the property owner to sell that right, then they would have suits from Colorado water owners saying the Federal Government had taken an action or not taken an action, that would lose their water rights.

So the way I read this, because it has got this section in the Tauzin amendment, there is absolutely nothing you could do under the Colorado compact law that the Federal Government would not have to pay for.

Mr. VENTO. Mr. Chairman, would the gentlewoman yield?

Mrs. SCHROEDER. I am delighted to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I thank the gentlewoman for yielding. Is the gentlewoman suggesting that Colorado has overappropriated and California has overappropriated, in other words, they have actually given away or granted water rights that do not exist?

Mrs. SCHROEDER. Mr. Chairman, obviously we can have years of drought, and yes, we have overappropriated.

Mr. VENTO. I think it is a pretty well understood fact that some western States have in some cases overappropriated the water, for instance, as in the Colorado Basin.

If I can continue for a minute, I realize we are in a Colorado debate here, but the point is when we have overappropriated in these cases and the Federal Government has somehow become involved in this, either by being present or by being the Federal Government, even in terms of where there are compacts and other agreements between States, the suggestion is that insofar as the shortfall would occur in terms of somebody finally in getting

their 10 percent, that the Federal Government would then be liable to pay the difference.

And we would be paying for nonexisting, nonexistent water actually under this, because somehow we have been compliant in terms of inaccurately describing and quantifying the amount of water, even though it is generally appropriated by these States as it is, unless we are dealing with the McCarran Act; we would have to then make up the shortfall and in the end be left holding the bag.

Mrs. SCHROEDER. What the Colorado Water Congress apparently decided was basically this 73-year-old compact would implode because there would be nothing to stop when the Federal Government will not have to pay.

Mr. ALLARD. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I am happy to yield to the gentleman from Colorado.

Mr. ALLARD. Mr. Chairman, this is not going to have an impact on the Colorado River Compact. This is an agreement between the States and the Federal Government and it is passed by the Congress. What is going to have an impact, and the gentlewoman may be aware, but in Colorado law we have a provision which says if you are a private owner of property that you cannot sell it outside the State of Colorado. It is Colorado law the gentlewoman is addressing and so much of what she is referring to here in this particular bill has to do with a Federal agency coming in and literally blackmailing water from individuals and States.

For example, the permit to bring water through the forests, reclaiming 30 or 40 percent of the water, it is taking of private property rights. It is water.

Mrs. SCHROEDER. I do not profess to be a water lawyer, I only figure that the Colorado Water Congress who follows this very carefully, would interpret it differently, and feels that because our State declares a water right to be a property right under this Federal law, if we did anything that would impact upon someone's property right it would be a taking. And therefore, we really could mess up the whole thing.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired.

(At the request of Mr. VENTO and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 3 additional minutes.)

Mrs. SCHROEDER. I thank the gentleman from Minnesota.

So I am reading what people who have a lot more expertise in this than I have said at this Water Congress, and I think we should take it very seriously.

Mr. ALLARD. Mr. Chairman, will the gentlewoman yield on that point?

Mrs. SCHROEDER. I am happy to yield to the gentleman from Colorado.

Mr. ALLARD. The Colorado Water Congress sets a policy and makes it available to all of our offices, and I have not seen any poll stating, and I do not believe one has been put out from the Colorado Water Congress that says this particular bill is going to interfere with interstate commerce or the Colorado River Compact, and certainly I would suspect that they would probably very strongly support what is in this bill.

Mr. VENTO. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I am delighted to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I appreciate the gentlewoman yielding. I think the recognition here of course in terms of Colorado's rights in many instances is to appropriate water, that they are actually appropriating this water, but somehow in terms of the Federal Government being involved, for instance if we reserved water rights under the McCarran Act, we could in essence by reserving those particular rights for whatever reason, whether it is a forest or public domain lands or wilderness, which under court interpretation has reserved water rights, then we would in essence by exercising that designation of land, by exercising that water right we would be taking water again for these other purposes which in essence could result in the overappropriation being compounded. And that in essence, then, is forcing the Federal Government, you are backing the Federal Government into this by putting us on line in terms of this particular issue where we have reserved water rights under the McCarran Act, so this makes us pay again for those particular, for that water or property which is the property I might add of the people of this country that are the owners in essence of these public lands, of the forests, of these public domain lands.

So the gentlewoman is exactly right. This is a dilemma; there is not an answer, there is not a question. You are putting in this particular legislation specifically changing language in terms of takings. Also we are not talking about takings here, we are redefining regulation and what constitutes a compensatable property, a compensatable sum under law. That is what is being done in this particular legislation. We are not talking about takings because that is a much higher threshold, and there obviously then and admittedly there is significant effort there to try to change that.

Mr. TAUZIN. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, let me reassert two facts that I hope should be abundantly clear. First of all, the basis on which we amend it as it comes out of committee does not affect State actions.

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To take water rights away from people, local actions to do that are not covered by this bill. So the State of Colorado, if it wants to take water away from people, is going to have to answer in some other court regarding that action.

Mrs. SCHROEDER. This is under a Federal law. This is the Colorado Compact that is enforced federally, so that does not hold.

Mr. TAUZIN. If the gentlewoman will yield further, the second point, as long as the Federal Government keeps its contract with the owners of that water, as long as the Federal Government does not violate the contract, whatever the State does is something else, as long as the Federal Government keeps the contract, there is no trigger in this bill for compensation.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has again expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. Mr. Chairman, the problem is that everything changes, and they cannot negotiate anything. They cannot negotiate anything for change, because it would become a taking.

Furthermore, because the water right is considered a property right, if the individual decided to sell their water to another State, this could be very, very critical.

Let me just say, I think this is all very confusing, and I am reading out of the Denver Post where it says spokesmen for Colorado, Wyoming, New Mexico, and Arizona held that the 73-year-old Colorado Water Compact could break down effectively if private water marketing is allowed. This could happen, they said, by people being able to do this, and the Federal Government being stuck by the taking.

I just want to finish my statement, if you do not mind. There was a wonderful article today in Roll Call that I think summarizes where we are. They said that we are moving to change these things so rapidly that it is like standing at the end of a conveyor belt with cream pies flying at you, and I think one of the reasons that no one is quite sure is we are changing things that have been around for a very long time. We are doing it so rapidly that we are all trying to make our best guesstimates.

This, I think, is really very frightening, because water is life out where we live. That is why I am very concerned about the gentleman including the Bureau of Reclamation and getting the Federal Government in under that.

Has the gentleman from Louisiana thought at all about taking that out?

Mr. TAUZIN. If the gentlewoman will yield further, first of all, the bill as it comes out of committee includes this and all Federal agencies and all Federal acts. We are limiting under this amendment to these acts, so the bill contains the total regulatory effect.

Second, the gentlewoman should not be concerned that anyone cannot renegotiate contracts under this bill.

You are perfectly entitled in Colorado, Louisiana, anywhere else to renegotiate contracts with the Federal Government. This bill only says if the contract is violated, invalidated by the Federal Government, and that diminishes someone's rights.

Mr. ALLARD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to rise in favor of the Tauzin amendment.

I think it is a good amendment. I think it moves us in the right direction as far as protecting private property rights. I think it is vital to the interests of the State of Colorado, because by recognizing water as a private property right, as the States do, we are saying to the Federal agencies that the States are in a better position to determine where one person's right begins and where another one ends, and we have, through Colorado water law and the doctrine of prior appropriations that has been adopted by most of the Western States, I think all of the Western States, and it recognizes there is a property right, and that that property right is going to be measured in a court. They take it to a water court in the States, and they determine exactly where one person's right begins and the other one ends.

And if nothing else, this amendment not only preserves private property ownership, but also recognizes the State's role, which is very important when we get into private property issues, particularly as they apply to water.

So I would just have to bring up a situation in the State of Colorado where we have cities, as well as individuals, but I will refer to cities who have purchased water or they have made, gained, water through annexation agreements, and this water was to be used for the purposes within the city, whether it is for open-space development or park development or municipal water supply, for drinking water or manufacturing or whatever. After the States had acquired this water, then the Federal Government changed the rules. They changed the rules and said all of a sudden, instead of automatically renewing permits that allowed the water to be transferred through the national forest, they were going to blackmail these cities to give them water for doing that, and it is the changing of the rules, not from private property, but by the agencies and traditionally they are doing that, and what they were requiring was 30 to 40 percent of the water would have to be left in that stream in a dry year.

And where were they going to get that water? They were going to get it from the cities who paid for it. They were going to get it from individuals who paid for it. It was obviously a taking, and that is the kind of problem that this particular amendment, as I see it, is trying to address our concerns, and so I think it is really very important.

The other thing I would like to make a point on, the Colorado Water Congress, they are a policy advisory board in the State, separate from State government. Usually when they take a position on water policy, we get a written comment on it. Now, there is not one individual that speaks for that particular Congress. It is usually done by a lot of consultation.

As far as I know, they have made no recommendations on action on this particular piece of legislation or this water language. I would suspect that if they reviewed this water language, because it is made up of a lot of cities of which I brought the situation up as well as private property owners, that they would support the language that is on the floor of the House today.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I think one of the reasons that they have not come up with a statement, and it was in the paper that they were debating it, is because this has all come at them rather fast, but I have another question.

Is the gentleman at all concerned that the Tauzin amendment strikes the beginning of section 4 in the bill on page 2 which says no compensation can be made under this act if the use limited by the Federal agency is prescribed under the law of the State in which the property is located? Does that not concern the gentleman vis-a-vis what we have been talking about? And I wonder why the gentleman from Louisiana did not strike that?

Mr. ALLARD. Reclaiming my time, I yield to the gentleman from Louisiana to explain that at this point.

Mr. TAUZIN. I will try to address that again as I tried to earlier.

The concern is now we are limiting the bill to these areas of wetlands takings and ESA takings or actions of the agencies here to deprive people of water rights, that to allow the State to duplicate the Federal proscription and, therefore, violate the person's right to receive compensation by simply duplicating the same proscription would, in fact, not be appropriate. The person who has lost his property, whose rights to use it, whose value is diminished because of some Federal statute should not lose the right to compensation just because the State has also duplicated that prohibition. Only when the State has other reasons to prohibit it should that occur.

Ms. DANNER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I ask to strike the requisite number of words.

Mr. Chairman, the opportunity is before us to seize the moment and restore the faith of millions of Americans through passage of the Tauzin-Laughlin-Fields-Danner-Peterson amendment to the Private Property Protection Act.

Surely our Government does not expect the American people to abandon their rights on an issue that was decided when our Constitution was conceived over 200 years ago. A government whose very conception was founded upon empowering words such as life, liberty, and the pursuit of happiness.

We must avail ourselves of every opportunity to recognize and understand not just the text of our Constitution, but how remarkable that document is—it's a bold and masterful plan for governance and individual freedom.

One of the basic tenets of our Constitution and a principle upon which our country is founded is an individual's right to own property.

In addition, pursuant to ensuring that right is not violated, the fifth amendment provides that the Government must justly compensate private property owners for property taken for public purposes.

Certainly, the past two decades are evidence of where our Government has gone astray. In this day of mounting and excessive government regulation, all too often, private property owners lose the economic use of their property.

This amendment to H.R. 925 would further solidify the private property rights of millions of Americans across the country.

In situations where the Government regulates to the point that the property owner may not use his property, or that a portion of the property is devalued by 10 percent or more, the property owner must be justly compensated.

I urge my colleagues to support the Tauzin-Laughlin-Fields-Danner-Peterson amendment to H.R. 925.

Mr. TAUZIN. Mr. Chairman, will the gentlewoman yield?

Ms. DANNER. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentlewoman for yielding.

Mr. Chairman, I received a letter today that I want to read to the House. It is a letter from a young man named Patrick Becnel:

My name is Patrick R. Becnel. I am twenty-eight years old and married with two children. I am a life long resident of Plaquemines Parish and a sixth generation citrus grower in the Jesuit Bend area.

I have recently run into a serious problem in obtaining continued financing for my farm operation. The nature of this problem has been a letter from the Dept. of Corps. of Engineers. A wetland designation on a portion of my farming operation. (see attached) And there is a map.

''In an effort to obtain additional necessary financing the bank required an appraisal on my farming operation. The appraiser stated that due to a letter dated in November 1991, which is now expired, no value would be allocated to the portion of land subject to wetlands determination. This land is within the Plaquemines Parish maintained hurricane protection levee.

''We desperately and urgently request your assistance in this matter. My farming operation, which is my livelihood, is in serious jeopardy due to this situation.''

This is typical of what we are debating here today, government regulations that tell a young farmer, 28 years old, married with two children, that he can no longer get financing on his farm because of a letter sent to him by the Corps of Engineers in 1991, a letter expired even, that designated a portion of his land as a wetland. If we do not give this farmer and other Americans some redress, not here in Washington in the Court of Claims, not at the Supreme Court, but at home in an arbitration proceeding that gives him his rights, shame on us.

I thank the gentlewoman very much for yielding.

Mr. THOMAS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. THOMAS asked and was given permission to revise and extend his remarks.)

Mr. THOMAS. Mr. Chairman, I had not planned on speaking on this amendment, but in listening to the discussion about California and somebody's re-creation of recent history about what happened in this House, I felt compelled to come down here and at least try to give a little balance to the CONGRESSIONAL RECORD that was being made by people who were perhaps folks who have not paid attention to what has been going on over the last several years, protesting a little bit too much, I think, about an amendment that says if the Federal Government violates a contract that it made with someone, the Federal Government is in the wrong.

And there was a discussion about the fact that the California water project, the Central Valley project, had been voted on by this House, and that an overwhelming bipartisan majority had already settled that question. And why in the world are we bringing it up again?

Now, one simple statement was missing in that entire dialog about how horrible it is that the Federal Government is entering into a contract with a private party, that the Federal Government has to honor that contract.

The changes that were made in the California water project law did not stand alone. We did not vote it up or down. It was a classic example of the arrogance and the way in which legislation had been managed for years by the now minority that was the majority at the time. When we decided the California water question, they rolled into the package the Central Utah project. The gentleman from Utah [Mr. HANSEN] stood here and kind of said, ''I can't do anything about it,'' to this gentleman from California. ''My project would be in jeopardy.''

The Central Arizona project was rolled into that little package. The Buffalo Bill Dam in Wyoming was rolled into that package. A water project in New Mexico was rolled in; the San Luis Valley project in Colorado was rolled in; the Mid-Dakota project was rolled in; the Lake Andrews Wagner project in South Dakota was rolled in.

Are you beginning to get the picture? There was not a vote on the California project. There was a vote on the Mountain Park Master Conservancy District in Oklahoma; there was a vote on the Cedar Bluff project in Kansas. There was an Indian rights provision. Texas was involved with the Lake Meredith salinity control measure, and on and on and on, the classic way they were able to get their way by creating an omnibus package that would put a number of people in jeopardy if they would not do the bidding of the former chairmen of the committees and subcommittees in the 103d Congress.

So when somebody stands in this well and tells you that the House voted on the California project, I want the RECORD to be straight on that, and when someone stands in the well and simply cannot understand either the logic of the amendment offered by the gentleman from Louisiana or the underlying amendment, the substitute offered by the gentleman from Florida [Mr. CANADY], I will tell you why they cannot understand it.

□ 1330

They do not understand the logic of the sanctity of contract. We had an amendment to the Constitution, the 11th amendment, over this very question as to whether or not government can abrogate its agreement under a contract.

The fact of the matter is the government has been abrogating its agreements over and over again, aided and abetted by the former majority.

This is a slight midcourse correction. It is an attempt to tell people who enter in good faith into a contract with the Federal Government that, in fact, we are going to make sure the Federal Government keeps its word, and, if it does not, you will be compensated. That is simply the totality of this discussion.

So when you listen to folks say, ''We don't understand why this is going on. We had a vote on the floor of the House,'' I want the record to show and for all of us to remember what used to go on around here. It is not going on around here anymore.

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the bill, H.R. 925, and the Canady-Tauzin amendment, which I believe is misguided legislation and amendments.

The bill, if enacted into law, will result in the biggest taxpayer bailout ever. This bill will dwarf the cost of things like the S&L bailout and will, in essence, establish a new welfare entitlement for land speculators, bankrupt developers and other want-to-be entrepreneurs seeking to make a quick buck off the Federal Government.

I appreciate my colleagues' attempts to improve this deficient legislation, but alas they fall far short of sound policy and law.

During today's debate we continue to hear the personal stories of hardships caused by the enforcement of laws on individual landowners. I do not disagree that at times, of course, law and regulation have an uneven impact, consequences that are unfair. However, the solution is not in a radical rewrite of what constitutes a regulatory compensation of property rights. After all, the Constitution needs, and especially Thomas Jefferson needs, little help from most of us. These are simply not a panacea cure-all to Government regulatory problems, in specific laws, correcting the basic shortfall or even the specific shortfalls outlined in the Tauzin amendment. Property rights under the U.S. Constitution have protection that is significantly different from what is being sought in this policy proposed on the House floor today.

I might say, incidentally, the rate at which this body is attempting to change the Constitution, the fifth amendment could well be on its way to being repealed at this point.

Under the auspices of this amendment, a process already exists to reimburse individuals and companies for property right takings, and ample legal history is in place for the courts to act.

I would also point out that the courts have not been hesitant to act to protect individuals' rights. However, this bill, with its lowered and almost nonexistent standards to limit regulations and to make the Federal Government pay to govern, now declares open season on taxpayers' pocketbooks to enrich passive logical limitation on private land, to pay for bad business deals and speculative disasters, for the failed developer. The American taxpayer will be the sucker of last resort and the source of funds.

Building homes on swampland? Just get denied a permit, and you can stick the taxpayer with the bill. Is your riverboat sinking? Seek a dock permit, get denied, and you have hit the jackpot. A new way to win at the gaming business. Who else wins? Some of this is for big business. Armed with the threat of massive Federal taxpayer payoffs and a corps of lawyers, big business will be able to blackmail most agencies to yield to their will. Who loses? Obviously, the public. Either we pay with our tax dollars or the surrendering of the Federal Government's ability to enforce crucial environmental laws.

Mr. Chairman, we should reject this proposal in total. This bill throws out over 200 years of judicial history and protections for the individual property owner and sets in place a radical and ill-conceived concept. We do not know how this process will work. We do not know how much this bill will cost. But, apparently, the advocates will not let those serious questions and costs to the taxpayers stand in the way of their ideological political goals.

The question with regard to appraisals, the 10 percent difference in terms of a piece of property's land appraisal,

is not unusual. You can get that by just asking two appraisers and then blame the difference on the government, and the government has to pay.

We had an example here of problems with the water rights. The legislation is designed to deal with specific problems with these laws, whether they be reclamation laws, the Endangered Species Act, or the other provisions that are touched under here, the Forest Planning Management Act or the entire law that governs the public domain, FLPMA. Then we ought to address those particular concerns.

There is a new majority here. These issues ought to be brought up, but what we are doing is superimposing this measure over a portfolio of law. This bill doesn't seek fair treatment, it seeks a change in the rules with regard to how we will govern or deal with these significant issues. This procedure greatly disadvantages those who are trying to regulate and implement the law to stop or delay them. Remember those regulators, those faceless, nameless bureaucrats some demean the public agent represent the people of this country and the implementation of the people's will. The Federal Government is standing in the place of the people in terms of achieving and advancing the various types of public policies. It is very important, I think, to recognize that and look at what happens in terms of the impact in these instances seeking the public good. So this proposal seeks to redefining and changing this procedure.

I might add, Mr. Chairman, there has been some indication about what the costs of this bill would be. In 1992, the gentleman from Louisiana's bill at that time, H.R. 1330, was brought before the Congressional Budget Office for a cost estimate.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. VENTO] has expired.

(By unanimous consent, Mr. VENTO was allowed to proceed for 2 additional minutes.)

Mr. VENTO. I thank the chairman.

Mr. Chairman, Mr. HAYES' bill on wetlands alone, and a bill that I might say had a very restrictive definition of wetlands, an estimate was made. An estimate was made on that particular bill with regard to what would the cost of the implementation of the bill be with regard to his specific provisions. The provisions of the measure were more limited than in the legislation before us.

In the CBO's estimate, excluding Alaska, excluding Hawaii, they estimated that the cost would be $10 billion to $15 billion in terms of cost, just for the provisions that deal with the wetland delineation process in H.R. 1330 of the 102d Congress.

As I said, I believe the restrictions that he had in the 1992 bill were much more limited. In fact, they calculated there were only about 100 million acres of wetlands, but the estimate dealt with touched on 9 million acres. It did not deal with Alaska, the wetlands in Alaska. That was the cost, that is what we were talking about, $10 to $15 billion.

Of course, the issue here is they say this bill does not appropriate, this bill isn't on entitlement according to the sponsors modifications. Mr. CANADY has made an effort to suggest that this would come only from appropriated funds. But how is the agency to carry out the responsibilities they have? In other words, in terms of paying for this, they have to say you take it from the agency, from other projects that they have to pay for it. The agencies entire budget could be wiped out by a single regulation action that would result in compensation being paid.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman.

Mr. TAUZIN. I thank the gentleman for yielding. First of all, let me correct the record. The bill covered endangered species as well as wetlands, No. 1. No. 2——

Mr. VENTO. Does the bill cover the reclamation provisions that the gentleman has?

Mr. TAUZIN. No, it did not.

Mr. VENTO. It did not.

Did the bill cover the public domain lands, the FLPMA lands?

Mr. TAUZIN. I am sorry?

Mr. VENTO. The gentleman's amendment, has the Federal Land Management Practices Act, [FLPMA] did it cover FLPMA?

Mr. TAUZIN. I am trying to tell the gentleman it covered endangered species and wetlands, and it was done at a time when the corps, in the 1989 agreement, was publishing a manual that said 60 percent of the State of Louisiana was going to be considered a wetland.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. VENTO] has again expired.

(By unanimous consent, Mr. VENTO was allowed to proceed for 2 additional minutes.)

Mr. VENTO. Mr. Chairman, I think this is an important discussion which the gentleman and I are having.

Mr. Chairman, I would just point out that in reviewing the letter, it indicated that there were 100 million acres but they only looked at 9 million acres that perhaps were being subject to this, and discounted Alaska and discounted Hawaii. But even under that particular provision, they came up with this figure of $10 to $15 billion.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield.

Mr. TAUZIN. I thank the gentleman.

Mr. Chairman, the amount that the Government is going to have to pay any landowner for taking his property is going to depend mightily on the actions of the agency from this date forward. If the agency wants to declare 60 percent of the State of Louisiana wetlands, I suspect it is going to be a very expensive propostion. If the agency wants to protect real wetlands and wants to protect habitat in circumstances where it does not have to take 21 counties of Texas for a single bird, it is going to have a much lower cost to that agency. It depends on the agencies and their regulatory practices.

Mr. VENTO. I appreciate the gentleman's observation. But I would say I do not think it covered that vast area. In fact, while they obviously identified 100 million acres of wetland, they only estimated 9 million acres of that might be affected, only a portion of that, excluding Alaska and Hawaii.

So this is a very conservative estimate by the CBO.

The point is, what the legislation says is that those dollars were not an entitlement, they must come from the agencies' appropriations.

I would suggest to my colleagues what does that mean, if it is the BLM or the Forest Service? If it is the Forest Service, you would have to completely—they would have no budget left to carry out the responsibility in terms of the law.

So I think the point I am trying to make is that if you want to change these laws, you ought to change it, you ought to deal with the Endangered Species Act or the wetlands laws on the floor.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield further?

Mr. VENTO. I am happy to yield.

Mr. TAUZIN. I thank the gentleman for yielding.

I point out that we purchased Louisiana for this Union for $14.5 million.

Mr. VENTO. And it was worth it, too, I might say.

Mr. TAUZIN. It definitely was. And if the Government wants to repurchase the State of Louisiana for the purpose of the gentleman or any other purposes, we are indeed willing to negotiate, but I suggest you pay a fair price.

Mr. VENTO. Part of that Louisiana Purchase was Minnesota, and I want to personally attest to its value.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. VENTO] has again expired.

(On request of Mr. THOMAS of California and by unanimous consent, Mr. VENTO was allowed to proceed for 1 additional minute.)

Mr. THOMAS. Will the gentleman yield?

Mr. VENTO. I yield to my colleague from California.

Mr. THOMAS. I thank the gentleman for yielding.

Mr. Chairman, in the course of his statement, the gentleman indicated that the amendment of the gentleman from Louisiana [Mr. TAUZIN] would be somewhat in the vicinity of $15 to $30 billion.

Mr. VENTO. If I may reclaim my time, that was only for the wetlands provisions.

Mr. THOMAS. Not this amendment. The previous amendment

Mr. VENTO. No, his amendment actually covered—that was a conservative estimate of just wetland cost of the regulatory compensation——

Mr. THOMAS. So, on a conservative estimate of $15 to $20 billion, but the other side of that coin, I would tell the gentleman, is that actions by this Government in regard to people who hold property put a burden on those private sector individuals to the tune of $15 to $20 billion. There was no discussion about priorities in terms of Government decisions. That is the problem.

Mr. VENTO. Reclaiming my time, I would just point out that the issue is, of course—the gentleman is redefining what value is. He is creating that value in the legislation, it is questionable whether it exists in reality.

Mr. TAYLOR of Mississippi. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, in my office I have a small bulldog that was awarded to me by a group for being a defender of the treasury.

I try as often as I can to try to save the taxpayers some money. I am trying to do that today by getting a clarification, hopefully, in law, so that this bill that is well-intended does not become the scam of 1995.

I would point out that the illustrations that many of you have given as far as wetland problems are real, and they have to be addressed, and I hope this bill will do that.

But I also see, in addressing those problems, the potential for multibillion-dollar losses to our country that I think have to be addressed.

This is an area of the district that I represent that adjoins Louisiana; it is a map of the Pearl River. The gentleman from Louisiana [Mr. LIVINGSTON's], district is right over here. It divides the State of Mississippi in the area that I represent.

As you can see, it is pretty hard to distinguish between the water and the land. This is a U.S. Geological Survey map. The reason for that is, when you get there, it is pretty hard to distinguish between the water and the land. It is a coastal marsh. With the wind blowing out of the north, you can pretty well walk across with a good pair of waders.

□ 1345

But if the wind is blowing out of the south during the springtime, the only way you are going to get across is by boat. It is a true wetland.

Now, what I have trouble with, and I hope the gentleman from Florida [Mr. CANADY] can explain this to me, is if someone buys a tract of this, a lot of this land was purchased during the Depression for about 1 dollar an acre. Say someone goes to the owner of the land and there is a wink and a handshake and he says, ''I want to pay you $5,000 per acre for that land because I want to put a shopping center there.'' And then he takes a napkin and draws on the back of that napkin and goes down to the nearest Corps of Engineers and says, ''This is the plan for my shopping center. I want to put it right here, elevation, six inches.'' The Corps of Engineers is going to say—

> There is no way on earth you can do that. It is the mouth of the Pearl River. Every spring it is going to flood, and every time there is a wind out of the south, it is going to flood. You will bankrupt the Federal flood insurance program. You can't build there.

Under the provisions of this bill as I read them, the person could then sue the Federal Government for that $5,000 an acre he paid for it. Now, you and I may look at it and say he was foolish to pay $5,000 an acre. But when you consider the highest priced property in the State of Florida is right along the canals that used to be marshes, and some of the highest priced property throughout our country is waterfront property, that person could turn around and make a fairly intelligent argument that this is right here on the Mississippi Sound, it is waterfront property, and I ought to be entitled to my $5,000.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Florida. Please tell me how we are going to keep people from abusing this bill?

Mr. CANADY of Florida. We are going to do that, because we grant them the right to compensation for the diminution in the fair market value of their property. What I am telling you is $5,000 in that case would be a sham. That is not the fair market value.

Mr. TAYLOR of Mississippi. I would ask the gentleman from Florida [Mr. CANADY] where is fair market value defined in this bill?

Mr. CANADY of Florida. That is a concept that is well defined in the law. We do not need a definition of that. That is defined in condemnation law already. That is there. There is no doubt about that. And the kind of circumstances you are describing are not going to result in compensation. I understand your concern, but I think it is not well founded.

Mr. TAYLOR of Mississippi. Mr. Chairman, reclaiming my time, let me ask the gentleman this: Is it fair market value if the 1 dollar an acre that the man bought it for during the Depression, is it fair market value for the $5,000 an acre that the man from the Midwest and does not know what a coastal marsh is worth, or he in good faith paid $5,000, or is it $50,000 an acre that it would be worth if he could build the shopping center? I would ask the gentleman from Florida [Mr. CANADY], with a rule of law, why are we so afraid to define something and why do not we define it in this bill?

Mr. CANADY of Florida. Mr. Chairman, if the gentleman will yield further, let me say this: I do not think anyone is afraid. No one is afraid to define this. It is already well-defined in the law and it is not going to cover the circumstances you are talking about.

This is an open amendatory process. If the gentleman has an amendment, that is something the House would consider. But I do not believe it is necessary, because that is a concept that is well-defined in the case law.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, the gentleman asked a very legitimate question, how do you determine the fair market value before and after the regulatory action takes place on the property. The courts have well-settled this issue. As the gentleman has indicated, if the gentleman wishes to incorporate that in the bill, that is fine. But the courts have held, and the arbitration proceeding called for in this act would follow those decisions, and I read from Florida Rock,

> The uncontroverted evidence of an active real estate market, you look at what a willing buyer, willing seller requirement in that real estate market produces as the fair market value on the date that the regulations took place.

If willing buyers and sellers are really out in those areas spending $5,000 an acre, I would be greatly surprised, and so would you. You know that is a sham price, so would the arbitrator. He would not award such a ridiculous amount.

The CHAIRMAN. The time of the gentleman from Mississippi [Mr. TAYLOR] has expired.

(By unanimous consent, Mr. TAYLOR of Mississippi was allowed to proceed for 4 additional minutes.)

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, what would happen would be that the individual who owned the property would go and get himself some kind of an assessor who would assay the value of the property. That individual would fix a value of the property after it was developed and before it was developed, a highly speculative process on which you could get a number of different people who would assess the value of that property quite differently depending on the assumptions they made and depending on a large number of other things, including highly speculative judgments as to the value of that property if it were in fact improved.

So what a fellow really would do under this legislation is to run in with two different estimates from a surveyor or an appraiser who would give him the best selection of choices that he felt would best enable him to come in and sue the Federal Government or to make claims against the Federal Government under this particular legislation, with consequences that the cost to the Federal Government would

be ballooned enormously. The Office of Management and Budget says it would cost literally billions and billions of dollars, in response to a request that I made to them.

Am I correct in my assumption?

Mr. TAYLOR of Mississippi. Mr. Chairman, reclaiming my time, I would say to the gentleman from Michigan [Mr. DINGELL], it is well known I am not an attorney but I share your feelings that a clever attorney could certainly bill the United States for a lot of money if we do not define fair market value as being fair market value at the time of purchase, fair market value of the potential of the property. We have to have a definition of what fair market value will be and at what time it is estimated.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I raised this before on Agriculture. It has always been my understanding in a variety of capacities at State and local governments as well as the Federal that what they talk about is appraising the value of property at the highest and best use. That is, whatever you can legally develop the property to be at the time that you had it and before the regulations that you were challenged under, that is what sets the value of the property. Any subsequent regulation which restricted the way you could use the property in fact devalues the property.

Mr. TAYLOR of Mississippi. Reclaiming my time and addressing the author of this measure, the sponsor of this measure, would you accept that as the definition of fair market value? The fair market value at the time that it was purchased?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, we will be happy to work with the gentleman on an amendment. I am happy to look at that language. I do not want to get wedded to a specific language here. But we want it to be fair market value. If we can come up with a definition that we think is consistent with the case law on that, we will be happy to work with you.

Mr. TAYLOR of Mississippi. I would say to the gentleman, the reason I do this, and I do it in good faith, is that I have met with several members of the staff that helped you draft this, and came up with several different interpretations of what would really happen under these scenarios.

These are intelligent people. I have got to believe that intelligent lawyers would be the same way and intelligent jurors would be the same way. That generally means that given that uncertainty, the liability to the American taxpayer would be phenomenal, and we need to prevent that.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Louisiana.

Mr. TAUZIN. The gentleman's concern is a valid one. The intent of the bill is that the fair market value is the fair market value at the time the regulation takes place as opposed to what it is worth once the regulation imposes a use restriction.

Now, that is generally defined in compensation cases in areas where the Government shows up to take your land and build a road. It does not look at what your grandfather paid for it. It looks at what the value was on the day they showed up to buy it for a road.

The courts have said for example, I would say to the gentleman from Mississippi [Mr. TAYLOR], that aberrational prices, the one you just cited, aberrational means outside the norm established by general activity. The court does not consider that fair market value. Neither have the appraisers under general law that applies to condemnation proceedings.

So what I am telling the gentleman is the intent is to do exactly what happens in a general condemnation proceeding, look at the value right before the regulation is prescribed, and the value right after the use is denied.

The CHAIRMAN. The time of the gentleman from Mississippi [Mr. TAYLOR] has expired.

(By unanimous consent Mr. TAYLOR of Mississippi was allowed to proceed for 3 additional minutes.)

Mr. TAYLOR of Mississippi. Mr. Chairman, I want to thank the sponsor of the measure and the sponsor of the amendment. I hope I have as a result of this colloquy the word, as a gentleman, of the gentleman from Florida [Mr. CANADY], that before the end of this day, before the passage of this measure, that we will do everything humanly possible to have a definition of fair market value included in this measure.

Mr. CANADY of Florida. I give you my assurance we will work with you to develop such a definition.

Ms. FURSE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong opposition to this amendment, and do that on behalf of the Northwest salmon fishing industry. I believe that while we talk about private property protection, we should also provide that protection to small businesses and local economies that are dependent on healthy natural resources.

I have heard statements today that the American people support this legislation. Well, I do not think that is quite true. The American people in poll after poll have said that they support protection of water and clean air, and they support legislation that does that.

Mr. Chairman, as recently as 1988, the salmon fishing industry in the Northwest contributed more than $1 billion a year to our economy, 60,000 jobs. This includes men and women who fish commercially, sports fishers, charter boat owners, hundreds of small businesses that sell to that industry.

But unfortunately, decades of habitat destruction through logging, mining, grazing and shoreline development, dam building, irrigation diversions, have sent our valuable salmon populations plummeting towards extinction.

Last year, for the very first time in history, the ocean salmon fishery was closed on the coasts of Washington and Oregon. Our legendary spring chinook fishery has been closed in the Columbia River. What has the economic impact been? A 42-percent decline in America salmon-related jobs. A 46-percent decline in overall salmon-related economic output.

I absolutely cannot understand how any Northwest Member of this House could support this legislation in opposition to the direct economic interests of their constituents. Recently, I received a piece of literature from the Pacific Companies Federation of Fishermen's Associations. I will include that in the RECORD. I would like to read a few excerpts from it.

Without a strong Endangered Species Act, the only available remedy for the species recovery is closing down the fishery. And they say the ESA is not the enemy, it is only the messenger. Listing a species is like dialing 911 when you need an ambulance. It should be used rarely, but where needed, it is nice to have.

Finally they say about the importance of wetlands—.

All around the country our industry is utterly dependent on species which themselves require healthy watersheds and estuaries for their most critical life cycle. Yet all this has been put at risk by the continuing destruction of wetlands and watersheds for those species dependent upon them for their very existence.

What H.R. 925 and this amendment does, it would make our already devastated fishing communities pay twice. They have already paid once with their livelihoods, because upstream property owners have overlogged or they have closed the streams to fish or they have developed riparian wetlands. But now we are asking them to pay again, to open up their wallets and pay again, to compensate landowners when the Federal Government has attempted to protect what little is left of a healthy fishery habitat.

Why should these hard working American taxpayers have to compensate corporate polluters and developers? They have wiped out our small businesses and our resource-based industries.

It is the cumulative impact, Mr. Chairman, of hundreds of private property owners acting in their own self interests that jeopardizes the public interest in such things as clean water and healthy fisheries.

Yes, we should compensate when there is a direct taking, but the American taxpayer should not have to pay landowners not to pollute or to degrade

our public resources, and water is a public resource.

I am a property owner myself, but I believe that although I have a private property right, I have a public property duty. If you care, if any of the Members here care about the American fishing industry, they should vote no on this amendment. This is not a takings bill, it is a corporate takeover bill.

Mr. CUNNINGHAM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I do not plan on taking the full 5 minutes. But the gentlewoman talked about the salmon in Washington. I went all the way through campaigning in Washington and looked at some of the dams and looked at the problems they had on even the impellers of their little edge in there that they were saying were killing salmon, the small ones going down. Part of the problem is recording. You release fingerlings. They go out to sea, and then they come back, and they actually measure how many salmon come back up river, not how many the sharks get or anything else, but the actual number that get back.

□ 1400

They also wanted to take and build this big venturi tube because they had a plan for $100 million to circumvent the dams up there that had no scientific basis, and it was going to cost them $100 million. The particular guy that runs the dam said, OK, we are going to save fish. They found out that there is this fish called a squawfish that eat their own body weight each day. Instead of $100 million, he took a group of high school kids for the summer and caught squawfish and saved about 90 percent of the fingerlings that went down and saved, this is big government's answer versus entrepreneurship.

They also want to take out a lot of the dams in Washington that have recreational value and storage of water and those kind of programs. But I look at, the President has just said, which I agree with, he wants to take a look, instead of just totally doing away with affirmative action. I think that is a reasonable view. But I think if you look at the reasons we have clean air, clean water, they have good purposes. But in many cases, those purposes have gone run amok. Same thing with the endangered species act and the wetlands.

I think that a reevaluation is what we are asking for, an economic impact where we do protect property rights of individual citizens in this country. Those are reasonable requests. But unfortunately, Mr. Chairman, there is many, many on the other side of the aisle, that do not want the reasonableness in any of those particular acts. They want to use it as a weapon, as a tool against our private citizens.

I know in the California desert plan, the property rights, and there was a portion of it that said that if you own property, they could take it and the Government would put you on a list because they are in arrears so much of paying for that taking. What happens is you could not build or improve your land over. You may be on there 10 years. The government then comes in and says, hey, now I want to give you fair market value after your land has been depreciated so much. That is not fair, Mr. Chairman.

I look in California at a fire that we had and hundreds of homes were burned. And one person said, I am going to grade regardless of what they tell me to save gnatcatchers because the brush, there is going to be a fire. That individual graded. The ones that were not allowed to are stuck with the law, their houses burned down.

I look in New Mexico at a young lad that was lost for 3 days in the wilderness and because it was a wilderness area, they would not let the helicopter land to pick up a child. He spent an extra night lost in the wilderness because a helicopter could not land in the wilderness.

I would think that Members would agree there are too many of these kinds of happenings, and we are looking for reasonableness, not extreme to where the people that want to concrete over the world or those that want to use the environmental issues as a leverage and as a weapon. I think that is the direction it is going.

Your take a look, look at the Colorado slag and what history has left. I mean that is a disaster. When you talk about property rights, miners have taken away our property rights to enjoy much of Colorado by the environmental damage they did.

Look at the Great Lakes. They cleaned that up. I look at the striper salmon on the eastern shore. I talked to my friend, the gentleman from Massachusetts [Mr. STUDDS]. I said, a long time ago I probably would have been one of those that fought against it; I would have been wrong, to my former chairman. I told him that in my long quest to become an environmentalist. He stated, ''Well, DUKE, you've got a long way to go.''

There are good things that we have done with all of these acts, but on the same measure, I think we need to have a reasonable approach to them. I do not think that is asking too much.

Mr. STENHOLM. Mr. Chairman, I move to strike the requisite number of words.

(Mr. STENHOLM asked and was given permission to revise and extend his remarks.)

Mr. STENHOLM. Mr. Chairman, about 2 hours ago, I came to the floor very angry. I had received what I perceived to be a very threatening phone call as a result of my support of this legislation from what I consider the primary reason why we are there today, and the gentleman from California was just speaking to the fact that most of us would like to see a reasonableness applied to the laws that affected our land, whether it be the environment, whether it be the Endangered Species Act, whether it be the rights of private property owners. We would like to see a reasonableness. But that is not what we have been seeing.

Just as I listened, with a great amount of interest and certain support of the eloquence in regard to the protection of the American eagle or the salmon, all very good stories and certainly not the intent of this Member in being part of seeing something that would undo those laws that have protected in a commonsense way, if that is the way it has been done, but I, too, could sit up and stand up today and talk about some unreasonable acts.

An act in my district that cost taxpayers over $3.5 million in the protection of a water snake when all we were trying to do was build him a lake.

These are the kinds of dumb things that we have had imposed upon us by the elitists of the environmental community who choose to overlook the fundamental reason why we are here today. That is the fifth amendment of the Constitution. If you are going to take someone's property, the Constitution guarantees compensation, period. But we have had an interpretation of current laws to such a degree that there are those among us who believe their cause, and that cause often is a snake or a fish or a bird or some individual very important cause to an individual or a group of individuals, that believe that their opinion supersedes the right of an individual property owner. That is why we are here today.

We have heard a lot of talk about the budget. I am very interested in that. This bill will not cost one dime. It will not cost one dime, because what it will do, it will cause us to begin to look realistically at the cost of that which we are about to impose by the various agencies. And I suspect that the reasonableness that the gentleman from California just spoke about, and this Member certainly believes in, that we will find reasonable solutions, because I find that it will be the rare exception of a property owner that will deny a reasonable application of protection for the environment or protection for an endangered species that is reasonable and can be arrived at in the same manner in which those on the other side continue to argue we will not do under this law.

This bill does not pay polluters to pollute. This legislation, in fact, it specifically says, regarding the health and safety of this country, ''no compensation shall be made under this Act with respect to an agency action, the primary purpose of which is to prevent an identifiable hazard to public health or safety.'' There is a lot of red herrings out here, and that perhaps is a bad example to use today. But basically and simply, what we are talking about is returning to the actual application of the Constitution of the United States in saying that for whatever cause you are going to take my property, you

must compensate me for it. Primarily we should start by saying it is in the public interest that we do certain things and have reasonable discussions and we would never even be here today.

I rise, again, in strong support of the Tauzin amendment. I believe that it will actually do what the opponents say it will not do, it will actually protect the environment and protect the endangered species in a way in which no one has even thought of as yet.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Just to point out that one of the reasons people oppose this is, they say the American public can not be in support of this. Let me point out, Nations Business magazine just did a poll. The question was, should the Federal Government compensate owners when private property is restricted for environmental reasons? Do you know how many people responded yes? Ninety-two percent of Americans responding in that poll said yes. We ought to say yes today.

Mrs. CHENOWETH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to respond to some of the comments that were made by the gentlewoman from Oregon because I, too, come from the northwest. My State has been severely impacted by the listing of the redfish lake sockeye salmon in the summer and fall Chinook salmon. My State has had a great fall as far as its economic abilities because of the listing of the endangered species.

One of the problems that we are seeking develop now is the fact that the issue really is not the fish. The issue really is control of the land, control of the land without due compensation and just compensation and due process.

When we look at the health of the fish, we look at the health of the Pacific salmon and the fact that through agency research, we were able to use a technique called chemical imprinting, and actually take the Pacific salmon and place the Pacific salmon, in spite of his anadromous fish instincts and the desire to spawn upstream and be able to reprogram the fish's brain and natural instinct through a process of chemical imprinting so we took the Pacific salmon and placed him in the Great Lakes. And right now some of the best salmon fishing can be found in the Great Lakes, an area that was once considered polluted.

In addition, Mr. Chairman, in the Great Lakes, they are now suffering, because the salmon has been so successful, a decline of the whitefish because the salmon is now competing for the environmental space.

The salmon runs and the anadromous fish runs in the great northwest are a product of many things, least of which is the product of the Marine Mammal Protection Act. And because this body, several years ago, decided to pass the Marine Mammal Protection Act, it has thrown out of kilter the balance between marine mammals and fish. It is another product of the El Niño, which is a warming trend in the Pacific Ocean.

And so if we, as a body, could simply let science be free to do what science is best able to do, we could improve the fish.

Now, with regard to the taking of property, I rise in strong support of the Tauzin amendment. The value of property and fair market value is established by the dynamics of the market system. There are comparables that can be used on developed property or the potential of developed property, and there are appraisers who are licensed by the State to make sure that their appraisals will live up to the standards the State has imposed on them. They are trustworthy appraisers, and MIA appraisers can be depended upon.

So this whole concept of compensating people for the taking of their property should be one to slow down the Federal Government from taking of our property because, Mr. Chairman, if we do not stop this, this Nation will face a recession of great magnitude, because all wealth is acquired from the land. Unless we are able to take our creative energies and apply it to the land and bring out original wealth, this Nation will face economically.

Right now, Mr. Chairman, approximately 40 percent of our land base is under the control of the Federal Government. We cannot afford, as a nation, to have anymore under it.

I strongly support the Tauzin amendment.

Mrs. LINCOLN. Mr. Chairman, I move to strike the requisite number of words.

(Mrs. LINCOLN asked and was given permission to revise and extend her remarks.)

Mrs. LINCOLN. Mr. Chairman, in representing a totally rural district in eastern Arkansas, I certainly have realized how critical private property rights are. I was raised in a seventh generation farm family in Arkansas Mississippi River Delta. And as a farmer, my father has taught me not only a tremendous reverence for land conservation but also a very big respect for fairness and equity in property rights.

In the past years we have seen some of our individual property rights diminished. I think that the efforts today in trying to restore that, those property rights as well as the individual constituency respect in the Federal Government and what we are here to do.

We see in this bill the efforts to put fairness back into our constituents' property rights. That is a very important issue. But also there is another issue. That is the fairness in terms of the financial implications this may have to our constituents as taxpayers.

I allude to a little bit of what my colleague from Mississippi [Mr. TAYLOR] was talking about. I would like to engage the gentleman from Florida [Mr. CANADY] and/or the gentleman from Louisiana [Mr. TAUZIN] in a colloquy on that issue.

I would first like to applaud them on working hard to make this bill and their efforts on behalf of our constituents in private property rights a much better bill, something that we can all be proud of.

I would like to engage them in the meaning of the fair market value as it is set forth in this bill and certainly in the amendment.

I would like to certainly qualify if it is your view, in terms of the fair market value, that it means the present day fair market value and not the potential market value of the real property in question?

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman yield?

Mrs. LINCOLN. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, the gentlewoman is absolutely correct in that regard.

□ 1415

Mr. TAUZIN. Mr. Chairman, will the gentlewoman yield?

Mrs. LINCOLN. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, the answer is absolutely yes.

Mrs. LINCOLN. I know, for example, in many of the examples that I have gotten in from my constituents is a piece of property that perhaps contains the wetlands. For those of us living on the Mississippi River, that is a great deal.

Would it be valued according to the present use of the land surrounding the property, like farming, or, certainly, the residential purposes? It would not be valued according to the potential use of the land, like developing a golf course or resort area or things like that?

In terms of urban areas, a piece of land located in New York City, certainly that would be valued as is, but not according to the potential use of constructing a skyscraper or something other than that, is that correct?

Mr. CANADY of Florida. If the gentlewoman will yield further, that is absolutely right. In determining the value of property, the circumstances surrounding the property are absolutely essential to coming to the fair market value.

As we indicated before, there is a large body of case law on this subject, and this is something that has been dealt with by the courts repeatedly. However, we are happy to try to work with the gentleman from Mississippi [Mr. TAYLOR], as well as the gentlewoman, in developing a definition on that, if that is the will of the House.

Mr. TAUZIN. Mr. Chairman, if the gentlewoman will continue to yield, the case we opened this debate with,

Bowles versus the United States of America, was a good example of exactly the question the gentlewoman raises; that is, what is the Government's obligation in regard to paying the fair market value of a piece of property that came under a wetlands regulation.

He had a lot in a subdivision. The Government for 10 years argued that they only owed him the value after they had told him he could not build on it, after they said ''You cannot build a house on it.''

He argued for a long time ''This is a subdivision lot. My neighbors have built houses. If you tell me I cannot build a house, I should get the fair market value as a subdivision lot.'' He won after 10 years. What we are saying is it is the fair market value before the use regulation restricts the property, as compared to the fair market value after the use restriction. That is it, pure and simple.

If the gentlewoman recalls, we had the same debate on the Desert Protection Act last year. The arguments there were that when an endangered species occurs on a piece of property and it lowers the value of that property, that in that case, the person should be compensated for the value of his property before the endangered species restrictions were imposed upon his property, not after. That is the whole purpose of the act, to compensate him for the damage diminution by the imposition of the restriction.

The gentlewoman is correct, it is not the prospective value after you build houses and buildings and subdivisions, it is the value as an undeveloped piece of property before the regulation is imposed upon it, compared to the value right after.

Mr. WILLIAMS. Mr. Chairman, will the gentlewoman yield?

Mrs. LINCOLN. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, if I could, on the gentlewoman's time, ask the gentleman from Florida [Mr. CANADY] a question.

The gentleman mentioned something to the effect there is plenty of case law in effect. My question is, Mr. Chairman, moving, as I think this legislation does, even with the amendment, from access to the judiciary to a different appeals process entirely, how would the case law crosswalk with it?

The CHAIRMAN. The time of the gentlewoman from Arkansas [Mrs. LINCOLN] has expired.

(By unanimous consent, Mrs. LINCOLN was allowed to proceed for 1 additional minute.)

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman continue to yield?

Mrs. LINCOLN. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, the arbitrators who would be involved in this process would be governed by the same rules that would apply in the courts.

Mr. WILLIAMS. Mr. Chairman, will the gentlewoman yield further?

Mrs. LINCOLN. I yield to the gentleman from Montana.

Mr. WILLIAMS. That is not required under the act, is it, that the case law be crosswalked to the department as they try to mitigate for the appeals?

Mr. CANADY of Florida. Mr. Chairman, if the gentlewoman will yield further, that is what determines the definition of fair market value. That is the reference for determining fair market value. I do not think there is any question that that body of law that helps determine fair market value would be applicable in this context, as well as in the traditional context.

Mr. WILLIAMS. With congressional intent, and I assume we are making intent clear, Mr. Chairman.

Mrs. LINCOLN. Mr. Chairman, I first applaud the gentleman for working hard to make it a better piece of legislation, and I would encourage them all to work with both myself and the gentleman from Mississippi [Mr. TAYLOR] so we can codify that.

Mr. CALVERT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, there is no district in this Congress that has been more affected by private property right disputes than my district. I represent Riverside County where the Stephens kangaroo rat, several weeds, lizards, and bugs have seized control of the land.

No longer can private citizens use their property the way they wish, for fear of reprisals from the U.S. Fish and Wildlife Service. One notorious example of this occurred early last year when residents were not allowed to disk their property around their homes in order to protect the kangaroo rat.

The consequences of this was disastrous and outright irresponsible. Fires broke out in southern California that destroyed 25,000 acres and 29 homes near Winchester, CA. The irony of that fire is that it destroyed critical habitat area for the species we were supposed to be protecting.

I know my colleagues have heard this story before. However, I cannot repeat this story enough. This story is a perfect example of what can go wrong when the Government oppresses honest and hard working citizens.

These people deserve compensation for these extreme regulations. They deserve to be heard. They should be treated better than California's furry little friends. The Tauzin amendment would give power back to the people.

It would give compensation to landowners who bought their property, and then found a critter or weed was lurking around the corner ready to devalue the land. While my constituents support the protection of endangered species, they will not tolerate the Government's irresponsibility in handling this process, and ignoring a person's constitutional right to own and use the land which they paid for with their hard-earned dollars.

Mr. Chairman, it is about time that we put the rights and the welfare of the people before the rights of a weed, rat, or bug. I ask my colleagues to vote yea on the Tauzin amendment.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. CALVERT. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding to me, Mr. Chairman.

Mr. Chairman, I asked the gentleman to yield for the purpose of clarifying one part of the amendment we are offering. The amendment provides that when the excessive regulations of the Government exceed 50 percent of the value of the property, that the landowner then has a right to demand the Government purchase the property.

At that point ''It is yours, take it, just pay me, here is the title.'' That provision does not in any way derogate from the landowner's right, if he chooses, simply to be compensated for the diminution of value. It is simply an additional right accorded under the amendment to the landowner, where the Government really owns more of the property than he does anymore, to seek actual compensation for the property, and then turn the title over to the Government.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have listened to this debate for a goodly period. I find myself troubled.

We have a perfectly good Constitution. It provides that when there is a taking there is compensation, if it is the Federal Government that does it. That has been the law on the books since the Constitution was first ratified. This now changes that law in a fashion which no one can properly predict.

I have been seeking for some while a proper statement from both the Congressional Budget Office and the Office of Management and Budget as to the cost of the proposal now before us, either the basic legislation or the amendment offered by my good friend, the gentleman from Louisiana [Mr. TAUZIN]. They do not know. They say there is no way that an intelligent cost estimate can be made, but that the cost would be billions and billions of dollars.

This should certainly be a warning to us that we should be very careful. First of all, the bill and the amendment are full of curious contradictions. The consequences of what they do is to impose enormous liabilities upon the taxpayers to redress grievances which are real and grievances which are not real, and to address circumstances which, in many instances, are in fact beneficial to the landowner, and where requirements of the laws would in fact protect other landowners from wrongdoing by the person who would seek relief and redress.

For example, Mr. Chairman, the question of building on a flood plain.

Building on a flood plain imposes liabilities on the government if the Federal Government does not permit that. However, it also protects other landowners in the area from being flooded.

This legislation would require the Federal Government to compensate an individual for building on a flood plain and demanding redress from the Federal Government. I do not think that makes good sense.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield on that point?

Mr. DINGELL. I am glad to yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding.

I think the gentleman perhaps did not hear the discussion previously, Mr. Chairman.

Mr. DINGELL. I am discussing the basic legislation that is offered. I thank the gentleman for pointing that out.

Mr. TAUZIN. We are amending that to make sure that does not happen.

Mr. DINGELL. I understand that, but the amendment offered by my good friend, the gentleman from Louisiana [Mr. TAUZIN], suffers from its own defects, which are also substantial.

However, this is a most curious thing. It also says that where the Federal Government tells somebody they cannot build a nuclear power plant on a fault, the Federal Government has to compensate. Most curious. It sets up a circumstance where the Federal Government is going to have to hire legions of lawyers to process innumerable claims for compensations, real and imagined, bottomed on two estimates by appraisers of differing values, bottomed on some very interesting appraisals and estimates and assumptions.

I would urge my colleagues, Mr. Chairman, to think very carefully before this body adopts anything this hastily drafted, this hastily considered, and this hastily brought to this body for consideration. Remember that the Congressional Budget Office and the Office of Management and Budget have said no way, they have no way, no way of judging what the costs might be of this.

I have seen legislation like this come to the floor earlier in a great burst of good will. Remember one time we had legislation to compensate doctors and pharmaceutical manufacturers for their conduct under a swine flu bill, and for the manufacture of a swine flu vaccine? That was some years ago. That was in the days when $1 million was a lot of money.

We passed it. We agreed we would compensate the doctors for everything, and for the manufacturers of antitoxins and vaccines, for anything which occurred: bad manufacturing, rape in the parking lot, collapse of the building, fire, whatever it might be, as long as you were in there to get a shot.

The practical result of that was that the lawyers had a bonanza. We did not have any idea what the liability was. I would be happy to tell Members, I opposed the legislation, because I thought it was accepting an absolutely impossible liability.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 3 additional minutes.)

Mr. DINGELL. Mr. Chairman, we accepted that liability, and very shortly the lawyers were conducting seminars on swine flu law, and swine flu law was widely practiced by the legal bar, both by honest attorneys and, quite honestly, by shysters and ambulance chasers.

The practical result was that the Federal Government wound up with a liability of $5 or $7 billion, because the lawyers went out and said, ''Here is how you do this thing.'' Then they went around and solicited clients. Then they rushed into court. Then they began collecting huge judgments against the Federal Government. The Federal Government hired enormous numbers of lawyers, and the Federal Government paid enormous sums of money.

Here nobody knows what the liability is. Here the only thing we know is that if the legislation discussed by my colleagues on the Republican side of the aisle is adopted, that if the Federal Government does anything that anybody can claim impacts on the worth or the value of their land, they can be absolutely certain that they are going to be in the Federal courts or before the Federal agency to demand that they be compensated, and they will get themselves a slick appraiser who will come forward with a slick appraisal of what the land is worth before and what the land is worth after.

We can bet that those slick appraisals are going to be done to assure that the Federal taxpayers come up with the most money they possibly can. Farmers are going to be paid under this for the costs of loss of value on land which has been enhanced in value by Federal irrigation projects.

Does that make sense? Not to me. Maybe on the other side of the aisle it does, but not over here. All I can tell my colleagues is, they are assuming liabilities that will gray the hair of everybody else. They are adding to a valuable constitutional protection an irresponsible, incalculable liability for the taxpayers who pay our salaries and who expect us to legislate wisely, and they are assuming responsibilities for claims by every slick lawyer acting on behalf of a slippery client over claims which may or may not have value, and which may or may not have worth.

If there is a good basis for legislating in this area, I say we should do it wisely and well, but not to simply come out with this kind of blank check where people can back an armored car up to the Treasury and walk off with a truckload of cash.

□ 1430

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Montana.

(At the request of Mr. WILLIAMS and by unanimous consent, Mr. DINGELL was allowed to proceed for 1 additional minute.)

Mr. WILLIAMS. My request is only for the purpose of not having us interrupted here and have to do so in another moment.

My colleagues, those of you new here who do not know me, I am from Montana, and this takings issue is big-time stuff out my way.

But if the gentleman in the well is right, and nobody on the floor now has more experience at this than the gentleman in the well, and I have not known him to be wrong since I have been here, then those of us who are concerned about takings ought to listen very closely, because the legacy that the sponsors of the bill may carry around for a long time is one of bureaucracy, legal obfuscation and delay and enormous cost to the taxpayer if the gentleman in the well is correct.

I have a feeling that the sponsors of this bill and the good sponsor of the amendment, the main amendment, although well-intentioned in trying to reach a position that many of us like myself from the West would find comfort in having in fact began to move legislation that will create the enormous problems that the gentleman in the well describes. We should be very careful.

Mr. TIAHRT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the right to own and use private property is a fundamental right to our system of self-governance. H.R. 925 and this amendment on the Private Property Protection Act is a crucial step in restoring the constitutional integrity of the takings clause.

The ability to own property enables citizens to exercise their autonomy over Government authority. That is why this right to own private property is enshrined in the Bill of Rights.

The fifth amendment states: ''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.''

Mr. Chairman, it could not be more clear. If the Government deprives someone of their property, then we must compensate them.

What do we hear from the opponents on the other side of the aisle? The passage of this bill is too expensive.

That is precisely the point. If it is too expensive to compensate property owners after implementing regulation, then perhaps we do not need the regulation. It is never too expensive to uphold the Constitution. Let's not limit the property owner's freedom.

On March 1 in the Kansas House they passed legislation to help protect property owners. The Speaker of the Kansas House, Tim Shallenburger, claimed that this legislation was long overdue, and he urges us to pass H.R. 925.

Mr. Chairman, the horror stories that rogue Government regulations have created go on and on and it is a shame. It is a shame that the madtom catfish can end three generations of a family business.

In Kansas the Shepard family has spent over 100 years, or three generations, scooping gravel near the Neosho River. But regulators went mad about the madtom catfish. They shut down the Shepards because the madtom inhabited the Neosho River and they thought the fish might be threatened, so their gravel-scooping days were over.

Many people like the Shepards have been deprived of the use of their land and have to fight just to get Government to consider their claim.

The passage of H.R. 925, as amended, will restore the true meaning of the takings clause of the fifth amendment and will restore sanity to the regulatory craze.

Mr. Chairman, we have fought an expensive cold war for many decades. What that fight was about was freedom. In September 1991, the Soviet Congress declared in article 24 of their Declaration of Rights:

> Every person enjoys property rights, including the right to own, use and dispose of property. The inalienable right to own property guarantees personal individual interests and freedoms.

Do the Russians have a higher respect for private property than some Members of Congress? I hope not.

H.R. 925 and this amendment must pass. It is the right thing to do and it is the right time to do it.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TIAHRT. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I want to thank the gentleman for his excellent statement, particularly reminding us how important private property rights and ownership are to the exercise of liberties and freedoms in our society. It is the cornerstone of the free enterprise system. Other countries who have gone through the awful experience of communism only to return to that system must be watching us with some humor to see people fighting the very rights that have made us special and different and emulated around the world.

I want to point out what the court, said, our Supreme Court said in Doland versus the City of Tigard:

> We see no reason why the takings clause of the fifth amendment, as much a part of the Bill of Rights as the first amendment or the fourth amendment, should be relegated to the status of a poor relation in these comparable circumstances.

In short it is as special, as sacred to our institutions of liberty as free speech, right of assembly, practice of religion, all the basic rights of our Bill of Rights.

Second, to point out that we are not creating this right on this floor today. It is a right inherent in our Constitution. We are not creating an obligation of this Nation to compensate. That is a right inherent in our Constitution.

All we are doing is saying that small individual landowners who cannot come to this Federal Court in Washington, DC, and spend 10 years of their lives and $500,000 of court costs and attorneys fees, who cannot do what big landowners are doing today, ought to have the same right to protections under that Constitution as those folks who can come to the court here in DC.

By golly, if we don't do that, we sacrifice an enormous part of that special package of Bill of Rights that our Founders knew were special and we have found out over generations makes us special, makes our country a great place to be. In fact, the place where most people would like to be. I thank the gentleman for yielding.

Mr. HAYES. Mr. Chairman, I move to strike the requisite number of words.

At one level, this afternoon's debate is about a statute, its words, its language, its construction, what it means individually as applied later by courts.

At a much greater and larger level, it is about a fundamental positioning of why each and every one of the persons who assemble in this room choose to do so, why they place themselves before a public for its endorsement to return here to represent their interests.

It is about that latter to which I would like to address a memory. He is a little man from Poland, about my dad's age. He sat very near where that rail is right by that door and watched the people's house that did not exist in Poland from whence he came. As he watched us last year deliberate an amendment involving property rights, he must have thought back to his arriving at this country, in Michigan, wishing no more than to work hard, to do well, and to be part of what had attracted him to this country.

In the late 1960's while I was in high school, he became part of the American dream, because Henry bought a little piece of property in Pennsylvania where he and his wife visited and where they some day planned to retire. That was 4 years before there was a Clean Water Act.

In 1971, before there was a Clean Water Act, the Corps of Engineers went to Henry who had paid 4 years of property taxes and 4 years of mortgage and said, ''We'd like to dredge a pit and put some of the spoil on your property. It will help some day when you retire.''

Two decades later, 21 more years of mortgage payments and interest, Henry retired. And the year I entered this Congress, he and his wife wished to enter that property to build their home. Instead, they got a cease and desist order from the U.S. Corps of Engineers. And the 70-year-old Henry Blaszkowski was told that after the fact we created the law where what you allowed the Corps of Engineers to do now means you have a wetland, even though it otherwise would not be and, therefore, you can't use this property.

The fundamental right to which I refer is whether as you stand in this well of this body to speak out on behalf of those who are aggrieved, you fear either that we will not write precisely the correct words so that we will not be able to do a perfect statute, and I suspect you are correct—we won't—but if we make an error today, I suggest to you that we err not on the side of the might of an endless bureaucracy, to a Henry Blaszkowski who did not have half a million dollars to try to reach the Supreme Court, to reach Mr. Madison's germane issue of right and takings in compensation, let's err against a mindless, faceless and thankless bureaucracy and on behalf of the Henry Blaszkowskis who now call America home.

In my case on behalf of those who occupy those bayous and inlets in coastal Louisiana and the 600,000 people who every 2 years have the right to tell me to get out and not be their Congressman, I want nothing more than for them to be given the same right with Federal agencies over whom they do not have the power of the ballot box and resources which they cannot otherwise match.

I want you to vote for an imperfect amendment and an imperfect bill in an imperfect world, because surely doing nothing is to say that you absolutely do not care.

Mr. MCINTOSH. Mr. Chairman, I move to strike the requisite number of words.

(Mr. MCINTOSH asked and was given permission to revise and extend his remarks.)

Mr. MCINTOSH. Mr. Chairman, let me commend the authors of this bill, the members of the Committee on the Judiciary, the gentleman from Florida [Mr. CANADY] and the gentleman from Louisiana [Mr. TAUZIN] for his amendment. They have done a tremendous job of crafting a consensus bill that can move forward in this House.

Many of us would have done slightly different things in the bill. I for one preferred the more broad coverage of all Federal laws that might present a takings of private property. But I have to say, they have done an excellent job of bringing this to the floor in a way that can secure passage and once again send a signal to the American people that we will stand up for their very basic liberties, in this case, the right to own property.

I wanted to bring to the body's attention two examples that come from my home State, one in my hometown. Mr. Bob Floyd is an 80-year-old farmer who one day went out to his field and discovered that his neighbor had accidentally broken the drainage tile in the adjacent property and a mudhole had started to develop. In came the Federal Government and told him that he could

no longer use his land because it was a wetland, subject to regulation. The gentleman, Mr. Floyd, lost $50,000 in the value of his property, $8,000 in farm income, and thousands of dollars in fighting to preserve his family farm.

Another example is the tragic story of a southwestern Indiana farmer named Bart Dye. Mr. Dye stands to lose his farmland which has been in his family since 1865. The Fish and Wildlife Service considers the protection of two species, mussels in a river adjacent to Mr. Dye's land, and the possibility that someday a bald eagle may decide to land on his property, none have been sighted, no nests have been found, and as far as anyone can tell, there are no bald eagles that live in the neighborhood, but the potential that it may be a habitat for that species has threatened to rob Mr. Dye of the use of his farm and prevent him from ever owning it.

The choice here is very simple. These laws will stay on the books, the government will be able to enforce them, but we must in so doing protect the private property rights of citizens who are affected by those laws. We will reestablish the basic principle that the property is owned by the citizen, not by the government given to them for their custody, and that if the government takes that property for a public use, they will receive fair and just compensation.

I urge the body to support the amendment and the underlying bill.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. MCINTOSH. I yield to the gentleman from California.

Mr. POMBO. In one of your examples, you talked about, I believe it was Mr. Dye, who had what would be suitable habitat or potential habitat for an endangered species, and they want to restrict the use of his property, based on the fact that if an endangered species ever wanted to live there, it could.

Mr. MCINTOSH. That is correct.

Mr. POMBO. Under this legislation, that would be a taking?

Mr. MCINTOSH. Yes. The diminution in value, because he would be unable to farm his farm would be a taking.

Mr. POMBO. If this legislation were to pass and in a few months when it is law, would Fish and Wildlife act in the same way and go out and just designate everything that they see as potential habitat and gain control of it? Or would they prioritize the areas?

Mr. MCINTOSH. It is my expectation that they would prioritize it for areas which are in fact critical habitat for species such as the bald eagle, but leave citizens such as Mr. Dye alone in their private property and actually seek out those areas that are critical to preserve that habitat.

Mr. POMBO. If that were the case and they had to prioritize what was critical habitat and they did not go after Mr. Dye, if there was a cost to the bureaucrats and the federal agencies of their actions and they did not go after Mr. Dye, what would it cost then?

□ 1445

Mr. MCINTOSH. At that point there would be no cost to the bureaucracy because they would not have deprived him of his property rights.

Mr. POMBO. So it would not bust budgets and Mr. Dye would not be able to back his U-Haul trailer up to the U.S. Treasury to take money because the U.S. Agency would be forced to be responsible for the first time in 40 years?

Mr. MCINTOSH. That is correct and that is the goal of this legislation.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. MCINTOSH. I yield to the gentleman from Louisiana.

Mr. TAUZIN. That was an excellent discussion of how this bill does not have to cost money if the agencies start being responsible.

I want to give you a similar example. Mr. Spiller of Lake Fausse Point in Iberia Parish, LA, built a crawfish pond on his property, 80 acres. He was then told he did not apply for a 404 permit. He was told you need a 404 permit to do that. It is a wetlands. He said, well, of course it is a wetland; I want to raise crawfish. They said well, you still need a 404 permit, so he went and applied for a 404 permit. In the meantime EPA issued a cease and desist order and told him to take down the 35,000 dollars' worth of levees he had built in order to raise the crawfish, and that would cost another $4,000. He had to do that. It cost him $40,000 for nothing. And then he filed for his permit and EPA objected. Do you know why he was denied his permit to raise crawfish on that property? Because EPA decided and found that it was a natural habitat for red swamp crawfish. He was told he could not raise crawfish on the property because the crawfish were there already.

I mean we get those crazy kinds of applications of the law, and the crawfish, you know, is not like the bald eagle, it is not likely endangered except by Cajuns like me and Mr. HAYES. It is fairly well prominent in Louisiana. And I thank the gentleman for his comments.

Mr. DOOLEY. Mr. Chairman, I move to strike the requisite number of words. Mr. Chairman, I rise in support of the amendment of the gentleman from Louisiana [Mr. TAUZIN] and the bill that is on the floor. And I rise in support of it for really one basic reason, because we are talking about fairness, we are talking about equity. We are talking about if this Government determines that it is in the interests of our greater society to provide for protection of a species, to provide for amenities that can benefit our life and our environment, that the cost of providing for that enhancement should not be borne solely by those who own private property.

The basic principle is if we are going to provide for benefits and the greater society is going to benefit from them, the greater society at large should bear those costs.

There have been some Members who have spoken that we are actually trying to change the Constitution with the amendment. Nothing could be further from the truth. What we are doing is basically building upon the precedents which have been set by the Supreme Court. But what we are trying to do is to ensure that that business owner on Main Street, that farmer in Illinois or that farmer in Louisiana or the farmer in California does not have to spend the legal fees, does not have to spend his time in the courts spending thousands of dollars in order to achieve the compensation for what is a taking by a regulatory action.

There are other comments that were made earlier about the fact this bill could bankrupt the country and there were some analyses that were made about a prior bill offered by the gentleman from Louisiana [Mr. TAUZIN] that dealt with wetlands, that it would cost the Government $15 to $20 billion if we were to provide for compensation and that is precisely the point we are trying to get at, is that $15 to $20 billion is now being borne by individuals, individuals that oftentimes do not have the resources, individuals who are working very hard to maintain a living for their family, to generate the income in order to send their children to college and in order to provide for a lifestyle which everyone should have the right to expect.

One other issue. There was some talk about the relationship to the Bureau of Reclamation being a part of this act. The bottom line is what we are talking about is that you cannot have the Government unilaterally abrogate a contract without compensation.

What we are trying to do is extend some of the same concepts that the private sector currently is mandated to comply with, that if you enter into a contract you are bound by that contract. If the Federal Government chooses to change an existing contract, they should be honor bound and mandated to provide a level of compensation for that.

I think that this is an appropriate extension of this act. I think by the passage of this legislation we are going to ensure a more judicious application of our environmental regulations, we are going to assure greater equity and greater compensation to all private individuals and private property owners.

Mr. FARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to speak today to those that have supported the Tauzin amendment. I want them to do two things. I want them to listen to this argument and to read the bill.

I want Members to think of this: All development, all land in the United States is somewhere, it is in some county or in some city. Anyone who

want to have any activity on that land starts at that level. They have got to go to a city council, board of supervisors or whatever the requisite there to petition for change in that land, whether it is change in zoning or they want to develop it or whatever.

The Constitution of the United States for over 200 years has said in the fifth amendment no person shall be deprived of life, liberty or property without the due process of law nor shall private property be taken for public use without just compensation. That did not just relate to the Federal Government. That did not just relate to the State government. That did not just relate to the county government. That did not just relate to the city government. It said no person shall be deprived of property by any government.

This issue in this bill speaks to the Federal Government, and why it is so difficult is because a lot of those Federal laws have become part of land use management at the local level. Think of wet plains zoning back in the 1970's. We asked every city and county in the United States to figure out where the wet plains were, we had that as Federal law in order that they could qualify for Federal flood plain insurance. That was Federal law carried out by local government.

This bill as it came out of committee is in trouble. We have seen that today. In the last 2 hours we have heard about how much trouble it is in. In fact, the gentleman from Louisiana [Mr. TAUZIN] has here an amendment to try to improve the bill and even with that there have been arguments about how you determine fair market value.

The trouble with the gentleman from Louisiana, Mr. TAUZIN's bill, with his amendment, is he is dealing with four issues. Two of those issues, the wetlands and Endangered Species Act come up for reauthorization this year. If indeed those are the problems, then let us deal with them at that time. Let us not change what this law does.

And I want to ask those Members who are supporting the bill to read it, because as I said, the Constitution says you cannot take for public use without just compensation. That is what the law has been for 200 years. This bill says, this bill says no law or agency of the Federal Government that diminishes value, not takes, diminishes the value by 10 percent of any portion of your property, you must find just compensation.

This is a radical departure from where we have been in the law in the United States. This is why the argument is that is going to be opening the bank, the Federal Government, that is why the argument is we are going to have to create so much Federal bureaucracy about what the law says that agency, that portion or that percent is all about. It is going to be a nightmare to implement.

Later on I am going to offer a bipartisan amendment that I think corrects all of this, but I think we are moving seriously with this Tauzin amendment into an area that is going to make this country in a lot of difficulty.

One of the comments the gentleman from Louisiana [Mr. TAUZIN] made is he said this bill is prospective, not retrospective, which is interesting to note because every speaker that has come up and talked about the problem talks about a problem that existed before this bill was introduced. This bill will not solve that problem, and it is interesting to note that those of my colleagues from California who talked about certain problems, as I looked at the list of supporters I never saw any planning commission, any county supervisors, any State legislator come in and support this bill in the form it has been presented.

This is a bill that hurts local government land use zoning, despite the fact that the author says it does not, and let me just tell you why. Because on page 6, line 10 through 15, it says but it also includes the making of a grant to a public authority, conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency. So, if the State of California takes over the 404 permit process, as it is planning to do, and if the local county and city governments implement that planning process, they would be triggered by this bill. And, therefore, we are going to really I think mess up the ability for local government to come up with sound land use planning. And I think that this amendment and the bill ought to be rejected.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FARR. I yield to the gentleman from Louisiana.

The CHAIRMAN. The time of the gentleman from California [Mr. FARR] has expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. FARR was allowed to proceed for 1 additional minute.)

Mr. FARR. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding. The gentleman makes the point that this gentleman said the bill was prospective; indeed it is. It is a new remedy for an old right and the new remedy is prospective, it starts as soon as this bill becomes law.

Mr. FARR. So all of those cases that were brought here on the floor today where people talked about problems they were having with their constituents, none of those constituents, under the conditions they brought, will benefit from the gentleman's legislation?

Mr. TAUZIN. If the gentleman will continue to yield, that is not so. The fact is that these regulations, these laws that are already on the books are going to continue to impede the use of property tomorrow and the next day. The right to seek compensation is already there; it is in the Constitution. All we are doing is creating a new remedy so that as these restrictions are applied to property from here on out, those new remedies become available but the right is a constitutional right and exists before we pass this bill.

Mr. FARR. The gentleman is changing the playing field because he is changing that from a right to discuss takings to a right saying that any portion that is affected or diminished.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman from California [Mr. FARR] has again expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. FARR was allowed to proceed for 1 additional minute.)

Mr. TAUZIN. If the gentleman will continue to yield, the gentleman made the point that this is some kind of radical departure from the jurisprudence. A court in Florida Rock said,

> Nothing in the language of the fifth amendment compels a court to find a taking only when the government divests the total ownership of the property. The fifth amendment prohibits the uncompensated taking of private property without reference to the owner's remaining property interest.

In short, any partial taking that is compensable is a taking under the Constitution, is compensable yesterday, today, tomorrow. We are simply providing a new remedy, and I thank the gentleman for yielding.

Mr. CONDIT. Mr. Chairman, I move to strike the requisite number of words.

(Mr. CONDIT asked and was given permission to revise and extend his remarks.)

Mr. CONDIT. Mr. Chairman, I feel compelled today to rise and just make a couple of brief comments. I first would like to state that we have heard some discussion this morning about this bill, and this amendment, as though this is one of the first times we have heard it. This is not the first time we have visited this issue. This issue of private property rights has been around this Chamber, around the Capitol for a long time. And I feel compelled to commend the gentleman from Louisiana [Mr. TAUZIN] and the gentleman from Texas [Mr. FIELDS] who have been working long and hard on this issue.

Last year we had a vote on this floor on the Desert Act, which I think we debated for about 4 or 5 days, and we had 143 Democrats who voted in favor of full compensation if your property was taken because of an endangered species. So we have debated this issue. There have been people who have been working long and hard, and [Mr. TAUZIN] has been in the forefront and the leader of that issue.

We have also heard people say well, we should do this in a freestanding bill somewhere else, we ought to do this with reauthorization when it comes up, and those all have merit. It would be great if we could do that. But you know what, we did not do that.

The gentleman from Louisiana [Mr. TAUZIN] could not get a hearing on his bill in past years. We could not get reauthorization up before this House because this House clearly knew that if we did, we would pass private property right protection for the citizens of this country.

Let me tell Members, make no mistake what we are talking about here today is compensation. You take my property, you owe me something.

□ 1500

I worked long and hard for it. That is what the citizens of this country are saying. That is what the farmers in my district are saying. ''If you keep me from making a living on my property, you owe me something.'' Pretty simple.

Most people in this country think that is already the law. They believe they are protected. Let me assure you, ladies and gentlemen out there, you are not.

We need to strengthen the law. We need to strengthen the fifth amendment, and that is what we are doing here today. We owe the gentleman from Louisiana [Mr. TAUZIN], the gentleman from Texas [Mr. FIELDS], the gentleman from California [Mr. POMBO], the gentleman from Florida [Mr. CANADY], and those, the gentleman from Texas [Mr. LAUGHLIN], who have been involved; we owe them a thanks for bringing this to our attention and for fighting the hard battle for a long period of time.

The fifth amendment to the United States Constitution seems clear enough; ''* * * nor shall private property be taken for public use without just compensation.''

Unfortunately, in the last 20 years, many Americans across the country have found that they cannot farm, ranch, or build homes on portions of their land. Why? They are blocked by State and Federal regulations. Steadily increasing regulation at all levels of government now touch every conceivable aspect of property use. Through its ability to regulate, the Government has increasingly tended to ''take'' the uses and benefits of a property rather than condemn it and pay its owner fair market value as is required by the fifth amendment.

This encroachment upon the right to own and use property in a reasonable manner has resulted in strong public and congressional support for efforts to protect private property rights. Already in this Congress eight bills have been introduced to address this issue. We have been debating private property rights for two Congresses now. Also, there have been numerous proposals that vary in their approach to solve the problem, but all are based on the idea that the current practice of ''regulatory takings,'' where the cost of regulations which benefit our entire society are paid for by individual landowners, is simply not fair.

The U.S. Government is currently facing well over a billion dollars in outstanding ''takings'' claims. In addition, several of the largest takings judgments in history were handed down, including one totaling $120 million in 1990. In California alone, property owners who can afford legal costs are winning about 50 percent of their takings cases and according to a recently released report by the Congressional Research Service, property owners won regulatory takings cases before the Federal courts in 1990 more often than not. This is astonishing when you consider the Federal Government wins 9 out of 10 times in other areas of law. The basic questions we must ask is what good are Federal regulations if they are overturned in court?

The fact that property owners who can afford to mount legal battles against their own government and are winning in the courts is no consolation. For every property owner who wins such a battle, there are thousands who lack either the time or the money to defend their rights in court.

Mr. Chairman, I look forward to supporting H.R. 925 and the Tauzin amendment today and applaud this House for taking a vital first step toward restoring the rights of private property owners in this country.

Mr. STUDDS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, words are beguiling, especially when used by the Members of the new majority in this House.

If all I knew about the Contract With America were the titles of its respective component bills, I would be all for it: freedom, justice, and equality amendments of 1995, the commonsense amendments. I do not know if anybody knows what the title of this bill is. It is the Private Property Protection Act of 1995. Who could be against that?

Let me suggest, Mr. Chairman, that is not what this bill is about, and I commend the cleverness of the authors of the pending amendments, and particularly my good friend and colleague, the gentleman from Louisiana. He and I have fought this one out through many a long year.

But it is no accident what is before us. What is now before us is not some broad treatment of the question of property rights. It is not some reaffirmation of a constitutional right which is inherent for two centuries and is not changed by what we do or do not do today. What is before us is specifically directed at a couple of statutes in particular, the Endangered Species Act and the Wetlands Act.

Why do you suppose that is? Several people on the other side said earlier today that if this bill is very expensive, as others here have contended, then the American people are being robbed. Well, Mr. Chairman, that is true, but it is only true if you redefine robbery, and that is exactly what this bill purports to do.

Whatever in the world is meant by 10 percent of a portion of property is, among other things, a redefinition of robbery, and although the bill very wisely and cleverly exempts local zoning statutes, let me ask Members to contemplate the logical implications which underlie it.

To the extent that actions taken pursuant to these environmental statutes constitute takings, so precisely, and for exactly the same reasons, exactly the same way, do local zoning statutes constitute takings.

I own a piece of property in my district. My community says to me I cannot build within 70 feet of the sideline of that property. That is diminishing the value. I could have built something bigger there. I cannot build so many feet from the street. That further diminishes the value. I have to be so many feet back from the water. That further diminishes the value. I cannot build on more than 40 percent of my land. My God, how valuable it would be if only I could. And I cannot build more than three stories high. But if I put a skyscraper there, God knows what it would be worth. I cannot put, I do not know, what would I like to put there, a factory. I cannot even put a small shop or a bookstore there. That value is diminished considerably by a local zoning ordinance.

Now, if that is robbery, then I am willing to concede that what we are talking about in the statutes under assault here is robbery.

There have been a lot of horror stories cited here, and for all I know some of them are true, or variations of them, are true. Some of them are not, but I am willing to concede that some of them are. But this bill does not target horror stories.

As my colleague from Massachusetts said earlier in the day, this bill targets these statutes, and make no mistake about it. The absolute target of this bill is the statutes.

The real takings here, the real takings, if this bill becomes law, are two of our most important environmental laws in this land.

If that happens, who will compensate the American people? Who will compensate the American people for the loss of wetlands? And what are they worth? And how do you calculate that? And who will compensate the American people for the loss of diversity in species, and what are they worth? And how do you calculate that? What is the plant that gave us taxol worth? It is a cure potentially for breast cancer and ovarian cancer. What is that worth? If it is taken away from the American people, how do we compensate them for that? Is there a plant out there or an insect or something slippery and slimy which apparently people do not like much around here that has the cure for Alzheimer's in its genes or the cure for AIDS? How do we compensate for the potential loss of that? Do we really know what we are doing here?

The committees of jurisdiction of these two statutes have had no hearings on this. They have not even had a sequential referral for 1 minute of this bill in this Congress.

I know what the gentleman from Louisiana is going to say. Let me see if I can paraphrase it for him, perhaps not in the same accents, but he is going to probably suggest that in the last Congress, when I chaired the committee of jurisdiction over the Endangered Species Act, he, on I would say more than one occasion, asked if we might not be able to consider this.

I plead, in advance, guilty to the charge.

Mr. TAUZIN. Thank you, sir.

Mr. STUDDS. But I feel, let me say, I feel a little bit exonerated by that judgment by what has transpired here in the last 3 or 4 hours. Again, I do not mean to impugn the motives of any of the honorable gentlemen on the floor.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. STUDDS] has expired.

(By unanimous consent, Mr. STUDDS was allowed to proceed for 1 additional minute.)

Mr. STUDDS. Let me say again as forcefully and calmly as I can, I do not think it is stretching the point at all to suggest that the logic underlying this bill applies as well and as thoroughly to local zoning as it does to any statute which in any way diminishes the value of property at any level of government.

We need to make public policy decisions at all levels of government as to wherein lies the public interest and wherein lies the private interest.

When there is a conflict, we have some tough calls to make. But the fifth amendment to the Constitution has been there for a long time. It is going to be there whatever we do or do not do today, tomorrow, or next week. it does not need our help. What does need our help are the wetlands of our country, half of which have been gone since the first Europeans came here, the habitat for species, the cleansing of our waters, the flood protection, the nurseries of our fisheries; these are absolutely priceless. No dollar value can be put upon these natural resources. They are the ones at this point that need our protection.

Mr. PETE GEREN of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to first commend the gentleman from Louisiana [Mr. TAUZIN], the gentleman from Texas [Mr. FIELDS], the gentleman from Louisiana [Mr. HAYES], the gentleman from Florida [Mr. CANADY], and the gentleman from Texas [Mr. LAUGHLIN], those who have labored for literally years to bring this issue in front of the Congress.

This is not a new issue. This is not an issue that was dreamed up as a result of the contract for America. This issue has been around, as my friend, the gentleman from California [Mr. CONDIT], mentioned a little earlier. Last year we voted on this; 143 Democrats voted for it. This issue has been with us, because it has been on the hearts of the people we represent for year after year after year.

As the power of the Federal Government has grown, this issue has become more and more important to those people. This issue has been in front of the Congress. It has been on the hearts and minds of Members of Congress because it has been on the hearts and minds of the citizens of this country for a long, long time.

This is a bill that is based on democratic principles—small ''d'' democratic principles. As the gentleman from Massachusetts said, the fifth amendment was here before we got here, and it will be here long after we are gone.

Unfortunately, the protections of the fifth amendment only have been available to those who could afford to buy the best legal services. You have got the little guy having to go up against the Corps of Engineers, the little guy that has had to go up against the Environmental Protection Agency. If that little guy cannot afford to hire $100,000 worth of lawyers, cannot afford to leave his work and fight this thing tooth and nail, he is probably going to get run over by the Environmental Protection Agency. He is probably going to get run over by this Federal Government.

He has protection under our Constitution, but it does not mean a darn thing if he cannot afford the legal talent to push his issue. That is what this bill is all about. This bill says that the little guy is going to have the same kind of rights, going to have the same opportunity to avail himself or herself of the protections of the fifth amendment as all of these other people who have been challenging these takings over the last few years who could afford that kind of high-powered legal talent.

It is important to note that in every case, when one of these takings has been challenged and it has been carried up through the court systems, the citizen won. The citizen won because the fifth amendment does protect the citizen. But if you cannot afford that lawyer, that protection is meaningless.

This bill today says that whether or not you can afford that kind of legal talent, we are going to ensure that the fifth amendment protects you. It is a basic democratic principle. It is democracy in its finest sense. It is a democratic principle, and I urge my colleagues to support this amendment.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. PETE GEREN of Texas. I yield to the gentleman from California.

Mr. POMBO. I would just like to point out in light of some of the recent testimony that we have heard, in a recent case that Chief Judge Loren Smith of the Court of Federal Claims, I would just like to briefly read something that he said:

> There must be a better way to balance legitimate public goals with fundamental individual rights. Courts, however, cannot produce comprehensive solutions. They can only interpret the rather precise language of the fifth amendment to our Constitution in very specific factual circumstances . . . Judicial decisions are far less sensitive to societal problems than the law and policy made by political branches of our great constitutional system. At best courts sketch the outlines of individual rights, they cannot hope to fill in the portrait of wise and just social and economic policy.

I would just venture to say what we are trying to do here today is fill in that portrait.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana [Mr. TAUZIN] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. FRANK of Massachusetts. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 301, noes 128, not voting 5, as follows:

[Roll No 190]

AYES—301

Allard	Diaz-Balart	Johnson (CT)
Andrews	Dickey	Johnson (SD)
Archer	Dicks	Johnson, Sam
Armey	Dooley	Jones
Bachus	Doolittle	Kanjorski
Baesler	Dornan	Kasich
Baker (CA)	Doyle	Kelly
Baker (LA)	Dreier	Kennelly
Ballenger	Duncan	Kim
Barcia	Dunn	King
Barr	Durbin	Kingston
Barrett (NE)	Edwards	Klink
Bartlett	Ehrlich	Klug
Barton	Emerson	Knollenberg
Bass	English	Kolbe
Bateman	Ensign	LaFalce
Bereuter	Everett	LaHood
Bevill	Ewing	Largent
Bilbray	Fawell	Latham
Bilirakis	Fazio	LaTourette
Bishop	Fields (TX)	Laughlin
Bliley	Flanagan	Lazio
Blute	Foley	Leach
Boehner	Forbes	Lewis (CA)
Bonilla	Fowler	Lewis (KY)
Bono	Fox	Lincoln
Boucher	Franks (CT)	Linder
Brewster	Frisa	Livingston
Browder	Frost	LoBiondo
Brown (OH)	Funderburk	Longley
Brownback	Gallegly	Lucas
Bryant (TN)	Ganske	Maloney
Bunn	Gephardt	Manton
Bunning	Geren	Manzullo
Burr	Gillmor	Martinez
Burton	Gilman	Mascara
Buyer	Goodlatte	Matsui
Callahan	Goodling	McCollum
Calvert	Gordon	McCrery
Camp	Goss	McDade
Canady	Graham	McHale
Castle	Green	McHugh
Chabot	Greenwood	McInnis
Chambliss	Gunderson	McIntosh
Chapman	Gutknecht	McKeon
Chenoweth	Hall (TX)	McNulty
Christensen	Hancock	Metcalf
Chrysler	Hansen	Mica
Clement	Harman	Miller (FL)
Clinger	Hastert	Minge
Clyburn	Hastings (WA)	Molinari
Coble	Hayes	Mollohan
Coburn	Hayworth	Montgomery
Coleman	Hefley	Moorhead
Collins (GA)	Hefner	Moran
Combest	Heineman	Murtha
Condit	Herger	Myers
Cooley	Hilleary	Myrick
Cox	Hilliard	Neal
Cramer	Hobson	Nethercutt
Crane	Hoekstra	Neumann
Crapo	Holden	Ney
Cremeans	Horn	Norwood
Cubin	Hostettler	Nussle
Cunningham	Houghton	Obey
Danner	Hoyer	Ortiz
Davis	Hunter	Orton
de la Garza	Hutchinson	Oxley
Deal	Hyde	Packard
DeLay	Inglis	Parker
Deutsch	Istook	Paxon

Payne (VA)	Schumer	Thomas
Peterson (FL)	Scott	Thornberry
Peterson (MN)	Seastrand	Thornton
Petri	Sensenbrenner	Thurman
Pickett	Shadegg	Tiahrt
Pombo	Shaw	Torkildsen
Pomeroy	Shays	Traficant
Porter	Shuster	Upton
Portman	Sisisky	Volkmer
Poshard	Skeen	Vucanovich
Pryce	Skelton	Waldholtz
Quillen	Smith (MI)	Walker
Quinn	Smith (TX)	Walsh
Radanovich	Smith (WA)	Wamp
Ramstad	Solomon	Watts (OK)
Regula	Souder	Weldon (FL)
Riggs	Spence	Weller
Roberts	Spratt	White
Roemer	Stearns	Whitfield
Rogers	Stenholm	Wicker
Rohrabacher	Stockman	Williams
Ros-Lehtinen	Stump	Wilson
Rose	Stupak	Wise
Roth	Talent	Wolf
Royce	Tanner	Wynn
Salmon	Tate	Young (AK)
Sanford	Tauzin	Young (FL)
Sawyer	Taylor (MS)	Zeliff
Schaefer	Taylor (NC)	
Schiff	Tejeda	

NOES—128

Abercrombie	Gejdenson	Pallone
Ackerman	Gibbons	Pastor
Baldacci	Gilchrest	Payne (NJ)
Barrett (WI)	Gutierrez	Pelosi
Becerra	Hall (OH)	Rahall
Beilenson	Hamilton	Rangel
Bentsen	Hastings (FL)	Reed
Berman	Hinchey	Reynolds
Boehlert	Jackson-Lee	Richardson
Bonior	Jacobs	Rivers
Borski	Jefferson	Roukema
Brown (CA)	Johnson, E. B.	Roybal-Allard
Brown (FL)	Johnston	Rush
Bryant (TX)	Kaptur	Sabo
Cardin	Kennedy (MA)	Sanders
Clay	Kennedy (RI)	Saxton
Clayton	Kildee	Scarborough
Collins (IL)	Kleczka	Schroeder
Collins (MI)	Lantos	Serrano
Conyers	Levin	Skaggs
Costello	Lewis (GA)	Slaughter
Coyne	Lipinski	Smith (NJ)
DeFazio	Lofgren	Stark
DeLauro	Lowey	Stokes
Dellums	Luther	Studds
Dingell	Markey	Thompson
Dixon	Martini	Torres
Doggett	McCarthy	Torricelli
Ehlers	McDermott	Towns
Engel	McKinney	Tucker
Eshoo	Meehan	Velazquez
Evans	Meek	Vento
Farr	Menendez	Visclosky
Fattah	Meyers	Ward
Fields (LA)	Mfume	Waters
Filner	Miller (CA)	Watt (NC)
Flake	Mineta	Waxman
Foglietta	Mink	Weldon (PA)
Ford	Morella	Woolsey
Frank (MA)	Nadler	Wyden
Franks (NJ)	Oberstar	Yates
Frelinghuysen	Olver	Zimmer
Furse	Owens	

NOT VOTING—5

Gekas	Hoke	Moakley
Gonzalez	Lightfoot	

☐ 1528

The Clerk announced the following pair:

On this vote:

Mr. Lightfoot for, with Mr. Moakley against.

☐ 1528

Ms. MCKINNEY, Mr. COSTELLO, and Mrs. MEYERS of Kansas changed their vote from ''aye'' to ''no.''

Messrs. SAWYER, HILLIARD, and CLYBURN changed their vote from ''no'' to ''aye.''

So the amendment to the amendment was agreed to.

The result of the vote was announced as above recorded.

☐ 1530

Mr. ALLARD. Mr. Chairman, I move to strike the last word so that I may enter into a colloquy as to the intent of the bill with the Tauzin amendment.

Mr. Chairman, I appreciate the opportunity to enter into a colloquy with my colleague, the gentleman from Florida [Mr. CANADY], as to the intent of the legislation as amended by the Tauzin amendment.

With respect to section 9 paragraph 5 subparagraphs (A), (B), and (C), section 404 of the Federal Pollution Control Act, the Endangered Species Act of 1979, and title XII of the Food Security Act of 1985 respectively of H.R. 925 as amended, am I correct in my understanding that agency actions, with respect to water under these laws can result in a compensable taking of property rights, specifically the taking of a water users right to use and receive water?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, the gentleman is correct. H.R. 925 as amended clearly protects water rights under section 404 of the Federal Pollution Control Act, the Endangered Species Act of 1979, and title XII of the Food Security Act of 1985. This section was clearly designed to protect all property rights outlined in section 9, paragraph (1).

Mr. ALLARD. Am I further correct in stating that section 9, paragraph (5), subparagraph (D) or H.R. 925 as amended, that the word ''only'' referred to in that subparagraph is a limitation on the Reclamation Acts, the Federal Land Policy Management Act, and section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, and not a limitation on enactments in subparagraphs (A), (B), and (C)?

Mr. CANADY of Florida. The gentleman is also correct on that point.

Mr. ALLARD. Mr. Chairman, I thank the gentleman for his clarifications.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I think it is important, as the author of the amendment just discussed, to add that I think he has received exactly the correct answers in this colloquy, and I concur ecactly with those answers.

Mr. ALLARD. Mr. Chairman, I thank the gentleman from Louisiana for his help in clarifying the record.

AMENDMENT OFFERED BY MR. PORTER TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. PORTER. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PORTER to the amendment in the nature of a substitute offered by Mr. CANADY of Florida, as amended: Page 3, after line 11, insert the following:

SEC. 6 EFFECT OF PRIVATE PROPERTY IMPACT ANALYSIS.

(a) IN GENERAL.—No compensation shall be made under this Act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action.

(b) CONTENT.—For the purposes of this section, a private property impact analysis is a written statement that includes.—

(1) the specific purpose of the agency action;

(2) an assessment of the likelihood that a taking of private property will occur under such action; and

(3) alternatives to the agency action, if any, that would achieve the intended purpose and lessen the likelihood of a taking of private property.

(c) PRECLUSION OF JUDICIAL REVIEW.—Neither the sufficiency nor any other aspect of a private property impact analysis made under this section is subject to judicial review.

(d) EFFECT ON OTHER RIGHTS.—The fact that compensation may not be made under this Act by reason of this section does not affect the right to compensation for takings of private property for public use under the fifth article of amendment to the Constitution.

(e) DEFINITION.—As used in this section, the term ''taking of private property'' means an action whereby property is taken in such a way as to require compensation under the fifth article of amendment to the Constitution.

Redesignated succeeding sections accordingly.

Mr. PORTER. Mr. Chairman, this amendment is offered by myself, the gentleman from Michigan [Mr. EHLERS], the gentleman from California [Mr. FARR], and the gentleman from Texas [Mr. BRYANT] to the amendment offered by the gentleman from Florida [Mr. CANADY], as amended by the gentleman from Louisiana [Mr. TAUZIN].

The Chairman, we have a Republican majority in the Congress, and yet we are about to support a measure that creates what is essentially a brandnew entitlement program that will lead to more bureaucracy, and redtape and endless litigation. This measure, if it were to pass into law, would make the Superfund legislation look pale by comparison in response to the amount of litigation that would be engendered. This is not what I, a Republican, was sent here to do, Mr. Chairman. I believe all of us, as Republicans, were sent here to cut Government spending, to eliminate bureaucracy and to end the tidal wave of litigation.

Mr. Chairman, everyone agrees that there have been instances of regulatory overkill, but this bill, as it has been

amended, is legislative overkill. I believe that this bill will cost the Government untold amounts of money and will lead to the opening of a litigation tap that will be absolutely impossible to turn off. Every Federal regulation covered in this bill will likely be the subject of litigation for every piece of property affected by it.

Mr. Chairman, there is a better answer to this, there is a much better answer. Senator DOLE has the answer for us. He has introduced in the Senate S. 22, a bill that will address the concerns of private property owners. It is a codification of the Executive order issued by President Ronald Reagan in 1988, Mr. Chairman, and, like Senator DOLE's bill and the Reagan Executive order, our amendment will require agencies to do a private property impact assessment before issuing a regulation or taking agency action. Our amendment goes beyond the Reagan executive order in one critical way, Mr. Chairman, it requires that the public have access to that assessment. The amendment reaffirms citizens' rights to just compensation under the fifth amendment, and, if the agency fails to do the assessment, then compensation is payable under the terms of the amendment offered by the gentleman from Florida [Mr. CANADY] as amended by the gentleman from Louisiana [Mr. TAUZIN].

Mr. Chairman, we should follow the Constitution. It has worked for over 200 years. Yes, there are instances where it has not worked, but in general it has worked extremely well. If we have a problem with protecting wetlands in the regulations issued under them, let us reauthorize the Clean Water Act in a way that more fairly takes into account the concerns of the private property owner. If there are similar problems under the Endangered Species Act, let us rewrite the act to address those problems. But, Mr. Chairman, let us not write an entirely new entitlement program with an endless flow of litigation and huge costs to the Federal government that are entirely unnecessary.

Senator DOLE has the answer for us, and I commend the amendment to every Member.

Mr. CANADY of Florida. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Illinois [Mr. PORTER].

Mr. Chairman, I think it is very important that we understand exactly what the impact of this amendment would be, and to understand that we can just begin by reading in subsection A where it states in general no compensation shall be made under this act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action.

Going beyond that, Mr. Chairman, I think it is important that we look at subsection C which follows in section 3. In subsection 3(c), Mr. Chairman, I think it is important that we note the provision for preclusion of judicial review. It says that neither the sufficiency, nor any other aspect of a private property impact analysis made under this section is subject to judicial review.

I say to my colleagues, When you put that section together with the first section that I referred to, you have an amendment here that absolutely guts the bill. It will render the compensation provisions of the bill entirely meaningless. All an agency will have to do is go through a sham of an analysis, and, if they've done that, there will be no right to compensation. It will not solve the problem we're trying to solve.

Now my good friend from Illinois has invoked the name of President Reagan—the names of President Reagan and Senator DOLE in support of this amendment, but in fact both Senator DOLE and President Reagan, I believe, would oppose the Porter amendment if they were present here on the floor today.

I have right here, which we have received today, letters from both Senator DOLE and from Roger Marzulla, President Reagan's Assistant Attorney General who authored the executive order requiring a takings impact analysis which was referred to earlier in the debate. Both Senator DOLE and Mr. Marzulla are indicating that the Porter amendment would be inconsistent with their goals in working for private property rights. As I said, the Porter amendment would gut the entire purpose of H.R. 925 to provide compensation to landowners burdened by overzealous regulation.

Let me quote. I will read the full text of the letter from BOB DOLE, the Republican leader of the U.S. Senate, to our Speaker. Senator DOLE says:

> As the author of legislation in the United States Senate to require the government to perform a taking impact analysis prior to taking any actions that might affect private property rights, I write to make clear that my bill differs significantly from the Porter Amendment to H.R. 925. One significant difference between my bill and the Porter Amendment is that the Porter Amendment specifically requires that no compensation shall be paid in cases when the takings impact analysis is performed. While my bill does not directly address the issue of compensation, I am an original co-sponsor of the Shelby/Nickles legislation which does require compensation be made.
>
> Best of luck on your efforts to pass meaningful legislation protective of private property rights.

Mr. Chairman, I would also like to read from a letter by Roger Marzulla, who I identified earlier as Assistant Attorney General in the Reagan administration who was responsible for the executive order on takings impact analysis. Mr. Marzulla says:

> Supporters of the Porter Amendment to H.R. 925, the Private Property Rights Act of 1995, suggest that this amendment would be consistent with President Reagan's ''Takings Impact Analysis'' set forth in Executive Order 12630. Nothing could be further from the truth. Executive Order 12630 simply requires federal agencies to complete a takings analysis prior to taking any action that might affect private property rights. The purpose of this Order was to avoid the destruction of lives and livelihoods by preventing the uncompensated taking of private property.
>
> Indeed, as chief architect of the Takings Executive Order, I can assure you that in no way was it ever intended that if the government went forward with action that did in fact violate the Fifth Amendment, the federal government was in any way relieved of its constitutional duty to pay just compensation to the affected property owner.

Mr. PORTER. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. I yield to the gentleman from Illinois.

Mr. PORTER. The gentleman does understand, I assume, that under the Porter amendment compensation would still be payable in accordance with the Constitution. The gentleman is not suggesting otherwise, nor are either of these two letters; are they?

Mr. CANADY of Florida. It is true that the right to compensation under the fifth amendment would be involved here, but the point is we are trying to have a workable way for individuals to receive compensation, and we have heard repeatedly today a quotation which I will repeat again from the chief judge of the Court of Claims concerning how the system in the courts is not working, and it bears repeating. He says the citizen likewise had little more Presidential guidance than faith in the justice of his cause to sustain a long and costly suit in several courts. Courts, however, cannot produce comprehensive solutions. He goes on to say judicial decisions are far less sensitive to societal problems in the law and policy made by the political branches of our great constitutional system. The political branches need to address this problem.

☐ 1545

Mr. FARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of this amendment because the bill that we have just adopted, as amended, creates a massive hole in America's abilities to pay for its actions. We have just created an ability for anyone who feels that a portion of their property has been affected by a Federal decision can go into court and claim money for it.

As indicated by a letter from the administration, this creates new bureaucracies and it costs several billion dollars to have to pay for it. The amendment that I rise in support of essentially recognizes what I think everybody in this room has been talking about, that there is a remedy to the problem out there, but that remedy is not in the bill that is before you. It is actually in the amendment that we are debating right now.

That remedy says let us take a look at the way you make these decisions on property. Require Government to take a look at the likelihood that a taking of private property will occur if they develop a law or regulation or an

agency action; to require the Government to assess the likelihood that a taking of private property will occur if indeed you develop that regulation; and to require the Government to look into alternatives to the agency's action.

So you sit down and are able to work out with the landowner, with the local government that is involved, a way in which you can reach your goals, mutually agreed upon, without having to cause the taxpayers to have to pay for it.

This is a very sensible bill. It is so sensible that a former President recommended that agencies should follow this process. It is so sensible that the majority leader in the Senate has introduced similar type legislation.

Why have both those Republican leaders gone that route, rather than adopt the bill or support the bill that is before you now? It is because they both know that the Tauzin amendment as just adopted will indeed bankrupt the American taxpayer.

Now, look at the bill as adopted. Who are the special interests supporting this? The National Mining Association, the Chemical Manufacturers Association, the National Association of Manufacturers, the American Petroleum Institute, the American Independent Refiners Association, American Forest and Paper Association, and International Council of Shopping Centers.

Those do not sound like small landowners to me. They are the ones that are supporting the bill that was just adopted in this House. We need this amendment to correct the error that was made, to make sure that we protect the taxpayers' dollars, and indeed put land use planning back in local hands and protect the rights of property owners.

Mr. Chairman, I ask for an aye vote on the Porter-Farr amendment.

Mr. ZIMMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, in this latest vote in which the House adopted the Tauzin amendment, the proponents of H.R. 925 have put their cards on the table. Their concerns are basically about the Endangered Species Act, wetlands programs, and water rights legislation.

If you have substantive problems with these programs, and I have problems with some of these programs, then what we should do is amend the substantive legislation, or we can deauthorize them entirely. If you think the agencies that administer these programs have excess money, then let us defund those agencies to the extent necessary.

We can cut the programs and cut the funding. But it makes no sense at all to do what this legislation would do without the Porter amendment, which is create a new multibillion dollar entitlement program that goes way beyond what the Federal Constitution requires and far beyond what any Federal court has interpreted the fifth amendment to mean.

It guarantees unlimited litigation and oceans of red ink for the Federal taxpayer. The Porter amendment fixes this situation. The Porter amendment would make Federal regulators more sensitive to takings without creating a new takings entitlement.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. ZIMMER. I yield to the gentleman from Florida.

Mr. CANADY of Florida. This issue of entitlement, we have discussed that and I understand the concern. But I want to point out in section 7 of my substitute amendment, there is language that makes clear beyond any doubt that we are not creating an entitlement in this bill. It is simply not so that we are creating an entitlement.

You may disagree with the bill, but let me read again the clear language here: ''Notwithstanding any other provision of law, any obligation of the United States to make any payment under this act shall be subject to the availability of appropriations.'' We must appropriate the money.

Mr. ZIMMER. Mr. Chairman, reclaiming my time, I understand that and have read that provision. It is a promise. You say we may break the promise by not funding the program. I am telling you that the first funds to redeem this promise will come straight out of the regulatory agency, as you intend it to do, and then if that agency runs out of money, the Federal Government will either have to break its promise or pass a supplemental appropriation.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. ZIMMER. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I have heard the gentleman say two or three times that this is subject to appropriation. I am trying to figure out what that means, because if somebody goes into court and gets a judgment against an agency of the United States of America, and that judgment is in effect in the courts of this country against the United States, how can we not appropriate the money and get out of that unless this is simply a false promise to property owners. I do not understand how we could as a nation with integrity say that somebody can get a judgment under a law, your law in this case, this law that we are debating today, and then turn around and say no, we are not creating any obligation to pay that judgment.

Mr. CANADY of Florida. If the gentleman from New Jersey will yield further, as the gentleman from North Carolina [Mr. WATT] and I have discussed previously, the purpose of the structure we establish in here is to make the agencies conscious of the cost they are imposing on people in the private sector.

Furthermore, if they impose costs, to pay for them they must come back to the Congress to seek the appropriation for that purpose. Ultimately, that decision does come back to the Congress.

But at least we will be confronting the reality of what we are doing. Right now what is happening is that that cost is just being imposed on the private sector like it was not a cost.

Mr. ZIMMER. Mr. Chairman, reclaiming my time, the fact is these agencies are not rogue organizations, they are creatures created by Congress and the executive branch. And if we have problems with the substance of the regulations, we should modify the underlying legislation.

The Porter amendment would make Federal regulators more sensitive to takings without creating a new entitlement and would protect private property owners because the takings assessment mandated by the Porter amendment would be available to property owners. In this respect it goes further than the Reagan Executive order.

So we should not pass the buck to regulatory agencies.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. ZIMMER] has expired.

(At the request of Mr. WATT of North Carolina and by unanimous consent, Mr. ZIMMER was allowed to proceed for 2 additional minutes.)

Mr. ZIMMER. Mr. Chairman, we should not pass the buck or pass the blame to regulatory agencies. We should not pass the burden on to American taxpayers with this huge new Federal entitlement program. I strongly urge the adoption of the Porter amendment.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment. One of the reasons I rise in support of this amendment by the gentleman from Illinois [Mr. PORTER] and others is after we passed the Tauzin amendment, I think there is an awful lot of concern by the Army as to what happens here.

Listen very carefully, because people forget this. The Corps of Engineers is the one who is to enforce the Wetlands Protection Act under section 404 of the Clean Water Act. Now, under the Tauzin amendment, 404 of the Clean Water Act is still being covered under these takings. So when the Corps of Engineers goes out to do these things, the Army is very concerned that this is the deepest pocket of all and can really come back against them and really jeopardize their budget.

Right now the way the law is, is that if there is a judgment against the Army Corps of Engineers, it goes into the general fund. It does not come out of the military. But under this bill, it would have to come out of the agency's budget.

Now, how does the Army project what kind of claims they are going to have? How does the Army plan for this? I have several letters that I will leave over here at the desk that I think are

very concerning for people who do not want to vote for this amendment, because I think this amendment is the one thing that might at least bring some rationality and some predictability to the process.

The first is a letter addressed to the Speaker, in which the Army is pointing out the problems that they will have and why they are against this bill overall. But they are pointing out if this passes, the Army's ability to carry on any essential civil works functions, such as responding to a flood or any other disaster, or protecting the public interest through development of water resources or projects for navigation, flood control, environmental restoration, and so on, is going to be severely impeded. And the way that I understand the Porter amendment is it is more predictable because it is more similar to what is happening now. So at least the Corps of Engineers and others would have some idea as to how the Clean Water Act would be moving.

Now, there will be many people saying ''Oh, no, the Army is just screaming 'wolf.''' But I think when you read this, and you read it, you will find out the Army is not crying ''wolf.'' They are really trying to get the EPA. But again under the statute, the EPA does not act under section 404, it is the Army Corps of Engineers that is directed to act. Therefore, they are the payor in all of these cases.

So there is also an information paper here from the Army that I will leave at the desk, talking about all the things that they are worried would happen. They are worried about its effect on readiness, what would happen in op tempos where they are out. Can people stop them from moving on missions because it might interfere? They are talking about the budgetary nightmares. They are talking about the civil works problems and the bureaucratic problem of not moving.

Since we are in this bill and since this bill may pass, I would hope that at least we could adopt this amendment, because it would be a bit more predictable as to what would happen.

But I am a little amazed that as we move through this contract, on the one hand we are trying to cut back people's claims on personal injuries, but we are moving out here into the private sector, and I sometimes wonder if we are not just trying to switch all of the tort attorneys into takings attorneys, because I would say if we do not adopt this amendment, what we are really doing is finding the deepest of all deep pockets, and I would advise any attorney in private practice to immediately forget any other sector but the takings sector, because you have got Uncle Sam standing behind it.

So I think the Porter amendment is a modification that would make it more predictable, and I would certainly think, although I understand the Army to be opposed to the whole bill, at least this would make it a little more predictable if it does pass.

Mr. Chairman, I will leave these two letters over here and hope people come read them, because I think they are very serious.

In our stampede to do things, I keep reminding people of Roll Call's article, saying it is just like we are running creme pies down a conveyor belt and expecting the Senate to bail us out. Read these first. Read these first, and then I hope you will vote for this amendment, and we will at least not make the mess for the Senate quite as deep as it will be if we do not adopt this amendment.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this amendment and in support of the underlying bill. The opponents of this legislation, who are also the supporters of this amendment which will gut the bill, say that we do not need to do anything more with regard to private property rights than what is stated in the fifth amendment of the U.S. Constitution, which states I think very clearly, ''Nor shall private property be taken for public use without just compensation.''

□ 1600

I think that is very clear, when we use private property for public use, as we do in many of the pieces of legislation that are passed, the private property owner is entitled to compensation. The problem is that the U.S. Supreme Court and other lower courts have interpreted that in a fashion that they see fit to say that sometimes you get compensation and sometimes you do not.

The fact of the matter is that this Congress has the same responsibility that the Supreme Court has, to interpret the U.S. Constitution and pass laws in accord with the Constitution. And that is exactly what we are doing here. We are simply acknowledging that when you determine what private property is and when it is used for public purposes, then we have every bit as much right as the courts do to indicate our interpretation of that amendment so long as our interpretation is a constitutional interpretation.

Clearly, this statute is such a constitutional interpretation. So if we are going to be realistic about our responsibility to private property owners in this country, and this important principle embodied in the Constitution, then it is important that we take action to compensate people when their land is taken for public use purposes.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Maryland.

Mr. GILCHREST. Mr. Chairman, I cannot agree with the gentleman more. I just would like to make a couple of quick points. One, I really do believe that the problem with the Endangered Species Act or wetlands should be dealt with in the authorizing committees and not in this fashion.

The fifth amendment is clear that if your property is taken away for the public good, that is taken, actually your property is then rendered useless to you, because the Government has taken that property entirely. If your property is taken away for the public good, you should be compensated fair market value.

The more sticky question comes when we see how the regulators regulate the laws that we pass, and that is, should you be compensated if your property is regulated to prevent public harm. That is the fine point that I do not think we should address on the House floor. We should leave that up to the courts. Any problem with over regulators should come from the reauthorizing committees.

Mr. GOODLATTE. Mr. Chairman, reclaiming my time, I strongly disagree with the gentleman's statement that we should leave that to the discretion of the courts. We have the same responsibilities that the courts have for interpreting the law. If we find that they are indeed acting contrary to the intent of Congress and what we think is contrary to the U.S. Constitution, then we should take action. I think the gentleman is quite wrong.

With regard to leaving this to the authorizing committees, in point of fact, the authorizing committee with regard to legislation related to the fifth amendment of the U.S. Constitution is the Committee on the Judiciary. We held hearings on this issue. We held an extensive markup on this issue. We have now come to the floor with authorizing legislation. As the chairman of the subcommittee has already indicated to the gentleman from New Jersey, this is not an entitlement. This is an authorization.

I think that it is entirely wrong to suggest that just because somebody cannot use their property for a very major purpose because of legislation that has been passed by the Congress or because of court interpretations of those legislation, that they are not entitled to compensation when there is a substantial reduction in value of the property, which this bill requires, that they should indeed be compensated.

Mr. GILCHREST. Mr. Chairman, I was not referring to the Committee on the Judiciary authorization of this bill. It is clear that they authorized this bill. I was referring to the authorizing committees that deal with the problems. We are going to be dealing with the problems that the Endangered Species Act and the clean water, section 404, and the wetlands——

Mr. GOODLATTE. Reclaiming my time. I would say to the gentleman that I commend him for that and encourage him to do that because I think after this legislation passes and becomes law, it will be very important and very necessary for you to do that, whereas previously it has not been necessary and has not been done.

Mrs. MORELLA. Mr. Chairman, I move to strike the requisite number of words.

Thank you, Mr. Chairman. I rise today in opposition to any legislation that would provide additional takings compensation beyond that allowed for under the fifth amendment to the U.S. Constitution.

I realize there are many citizens who believe they have been dealt with unfairly or uncaringly by Federal regulatory agencies. I strongly support initiatives that would grant them relief.

I support the Porter amendment, which requires new takings assessments and which will heighten regulators' awareness of these important issues. I support the concept of installing agency ombudsmen—to explain the laws, to handle complaints, and to nip disputes in the bud. And I support the settlement of property claims by new, nonjudicial mechanisms.

However, to support a new and broad-based system of takings compensation would be to support one of the most unwieldy, unworkable, and unneeded entitlement schemes that has ever come before this body.

H.R. 925 would force us to make an impossible choice: either we agree to bloat the Federal deficit and clog the Federal judiciary with takings claims or—more likely—we must abandon the enforcement of those laws most crucial to the protection of our Nation's wildlife and its remaining natural areas.

That is the choice before us today. It is a choice that none of us can make, and it is a choice none of us should have to make.

To understand the law, Justice Holmes reminds us, we must understand what the law has been. Private property rights are not absolute—not now, not ever. In saying so, I am not quoting from the latest Greenpeace bulletin—I am not quoting from John Muir or Karl Marx. I am quoting a principle of common law which has existed for almost 1,000 years.

From the time of King Henry the Second, in the year 1166 A.D., the Assize of Nuisance stated that a property holder could be held to account for ''things erected, made, or done'' on his land that gave trouble to others.

If a property holder's cattle strayed from his land causing damage, his neighbors could sue and force him to build an enclosure. If the landowner raised or lowered the water level on his property, and that act caused detriment to others, the landowner could be held liable.

If a man cast dung into the ''ditches or waters which are next to any city, borough, or town,'' another citizen could sue and force the mayor or sheriff to take corrective or punitive action.

The nature of the nuisances and pollutants may have changed since the Middle Ages—the underlying principle has not. The principle that the polluter should pay is rooted in laws and customs that prevailed for centuries before Columbus sailed the Atlantic.

The bill before us today would fundamentally undermine these principles. It would undermine the property holder's responsibility for the public goods of which he is but a temporary steward.

A landowner does not own the air we all breathe, a landowner does not own the water that flows under his land and into our taps, a landowner does not own the eagle that lands in his tree.

Rather, these are public goods, and as such, they are the greatest and proudest possession of the American people. These public goods are for the property owner to respect and protect—they are not for him to sell back to the American people, their true and rightful owner, at the auction block.

I urge the defeat of the compensation bill, I urge passage of the Porter amendment, and I yield back the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman yield?

Mrs. MORELLA. I yield to the gentleman from Florida.

Mr. CANADY of Florida. I thank the gentlewoman for yielding to me.

There is a large portion of what you have said in your statement that I wholeheartedly agree with. I would just point out to the gentlewoman that the substantive amendment which I have offered specifically provides that ''no compensation shall be made under the act in circumstances where there is an identifiable hazard to public health or safety or damage to specific property other than the property whose use is limited.''

I believe we have covered that. In addition to that, in the amendment of the gentleman from Louisiana [Mr. TAUZIN], there is specific language that says, ''if a use is a nuisance as defined by the law of a State or is already prohibited under a local zoning ordinance, no compensation shall be made under this act with respect to limitation on that use.''

So I believe that the general sorts of concerns that you have raised are concerns that we have been aware of and that we have covered in the legislation that we are proposing.

Mrs. MORELLA. I admire the fact that you have tried to take a bill that is unnecessary and help it, but I think it is still unnecessary. We still have an amendment in the Constitution which is working, and we have the courts to help to enforce it.

Mr. CANADY of Florida. The Chief Judge of the Court of Claims thinks it is not working.

Mr. NADLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support the Porter-Farr amendment which really is in contradistinction to some of the worst provisions of the Canady-Tauzin compensation bill.

This bill constitutes a fundamental reinterpretation of the fifth amendment. Contrary to the gentleman from Virginia, it is the court's duty to interpret the law. It is our duty to change the law if we do not like the court's interpretation. But we make the law. We change the law. The court interprets the law.

The courts have interpreted the fifth amendment in light of the common law over the centuries to mean that if the use of the land is precluded by the government, then that is a taking. If the value is diminished because some uses are precluded but substantial use is still permitted, that is not a taking.

To interpret it otherwise, as this bill would do, would force the Government to compensate a landowner for any change, almost any change in value which would occur from almost anything Government does.

It would establish a major entitlement program for landowners and establishes no money to pay for that entitlement. In effect, when an Army Corps of Engineers project has an effect on the value of nearby land, it would be up to the Secretary of the Army to pay for that. That would have priority over guns and tanks and missiles and readiness and troop payrolls, which makes no sense at all.

And the bill is based on a fundamental misconception. The gentlewoman from Maryland referred to the misconception. Property rights under Anglo-Saxon law, Anglo-American law are not absolute.

A great Republican President, Teddy Roosevelt, said, I quoted this last night but it deserves to be quoted again, ''Every man holds his property subject to the general right of the community to regulate it to whatever degree the public welfare may require it.''

That that may sound, these intelligent words of President Theodore Roosevelt, radical today just shows how far some of our colleagues have gone from the common sense and public welfare conception of the Constitution.

What this amendment would do, Mr. Chairman, is to say that we are going to vindicate landowners' rights by requiring that any agency, before undertaking any rule or action, must do an impact analysis to see what impact, if any, that will have on the value of land by necessity say it, almost any action government takes is going to raise the value of some land, decrease the value of other land. But this at least recognizes the need to address regulatory burdens on individual landowners. It is a positive step in support of private property owners, but without escalating the cost, the size or the inefficiency of government and without making it impossible for government to take almost any regulatory action, because that is what the underlying bill, as amended by the gentleman from Florida [Mr. CANADY] and the gentleman from Louisiana, [Mr. TAUZIN] would do.

Almost any regulatory action would be impossible because somewhere

somebody's land value would be diminished. That would have to be compensated for and we all know there is no money for that. This amendment, based on President Reagan's executive order and on Senator DOLE's bill, is an intelligent, common sense, down-the-middle approach to say we have to recognize and minimize the impact on property values, but we are not going to subordinate the public welfare to any change in value on somebody's land.

Mr. EHLERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, approximately 12 years ago, I was elected to the Michigan legislature and rapidly became immersed in takings issues, because Michigan is the only State of the Union which has been delegated responsibilities for wetlands by the U.S. Government. Takings was a major issue, and my initial reaction was to do precisely what the bill before us does, and that is provide for immediate compensation to property owners whenever an area of their property was declared a wetland.

□ 1615

However, in researching the issue, I discovered that there is an extensive 200-year history. Takings is a very complex legal issue. It has a long history, as I mentioned, but it has developed into a basically fair approach.

Generally, in takings cases, courts engage in a rigorous balancing process in which they consider a variety of factors, including the purpose of the law and the benefit or economic impact of the law. Precedent, established through zoning laws and the like, looks at the entire piece of property, not only the portion of the land that cannot be used as the owner desires.

I believe that H.R. 925, as written, will destroy centuries of U.S. and common law and will create immense legal and financial problems if implemented as it is currently written.

In addition, we discovered in Michigan most takings problems can be resolved by ensuring that regulators work with the constituency to achieve a solution. That should be the thrust of the law, and that, I believe, is the thrust of the Porter amendment.

Mr. Chairman, I would like to quote from a letter I received today from a gentleman who served as a Justice in the Michigan Supreme Court for several years, and currently is serving as mayor of the city of Detroit, one of the major American cities.

His comment about the bill before us is as follows:

> These takings bills pose a radically new and constitutionally unsound theory for litigation. Historically, takings' issues have been decided by the courts. The judiciary has crafted just and adequate protection for property owners based on the constitutions of the Federal and State Governments, weighing in each individual case a property owner's justifiable expectations of property use against the rights and interests of the public as embodied in governmental regulation. There is no reason to expand the ''takings'' theory, because a substantial body of case law that the courts have developed to enforce constitutional protections is sufficient.

That is the end of the quote from former Justice Archer. We, of course, have experienced takings in other forms; zoning laws, for example. I recently bought a house in Grand Rapids. My wife and I would like to add an addition in the back, and discovered we cannot build exactly as we had hoped because the city government has said ''You cannot build anything on the rear 25 feet of the lot.''

That property cannot be used as I wish, just as it often happens with wetlands conditions. However, we have established procedures for that. We have established laws that result in what is for the greater good of the public. Even though I may not build on that piece of property, that particular zoning law has increased the value of my property and the value of my neighbors' properties.

Mr. Chairman, as a former State legislator, I also took a look at what the States are doing, because I know this is an issue before the States. 25 State legislatures have considered a law like the one before us, and have rejected it. Nine States have adopted some type of takings legislation, similar to the law before us, but it is interesting that 6 out of the 9 have adopted legislation that is modeled after the Reagan executive order and the Porter amendment that is before us. In other words, they are taking the same approach that we are recommending in the Porter amendment.

One State which adopted a takings law actually had it repealed by the people of the State 2 years later. That is the State of Arizona. The legislature adopted it and the people through a referendum rejected it.

Based on the information I have given, the 200-plus years of constitutional law, a great deal of work on the takings issue, the States' experience in rejecting the approach in H.R. 925 and adopting the approach largely in the Porter amendment, I urge adoption of the Porter amendment, and urge that we help property owners meet the law and treat them fairly.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. EHLERS] has expired.

(At the request of Mr. CONYERS and by unanimous consent, Mr. EHLERS was allowed to proceed for 1 additional minute.)

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. EHLERS. I am pleased to yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to compliment the gentleman from Michigan [Mr. EHLERS] on his presentation. I agree with him. I am pleased that he would quote the former Justice of the Michigan Supreme Court, now the mayor of the city of Detroit, Dennis Archer.

Just to show the bipartisan nature of this amendment, I am quoting Ronald Reagan and Senator DOLE, so I think this amendment has just about everything going for it as far as bipartisanship is concerned. I compliment the gentleman for his contribution.

Mr. ABERCROMBIE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, speaking in favor of the Porter-Farr amendment, there has been anecdotal evidence, Mr. Chairman, offered on the floor with respect to the overall bill here, 925. I would like to add to it by way of example, I hope illustrative of what might really be involved and what parallel experiences others might have.

I am going to cite the example of water, Mr. Chairman. There is an assumption, an underlying assumption in this bill that questions about private property have already been resolved; that is to say, we know who owns what. I would suggest, Mr. Chairman, that is not always the case, not by a long shot.

I would also suggest that if we go over the history, as we have in Hawaii, on water rights, who exactly owns the land where water coursing is concerned, where the water goes? What is the natural course that water takes? What if it is diverted?

What if we have an historical situation, as we have in Hawaii, where plantations came into existence and literally changed the course of nature, took water from one place and took it to another place for economic purposes? The land which was owned or leased, in some instances, where sugar was grown, where pineapple was grown, did not have sufficient water. It was taken from elsewhere.

Now we have a situation in which we have to determine whether we are going to, as sugar lands, utilization of sugar lands declines, whether we are going to return the water to its original course. If that happens, what consequences are there for landowners?

In that context, in Hawaii and elsewhere in the country we have the question of watershed areas, we have the question of water conservation. We have, in fact, the question of how will water be used for municipal purposes, for private purposes, for household purposes.

Once this takes place, there are immediate consequences for the land. The gentlewoman from Colorado [Mrs. SCHROEDER] has brought before the body, and I think it deserves reiteration now, the questions that have been raised by the Acting Assistant Secretary of the Army for Civil Works, and I want to repeat that, the Assistant Secretary for Civil Works in the Army, addressed to Speaker GINGRICH, strongly opposing the bill because of some of the kinds of questions that I have raised in the private-public sector with respect to water and how it is

used and whether or not private property can be seen as private, and that all questions concerning ownership that have to be resolved also exist in the wider sphere of public purpose, even going as far as to say what constitutes the national interest in terms of the military.

These things are not so easily decided. Quite the opposite. The reason I support, then, the Porter-Farr amendment is that this is an assessment bill. We have kind of gotten away from what the Porter-Farr amendment actually says. It is attempting to reduce some of the questions that have been raised by our friends on the other side in opposition to the Porter-Farr amendment.

This allows, in fact requires, that a private property impact analysis be made, all within the context of the fifth amendment. Mr. Chairman, let us not forget, the fifth amendment is not abandoned. I think the gentleman from Illinois [Mr. PORTER] raised that question in some of his previous commentary, that after all is said and done, and after all our interpretations are made, and I hope that everyone will grant that I am making mine in good faith, as I granted it to others that they are making it in good faith, that the fifth amendment must be satisfied. There can be no takings without just compensation under the fifth amendment.

What constitutes that just compensation and what constitutes that taking does now and will remain a question to be decided under the full protections of the fifth amendment. In the meantime, then, what we do legislatively is very, very important as to what will be presented to the court as a fifth amendment issue, a takings issue.

Therefore, I commend to the Members' attention, in conclusion, please look at the content of what the private property impact analysis says, and I think a lot of the fears and anxieties of those who favor not supporting the Porter-Farr amendment will be alleviated.

Mr. DOOLITTLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this Reagan executive order which has been referred to, and which has not been very faithfully implemented, I might add, since it was promulgated, and this bill that we are considering are perfectly harmonious, and I believe will work very, very well together.

In fact, the Reagan executive order without this bill will not work nearly so well, and that is because if one is so unfortunate as to have the massive power of the Federal Government directed against himself, the average length of time to pursue a takings case is between 5 and 10 years, ranging in cost from $50,000 to $½ million or more.

I have heard a lot of rhetoric about how this is a big bonus for big corporations and wealthy landowners. I would say, Mr. Chairman, the only ones that do not have a remedy in this country are the average people.

Sure, we have had the fifth amendment for 200 years, and there has been no effective remedy, really, to implement it for 200 years. We have had some very vague Supreme Court cases, and unless a person was big and wealthy and had a staff of attorneys, they could never afford to pursue their right for relief under the fifth amendment.

Finally, we are to the point today, thankfully, with the Contract With America and the changes that have occurred, where we can respond to the voice of the average citizen, and we can provide a remedy in order to make real the protections afforded by the fifth amendment to the U.S. Constitution.

We have heard today, I just cannot believe it, I hear the words ''unwieldy, unworkable, radical,'' used about this piece of legislation, and these words spoken from the very mouths of those who have supported the Endangered Species Act and its bizarre conclusions, such as whereby the farmer who was unintentionally plowing his field and kills a rat, he stands now criminaly indicated because he has committed a taking of an endangered species. That sounds like it is pretty radical to me, pretty unwieldy, pretty unworkable.

Then we have this little critter, the fairy shrimp. This costs each new homeowner, and continues to cost today in the city of Roseville, in my district, $6,000 extra per house because of this creature which we are protecting. Radical? Yes. Unwieldy? Yes. Unworkable? Yes. That is what we seek of change by this very wise and judicious piece of legislation.

Mr. Chairman, we need this bill. I just want to point out, it has been implied that somehow we are going to impair defense readiness because the Army will have to respond to all these claims. I just want to point out that there are two funds. The defense readiness and all of that, the military stuff comes out of one fund, the defense appropriation, and the energy and water appropriation, a separate subcommittee, deals with the civil aspect of the Army, so there is no way this bill is going to impair defense readiness.

Mr. Chairman, I would urge this amendment to be defeated and the bill to be adopted.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Porter amendment, and in an effort to keep the U.S. Government from going bankrupt or pursuing any of the other alternatives that might result if this bill is passed. I have heard the argument here that this is not an entitlement program. I would submit to my colleagues that it is either an entitlement program or it is a fraud on the American people.

I have thought this thing through, and it seems to me that ther are four options that we have under this bill. The first option is if we apply it like it is written and we continue to apply the laws as they are written, and the regulations, we can bankrupt the Government, because everybody who has any decrease in value in their property will be making claims under this bill.

□ 1630

The second option is we can bankrupt an agency of Government which chooses to promulgate rules that are pursuant to statutes that this Congress has passed. We can have judgments entered against the agency and the agency can choose to continue to promulgate rules as we have directed them to do under our statutes, and if we do not appropriate some more money to fund these agencies or departments of Government, then ultimately that particular department of the Government will become bankrupt as opposed to the whole Federal Government becoming bankrupt.

The third option that we have under this bill is that we can work a tremendous fraud on the claimants who are coming into court by saying to them under this bill that we give you a cause of action but if you get a judgment against the Government or against the agency, that judgment is not going to be worth the paper it is written on because the Federal Government is going to refuse to pay the judgment.

The fourth option is that we can say to our Federal Government agencies that you will not promulgate any regulations in furtherance of the laws that this Congress has adopted because if you do, then you are going to have lawsuits against you.

With all respect to the gentleman from Texas [Mr. STENHOLM], at least he was honest enough to come to this floor and say that is exactly what he expects to happen, we are not going to have any more regulations promulgated, and that is the objective we are trying to achieve. At least that is honest with the American people.

What does the last option here do for respect for the laws of this country? It means we have got laws on the books that our departments cannot promulgate any regulations to enforce. Therefore, people's respect for the law goes down, and we already have a crisis in this country, we are told, about people's respect for the law. So we have got this vicious cycle going around.

The final point I want to make is you will recall several weeks ago I came into this body and I offered the exact language of the fourth amendment to the U.S. Constitution. My colleagues here by an overwhelming majority voted against the precise language of the fourth amendment. I did not bother to come back into this body today and bring the language of the fifth amendment. I guess my colleagues who have all stood up here and said this bill is in furtherance of the fifth amendment, if I had brought the exact language of the fifth amendment into this body and said, ''Please vote the fifth amendment

up or vote it down,'' I wonder what my colleagues would have done.

We are back here today saying we are furthering the Constitution when we are doing exactly the opposite thing.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(At the request of Mr. FRANK of Massachusetts and by unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 30 additional seconds.)

Mr. WATT of North Carolina. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. To answer your question about whether or not this body would vote for the fifth amendment, would you leave any of that self-incrimination stuff in your version?

Mr. WATT of North Carolina. Yes, I would.

Mr. FRANK of Massachusetts. Then the answer is, no, you would not get it.

Mr. GILCHREST. Mr. Chairman, I move to strike the requisite number of words and speak in support of the amendment.

I would just like to sort of clarify and frame the discussion that we are having here. We have had some problems with regulations, they have been described as regulatory takings. We have had problems probably to some degree at any rate all across the country. So we are attempting here to solve or find some reasonable cure, for an over, to some degree, in some people's minds, and to a certain extent that is true, regulatory insensitivity to private property.

What we have here, on the one hand, we have problems with property rights. Because if you find the little fairy shrimp on there, you cannot do something, and where is the value of that? On the other hand, we have jobs. Maybe you cannot lumber or timber or do something else in an area.

But on the other hand we have this crucial, critical thing called biodiversity which to a large extent is to be protected by the Endangered Species Act. So how do we as humans solve this particular dilemma? Do we solve it by talking and discussing with the regulators, with Members of Congress, with the landholders about what they can do with their property and still hold onto biodiversity for future generations? Or do we solve the problem by sterilizing debate, by saying that we are going to take care of this and if some regulator comes in there and wants to take your property or regulate your property, we are going to compensate you, flat out, the Federal Government will pay for you not to abide by the Endangered Species Act, or for protecting wetlands.

I think what we need to do, and I am coming from a position of what I do in my district, whenever we talk about wetlands in my district, or whenever there happens to be a beetle on the side of a hill, we try to get the Corps together, Soil Conservation, EPA, Fish and Wildlife, myself, the affected landholder, and we sit down and we discuss this issue. But unless we adopt the Porter amendment, there will be no more discussion of this issue. You will have the incentive for people not to want to talk to the regulator, not to want to talk to any State legislator or to their Congressman or anybody. The incentive will be dollars and cents. I do not think that is what we really want to do here. We want to solve the problem of some cases being insensitive with their regulation.

We ought to deal with this in the authorizing committee, of Resources, to fine-tune the endangered species act. We ought to deal with this in the Committee on Transportation and Infrastructure to fine-tune the wetlands provisions of the Clean Water Act.

I want to make one other point. When we look at this little tiny thing here that no one would ever notice, I suppose, now, I do not know if this has any medicinal value at all, and I recognize there is a problem with overregulation, but I do not want to throw out the idea that we live on this planet in a very cold void called the universe that is infinite, and we as human beings, getting fundamental now, rely on the resources of this planet to keep us alive and to keep the future generations alive. I see that if we enter into this problem of takings in the way that we are dealing with it, that some of those resources are going to be diminished.

Before there was human impact on this planet, and I recognize we have to manage what with we do because we have people here, we cannot save every species and we cannot live in the wilderness like people did a thousand years ago.

Before there was human impact on species, we had about an average of one species per million become extinct every year, for millions and millions of years on average, except for 2 catastrophes, one of which was the dinosaurs, one species, per year, out of a million became extinct.

Now it is close to 10,000 species becoming extinct out of a million every single year. We have accelerated that process, and we do not know what the value of wetlands and biodiversity will do for future generations, but let us make sure that when we have this debate, we do not throw those things out. Those are important. We must continue to discuss them.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. Am I out of time, Mr. Chairman?

The CHAIRMAN. The gentleman has 15 seconds.

(At the request of Mr. POMBO and by unanimous consent, Mr. GILCHREST was allowed to proceed for 3 additional minutes.)

Mr. GILCHREST. I yield to the gentleman from California.

Mr. POMBO. I originally came down here to ask you one thing, and as you continued, there is something else I have to ask you. You said that we had one species a year for a million years.

Mr. GILCHREST. I said that before there was human impact on biodiversity and ecosystems, there was one species for every million species on average, for every million species, you would have one species becoming extinct every year. That was before the human impact in the last, let's say 1,000 years.

In this particular decade, in an evaluation of our relationship with biodiversity or species on the planet, you have about 10,000 species, plants, insects, per 1 million becoming extinct every year. That is an acceleration.

Mr. POMBO. If the gentleman will yield, the study on the 10,000 was based on, if it is the same study I saw, was based on one island and what happened on that one island and extrapolated throughout the entire country.

Mr. GILCHREST. Reclaiming my time, the study you are talking about, there have been studies in the rain forests of Latin America, there have been studies in Indonesia, there have been studies all over the world, including the United States. The average is, now in the United States we would not have 10,000 species per every 1 million becoming extinct, but we have hundreds of species becoming extinct in the United States as a result of human impact.

What do we do, tell all the people to move? No. But you manage the resources with what you have. I yield to the gentleman.

Mr. POMBO. I do not know how in the world you can say that there is one species per million before human impact as humans were not here and I do not really follow that. But the main point I rose on——

Mr. GILCHREST. Reclaiming my time, the way you do that is through scientific discovery of the strata, of the biology of things, through research, through archaeology, through anthropology, through scientific techniques that can evaluate what species looked like throughout just about the course of time that the Earth has been here. There is a scientific technique to discover those kinds of things. I yield to the gentleman.

Mr. POMBO. The main reason why I came down here is because you and I have discussed this issue for a number of years about what to do. You have always said that you want to help, that you do want to protect people's private property and that that is an interest of yours. This amendment that is on the floor right now is purported to be the Reagan Executive order, or taken from the Reagan Executive order. I do not know if you even realize this or not, but the Executive order is still in existence. If this amendment passes, the only change in——

Mr. GILCHREST. Reclaiming my time, the Reagan order, the only thing

that will happen, if this Porter amendment goes through, this will offer us an opportunity to do two things: One, to make sure that the agencies are much more sensitive to what happens, and we can reauthorize the Endangered Species Act——

The CHAIRMAN. The time of the gentleman from Maryland [Mr. GILCHREST] has expired.

(At the request of Mr. POMBO and by unanimous consent, Mr. GILCHREST was allowed to proceed for 1 additional minute.)

Mr. GILCHREST. When we reauthorize the Endangered Species Act, we can certainly address those problems that have happened. When we reauthorize the Clean Water Act, we can do that for wetlands. This Porter amendment makes sure, it reemphasizes, it directs the agencies so that they will be told by us and we have the responsibility, that you must inform that person as far as the impact of their property is concerned and the value of their property whether it is diminished or whether it is not diminished.

The fifth amendment still holds true. But my problem with this bill as it stands without the Porter amendment is that in my mind it is going to create a huge, litigating, bureaucracy that we cannot anticipate.

Mr. POMBO. If the gentleman will yield, what you are worried about is you want to protect what is happening right now, which is not working, and that is what we are trying to change. That is the whole problem.

Mr. GILCHREST. Reclaiming my time, I just do not want to make it worse.

The CHAIRMAN. The time of the gentleman from Maryland [Mr. GILCHREST] has again expired.

(At the request of Mrs. CHENOWETH and by unanimous consent, Mr. GILCHREST was allowed to proceed for 3 additional minutes.)

Mr. GILCHREST. I yield to the gentlewoman from the beautiful State of Idaho.

Mrs. CHENOWETH. Could the gentleman just define for me what biodiversity and ecosystems are?

Mr. GILCHREST. Biodiversity means all of the species on this planet that have evolved over millions of years that have created, literally, life on the planet.

We have air because of living organisms on this planet. We have purifying techniques in life forms on this planet for our atmosphere. We have animals in the oceans, for example, a whole range of species, from microorganisms right on up to whales that interact with each other that cause what we call the balance of nature. The planet Earth exists the way we know it, we breathe the air, drink the water, eat the food, we find medicines in the natural environment to cure diseases. This happens as a result of over millions of years of evolution of different species reacting with each other to form the planet Earth.

Mrs. CHENOWETH. Would the gentleman yield for a second question?

Mr. GILCHREST. Yes, I will.

Mrs. CHENOWETH. Mr. Chairman, I ask the gentleman from Maryland [Mr. GILCHREST], what is an ecosystem?

Mr. GILCHREST. An ecosystem in Idaho, for example, would be an area where you have a certain type of tree, a certain type of animal life, a certain type of insect and so on that has evolved in that particular area and depends on that type of vegetation, that type of a full range of other animals like—I do not want to bring up wolves now, but let's say a moose is going to eat a certain type of vegetation.

□ 1445

In my area an ecosystem on the Eastern Shore would be a little bit different because we have deer, we have geese, we have fox and so on. So ecosystem is different from one place to another, but an ecosystem is an area where you have animals, plants and insects that will depend on each other to survive.

Mrs. CHENOWETH. Mr. Chairman, then is it the gentleman's suggestion then if ecosystem means all of this, that it is the responsibility of the Federal Government of the United States of America to manage and fund and control all of this?

Mr. GILCHREST. No; I would not say it is the responsibility of the Federal Government to control all the ecosystems and I am not sure how much time I have, Mr. Chairman, but property owners, local government, people in general need to cooperate with each other to find solutions to some of these problems that are vexing this institution.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words and I rise in support of the amendment.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, I have good news for my colleagues. Rejoice, the fifth amendment is alive and well. It is in the hands of the courts which are vastly more competent to interpret it, to enforce it and to provide for justice to be properly administered to the American citizens, to see to it that where there is a taking it is compensated, and to do so in a thoughtful fashion in accordance with law, and on thoughtful consideration of the requirements of the Constitution and the precedents which have interpreted that great institution of this country.

The fifth amendment says 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.

This amendment implements that language. It sees to it that Americans are treated fairly, according to 200 years of constitutional law; and that where there is a taking they are properly compensated.

It is remarkable to note the curious way in which this legislation has been considered, brought rapidly to the floor, without proper consideration of the facts that are associated with it. When I was a young Member, no bill was brought to the floor until we had an estimate as to the cost from the Office of Management and Budget.

As I mentioned earlier in my remarks, we sought the views of the Office of Management and Budget, and of the Congressional Budget Office to find out what this legislation is going to cost the taxpayers. Those two agencies responsible for the administration of the public monies, and estimates of expenditures and costs, were not able to tell my office either how much is at stake here, how much this is going to cost, nor were they able to tell us what programs were involved.

Happily, there is a possibility that there is some limitation as to the sweep and scope of the cost of this from the original bill, but that is not enough. What we really need to know is what this is going to cost, why is it that we are rushing out to spend the public monies?

I have heard great groaning and great distress from my colleagues on the Republican side of the aisle about the fact that the budget is out of balance. Let me tell my colleagues that if there is a budget busting piece of legislation in this session of Congress, or indeed in any session of Congress, this will rank in the top three or four. There is not anyone on this side of the aisle who can tell this body what this is going to cost.

And there are very few who could justify all of the strange and anomalous consequences that are going to flow from this, people who are going to be compensated for enrichment which they have already gotten which might be diminished by the same problem project which has contributed to their enrichment.

I can understand there are people out there complaining about the fact that there are Federal laws that say you cannot pollute, that say you cannot flood your neighbor's land, that you cannot build where good sense says you should not, and taxpayers would have to pay you and want to be paid for being denied the privilege of building where you ought not. It is not good sense, but I understand that, and there is no reason why we should listen to it. What we ought to do is legislate with the full awareness of costs, a full appreciation of what it is we are doing, and whether or not it is wise public policy, the programs which we are amending and the behavior of this body. That is good legislation, that is good sense. It is not being applied here.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Let me just reinforce what the gentleman says. I am the ranking minority member of the subcommittee that would have had jurisdiction over this if the

minority had been willing to let it go to the subcommittee. Behind me is the ranking member of the committee that would have had jurisdiction over it if we had been allowed to discuss this in committee. But to reinforce what the gentleman said, the bill on which we had hearings disappeared when we went to markup; we had a very different version. So the language that is before us now, the Canady substitute as amended by the gentleman from Louisiana [Mr. TAUZIN], has never been before a committee for a hearing and in fact the great bulk of this has never been subjected to the markup process and that is why we do not have these answers because they did not want to subject it to scrutiny.

Mr. DINGELL. That seems to be consistent with the overall practices that we have observed with regard to legislation. I think that in almost every instance where we have dealt with questions which were involved in the contract in the 100 days we found that the legislation has changed faster than even the managers of the legislation could understand. And that they were incapable of explaining language which was in their own bill.

I think that good legislative practice deserved better protection of the public interests and requires better than the legislation we have before us.

Mr. BOEHLERT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong support of the amendment being offered by my good friend and colleague from Illinois, Mr. PORTER. The Porter amendment to H.R. 925 is well reasoned, and a fiscally responsible approach to the issue of regulatory takings.

The American people voted on November 8 for reasonable and responsible laws. As drafted, H.R. 925 passes neither of these tests.

As has been stated repeatedly, H.R. 925 is a budget buster. This legislation could require hundreds of billions of dollars in additional Federal expenditures, not tomorrow, not next week or next month or even next year, but over several years. I cannot support legislation that would increase the Nation's debt in such a sweeping and irresponsible manner.

Keep in mind we have got to be serious about addressing our Nation's budget crisis. We are spending $813 million every day just in interest on the national debt. It does not feed anybody or clothe anybody or educate anybody or indeed compensate anybody. It just services the national debt.

H.R. 925 is a budget boondoggle whose cost to the American taxpayers cannot be accurately estimated by any Member of this body. Not by the Congressional Budget Office, not by the Congressional Research Office, not by the author of this bill, not by the professional staff of the committee of jurisdiction.

We are being asked to venture forth into Rod Sterling's twilight zone.

Earlier this week this body passed legislation requiring Federal agencies to do risk assessments and cost-benefit analyses before proceeding with new regulatory actions. Ironically, many of the same proponents of conducting thorough cost-benefit analysis are before us today, asking us to support legislation that may cost the American taxpayers hundreds of billions of dollars over the long haul, without assessing the scope and impact of this far-reaching legislation.

The proponents refuse to admit the risk, and they fail to enlighten us as to the cost.

Now more than ever, we must take a hard look at the cost and implications of Government actions. The bill before us today needs such a hard look.

The Porter amendment assures us that we assess the costs and benefits of regulatory actions that may impact property values. The Porter amendment, which is based on legislation introduced by Senator DOLE and an Executive order issued by President Reagan, requires agencies to complete a private property taking impact assessment before issuing a regulation. This is a sensible way to determine if billions of dollars of taxpayers' money should be spent on compensation.

It is also worth noting that millions of dollars in litigation costs will also arise out of H.R. 925.

I would like now to share with you just a brief passage from an op-ed piece that appears in today's New York Times that outlines one of the many costly unintended consequences that could result if H.R. 925 is amended.

The op-ed piece states for their part landowners would be encouraged to shop for the highest possible appraisal of their loss, and lead to a new form of land speculation that had nothing to do with offsetting regulatory harms. That would lead to endless rounds of litigation over the necessity of compensation, the adequacy of economic appraisal and whether each side filled out the forms in the right order. That is not something we want.

We have heard about the Porter amendment guts this bill. The only thing being gutted is the taxpayers' wallet. We hear about shame; shame has been repeated over and over. The only shame I would submit is to suggest that the Constitution does not protect private property rights. It does in that sacred document in the Fifth amendment.

Let me point out there are a whole list of very respected opponents to this legislation. The National Council of State Legislatures, the National League of Cities, the National Governors Association. The only vote we have had on this recently was in the very conservative State of Arizona, where by a 60 to 40 margin the voters of Arizona rejected this.

The CHAIRMAN. The time of the gentleman from New York [Mr. BOEHLERT] has expired.

(By unanimous consent, Mr. BOEHLERT was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. Mr. Chairman, the voters of Arizona rejected this. If the bill passes it will reverse decisions of very conservative members of the Supreme Court of the United States. In a 1993 decision, Chief Justice Rhenquist and Justice Scalia and every member of the Supreme Court reaffirmed 2 basic Fifth amendment principles. Takings can only be decided based on the impact on an overall parcel of property, not just the affected portion. And, and this is extremely important, particularly to this debate, Justice Rhenquist, Justice Scalia, and every member of the Supreme Court said diminution in the value of property is insufficient to demonstrate a taking.

I think the gentleman from Illinois [Mr. PORTER] is taking a very reasoned approach to a problem we all acknowledge, and I would urge that we follow his lead and support his amendment.

Mr. MILLER of California. Mr. Chairman, I move to strike the requisite number of words and I rise in support of the amendment.

(Mr. MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. MILLER of California. Mr. Chairman, I rise in support of the Porter-Farr-Ehlers amendment. I think it a well-reasoned amendment, for reasons my colleagues from New York just reiterated. It is also very fiscally responsible for those of us who are concerned about the Federal Treasury and potential raid on the Treasury that the underlying legislation holds out.

It is also a good amendment because it keeps in place what happens in most instances under the current laws, and under the current laws the matters between the enforcement of the Endangered Species Act, more importantly the enforcement with the Clean Water Act is a matter of negotiations between the landowner and the local agency and the Federal Government about how that land shall be developed or not be developed, and to bring it into compliance with the purposes of both the Endangered Species Act and the Clean Water Act.

We are all well aware, you cannot serve in the Congress of the United States and not be aware that we have had enforcement of these laws that defies common sense, that we have had enforcement of these laws that is about the arrogance of an agency. We have had enforcement over these laws and decisions rendered in many instances where there simply is a mismatch between the landowner and the agency, but this legislation comes in and says we will treat all situations as if that is the normal course of doing business under the law.

In fact, it is not, because the point is that there are thousands and thousands

and thousands of projects that are approved every year where they have to comply with Clean Water, comply with Endangered Species, and we negotiate it out.

□ 1700

Now your suggestion is the landowners can simply cross their arms and say, ''Pay me.'' That does not really help us in terms of the development that people want to see take place in their cities and their towns, and it means that we will have to reconsider projects because simply agencies will start to run out of money to comply with that act should they want to continue to go forward with those projects.

What we really ought to be doing, and over the last year, unfortunately, we were not able to do that, but I guess with the new majority, we will; the gentleman from Louisiana [Mr. TAUZIN], myself, and the gentleman from Louisiana [Mr. HAYES] and others have worked on an amendment to change procedures within the Clean Water Act to get people timely decisions. Most of the people I have been engaged in in the enforcement of the Endangered Species Act, what they want is a decision. They would like to have a decision, because time is money in their business, and then they would know what to do.

But these agencies drag them out and drag them out. But that goes to the underlying acts, especially with respect to Clean Water and how to make sure we can even up the negotiating positions of those parties.

But to come in at the end with the Tauzin amendment and suggest that in each and every case the issue is whether there is a taking or not is not so at all, because the vast majority of these cases, whether they are very large developments or small developments, have to do with negotiations between the landowner and the various entities pursuing or participating in the development plan for that piece of land.

And for that reason, I think we should strongly support the Porter-Farr-Ehlers amendment, and then get on, as a number of other people have suggested, get on with the reauthorization of the Endangered Species Act, with the reauthorization of the Clean Water Act, where many of us believe that structural changes have got to be made in that and definitional changes have got to be made in that, and we now have lands that the Clean Water Act is applied to and definitions of wetlands that leave us all speechless as to how that could have ever been the intent of the Congress.

I think in a number of instances it was not the intent of Congress. Those are the actions that have got to be taken to straighten out and preserve the environmental balance and the protection and the need for communities and landowners to be able to use and to develop their lands as they see fit.

So I would hope that we would take the Porter-Farr amendment as a stopgap approach to the rewrite of that legislation in your committee, Mr. Chairman.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let us cut through all of the rhetoric of this amendment and get to the real intention of the authors of this amendment, and that intention is, and I am going to quote, ''to basically gut everything in H.R. 925.''

People may ask the question, Mr. Chairman, is that my interpretation of the amendment and the intentions of the authors? And the answer is absolutely not.

Mr. Chairman, I am going to read from the Congressional Green Sheet of March 1. It says here a Farr aide said that this amendment would basically ''gut everything in H.R. 925,'' which is what we are trying to do with this amendment. This is the aide to one of the authors, clear and simple, gut the private property rights bill.

Now, if you read subsection (a) of this amendment, and again I quote, ''no compensation shall be made under this act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action.''

Mr. Chairman, no compensation does gut this legislation. The aide to the gentleman from California [Mr. FARR] is exactly correct. This particular amendment guts private property rights.

Now, I have heard speech after speech of how this is a budget-buster. That is why compensation should not be paid, if you listen to people on the other side of the argument.

No one that I know in Congress who supports private property rights wants another Federal spending program. No private property owner that I know wants compensation because of a wetland or an endangered species designation. Those of us who support private property rights and landowners want Federal bureaucrats to stay off of private property. We do not want them taking away the use of that property.

We feel that there is a constitutional right to use and enjoy one's private property. No one wants compensation for that.

So for us, those of us who have been involved in drafting the Tauzin amendment to the Canady substitute, we see compensation as a stick that forces the Government to make the right decision, not the bureaucratic frivolous decision that can be made with no compensation.

Now, I am going to say in regard to the authors, this bill does mandate a private property impact analysis before the Government takes the property, and I will credit the authors that alternatives have to be identified that lessen the likelihood of taking private property in the analysis that is done. That is positive. But, and I want to underline ''but,'' after the analysis is done and even if alternatives are identified, there is nothing that forces the Government to take those identified alternatives. But worse, in Porter, judicial review is precluded for the private property taking analysis, and we have seen situation after situation where the biologist or the scientist of the Government, of a private landowner disagree, and yet under this, it is precluded. So if you disagree with a Government biologist on a takings determination, you cannot get that judicially reviewed the way this amendment is drafted, as it regards the Government's analysis.

So what is the worth of that to a private citizen? Absolutely nothing. And I think this is a sham amendment to private property owners.

So what does Porter-Ehlers-Farr do for the private property owner? It says your right to compensation for takings to private property for public use under the fifth amendment is there. Well, that is there now, and a citizen can go to Federal court today if there is a question about a taking with endless appeals at an average cost of over a half-million dollars to that private citizen if they want to try that particular action in Federal court.

How many average citizens can afford that type of expense? Not many. And that is why you have not had that many cases taken through the Federal court system.

This is a gutting amendment. People should make no mistake about it.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

(By unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 1 additional minute.)

Mr. FIELDS of Texas. If you are for those people making wetlands and endangered species decisions in your district, basically the Corps of Engineers and Fish and Wildlife involved in every property transaction and building permit, you should vote for this amendment. If you told your constituents back home you are for private property rights, you should vote against this amendment that, in the words of the author, guts the true intent of H.R. 925.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to express my support for this amendment.

With regard to the previous speaker, I want to express my skepticism that a staff member of a Member on the minority side somehow captured the gentleman from Illinois [Mr. PORTER], the gentleman from Michigan [Mr. EHLERS], and other Republicans and turned them to his or her will. This amendment was drafted by the gentleman from Illinois [Mr. PORTER] and his colleagues long before my colleague from California got involved.

But let us get back to the merits. First, I want to talk briefly about the procedures. We do not know a great

deal about this bill. Questions about it have gone unanswered. There have been a great deal of uncertainties.

The chairman of the subcommittee has said we will have to get back to see if we can work that out to the gentleman from Mississippi. The problem is this bill has undergone none of the normal scrutiny of the legislative process. We had a hearing on the appropriate language, the relevant language, in the contract. That was a bumper sticker on a page. It had so little content it was an embarrassment even to them.

The chairman of the full committee, the gentleman from Illinois, tried to remedy that situation, so when we had the committee markup, there was no subcommittee markup, when we had a committee markup, he had a very different bill. It looked a little bit like the Tauzin bill, but still there were a lot of differences. That bill had a life of about an hour. It disappeared even before some of the species that our friend from Maryland has lamented.

Because back came something that was close to the original, and that went through the committee on a voice vote. Then when they realized that even by their standards that was too extreme to pass, they decided they had better make some kind of arrangement with the gentleman from Louisiana. So we got a fourth version of it, and the amalgam of the Canady substitute and the Tauzin amendment has never before been subjected to any legislative process. We are dealing with an extraordinarily complicated subject for the first time on the floor of the House this year without hearing and without any markup from the committee to which it was referred.

Now, we have the second issue, and that is the unwillingness of the sponsors to discuss what this bill will really do, because what they have talked about are those examples when the regulatory process itself may have gone astray, and things go astray, Members of Congress, and legislative processes and all kinds of things go astray. They have talked about what they call the horror stories, how this misapplication and that misapplication was involved.

But this bill, absent the amendment that we are now discussing, does not correct mistakes in the regulatory process. It applies, with its full force and effect, to those instances when the regulatory process is working perfectly and exactly as it was supposed to. This is a bill that deals with those instances when the Wetlands Act is being imposed to protect wetlands, because they have an important environmental purpose. Everyone acknowledges that wetlands have an important environmental purpose. They affect drinking water, a whole lot of things.

This bill deals with those instances, a great majority of instances, when the system is working exactly as it should. It deals with the Endangered Species Act when it is working exactly as it should.

Why do they talk about the exceptions? Because the real purpose is to undo the basic Wetlands and Endangered Species Acts, and if they want to do that, they should do that in those committees. They said, ''Well, in the past, we did not have control of those committees.'' But they do now. Those committees now have majorities amenable to them, so they ought to be brought up in those committees.

Instead, you have got this now you see it, now you don't process. In fact, what they did in the Committee on the Judiciary was pull the old hidden bill trick, because the bill that finally came to the floor had very little relationship to the bills we had hearings on and the bills we debated, and, again, what they are doing is attacking the Wetlands Act and attacking the Endangered Species Act collaterally, not by changing the substance, but by making them impossible to enforce.

Because, again, I want to be very clear about this, this is not a bill that says where the Corps of Engineers, where the EPA, where the Interior Department has misapplied the law they have to pay, where they have exaggerated, where they have had bad science, they have to pay. This is a law that says that when any of the Federal agencies charged with administering these acts carries out the act exactly as it was meant to be carried out to protect wetlands, to protect endangered species, to do exactly those environmental things which we said we wanted done, they will have to pay and engage in this very lengthy process. That is why, both for procedural and substantive reasons, it is a grave error to try to rush this bill through here.

It is one more example of undue haste on a complex subject, the result of which will be the kind of legislation we now have.

This amendment would slow it down. The amendment, for a bill from the Committee on the Judiciary dealing with process, is the appropriate amendment.

If Members feel that, as part of the Wetlands Act and as part of the Endangered Species Act, they have been overadministered, then deal with them here. Do not do it by stealth in this bill.

Mr. CRAPO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is important that we respond to some of the arguments that are being made here, because some of them are just wrong, and others need to be clarified.

Let us go through some of them. First of all, it has been said repeatedly here this is a budget-busting measure. I think that is kind of an interesting argument. Remember what the bill does, it says when the Federal Government is diminishing the value of private property owned by private citizens in this country, that it must pay for it.

Those who are saying this is going to cost hundreds of billions of dollars must at least be concerned the Federal Government is causing hundreds of billions of dollars of loss of property value to people in this country by their actions. Yet they seem to say that does not need to be addressed.

Well, I do not know whether it is hundreds of billions of dollars that this act will cost or not, but if the Federal Government is doing that to the people of this country, then something should be done to stop it, and this bill addresses that.

Now, I do not think it is going to cost the Government that much money, because I believe there are a lot of creative people in this country, and when the regulators find out they cannot simply ignore private property rights any longer, then they are going to be able to look for other alternatives to accomplish the same solutions, alternatives that do not run roughshod over private property owners.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Mr. Chairman, on that very point, that is what is happening in my congressional district with the red-cockaded woodpecker. The Government has come in and identified colonies of nests and begun to move those to Federal forestry land off of private property. That makes sense. That is the type of creative work the gentleman is talking about, and I really appreciate you making that point.

Mr. CRAPO. I thank the gentleman for that specific example.

That is the point. Today we have a Government that does not care enough about private property ownership and protecting that principle in our system of government, and this bill will force it or force them to pay for the social costs of running over those rights.

Then there are those who say that the fifth amendment protects our rights adequately, and we do not need to go beyond the constitutional protection. But one of the very speakers in support of this proposed amendment said the Supreme Court has already declared that under the fifth amendment the protection is against a total taking of your property.

☐ 1715

It goes not against the taking or diminishing in value of the property. As I said earlier today, the Federal regulatory system we have has found out that if they do not take your whole property but just go in and regulate it to the point that you have to do with your own property what they tell you with it, then they can get around the fifth amendment requirement on takings.

I think the Founding Fathers of this country would have put something in if they had known what our regulatory system today was trying to do with regard to private property.

The point is the fifth amendment protects against takings. This statutory protection protects against diminishing in value.

Then there are those who say, well, this is just the Dole-Reagan approach. It has been said before, but I want to repeat, that Senator DOLE said in a letter that he sent us that this amendment which we are debating here, which is a killer amendment to the legislation we are bringing, does not represent his approach and that he supports the concept of compensation as this bill requires. And the person who sponsored, who drafted the letter——

Mr. PORTER. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Illinois.

Mr. PORTER. I thank the gentleman for yielding.

Mr. Chairman, I have read the letter from Roger Marzulla and also the letter from BOB DOLE. And it is very evident from both letters, if you read the last paragraph of the Roger Marzulla letter, he says, ''As chief architect of the Takings Executive Order, I can assure you that in no way was it ever intended that if the Federal Government went forward with action that did in fact violate the fifth amendment, the Federal Government was in any way relieved of its constitutional duty to pay just compensation.''

Obviously, neither Senator DOLE nor Roger Marzulla understood the amendment. The amendment says, ''No compensation shall be paid under this act,'' referring to the Canady-Tauzin legislation. If you read section (d) of the amendment, it says the fact that compensation may not be made under this act by reason of this section does not effect the right to compensation for takings of private property for public use under the fifth Article amendment to the Constitution.

So, what the amendment does is entirely different from what Senator DOLE thought it was, or Roger Marzulla. Both did not understand it.

Mr. CRAPO. Reclaiming my time, I think the gentleman's point about the fifth amendment is correct. Senator DOLE clearly said he supports separate legislation that does address compensation. Senator DOLE is saying although his initial letter does not address that issue, his sponsorship of two separate pieces of legislation should never be taken to mean that he does not support private property compensation.

Mr. PORTER. If the gentleman would yield further, there is one significant difference—there is the Dole letter I am reading—''One significant difference between my bill and the Porter amendment specifically requires that no compensation shall be paid in cases when the takings impact analysis is performed.'' That indicates that Senator DOLE does not understand the amendment. He did not understand that the compensation is still payable under the Porter amendment.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired.

(By unanimous consent, Mr. CRAPO was allowed to proceed for 3 additional minutes.)

Mr. CRAPO. I yield further to the gentleman from Illinois.

Mr. PORTER. I will finish up very briefly.

It is payable under the Constitution except if an impact analysis is not done. Then it is payable under the Canady-Tauzin approach. In either case, compensation is payable.

Mr. CRAPO. I understand the point. I want to continue on my time because I have a number of points to make on my time, and it is already running out.

Let me respond to that point by saying that the amendment—and I want to refer to the amendment—the amendment allows compensation only if an agency does not conduct a property impact analysis. If the agency does conduct that analysis, they do not have to compensate, regardless what the impact analysis said. Is that correct? And I yield to the gentleman.

Mr. PORTER. That is incorrect. The agency has to pay compensation under the Constitution.

Mr. CRAPO. OK. Except for the Constitution.

Mr. PORTER. Yes.

Mr. CRAPO. It applies only in a taking.

Mr. PORTER. In a taking of private property.

Mr. CRAPO. If the agency is successfully able to identify a way to impact the property without totally taking it, there is no compensation as long as they analyze it and say so.

Mr. PORTER. As long as they look at the regulation to see its impact on private property, they have looked at the specific purpose of the agency action, an assessment of the likelihood of the taking of private property will occur under the action, alternatives to the agency action that would achieve the intended purpose and lessen the likelihood of the taking the private property. If they have done that kind of thorough analysis, then they escape the provisions of Canady-Tauzin and must pay compensation under the Constitution.

Mr. CRAPO. I understand the point. But we still have a difference of opinion on this in terms of whether it is viable, because we have agencies being required it do an analysis but no penalty, no requirement that they are to be reviewed. In fact, under the very amendment we are talking about, there is no judicial review to be sure the agency is conducting the analysis properly. All the agency has to do is conduct an analysis to avoid the problem of compensation.

Mr. Chairman, the point I make here is that we have a basic difference in philosophical point of view. There are those who want to say the constitutional protection against a taking, a total taking of the property, is sufficient if we add to it a requirement that the agency study what they are doing, with no requirement that the agency must compensate or that the agency must be subject to review.

The basic difference here is this: Our agencies today have shown, and I think here is where the philosophical difference lies, I believe our agencies have shown the American people that they do not give enough consideration to private property rights.

There are those who are willing to trust the agency with simply reviewing that issue without requiring that when the agency reaches a conclusion that there is no better way to do this to impact private property, then even in that case, when there has been a review, if society's requirement so deems that that person's property should be diminished in value for society's purposes, then that should be compensated. That is the basic philosophic debate we are having today, and that is why we must not support this amendment.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. CRAPO was allowed to proceed for 2 additional minutes.)

Mr. CRAPO. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I want to make sure I understand this, if the gentleman will yield.

As I understand the amendment as drafted, if an impact analysis is done, which, by the way, is a positive step, particularly from the fact that they look for alternatives, there is no compensation directly from the government but you have your constitutional right for a taking, which means you go as a private landowner, spend half a million dollars in Federal court with endless appeals, questioning biologists. It is just a sham. If you are for the system as it is, vote for this; if you are for private property rights, you had better vote against it or you had better have good explanation for your constituents if you said you are for property rights.

Mr. CRAPO. That is right. Let me clarify one point. We have to understand, in this debate, the difference between protections under the U.S. Constitution and what this statute seeks to do. The Supreme Court has made it clear that the constitutional protections relate to what amounts to a full taking of the property. And when the Federal agencies do not fully take your property but simply regulate what you can do with your property to a lesser extent than actually taking it from you, the constitutional provisions under the Supreme Court decisions provide no protection. This statute is intended to fill that void and provide compensation when your property is diminished in value but not totally taken.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has again expired.

(By unanimous consent, Mr. CRAPO was allowed to proceed for 2 additional minutes.)

Mr. CRAPO. I Would yield further.

Mr. EHLERS. Mr. Chairman, Mr. Chairman, with your leave, I would like to comment on what the gentleman has said and also the gentleman from Texas. There is a very important point here that has not been emphasized in the debate.

The example of the gentleman from Texas about the red cockaded woodpecker is a good example of how it should be done. We had a similar situation in Michigan with the Courtlands Warbler a number of years ago. Once again we established areas within the national forest and within State forests and solved the problem without impacting private property owners.

The reason I mention this is that the portion of the Porter-Farr amendment which has not received emphasis in the debate is the part that requires the agency, as part of their private property impact analysis, to include alternatives to the agency action if indeed that would achieve the intended purpose and lessen that likelihood of a taking of private property, which is precisely what happened in Texas, which is precisely what happened in Michigan.

I can tell you from our experience, with takings in Michigan that once we turn the bureaucracy around and say, ''No, you cannot just simply say 'no' to some alternatives, you have to sit down with the property owner when they have a permit, you have to sit down with them and discuss alternatives with them.'' That solved virtually all of the problems that we had. Instead of just simply saying ''no,'' they have to look at alternative under this amendment. That is precisely what we did in Michigan, which solved the problems to a very great extent with wetlands, sand dunes, and other problems. It is something that the bureaucrats should have the sense enough to do in the first place without being told. But we told them and this amendment tells them, and it really takes care of most of the problems.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I thank the gentleman for yielding.

Mr. Chairman, let me just respond to the gentleman from Michigan.

First of all, I appreciate his sincerity. I have a feeling that he and I could probably sit down and work out most of the problems in a commonsense manner. The problem with the question on this amendment, though, is while it is mandated that those alternatives should be studied and brought forward, there is no mandate that the alternatives be implemented. So, in the red cockaded woodpecker example, instead of saying here we have an alternative, ''We are still going to take your property.'' There is no compensation. If you want to go to the Federal courts for half a million dollars, you can do that.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired once again.

(By unanimous consent, Mr. CRAPO was allowed to proceed for 1 additional minute.)

Mr. CRAPO. I thank the chairman.

Mr. Chairman, I want to address the comments which have just been made. It is correct that this amendment would be better than nothing, but it is much worse than the current statute we are considering. The reason is, as was said by the gentleman from Texas, there is no mandate in this amendment that the least oppressive or least intrusive alternative be selected. There are times when the agency is actually bound by statutory provisions that this Congress passes that require the agency to run roughshod over private property rights. In those cases, after there has been a congressional action or after there has been a full agency review, when it is decided private property rights must be diminished for some social purpose, there should be compensation, and this amendment does not allow for that compensation.

Ms. LOFGREN. Mr. Chairman, I move to strike the requisite number of words. I just want to make one point after listening to the debate here.

I think it is worth pointing out that the amendment provides the remedy to a landowner who feels they have been abused and their land has been taken and the remedy is to go to court. That is the same remedy that is provided in the underlying bill on line 10, page 4.

Ultimately, if you do not agree with the Federal Government, you are going to have to sue to get justice. I do not think there is anything inherently wrong with that.

I did want to say a few things as a member of the committee. I believe in the fifth amendment. As a matter of fact, as part of the Bill of Rights, I think it is a very important component of our rules of law and justice here in America. I personally have had some very unhappy run-ins with the Army Corps of Engineers in California, and I am not much of a fan of the Army Corps, but having spent the brief time the Committee on the Judiciary, which we had in marking up this bill, I would like to note that I fear that much mischief will be done by this bill, and I assume it is not mischief intended by the authors or proponents of the action, but when you think back to our law school training, the black acre and white acre, if the white acre is wet, any developer worth his salt is going to make sure that the development potential is focused on what is compensable by the Federal Government.

All of the developers that I know in California have not become successful by being stupid. There are sharp characters out there, good businessmen, they know how to play the angles, and that is why they have survived in business. And they will, and I understand why, there is nothing in this bill or law that would preclude them from coming down to the Federal Government because, ''Come on down, we got some free money for you right here under this bill.''

I really do believe this amendment should be supported, although I am not entirely pleased with every aspect of it.

I note the law in the area of takings is moving toward a more moderate approach with the Nolan case and the Dolan case, and now noting the regulatory impact must be proportional. I believe the court is going to move further in that area.

My concern with the underlying bill and the large reason why I am supporting this amendment is once again we will have a law of unintended consequences moving forward.

I believe this is an entitlement program that is virtually open-ended. At least we ought to make it a block grant, like we are doing with the school lunch program, to stem the loss.

I have many friends and associates and also supporters who are active in the private property movement in California who called me up and said that we should not support this, this is too extreme. They think the 10-percent limit is way too extreme. They think the Federal Government is going to bleed money off of this bill. I feel the same and would urge support of the amendment.

Mr. CRAPO. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield briefly to the gentleman.

Mr. CRAPO. I thank the gentlewoman for yielding.

I would just ask one question. I thought the gentlewoman said at the beginning of her debate that under this amendment, there would be a right for judicial review or the opportunity to go to court.

Ms. LOFGREN. Certainly.

Mr. CRAPO. As I read it, the amendment says neither the sufficiency nor any other aspect of a private property impact analysis under this section is subject to judicial review.

Ms. LOFGREN. Yes, but if you continue on, there is a note that the fact that compensation may not be due under this act by reason of the section does not affect the right to compensation for takings of private property for public use under the fifth amendment to the Constitution.

☐ 1730

Mr. CRAPO. So what the gentlewoman is saying is, ''You still have a right to go to court for a taking under the Constitution.''

Ms. LOFGREN. Reclaiming my time, yes, I am. The argument made was that somehow this was unfair because those who felt that they had a wrong would have to go to court. I point out under the existing bill, unless the agency

agrees, or the arbitration is successful, the individual still has to go to court. So the remedy ultimately is no different under the bill before us or under the amendment before us.

Mr. PORTER. Mr. Chairman, will the gentleman yield?

Ms. LOFGREN. I yield to the gentleman from Illinois.

Mr. PORTER. I think we ought to make clear that the preclusion of judicial review goes to reviewing the impact analysis. It does not affect anything else. In addition, we ought to be clear that the impact analysis is not something that is kept internal to the agency. That document is made public so that the private landowner would know exactly what is in it.

The CHAIRMAN. The time of the gentlewoman from California [Ms. LOFGREN] has expired.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, Members of the committee, when one of the sponsors of this amendment was quoted as saying this amendment will gut the bill and that is what we intend to do, he knew what he was talking about. This bill is designed to give property owners whose property is taken away from them by Federal regulation under the named statutes now a right to get justice at home, to get compensation at home, from the very agency, the very agents of this Federal Government who took their property away from them in the first place.

I say,

This amendment literally leads you right back to court if you want compensation. It literally says that anytime an agency doesn't want you to have the advantage of this bill to get justice at home, all they have to do is do some kind of an impact analysis. It doesn't even have to be a good one, doesn't have to be a sufficient one, doesn't have to be at all relevant even. It just has to be an impact analysis. The property owner can't go to court and say, ''You haven't done a good analysis.'' That's proscribed in this amendment. It can't go to court to say, ''They're playing with me again, they won't compensate me, they're about to regulate me, and they did this silly analysis that has nothing to do with what is going to happen to me.'' They can't go to court and say, ''They're playing with me again.'' All he or she can do is do what they can do today which is to spend a half million dollars through the Federal court systems, 10 years of litigation, and maybe never even reach the Supreme Court. Ten years Mr. Bowles in Texas spent, and he never got out of the Court of Claims, just got a judgment March of 1994.

My colleagues, there was a time in America when we in our society said, ''You have to sit in the back of the bus,'' said to some of us, ''You can't eat at a lunch counter,'' said to some of us, ''You can't vote in America,'' and some of those same people said, ''Oh, but there is a Constitution. Don't worry about it. If somebody has a problem with that, take it to court.''

There are others, many of us, who rose in indignation in the 1960's and said,

Wait a minute, that's wrong. No society ought to tell, under our Constitution, anyone that you got to go to court, the Federal court, to get a right to sit in the front of the bus, eat at a lunch counter, go to school, to vote, in this country.

So, Mr. Chairman, we passed civil rights laws. We passed the laws so that no child in America had to go to Federal court to get their civil rights.

Now let me tell my colleagues what the Supreme Court said in Dolan versus the City of Tigard:

We see no reason why the takings clause of the fifth amendment of the Constitution, as much a part of the Bill of Rights as the first amendment or the fourth amendment, should be relegated to the status of a poor relation in these comparable circumstances.

In short, we are dealing with a civil right. Property owns no rights; we do. Our Constitution does not give property some rights, it gives citizens rights, and the Bill of Rights was not written for a farm, or a forest, or even a home or backyard. It was written for people in this country.

And Dolan said, ''This civil right, to be compensated for the taking of your private property, is as sacred as free speech, as sacred as the right of assembly or the practice of free religion in our country,'' and for those of my colleagues who support this amendment, who come to this floor and say they want all the citizens to go to Federal court to get their rights under the fifth amendment, it is the equivalent of telling every citizen of this country: ''If you want civil rights, file a lawsuit. Don't count on Congress to define your civil rights and to make sure you're protected at home.''

The bill, as it is written without this amendment, will give small landowners who cannot afford a trip to the Supreme Court a chance to get their civil rights, and my colleagues ought to stand for that proposition in this Congress just as we stood in the 1960's for citizens to have their civil rights. The bill without this amendment will do what the bill with this amendment tells them all, ''Go back to court. You'll get played with again.''

I say to the gentleman from Illinois, ''Mr. PORTER, if I have time, I will yield in a minute.''

If the fabric of the relationship between this Government and the people who have created it has been torn in the last several decades, I believe it has been torn for one word and one word more important than any other.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

(On the request of Mr. DELAY and by unanimous consent, Mr. TAUZIN was allowed to proceed for 5 additional minutes.)

Mr. TAUZIN. Mr. Chairman, I believe the fabric of the relationship between those who created this Government and this Government has been ripped apart for one word more than any other. The word is ''arrogance.'' There is a reason why people in this country believe Government is no longer their servant, it has become their master. There is a reason why people in this country do not trust Government agents on their private property anymore. There is a reason why people in this country, and business, and industry fear the Government representatives even when they call him for help because they know the Government agency is coming around to find them, to regulate them, to somehow make their life more difficult instead of serving them as it once did, and the word that turns most Americans so angry at this body and this Government is that word ''arrogance,'' and it was epitomized at home for me in Ascension Parish just a couple of years ago.

I had a family move into my district from out of State. They bought a home in Ascension Parish. Their names were the Chaconases. They bought their home from a family called the Gautreaus. The Gautreaus built their home. They built it first checking with the Corps of Engineers to see if it was all right to dig a pond and to use the material from the pond as a foundation for the home. The Corps said, ''No problem.'' They built the home. Then they built another home across the street and sold that first home as an investment to the Chaconases. Oh, but guess what happened in the meantime. The Corps of Engineers showed up because some neighbor did not like the drainage situation in the area and reported him to the EPA.

Mr. Chairman, the Corps of Engineers showed up and said to the Chaconases, new owners, ''You may have to take down part of your home because it's built on a wetland,'' and the Chaconases said, ''What's going on here? Did anybody notice me before I bought this home that it was a wetland?'' The answer was no. They filed suit against the Gautreaus.

The Gautreaus got involved and said, ''What's going on here? You told me I could build that home, dig that pond. What's happening here?''

The Gautreaus were told, ''Well, guess what. The road, the only road going to both of your homes, is also located, we think, on a wetland. It's got to come out, too.''

And Mr. Gautreau, with all the innocence of a citizen who believes in government as a friend, who believes that these people were going to try to help him out of this mess, said, ''Wait a minute. If you take away my road, how am I going to get to my house?''

And that official of this U.S. Government who is paid by the taxes that Mr. Gautreau spends each year, sends to this Government, has the arrogance, the audacity, to tell that man, ''Take a helicopter. You want to get home after noon, after work, you've sweated and toiled and sent your tax dollars to this government, take a helicopter because we're taking your road.''

Mr. colleagues, Mr. Gautreau ought not to have to come to this Federal

court here in Washington to file a suit against that kind of arrogance. Mr. Gautreau ought to have the confidence and the trust of this Congress working behind him. He ought to have this bill which says he can get justice at home. He ought to be able to go to that Corps of Engineers office in New Orleans and the EPA office in New Orleans, say, ''You did this to me. Now you pay for my property damage you caused me. You give me enough money to relocate if I can't live here. If my home is built on a wetlands that is so important to so many of you in America, save it for God's sake. But pay me the decent value for my property, and let me relocate my family where I don't have to take a helicopter to go home.''

That is why this amendment needs to be defeated, because the Gautreaus of America and the Chaconases of America were victimized under this system and ought to have a right to justice, civil right justice, at home and not to have to come to the court in Washington, DC, any more than we made any citizen in the 1960's have to come to Washington to file a suit here.

Mr. PORTER. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Illinois.

Mr. PORTER. How does the individual get his rights asserted under the bill under the gentleman's amendment? He does not have to go to court——

Mr. TAUZIN. Reclaiming my time, Mr. Chairman, I say to the gentleman [Mr. PORTER] under our amendment you deal with the agency at home just as the Gautreaus did, and, when the agency at home tells you that you can't use your property, you have to take your lane down, you have to destroy the house you built and bought, if you have to do all of that, you go to that agency, and you say, All right, if my property is so important for the rest of you in America to take it from me, which you have a right to do under wetlands protection, under—'' let me finish—under endangered species protection, then let's go to arbitration and find out how much you've cost me and the arbitrator then takes account of what the appraised value of Mr. Gautreau's home was and the appraised value of the home across the street, the Chaconases', and they calculate the appraised value before the regulators came to visit him, they calculate the appraised value after they have been told to take it down, and then they get paid——.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

Mr. DELAY. Mr. Chairman, I ask unanimous consent that the gentleman from Louisiana [Mr. TAUZIN] get 3 additional minutes.

Mr. FRANK of Massachusetts. Mr. Chairman, reserving the right to object, we are stuck with their 12-hour rule which I am not crazy about, but we have already used up more than 6 hours on two amendments, and I am reluctant to have this go on. I will not object at this point, but I would ask that people understand they have put to a rule which already limits this important bill. This is an example of the unfairness of a 12-hour type rule. We are on the second amendment. I do not think anyone thinks anyone has been dilatory. We have had serious debate. Members have engaged each other. But while we have been trying to deal with this very complex issue we used up, as we started at about 11:25, 11:35, more than 6 hours. So, if they keep this up, we have other people who have important amendments.

I am not going to object further. I am going to have to object if people keep extending it, but I wanted to make it very clear the reason is that they are insisting on debating this very complex subject under such a restrictive rule that I cannot allow this because other people who have important amendments are going to be constrained, and I hope they will, on the majority side, take this into account in the future so they will not be restricting the debate this much.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. The gentleman from Massachusetts withdraws his reservation of objection, and without objection the gentleman from Louisiana [Mr. TAUZIN] is recognized for an additional 3 minutes.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I can just answer the gentleman from Massachusetts [Mr. FRANK] very quickly in that I am taking this time so that I do not have to take 5 minutes, but I just want to compliment the gentleman from Louisiana. That was one of the most eloquent speeches on this issue, and many other issues for that matter, that I have heard. The gentleman understands this issue better than any man in the House, and any woman in the House, and understands it so well. He has been pushing for property rights for American citizens for many years. He is part of this American revolution that we are experiencing right now.

We have made great progress with this American revolution. We passed the balanced budget amendment, we passed the line-item veto, we worked to rein in unfunded mandates, and this week we passed several very important regulatory reform measures. Today in this legislation we take a giant step forward by protecting private property interests.

Unfortunately, Mr. Chairman, the amendment offered by the gentleman from Illinois [Mr. PORTER] is a giant step backward. Make no mistake about it, the Porter amendment will deal a devastating blow to the rights of private property owners. It creates an enormous loophole which will prevent government agencies from being accountable for the costs they impose on American citizens.

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A single landowner would still be forced to shoulder the entire burden of regulations as long as agencies perform an impact analysis. But this impact analysis will be used by Federal bureaucrats to dodge responsibility for their regulations. And in the end, if the Porter amendment is adopted, the bureaucrats will get the land while the private property owners will once again get the shaft.

Mr. Chairman, the issue here is very simple: Do you support the rights of private property owners or do you support the power of government bureaucracies. My constituents as well as the constituents of the gentleman from Louisiana are sick and tired of the heavy hand of the Federal Government. They want relief from bureaucrats, not more power for the Federal bureaucracy.

Mr. Chairman, I urge my colleagues to defeat the Porter amendment and score a victory for the private property owners of this country.

Mr. SHADEGG. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong opposition to the Porter amendment and in support of the legislation as it stands before us. The Porter amendment, at least it has been acknowledged, will gut this bill, and that much and to that degree only has there been candor.

This bill is about the protection of private property rights, and I am personally outraged about the tone of the debate. First, we hear that it is too costly. You tell me when in America it is too costly to live up to the U.S. Constitution and the guarantees in that Constitution? You tell me when it is too costly.

It is not too costly to live up to the cost of the Endangered Species Act the Wetlands Act or the plethora of other laws we have pummeling the American people everyday. They are not too costly. And when they went through this body, we were told there would be no cost to them at all. Now we discover there are massive costs to them. But the opponents of this legislation call it too costly to pay those whose property rights they are taking.

Second, we are told it is too bureaucratic. I ask again, since when is it too bureaucratic to live up to the words of the U.S. Constitution which promise to each American citizen he will be compensated when his private property is taken?

But I could not stand silent any longer than when people took to the floor and cited my home State of Arizona in support of the Porter amendment and in support of defeating the legislation we have before us. It is critical that we set the RECORD straight. The fact is that the people of Arizona did not defeat a Private Property

Takings Compensation Act like we have before us in the Canady and Tauzin bill. What in fact they defeated was a bill very much like the Porter amendment.

What was put before the people of Arizona was not a private property takings compensation piece of legislation which would have said to people whose property was taken by government regulation. They did not have that before them.

What they had before them in the initiative which we recently debated in Arizona was a phenomenally bureaucratic piece of legislation very much like the Porter amendment which said what we ought to do is have a lot of government bureaucrats study the issue and do an analysis. At the end of the day it provided no remedy. The people of Arizona said that is not sufficient.

The people of Arizona believe in the fifth amendment. They believe it is not time for further bureaucracy, it is not time for an impact analysis, it is not time to empower bureaucrats to study the issue and, having studied the issue, no matter now valid the study, to deny people their private property rights. Rather, they want compensation. If, in fact, there are great and worthy purposes to be served by wetlands takings, by ESA takings, then so be it. But the people whose property is taken then deserve not bureaucracy, not words, but compensation for the property they have surrendered.

Mr. Chairman, I urge the defeat of the Porter amendment.

Mr. HASTINGS of Florida. I move to strike the requisite number of words.

Mr. Chairman, as I listen to the debate, I become genuinely concerned that all of us need to tone down a bit, for the reason that no one here wishes that anybody's property be taken without fair and just compensation. But I do believe that the Porter amendment would provide for that, and I do not believe that my good friend from Louisiana means to establish the rather extraordinary bureaucracy that likely will come into existence in order to be able to implement what is a well-intentioned bill.

Mr. Chairman, I yield to the gentleman from California.

Mr. FARR. Mr. Chairman, I want to point out the difference between the Porter amendment before you and the Tauzin amendment that you have adopted. If you are really interested in trying to solve the problem of the property owner, you will listen very carefully.

Because what the Porter amendment says is government, take a look before you do anything. The Tauzin amendment does not ask government to do anything except to act, and then to come back and bite you by suing you in court.

The Porter amendment says write down, government, what you are going to do and tell us what the impact will be. Is there a likelihood that there will be a taking? If so, write it down. Give us an assessment of the likelihood that that taking will occur under such action and write it down. The Tauzin amendment does not require that.

The alternatives that the government has to look to that would achieve the intended purpose and lessen the likelihood of taking the property, the Porter amendment does that. The Tauzin amendment does not.

Then you go to the other end and you say all right, what does Tauzin do? It says government, after you have done your action, the property owner has up to six months to write a letter and claim compensation for the portion of their property that has been taken. And if they are not satisfied, if the government does not pay them off right away, then what do you do? You go into the exact same court for the exact same reasons on the exact same issues that you go into court for the Porter amendment. The remedy is the same. It is the fifth amendment of the United States Constitution, and that is not changed by either of the bills.

To get some idea that the landowner is going to be more easily compensated, that the process is going to be cheaper, that the end result is going to be better under the Tauzin amendment, is absolutely wrong, and that is why the Porter-Farr amendment makes such good sense.

It is sense because it reaches a solution for the problem that occurs on the land by the landowner. It requires government to look before it leaps, to think before it acts, and to realize that if there is compensation need, to indeed pay for it. It is a much more sensible process to problem solving. If indeed that is what we were elected to do, then you will you support the Porter amendment.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. HASTINGS of Florida. I yield to the gentleman from California.

Mr. POMBO. Mr. Chairman, I wanted to ask one of the authors of the amendment a question on that. That is that at a recent Committee on Agriculture hearing on private property rights that the gentleman was in attendance at, the question of the Reagan Executive order did come up. One of the people that was testifying happens to be Roger Marzullo, the author of that particular Executive order. The question was put out whether or not it was still in force, and the answer was yes, it has never been rescinded. And when we asked does the current administration, as well as the Bush administration, did they feel that they were implementing the Reagan Executive order, the answer came back yes.

Now, if that is true, that it has never been withdrawn, then all we are doing by adopting something like the Porter amendment is reaffirming what we have now and telling the agencies to do what they claim to be doing now.

Mr. FARR. Mr. Chairman, if the gentleman will yield further, that is only partially correct. This bill takes it a lot further. One, it requires that the Government write it down, the analysis; two, that they publish it.

Mr. POMPO. That is in the Reagan Executive order.

Mr. HASTINGS of Florida. Mr. Chairman, reclaiming my time, the problem we have is making law by anecdote. As I have listened to the various speakers talk about rather extreme situations, each of those situations may very well have facts that are not put before us at a given time. For example, if there is a landfill that a person uses their property on, it may very well result in a different kind of result.

Mrs. CHENOWETH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I guess one of the things that strikes a freshman when they come to this very distinguished body is the fact that somehow the process just does not meet the reality. The process just does not meet the human misery that Government action has caused to happen, the human misery so adequately described by the gentleman from Louisiana [Mr. TAUZIN] and the human misery that I want to begin to impart to this body.

I had a client in Morrisville, PA, whose name was John Poszgai. Mr. Poszgai was a freedom fighter born in Hungary. When he was a young man he was a lieutenant in the Hungarian Army. He was a tank commander when the Russians came rolling into Hungary and the Hungarians, with a spark and desire to fight for freedom, were crying out to America to help them. And yet the Hungarian freedom fighters fought on their own.

When the Russian commanders took a bullhorn and told John Poszgai and the other tank commanders to turn fire on his own men, he instead turned fire on the Russians. The desire for freedom and liberty always burned very strongly in this man's heart and spirit.

We know what happened to the Hungarian freedom fighters in the late 1950's. But John Poszgai was able to escape with his life. He was able to set up a home, become a naturalized citizen in Morrisville, PA, and went to work for International Harvester. A man who would never dream he could come to American made the American dream come true. Yet here he found himself in America with the full rights and privileges, including owning property, as you and I have.

He was, of course, as I said, a naturalized citizen and very proud of his citizenship. John Poszgai's desire to be a good American far exceeded his ability to speak good English, but nevertheless he always paid his taxes, he raised his family, and he worked hard. And when International Harvester pulled out of Morrisville, PA, John Poszgai set up a truck repair store, using all the savings he had next door to his home, Mr. Chairman.

Morrisville is the industrial-commercial section of Philadelphia, and he was able, he and his Hungarian wife, were able to raise their two girls and put them through college.

Gloria and Victoria Poszgai were so thrilled when they graduated from an American college because of the hard work of their father, laboring in the fields as many of us have done, as many of us who understand the lay of the land and the ability to work and produce. And Mr. Poszgai and his wife received a present from their two daughters. On a billboard that the two girls rented after they graduated from college the girls wrote ''Thank you, mother and father. Thank you for helping us make the American dream come true, because you have. Thank you, from Vickie and Gloria Poszgai.''

The American dream didn't die there. There was a 14 acre parcel of property across the street from where the Poszgais lived. It had historically been used as an old dump. Mr. Poszgai checked with planning and zoning and the property, the 14 acre parcel of property, had been zoned as commercial and industrial, although illegally used as an old dump. The only cloud on the title was a ditch that ran counter, cater-corner across that property, for the purpose of exhausting rain water that had collected in the gutters of the streets at Morrisville across this property. But over the years an adjacent property owner had thrown about 7,000 tires out on this property.

The CHAIRMAN. The time of the gentlewoman from Idaho [Mrs. CHENOWETH] has expired.

Mrs. CHENOWETH. Mr. Chairman, I ask unanimous consent to proceed for 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Idaho?

Mr. FRANK of Massachusetts. Mr. Chairman, reserving the right to object, I just want us to understand again, and I am not going to object, but that is what your restrictive rule has forced us to. We have several more important amendments. The time is being eaten up by this process. I hope people on the other side asking for extra time, cutting into the time of other people who want amendments, will remember that the next time they vote for a rule which so restricts us on so important a piece of legislation.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Idaho?

There was no objection.

Mrs. CHENOWETH. Mr. Poszgai went in after mortgaging everything he had and buying up this 14-acre parcel of property, he cleaned it up, took 7,000 tires off the property, and was immediately charged with criminal violations of the Clean Water Act. He was arrested in his place of business and hauled off because he had destroyed a wetland by taking the tires off of his property.

Now, this is a Hungarian immigrant who had very little money. He did not even have a lawyer before. He was taken to court after his home was searched for guns, Mr. Chairman.

□ 1800

How in the world could a Federal Government even reason that there was reasonable cause to believe that a gun was used in the commission of a crime which was to remove 7,000 tires from private property? But nevertheless his home was searched. He stood trial. The judge narrowly instructed the jury about their only responsibility was to determine if Mr. Poszgai had destroyed a wetland or not.

The jury came back and said, yes, Mr. Poszgai had destroyed a wetland. This judge sentenced him to three years in Allenwood Federal Penitentiary, fined him $200,000, told him that he had to dig down on half of his property so that it became wetlands, this federal judge in Philadelphia. That is the reality of what we are trying to fight.

When I first met Mr. Poszgai, he was at Allenwood Federal Penitentiary. He finally served his sentence out. But that is what is happening to our people out there. That is what this bill will remedy I support the bill, and I oppose the Porter amendment.

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, listening to the comments of my colleague sounds like we are going to legislate by anecdotes. I take seriously some of the concerns that are raised about the individual circumstances, but certainly across the depth and breadth of this country, in terms of enforcing zoning codes, enforcing land use qualifications, if somebody chooses to in fact continue to oppose those and in such an unreasonable and unworkable manner, obviously it ends up with long appeals. It leaves one thinking you want to change the Constitution of the United States in terms of what constitutes a taking. I expect that you are going to be finding yourself in court for a long time at great expense. If you accept those precedents, in terms of what that means, then it obviously puts certain other limits on you.

But, Mr. Chairman, I rise because I want to, reluctantly, I rise to support the Porter amendment. I know my colleague's efforts in this effort are sincere, both the gentleman from Illinois Congressman, [Mr. PORTER] and the gentleman from Michigan [Mr. EHLERS] and the gentleman from California [Mr. FARR] but I am concerned about it because I think this is basically and fundamentally really a bad bill in terms of the 10 percent, the appraisal issues, and then of course then we have narrowed it down so now we are only focusing on what is the heart and soul of this. And that is to, in other words, stop the environmental laws, specifically the Endangered Species Act, with the lands, reclamation law. That is what this is really all about. That is what this is after.

While the word environment is not mentioned in the contract, the Republican Contract With America, the fact is that that has been the focus. We know that in terms of the regulations and the vendettas against the EPA. As I say to my colleagues, these did not become law because simply the Democratic majority for 40 years helped to write these. These are law because the American public wants them. Very often they are written on a bipartisan basis. I would like to really reclaim the word ''conservative'' and try to find some conservation in the conservatives in this body, because that is at the heart and soul. That is what the word means, is to conserve and to take care of the resources of this land for future generations. But that seems to be somehow lost in this new neo-conservative definition. I think that is a word we need to reclaim.

I would say further, Mr. Chairman, that this particular measure provides a screening device, a way to filter through and to get at the heart of it, to make the agencies look at whether or not in fact there is a takings, to go through a specific criteria in terms of stating that is outlined in the amendment. Then I think that is a useful activity in terms of avoiding the types of conflicts and the overreaching.

I would be certainly willing and understand that in some cases regulations do have an uneven effect. Sometimes they are unfair. And clearly, as legislators, that is why we are here day in and day out, year in and year out. We have not worked ourselves out of a job. We need to improve and work on many of these laws that affect the people that we represent.

That is what we spent the better part of our times doing, but trying to do this by some sort of a panacea, some sort of an overreaching, overarching activity which does not interpret the Constitution, I do not think any of us are equal to the task of improving on the Madisons and the Jeffersons in that particular sense. But what you are putting in place here is regulatory compensation. You are saying that the government is going to have to pay to govern.

I would just ask you to look, you say that this bill is not an entitlement because you subject it to appropriations. But you force the agencies in exercising the responsibility under law to take the money out of their coffers as they have it or from other agencies. That is going to require an appropriation and/or a cease and desist of the implementation of those particular laws.

We know, for instance, with the wetlands legislation, even a modest version of it, that the cost would be $10 to $15 billion. That is a CBO estimate, when they were making estimates on this. They cannot even estimate the

cost of this. But if your goal is to stop the implementation of these laws, then you do not worry about that, because there is not any money. Then you can stop it.

I would further say that if you are going to monitor what constitutes a 10 percent limitation on property, that somebody has to do that. If you buy these types of rights, as they are paid out, year in and year out, you literally have tens of thousands of small ownership that you have to monitor to make certain that those landowners do not use that. Imagine the bureaucracy that you would have to have in order to monitor.

I can tell my friends and colleagues, observing the types of easements on various lands owned by land management agencies, that the cost of managing those easements is far more expensive, for instance, than if we had bought the land outright in the first instance, is far more expensive because of the annual type of cost. They are contested. I would further make the observation that most law that deals with property and property law is uniquely State law.

I would ask my lawyer colleagues if I am correct in this, as you know, just a poor old science teacher from Minnesota, but most law that deals with property law is State law. So what you are doing in this instance is inviting the U.S. Congress to override and to set a precedent which will have to be followed by the States in terms of property law.

I do not think it is a good practice. You can move it in this direction, but we can come back at some particular time and move it in a different direction.

Mr. TRAFICANT. Mr. Chairman, I move to strike the requisite number of words.

I would like to say this to the managers of this bill. There are certain amendments that have been agreed to on both sides. I think the managers of this bill should sit down, bring those out, get them out of the way and put some time limits on the remaining amendments.

Mr. PORTER. Mr. Chairman, since it is my amendment, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from Illinois [Mr. PORTER] already has addressed the body. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. PORTER. I will take just 2 of the 5 minutes.

Mr. Chairman, let me summarize by saying, the legislation as it presently stands would take egregious bureaucratic action of a few cases and replace it with egregious legal action in every single case. An agency which does anything that affects private property would find itself in court. Every single regulation or the application of every single regulation would mean a lawsuit and ultimately the payment probably of compensation.

If the sponsors of the legislation think that there is too much going to court under the fifth amendment, I suggest that the way this legislation becomes law, every regulation you go to court, arbitration, we will delay it, yes, but you go to court. This is a lawyer's bill like no other lawyer's bill I have ever seen.

I suggest to the Members that the amendment that we have offered is a reasonable amendment. It was introduced by Senator DOLE as a piece of legislation in the Senate. It is built on the Reagan executive order except it goes beyond the executive order to make the assessment available to the property owner and to the public.

It maintains compensation under the Constitution for the taking of private property unless the agency fails to do the private property impact assessment on any agency action. Issuing a regulation or dealing with property in any way, there has to be an impact assessment. If they do not do it, then this legislation, the Canady-Tauzin, applies.

I commend it to the Members. I think it is a reasonable amendment. I think it handles the problem.

Ms. JACKSON-LEE. Mr. Chairman, I move to strike the requisite number of words.

I want to add my support to the amendment to H.R. 925, the Porter-Farr-Ehlers amendment, and to indicate that this is the fairest way to deal with property takings on behalf of citizens of the United States.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. PORTER] to the amendment offered by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. PORTER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 186, noes 241, not voting 7, as follows:

[Roll No. 191]

AYES—186

Abercrombie	Clayton	Eshoo
Ackerman	Clement	Evans
Andrews	Clyburn	Farr
Baldacci	Coleman	Fattah
Barrett (WI)	Collins (IL)	Fazio
Becerra	Collins (MI)	Fields (LA)
Beilenson	Conyers	Filner
Bentsen	Costello	Flake
Bereuter	Coyne	Foglietta
Berman	DeFazio	Ford
Bishop	DeLauro	Fox
Blute	Dellums	Frank (MA)
Boehlert	Deutsch	Franks (NJ)
Bonior	Dicks	Frelinghuysen
Borski	Dingell	Frost
Boucher	Dixon	Furse
Brown (FL)	Doggett	Gejdenson
Brown (OH)	Doyle	Gephardt
Cardin	Durbin	Gibbons
Castle	Ehlers	Gilchrest
Clay	Engel	Gilman
Greenwood	McDade	Rush
Gutierrez	McDermott	Sabo
Hall (OH)	McHale	Sanders
Hamilton	McKinney	Sawyer
Hastings (FL)	Meehan	Saxton
Hinchey	Meek	Schiff
Hoyer	Menendez	Schroeder
Jackson-Lee	Meyers	Schumer
Jacobs	Mfume	Scott
Jefferson	Miller (CA)	Serrano
Johnson (CT)	Mineta	Shays
Johnson (SD)	Minge	Skaggs
Johnson, E. B.	Mink	Slaughter
Johnston	Mollohan	Smith (NJ)
Kanjorski	Moran	Spratt
Kaptur	Morella	Stark
Kelly	Murtha	Stokes
Kennedy (MA)	Nadler	Studds
Kennedy (RI)	Neal	Stupak
Kennelly	Oberstar	Thompson
Kildee	Obey	Thornton
Klink	Olver	Torkildsen
Klug	Owens	Torres
LaFalce	Pallone	Towns
Lantos	Pastor	Tucker
LaTourette	Payne (NJ)	Velazquez
Lazio	Pelosi	Vento
Levin	Peterson (FL)	Visclosky
Lewis (GA)	Pomeroy	Walsh
Lipinski	Porter	Ward
Lofgren	Quinn	Waters
Lowey	Rahall	Watt (NC)
Luther	Ramstad	Waxman
Maloney	Rangel	Weldon (PA)
Manton	Reed	Williams
Markey	Reynolds	Wise
Martinez	Richardson	Woolsey
Martini	Rivers	Wyden
Mascara	Roemer	Wynn
Matsui	Roukema	Yates
McCarthy	Roybal-Allard	Zimmer

NOES—241

Allard	de la Garza	Hoke
Archer	Deal	Holden
Armey	DeLay	Horn
Bachus	Diaz-Balart	Hostettler
Baker (CA)	Dickey	Houghton
Baker (LA)	Dooley	Hunter
Ballenger	Doolittle	Hutchinson
Barcia	Dornan	Hyde
Barr	Dreier	Inglis
Barrett (NE)	Duncan	Istook
Bartlett	Dunn	Johnson, Sam
Barton	Edwards	Jones
Bass	Ehrlich	Kasich
Bateman	Emerson	Kim
Bevill	English	King
Bilbray	Ensign	Kingston
Bilirakis	Everett	Knollenberg
Bliley	Ewing	Kolbe
Boehner	Fawell	LaHood
Bonilla	Fields (TX)	Largent
Bono	Flanagan	Latham
Brewster	Foley	Laughlin
Browder	Forbes	Leach
Brownback	Fowler	Lewis (CA)
Bryant (TN)	Franks (CT)	Lewis (KY)
Bunn	Frisa	Lightfoot
Bunning	Funderburk	Lincoln
Burr	Gallegly	Linder
Burton	Ganske	Livingston
Buyer	Gekas	LoBiondo
Callahan	Geren	Longley
Calvert	Gillmor	Lucas
Camp	Goodlatte	Manzullo
Canady	Goodling	McCollum
Chabot	Gordon	McCrery
Chambliss	Goss	McHugh
Chapman	Graham	McInnis
Chenoweth	Green	McIntosh
Christensen	Gunderson	McKeon
Chrysler	Gutknecht	McNulty
Clinger	Hall (TX)	Metcalf
Coble	Hancock	Mica
Coburn	Hansen	Miller (FL)
Collins (GA)	Harman	Molinari
Combest	Hastert	Montgomery
Condit	Hastings (WA)	Moorhead
Cooley	Hayes	Myers
Cox	Hayworth	Myrick
Cramer	Hefley	Nethercutt
Crane	Hefner	Neumann
Crapo	Heineman	Ney
Cremeans	Herger	Norwood
Cubin	Hilleary	Nussle
Cunningham	Hilliard	Ortiz
Danner	Hobson	Orton
Davis	Hoekstra	Oxley

Packard	Schaefer	Tejeda
Parker	Seastrand	Thomas
Paxon	Sensenbrenner	Thornberry
Payne (VA)	Shadegg	Thurman
Peterson (MN)	Shaw	Tiahrt
Petri	Shuster	Traficant
Pickett	Sisisky	Upton
Pombo	Skeen	Volkmer
Portman	Skelton	Vucanovich
Poshard	Smith (MI)	Waldholtz
Pryce	Smith (TX)	Walker
Quillen	Smith (WA)	Wamp
Radanovich	Solomon	Watts (OK)
Regula	Souder	Weldon (FL)
Riggs	Spence	Weller
Roberts	Stearns	White
Rogers	Stenholm	Whitfield
Rohrabacher	Stockman	Wicker
Ros-Lehtinen	Stump	Wilson
Rose	Talent	Wolf
Roth	Tanner	Young (AK)
Royce	Tate	Young (FL)
Salmon	Tauzin	Zeliff
Sanford	Taylor (MS)	
Scarborough	Taylor (NC)	

NOT VOTING—7

Baesler	Gonzalez	Torricelli
Brown (CA)	Kleczka	
Bryant (TX)	Moakley	

☐ 1827

Mrs. SMITH of Washington and Messrs. MCCOLLUM, ROSE, and HILLIARD changed their vote from ''aye'' to ''no.''

Mrs. KELLY and Messrs. SCHIFF, RUSH, and FROST changed their vote from ''no'' to ''aye.''

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above recorded.

☐ 1830

AMENDMENT OFFERED BY MRS. SCHROEDER TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mrs. SCHROEDER. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mrs. SCHROEDER to the amendment in the nature of a substitute offered by Mr. CANADY of Florida; as amended: At the end of section 3(a) insert ''The amount of compensation made under this Act shall be decreased by an amount equal to any increase in value of the property that resulted from any agency action.''

Mrs. SCHROEDER. Mr. Chairman, actually the concept of this amendment is really fairly simple. It is rather a taxpayer protection amendment to make sure there would be no double-dipping under the takings requirement we are debating today.

Mr. Chairman, we all know that public property is one of America's basic foundations, and also we are concerned about the public good. That is why this issue is so difficult. But there are many areas where Federal action enhances the value of the property, and it enhances the value of the property but the person is also able to say that they get money back for a taking.

Mr. Chairman, again I would think that this amendment would not be objectionable by anyone because it is really a very simple concept, and, that is, that we want to make sure that we do not see on some magazine program on television how somebody has been able to use this law to make all sorts of extra money.

Let me give Members some examples how this could be done. Under the Tauzin amendment, the swamp-buster provision of the farm bill could be a taking, and that is very interesting. If you do not plow up wetlands, that is a precondition to receiving farm subsidies that we are already paying farmers not to farm. So if we were to consider then the bill also of the takings part, you would see someone getting a double dip. The farmer could get a double dip in his subsidy for not plowing and also the loss because it has been declared part of the wetlands. I do not think that is what anybody intends. I do not think that they want to doubly benefit people.

We over and over talk about how the Government takes property, but the Government has taken many actions in which we have readily enhanced the value of property.

Let me cite a few, because I think often we have forgotten that in this debate. I suppose the No. 1 issue would be the water issue. When the Bureau of Reclamation is out there, and that is under this bill. As you know, the sole mission of the Bureau of Reclamation is to provide cheap irrigation water for farmers. As you can imagine, the value of the land before they come in is a whole lot lower than it was after they come in. But since 1902, the Federal Government subsidized almost 86 percent of all the irrigation construction costs and therefore enhance the value of this farmland.

People will say, well, folks pay property tax on that enhanced value, but they pay it to the State, not the Federal Government. So the Federal taxpayer has worked very hard in upping those values of the land because it is considered part of the public good, and I do not think we want to see them also be able to ascertain that they were harmed in some manner because of that.

This is kind of a commonsense amendment, that if someone is pleading harm, at least you look to see whether the overall value went up.

You can do this in any number of other areas, too. When you look at highways, you can say a Federal highway goes through, and people can say that that was very disruptive. However, if you look at the value of land, we constantly find the value of land goes up the nearer it gets to a Federal highway because of access coming into it.

So we would not want to be able to say that they had diminished the value by having a highway go through for some usage but we also find that the overall increase went up.

One of my favorite stories from Colorado has to do with ski areas. When the ski areas would come in through the national forests, and most of our ski areas are in national forests, obviously they dump into valleys and most of the valleys were privately owned. So we had some people claiming that they were displaced shepherds, or displaced cow herders.

I suppose that is true, but the value of their land had increased so radically because they were now owners of land that became very, very valuable for condominium owners and ski resort areas and all sorts of other things, that to just focus on that one issue, I think we would look silly.

I think this should be a very simple concept, where we are talking solely about looking at what the Federal Government also does to increase the value.

Some other areas that I talked about earlier, the Army Corps of Engineers, when they create harbors, when they do navigation channels, when they restore beaches, when they shore up coastlines.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired.

(At the request of Mr. VOLKMER and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. I thank the gentleman from Missouri.

Basically what I am saying, Mr. Chairman, is that I do think when we are looking at this whole issue of takings, we have to look at the whole picture. I think everyone knows that if the Army Corps of Engineers is helping protect your property from flood, there is a value to that. I go back to the earlier letters that I had from the Army talking about how they felt if we did not have some of these commonsense things, it could almost stop what the Corps of Engineers does.

First of all, under this bill, any money would go directly out of the Army's budget. But I think we ought to at least look at the public good they are talking about and see if that particular property was enhanced in value, maybe not value to the individual owner but the overall price to that public good, or to that individual owner before we start assessing money that we think the taxpayer should be paying back.

I just think this is an easy, easy one. I would hope that this could be approved.

Mr. VOLKMER. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Missouri.

Mr. VOLKMER. I was listening to the statement of the gentlewoman from the beginning, and I thought the gentlewoman said something that perhaps is very minute but needed to be corrected for the record, something about farmers being paid not to farm?

Mrs. SCHROEDER. No, I was saying that under the 1985 farm bill, you could as a precondition for receiving farm

subsidies in some areas, they were paying farmers not to plow under wetlands. So you would not want them to be getting money under that 1985 bill that I understand is there and then also have that considered a taking.

Mr. VOLKMER. We do not pay farmers not to farm anymore. We have a CRP program that pays farmers not to use that land for CRP, but that does not decrease the value of the land. They get a payment on the CRP. Environmentalists and everybody agrees on that program that it is a good program.

Mrs. SCHROEDER. That is right. But that is part of my point.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has again expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. We have, and I think it is right, in the farm bill these incentives to be environmentally sane, is how we work on that. But then if we also say later on that the farmer can then also claim this as a takings while they are also getting——

Mr. VOLKMER. No, this is a voluntary program. It is a voluntary program. The farmer comes in and asks that the land be. So it is not a taking.

Mrs. SCHROEDER. That is exactly my point. You could do that and do the other, too, and I think you just want to make sure that you look at the whole thing, so you make sure someone is not double-dipping. This is just a sensible anti-double-dipping that is possible, the way I read the two laws together.

Mr. CANADY of Florida. Mr. Chairman, I rise to speak in opposition to the amendment.

Mr. Chairman, I think it is very important that we focus on the exact wording of this amendment and its very, very broad scope. The amendment says, ''The amount of compensation made under this act shall be decreased by an amount equal to any increase in value of the property that resulted from any agency action.''

The important thing to note is there we are not talking about the same agency action that resulted in the diminution of value, because, of course, if that agency action had one impact that would tend to increase the value and another that tended to decrease the value, that would all be netted out in determining what the actual diminution of value was that was caused by that.

What this will deal with is any agency action, no matter how unrelated to the agency action in question that caused the diminution, and any agency action that occurred at any time in the history of the Republic. If there happened to be a road in which the Federal Government was involved in the neighborhood, if there were any public works in the vicinity that were ever participated in or constructed with the use of Federal funds through an action of a Federal agency, that would be included in this. So what we would be talking about under this amendment is providing an offset for benefits that have been provided over the whole history of this country to the general public in that particular vicinity, against the costs that are being imposed on an individual property owner. I do not think that is fair.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. The gentleman is correct, and I guess we just disagree in what is fair. Because it is the taxpayer that is supporting the different Federal agencies, and I think that if one agency action has greatly increased the value of it, to then allow them to say on another area that it was a taking, we at least look at it.

Mr. CANADY of Florida. Reclaiming my time, what we are talking about here, though, are benefits that are provided to the general public and one thing we have to remember is that the individuals we are going to try to penalize in these circumstances are also taxpayers. They were paying taxes to help provide that benefit to the general public, of which they were beneficiaries, along with all the other people who might be in the vicinity. But to then come along and say, well, we are going to offset those benefits and that benefit you derived against this imposition that we are putting on you individually, at this point I do not think it is fair because they have already paid as taxpayers for those benefits they received as part of the general public. I believe the general public now should pay the cost of the burden that is placed on them as individuals as a result of its Government regulation.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield again?

Mr. CANADY of Florida. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I think, though, it is much more specific than the gentleman thinks, in that it says any increase in value to the property.

Mr. CANADY of Florida. Reclaiming my time, the gentlewoman said that my analysis of this was correct. Now, if you want to differ with my analysis at this point, I would like to know what has changed your mind in the last minute?

Mrs. SCHROEDER. If the gentleman will yield, I will explain it. Analysis part A was correct, in that any agency increasing the value, you could look at the whole picture. But part B, I thought you were intimating that this was some generic overall thing, and I am saying, no, it is more specific than that. Whatever the agency action was, whichever agency it was, if you look at that, it must have increased the value of the property. So it is not a general public thing, it is this property that we are talking about.

Mr. CANADY of Florida. Reclaiming my time, there are all sorts of agency actions that benefit the general public that will also increase the value of individual property owners. That is what much of public works is about. It benefits the general public but as a consequence also benefits individual property owners. These are benefits that are provided to all members of the public and what you want to do here is penalize these individuals who have been singled out for imposition of regulations because they have benefited just like everybody else. The important thing to remember here is they were paying taxes like everybody else, also, for those general benefits.

☐ 1845

Mrs. SCHROEDER. Mr. Chairman, if the gentleman will yield again, basically all I am saying is they cannot have it both ways. And I think that that makes sense.

Mr. CANADY of Florida. Reclaiming my time, the gentlewoman is really saying they cannot have it either way.

Mrs. SCHROEDER. No.

Mr. CANADY of Florida. You want to penalize them because they receive benefits like everybody else and I just do not think that is fair.

And another important thing I think you have to focus on here is there is no time limit on this. There is no time limit. We are talking about benefits that that property might have derived from the very beginning of the republic, and I do not think that makes sense.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is very important that the membership committee clearly understand what this amendment does and what it does not do. This amendment does not say that you take into account all of the pluses and minuses of the Government agency's action that is in question, reducing the use or the value, or changing the use of your property.

This amendment does not say that you weigh those pluses and minuses; the bill already does that. It says you look at the value of the property before and you look at the value of the property after. If the agency action has helped to increase the value and also decreased it in some way, those are going to be balanced out by the appraisal and the arbitration process, and you are going to get a commensurate measuring, a balancing of the positive and the negative effects of that agency's action on your property.

That is already in the bill. And so that is a concern you do not need to pass an amendment to do it, it is already in the bill.

Let us talk about what this amendment does do. This amendment requires the arbitration panel, the agency, to look at every single agency action in America that may have some impact on your property and may have helped its value out some time or other.

It will require that agency to do the most extensive and elaborate analysis of all Government agency actions ever done in the history of this country on your single piece of property. It is going to have to find out, for example, whether all of the roads built in America have enhanced the value of your particular piece of property; it is going to have to look at all of the harbors that were built, all of the drainage, all the levees, all the drainage, all of the public works that were accomplished in the history of this republic. It is going to have to look at how much we spent on defense because defending your property is certainly a Government action that enhances its value.

I mean this will be the most expensive, extensive review ever in the history of this country.

If this bill did not have in it, if it did not have in it provisions to make sure that when the appraisers look at the value of your property before and after their action, that you literally shake out the pluses and minuses and compensate for the difference, then maybe we would need that kind of amendment to do that, but it is already in the bill.

This amendment is clever; this amendment is absolutely devious. This amendment literally has the effect of saying that homeowners, property owners, farmers, ranchers, people on forestry land, anyone who might otherwise have a claim for a government taking is going to be defeated in that claim, because when this amendment gets through adding up all of the things that the Government has ever done in the history of this country in government action that may have enhanced the economic life of our country and thereby enhanced the value of our oaths properties.

By the way, all of the things which are paid for already, some of which we borrowed money to pay for, and are still paying at great interest rates with those borrowed funds, when it gets through doing all of that, let me tell you, you will have become so old, and your children will have become so old, your grandchildren will become so old that by the time you get the award, if you get any, the interest on that award will be astounding.

I suggest this is a clearer but a killer amendment. It ought to be defeated.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to my friend, the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Louisiana for yielding, and I enjoy listening to him talk, but let me tell you it is not quite as broad as the gentleman points out. Let me point out the second part is what I think we are talking about.

Mr. TAUZIN. Why is it not as broad as I have defined it? Would the gentlewoman tell me why the amendment which says any agency actions which have affected the property is not as broad as I have described it?

Mrs. SCHROEDER. The way I understand what my colleague is saying, he is saying if there is a mortgage deduction, everybody is benefited by an IRS mortgage deduction, so they could take that into account.

Mr. TAUZIN. I suppose if Alan Greenspan ever did us a favor in this country and lowered interest rates, that would be an agency action that enhanced our values, but I am telling you we cannot count all of these things in America at these arbitration proceedings and if the gentlewoman insists on doing that she kills this bill.

Mrs. SCHROEDER. If the gentleman will yield again, what I am trying to say is I think there are generic things that go all across the board to all taxpayers, that is one thing. I think clearly a reasonable, prudent person would read this as saying we are talking about agency actions that specifically increase the value of that piece of property, because they were near a dam or they were near an airport or they were near something. Now it is not all pieces of property because they are not all near that.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, just to follow the conversation of my good friend from Louisiana, I have no doubt that the gentlewoman has a noble objective, and I am also thinking she probably has some specifics in mind that at some point we might be able to support, and to meet the objective of stopping double dipping is something that we should certainly consider.

But in my community I was trying to think of how we could be impacted, various pieces of property, and we do have an interstate highway system that goes through the area. Every piece of property was enhanced. I do not know if that is what was envisioned by this particular amendment.

We also have an airport in the area, and when that airport was first opened and finally the construction was finished, every piece of property was enhanced in value.

There are numerous flood control projects in the area, some are very specific, and when those flood control projects have been developed and actually brought to completion, the property value in those particular areas have gone up. But that does not diminish the fact that all of the area that I am talking about has wetland problems, all of the areas that I talk about have had endangered species designations, and it would seem to me in reading the amendment and trying to be fair to the gentlewoman, that much of this is extremely general. And as I read this, I do not know how this would be interpreted by an agency trying to make a determination. And if the gentlewoman would like for me to yield, I will yield.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman for yielding. If you start out with land and it is valued very cheaply at like $10, and say a highway goes through or a harbor comes in or irrigation comes in and it suddenly goes way up in value so it is like now $300 an acre, which has been known to happen in many places, and then let us say there is some other Federal action that they claim is harmful, you ought to at least include what the Federal Government did to increase it if you have got those records from $10 to $300, if the gentleman sees what I am saying.

The other piece I am concerned about is I spoke earlier saying I worry that what we are going to do is send a message tonight to all lawyer wannabes, they ought to run out and study takings law because this is going to be the most profitable form of law ever.

You know and I know the cases in the past of someone who had an airport built by their house, their house went way up in value, but they said they wanted to live in the House and could not bake angel food cakes.

Mr. FIELDS of Texas. I appreciate the gentlewoman's explanation, but it really does not answer the fear I have, because the property I have been talking about is property that in many instances has been held for a long period of time by families. They have not gone out and solicited government to be going out with a road or airport or flood control project, but if they are subject to a wetland or endangered species designation they do have a right to a fair market value of that property. They did not have an intent to use the Federal Government in one instance to enhance their property and the Federal Government comes in in another instance and causes a diminution of the value.

Again, I have to oppose this amendment. Again, I think the purpose and objective of the gentlewoman is noble, but I do not see this objective being met with this particular general amendment.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Colorado [Mrs. SCHROEDER] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

The amendment to the amendment in the nature of a substitute, as amended was rejected.

AMENDMENT OFFERED BY MR. GOSS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. GOSS. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. GOSS to the amendment in the nature of a substitute offered by Mr. CANADY of Florida, as amended; In section 3(a), strike ''any portion'' and all that follows through ''10 percent'' and insert ''that property has been limited by an agency action, under a specified regulatory law, that diminishes the fair market value of that property by 30 percent''.

Mr. GOSS. Mr. Chairman, this is a very straightforward amendment. I do not think it will take a lot of time. It is in no way mischievous, it is exactly what it pretends to be and that is to change the threshold trigger for when a taking takes place.

In the legislation that we have before us, the ultimate trigger probably will be 10 percent of any affected portion of property. That could be at just about any part of the property. It is a very low percentage point, it is 10 percent or less triggers an automatic taking.

What I am proposing we do is we go back to a number we understood on the total parcel itself rather than determine what the affected portion is and we change the number to 30 percent. I offer this amendment in an attempt to bring a more reasonable standard to the Private Property Protection Act which we are dealing with here.

Let me say from the outset that I agree with the bill's sponsor that private property rights are a basic constitutional right and that in the light of some of the excesses we have seen in Federal regulation reaction that these rights certainly deserve more protection. And I commend my friend from Florida, and the gentleman from Louisiana, Mr. TAUZIN, especially for their great efforts to finally bring the bill off the shelf where the previous congressional leadership had placed it, hoping it would never see the light of day, but now we have to deal with it as we should.

I have some very grave concerns about the standard that H.R. 925 sets, as I said, including this 10-percent devaluation threshold on the affected property.

Under the Canady-Tauzin substitute to H.R. 925 a property owner must show only a 10-percent devaluation of a portion of his or her property to qualify for automatic compensation.

Mr. Chairman, I have grappled with the issue of planning and zoning at the city, county, State, and Federal level for a long time. I have been on the front lines for over 20 years and I am afraid that the 10-percent standard is neither practicable nor affordable.

As yesterday's New York Times Sarasota Herald-Tribune points out, I think wisely, a 10-percent difference in the appraised value on any land so easily arises from market factors, from different appraisal methods, for any number of reasons that have little or nothing to do with Federal regulations. Ten percent is within the margin of error, as they would say.

In my district of southwest Florida, land values fluctuate greatly every day and as anyone with experience in Florida real estate will tell you, the price, the actual price in the marketplace of a parcel of land sometimes has very little to do with its value. Nevertheless, there are customers.

To be workable, we must have a higher standard than the one in the bill before us, in my view and I think in the view of many others as well.

My amendment to raise the threshold to 30 percent of the entire property is an attempt to find a reasonable workable standard that everybody can define and clearly understand.

My other major concern with the 10-percent standard is that it is probably not affordable. But who could really tell whether it is or not. Mr. Chairman, one obvious outcome of the 10 percent on any affected portion is that the Federal Treasury could be flooded with claims both legitimate and otherwise that the low threshold for what I will call spot takings will encourage. As a strong fiscal conservative I have real trouble trying to support legislation that apparently invites such substantial costs, especially when we are already facing $200 billion-plus annual deficits and $5 trillion national debt.

There are other reasons to impose a higher threshold to trigger compensation. One that frankly comes to my mind is the burden we are probably going to be transferring to State and local government. There is clear evidence, especially in fast growth, low-lying waterfront areas that there is a coordinated relationship between Federal regulations and local land use regulations.

□ 1900

Simply put, local governments in some States rely on Federal regulations to help achieve community land use plans and goals. Of course, we should restrain any level of government from promulgating overzealous regulations, but that does not mean we should cripple the Federal Government's ability to use reasonable regulations which protect and provide for legitimate public health, safety, and welfare objectives in partnership with State and local government.

Mr. Chairman, I still feel that fundamental land use planning and zoning decisions should be made at the local level.

Interference from the Federal Government either to limit private property rights or to set a rigid formula for them is unwise and probably unworkable. However, if we are going to try to have a single Federal standard for private takings, then we must insure that this standard is both practical and affordable.

The CHAIRMAN. The time of the gentleman from Florida [Mr. GOSS] has expired.

(By unanimous consent, Mr. GOSS was allowed to proceed for 1 additional minute.)

Mr. GOSS. The 10 percent of affected area threshold is neither, in my view. Trying to do a quick and definitely unscientific overview of case law, I think it is fair to say that 30 percent of total market value is a whole lot closer to what our society has generally and traditionally accepted as qualifying as takings. Certainly that is true in the judiciary, and certainly the 10 percent of affected area threshold, in the Canady substitute, is a major departure, and likely a costly departure, I am afraid, into the unknown.

I am not arguing for consistency in the judicial branch in this, but I am stating that encouraging a nationwide frenzy of spot takings claims is poor legislation.

I urge my colleagues to join me in voting to raise the threshold to 30 percent of the entire parcel of land. We can understand that. We can deal with it. I think it will work.

Mr. CONYERS. Mr. Chairman, I rise to strike the requisite number of words.

I want to make sure we are talking about the 10 percent threshold going to 30 percent?

Mr. GOSS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Florida.

Mr. GOSS. My amendment calls for a 30 percent trigger for the total market value, for the market value of the total parcel.

Mr. CONYERS. And that changes the 10 percent that is presently in the bill?

Mr. GOSS. Yes. That changes 10 percent to 30 percent.

Mr. CONYERS. And that would reduce a number of, a large number, of claims that might be, while they may not be called frivolous, they certainly might not have the merit that the 30 percent threshold would have?

Mr. GOSS. I believe the gentleman's assessment is exactly correct.

Mr. CONYERS. I compliment the gentleman, and I wish I could tell him we accept the amendment on this side, but I do not have that authority.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Minnesota.

Mr. VENTO. I want to commend the gentleman from Florida for bringing forth this amendment. I think it points up, and I think the debate here should have brought to mind some problems with the issue. For instance, just the variation in terms of appraisal would itself lend itself to a great deal of variation in any area. That is one area where we know appraisals can come in such wide ranges in terms of the legislation being workable.

Second, each State, of course, defines the rights and the uses of land in a different way and, of course, this itself again enters in new variations in terms of what is going on.

I think unless we are going to completely hamstring the agencies in their ability to carry out some legislation like this, some sort of litigation, some sort of guidance ought to be provided. I think that from my point of view, it seems to me this regulatory compensation which is being provided in this bill for some specific laws is being cut from whole cloth. This is a entirely new allocation and definition of what constitutes compensation from the U.S. taxpayers.

Unless we are going to open up the coffers without limit, I think we have

to provide much more guidance than that which has been provided in the underlying legislation. It is seriously flawed. The legislation is seriously flawed. They do not know how they are going to administer it. They do not know how they are going to pay for it.

One would, I think, only be left with the conclusion that the effort here is, of course, to really pull the rug out from under the laws that we are talking about, and in doing so, superimposing a really radical new concept of regulatory compensation. They, or course, have left behind the health regulators now, they have left aside the safety regulations, and in the highway department, they have left aside those that affect energy issues. The only ones that are left are these focused, targeted in on these environment laws, the Wetlands and Endangered Species Acts, the issue in terms of water rights that are included in this legislation. And so they have targeted it.

So I think the gentleman's amendment may make this more workable. I still think it is a flawed concept. I think we ought to be careful, but I think this actually makes it more workable.

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. DAVIS. Mr. Chairman, I would just want to say I want to support the amendment offered by the gentleman from Florida.

I have been in local government for 15 years. During that time I have sat through hundreds of zoning cases, literally hundreds of condemnation cases, sat through a number of appraisals that have come across our desks, and looked at the variations, and 10 percent is clearly within that margin of error.

Many, many times we get three appraisals, and they are all over 10 percent apart from each other. I think without this amendment you almost raise the presumption that any action could reduce property by 10 percent.

Any we know that market conditions, interest rates, financing mechanisms, the seasons, school districts, all of these which, extraneous to the governmental regulation, could reduce, actually could reduce the property values by 10 percent. Thirty percent looks to me like a reasonable threshold. It is beyond the margin of error. It addresses the anecdotal horror stories that we have heard on this floor that I think need to be addressed.

Without this, I think the legislation raises the presumption that any regulation will adversely affect the property values by 10 percent. That is just within the margin of error. That has been my experience.

I support the gentleman's amendment.

Mr. CONYERS. I thank the gentleman.

I would say, in closing, that this corrects a very serious problem that is in the bill. Ten percent is, frankly, shocking.

I think this makes it more attractive. There are still a lot of problems, but I want to compliment the gentleman from Florida for bringing this forward, and I hope that bipartisan support would carry this amendment through to a successful conclusion.

Mr. POMBO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take the entire 5 minutes, but I just would like to rise in opposition, because when we originally came up with this bill that we have been working on and all of the changes that have been made to it, in order to get it through committee and get it to the floor, when we originally started, we were at zero, because I felt that it was important that Federal agencies not come in and take people's private property.

I am not comfortable going to 30 percent. I felt that it was a moderate, modest compromise to put in a threshold, because in the Constitution it does not say the Federal Government can take 10 percent of your land before they have to compensate you. They say that they cannot take your land, period.

So the whole idea of putting in a threshold, I fought against, and because it was brought to my attention that appraisals can vary by 10 percent and market conditions can force things one way or the other, that we need to put in some kind of a threshold because of the other parts of the bill that make it easier to be compensated, I agreed to go to 10 percent. I agreed that that would be a modest and moderate way of attempting to get at the problem.

Now, to stretch that and go to 30 percent, what we are saying is that the Government can take 29 percent of your property in order to qualify under the provisions of this bill.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. POMBO. I yield to the gentleman from Michigan.

Mr. CONYERS. Did I understand you to say that you were originally at 1 percent and you went to 10 percent?

Mr. POMBO. The original way, a year and a half ago, when we first started working at this, was at 1 percent, yes.

Mr. CONYERS. You have come a long way, baby, and maybe you can keep on moving down the road. We think 30 percent is pretty low.

Mr. POMBO. Reclaiming my time, I think we went far enough when we went to 10 percent. I mean, I was trying to be nice about that.

In regard to another comment that was made about zeroing in on environmental laws, I would just like to point out that when this was before Judiciary, that it was all Federal regulations; the compromise that was worked out involved the Federal regulations that provide about 90 percent of our problems. The other 10 percent we are going to have to take care of in other legislation. But the whole attempt here is being undermined, I believe, by moving the threshold to 30, because the Constitution is clear that you cannot take private property without compensating for it, whether at 10 or 30 or 50 or whatever number you want to plug in.

And because we are setting up a different method of being reimbursed, a different method of being compensated, I felt that it was important that we do that.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman and members of the committee, the courts have struggled very greatly with this question of partial takings. The most definitive statement occurs in the case of Florida Rock. I have quoted it several times here.

Florida Rock was on a third trip to the circuit court of appeals. It started in 1979. It still had not been finished.

But in the lastest expression, the court said that nothing in the language of the fifth amendment compels the court to find taking only when the Government divests the total ownership of the property. The fifth amendment prohibits the uncompensated taking of private property without reference to the owner's remaining property interests.

It went on to talk about the Supreme Court decision in Lucas, a wetlands case decided by the Supreme Court in which Mr. Lucas was ordered to be compensated for the value of his beachfront lot that had been regulated, and in that case by a State action. The court said that in Lucas the Supreme Court touched upon the question, but concluded that the facts before it did not call the question to order, because the State of South Carolina had conceded that they took all the value from this man's land.

The court found a categorical taking, and thus did not have to decide the partial-taking question. They went on in Florida Rock to say the following, Justice Stevens, writing separately, criticized as arbitrary the notion a landowner whose property is diminished at 95 percent should recover nothing, where an owner whose property is diminished a hundred percent should recover the land's full value. Justice Scalia also wrote saying that the analysis errs in the assumption the landowner whose depravation is one step short of complete is not entitled to compensation.

The Supreme Court clearly has not yet dealt with this difficult area, but the Florida Rock case did. It said no such conceptual problem exists when the taking is by physical occupation. If an owner of a property owns a 100-acre tract, for example, and the Government shows up and takes 95 acres for a public park, no one would argue that the 5 acres remaining somehow precludes the property owner from claiming entitlement to just compensation

for the loss of the 95, and in Florida Rock, it went on to say, and listen to this carefully, indeed, if the Government took just 5 acres and left the property owner with 95, there would be no question that the owner was entitled to compensation for the parcel that was taken, with severance damages even attributable to the remaining tract. In short, the court said a taking as low as 5 percent is compensable under the fifth amendment to the Constitution.

Indeed, if the Government showed up tomorrow on your property or mine and said that it wanted one of our acres, a half of our acres to build a road, would it matter how big an acreage we have? We would get compensated under the condemnation proceedings, and we should under the fifth amendment.

And so the court in Florida Rock made it clear partial takings of some percent of your value are, indeed, compensable.

Now, what is the gentleman from Florida offering? He is offering a 30 percent threshold, and he does not apply it to the parcel that is affected by the regulation. It is now 30 percent of the whole of the property, pretty much like the original bill that was filed that said 10 percent of the whole of the property.

What is wrong with that? Well, can you imagine the gaming that is going to occur under such an amendment? Thirty percent of what whole? How many acres? If I have got a hundred acres today and I have only got 5 acres taken, can I sell part of my acreage away and qualify? Can I give some of it to my brother-in-law and let him file the claim? Can we do some kind of, you know, sweetheart deal with a counter letter that says I really have not sold it, just to qualify of the 30 percent figure?

You see, 30 percent of a whole opens it up to all kinds of gaming. Ten percent of the whole would have done the same thing. Thirty percent threshold, if I read Florida Rock, is awfully high, but more importantly, 30 percent of a whole just does not work.

As much as I know my friend just wants to raise the threshold, when he applied the threshold to the whole of the property, he created a mess. He created a situation where every landowner can game the system away, and we will be in court interminably arguing whether somebody is trying to defraud the government by gaming the system, claiming they own less than the whole of their property.

Mrs. CUBIN. Mr. Chairman, I move to strike the requisite number of words. I will be very brief.

Mr. Chairman, I want to bring this down to terms that we can all relate to in a real sense rather than a theoretical sense.

First of all, I need to say this legislation is needed to remedy a fundamental wrong, and that is that the Federal Government forces property owners to shoulder the entire cost of public benefits such as preserving wetlands, conserving endangered species, and that sort of thing.

□ 1915

Now when we talk about the difference between 10 and 30 percent for compensation, I want to give you an example of something that happened in my district. There is a home builder in the area in the Jackson Hole trying to provide some badly needed housing. But the EPA came in and the Corps of Engineers came in, both of whom administer section 404 of the Clean Water Act, and they stopped all development. There were 6 houses practically complete. They threatened to tear them down. Three more foundations had been poured. They would not allow those houses to be built. In fact, they had to remove the foundations.

Twenty-two homes in all were planned for this, and the whole thing came to a stop. Even at 10 percent, the owner would have lost over $250,000.

Now, when we go to 30 percent, we are talking about a $750,000 loss. It is not unusual to have a farm or a ranch that is valued at $300,000. Again, 10 percent is a huge loss, but 30 percent can put them out of business.

I stand opposed to the Goss amendment, and I hope it will be defeated.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will try not to take the 5 minutes. I know we want to move ahead to the next amendment.

I just have to strongly rise to oppose my friend from Florida's amendment. I hesitate to do so because I know the gentleman from Florida [Mr. GOSS] is a strong Member and a well-thinking Member. I have to speak on this amendment.

I understand the argument about it is easier to prove a 30-percent loss of value than it a 10-percent loss of value. But I have to tell you something: I do not care if it is easier for the bureaucrats to determine whether it is 10 percent or 30 percent. I am interested in that homeowner, that farmer, that person that loses the value of that property because some bureaucrat or some agency has imposed a regulation on them. And I can guarantee you that if my house lost 10 percent of its value because of some action by the Federal Government, by the oppressive Federal Government, I will know that it is 10 percent but I can participate in the process and be able to bring forth my substantiation for a 10 percent loss in value.

What you are talking about is loss of value from 30 percent on is okay, but if you lose 29 percent or less of value, we do not care. The Federal Government does not care, this House does not care. So you just eat the loss of value of the 29 percent.

Mr. GOSS. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Florida.

Mr. GOSS. I thank the gentleman for yielding.

Mr. Chairman, that is not entirely true. You lose the automatic taking, you do not lose your constitutional right for less than 30 percent.

Mr. DELAY. Well, it is the same thing. What we are doing, what the gentleman is doing, is making it easier on the bureaucrats and easier for them to hide and manipulate and game the system.

I just think this is unfortunate. If you are strongly for property rights, if you are strongly for the rights of the property owner to be protected from loss of value of the property, then you will vote against the Goss amendment.

Mr. Chairman, earlier today I spoke of the historical basis for including the right to property in our Constitution. Federal overregulation has severely infringed on this right, and landowners are rebelling. Tonight we are fighting for the rights of private property owners to receive fair compensation for the loss of the use of their land.

As it stands currently, H.R. 925 requires the Federal Government to compensate a private landowner if regulations reduce the value of the property by 10 percent or more. The Goss amendment would raise that threshold to 30 percent.

Now, there is something here I don't quite understand. If you believe in the principle that property owners should receive compensation if the value of their land is reduced due to federal regulation, there is something strange about placing a percentage threshhold on that right.

I think property owners should receive compensation if government action reduces the value of their land by any percentage. However, I understand the difficulty involved in accurately appraising land value and believe 10 percent is a reasonable threshhold.

Raising that threshhold to 30 percent means if the value of your land is reduced by one quarter, you're out of luck. You simply can't use one fourth of your land or you lose one fourth of its market value if you choose to sell it.

The Supreme Court has said that the fifth amendment of the Constitution is designed to prevent the government from requiring a few individuals to ''bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'' If you believe in this principle, you must vote ''no'' on the Goss amendment.

Mr. DOOLITTLE. Mr. Chairman, I move to strike the requisite number of words.

I too rise, and I respect my colleague from Florida [Mr. GOSS], but I am very concerned about the effect of this amendment.

When you think about it, the fifth amendment obviously is designed to protect the individual from the oppressive acts of government. Think about your own house for a minute. Say it is worth $200,000, to take maybe an average; some will be worth less than that and some will be worth much more than that. But if we take the $200,000 figure, under the provisions of this amendment, we are saying the government can come in and can take away nearly 30 percent of that value, $60,000, and they can do it without your having any remedy except the traditional constitutional remedy, which has basically failed to

work for the common man or woman in this country.

The remedy of filing an action and working your way through the Federal court system, we know it takes up to 10 years, up to $500,000 in attorneys fees. You know what? If you are a big corporation, it is great; you have a staff of legal counsel who routinely handle matters and it just becomes part of the cost of doing business, which all the rest of us pay for as consumers.

But if it is your property, if it is your $200,000 value, we are saying under this amendment, ''Go ahead, government, we know that you are weak, we know that you need the help, we want to help you. So go ahead, take $60,000 of the value, no problem. We know you need it.''

Mr. Chairman, the government is not weak, the government is strong, the government is powerful, the government has an unlimited checkbook because it is our money as taxpayers, an unlimited checkbook to run people through the system, with their staff of attorneys paid at government expense.

We need to keep the value at 10 percent. Yes, we acknowledge a line has to be drawn for the purposes of his bill. But we think that line ought to be at 10 percent. 10 percent loss is significant. But, Mr. Chairman, a loss of 30 percent more often than not is not loss of the person's profit, his or her entire profit in the value of the property is out the window if the long arm of the government decides to reach out and regulate you in a fashion that destroys 29.9 percent of the value of your property.

So, Mr. Chairman, I would strongly urge our Members to oppose this amendment and to support the underlying legislation.

Mr. WYDEN. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Florida.

Mr. GOSS. I thank the gentleman for yielding. I will be very brief and not take advantage of his generosity.

I did want to say that the question of the Florida Rock case is certainly an interesting illustration. That is not the only case in the case law, as I think we all know. But I am not going to stand here and practice law without a license, but I think anybody who has done some work understands that the Supreme Court has done everything they can not to come to a final decision on this, because it has been just as hard for them as it is for us, and this remains sort of a case-by-case situation.

The reason we went to total property is because it is very easy to get an agreed-upon market price for a total parcel. It is very difficult to talk about whatever an affected area is on a percentage basis because we have three or four separate areas that may be involved in a low-lying piece of property, endangered species, 404, we may have several affected pieces of property. Once we have determined what the affected pieces of property are or what the fair market value of those are, then we figure out what the value is and we can tell what the 10 percent of that is. That is a long, complicated, new process that is going to create, in my view, another bureaucracy.

I think what we are trying to do is provide precision definitions so that private property owners know exactly what they are entitled to, under what circumstances, and so the government regulatory agencies know with precision what happens if they get the 30 percent, they have a problem on their hands.

I think it is fair because the other constitutional remedies certainly provide for anything less than the 30 percent as they do today.

Mr. DOOLEY. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the Goss amendment. I stand behind no one in my efforts to protect private property rights, but those of us in this delegation also have an obligation to protect interests of taxpayers. With the 10-percent threshold, we have established in this bill, we are creating the opportunity to create a tremendous windfall that, for those of us who are interested in protecting private property rights, insuring they are going to receive some compensation, if we leave it at that 10 percent, we are going to ensure that this whole system of compensation will implode, because 1 year after this bill would be passed and enacted, we are going to have so many cases and examples of people throughout this country who are gaming the system at 10 percent because they are going to be able to find an appraiser, a lawyer who is going to be able to market a service that they are going to go out to landowners who have seen, because of market fluctuations, a decline in value, and they are going to be able to tell you that on a contingency basis, ''I will go out and work your case, take it to an arbitration panel, and if I win on that and get compensation for 10 percent, I will take a portion of that fee.''

We are going to be creating a nightmare. The amendment offered by the gentleman from Florida [Mr. GOSS] is bringing some reason to this; it is ensuring that there has to be a threshold large enough that it cannot be used—that has to be greater than what can be normal and traditional fluctuations in the marketplace.

We all know, those of us in farming such as myself, we have seen fluctuations in market values over 10 percent every year. For those of us who have been involved in the Endangered Species Act, we have also seen cases in California in the last several years where we have had droughts where you have had the listing of endangered species, and how are you going to differentiate between what is the lowering of the value from the drought and because of the delisting of a species? There is no way you can do that. At 30 percent, we provide some reason and some balance.

I think this is a reasonable compromise and makes this legislation far more effective.

Mr. BARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would respectfully say to the last speaker the nightmare is here, the nightmare is here because we have had year upon year of Government agencies coming in and running roughshod over property owners of this country.

The bill before us right now tells the Government in two words something that the voters and the taxpayers and landowners of this country have been voiceless to tell the Government for generations now, and those two words are, ''Back off.''

This bill tells the Government, ''Back off.'' If you have a legitimate claim to this property, no matter how much you take, you have to pay a legitimate price to the property owner for that. Under the amendment that my distinguished friend from Florida is proposing, the gentleman from Florida, that ''Back off'' becomes, ''Please don't.'' We need to hold the line here, we need to stand up for property rights. That is what brought us to this Congress. Let us not fail the American people. We need to defeat this amendment and support the underlying legislation.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. GOSS] to the amendment offered in the nature of a substitute by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GOSS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 210, noes 211, not voting 13, as follows:

[Roll No. 192]

AYES—210

Abercrombie	Coleman	Foglietta
Ackerman	Collins (IL)	Foley
Andrews	Collins (MI)	Forbes
Baldacci	Conyers	Ford
Barcia	Costello	Fowler
Barrett (WI)	Coyne	Frank (MA)
Bass	Davis	Franks (NJ)
Becerra	DeFazio	Furse
Beilenson	DeLauro	Gejdenson
Bentsen	Dellums	Gephardt
Bereuter	Deutsch	Gibbons
Berman	Dicks	Gilchrest
Bilbray	Dingell	Gilman
Bilirakis	Dixon	Gordon
Bishop	Doggett	Goss
Blute	Dooley	Green
Boehlert	Doyle	Greenwood
Bonior	Durbin	Gutierrez
Borski	Ehlers	Hall (OH)
Boucher	Engel	Hamilton
Brown (FL)	English	Harman
Brown (OH)	Eshoo	Hastings (FL)
Cardin	Evans	Hefner
Castle	Farr	Hilliard
Clay	Fattah	Hinchey
Clayton	Fazio	Hobson
Clement	Fields (LA)	Jackson-Lee
Clinger	Filner	Jacobs
Clyburn	Flake	Jefferson

Johnson (CT)	Miller (CA)	Sanford
Johnson (SD)	Miller (FL)	Sawyer
Johnson, E. B.	Mineta	Schroeder
Johnston	Minge	Schumer
Kanjorski	Mink	Scott
Kaptur	Mollohan	Serrano
Kelly	Moran	Shaw
Kennedy (MA)	Morella	Shays
Kennedy (RI)	Nadler	Skaggs
Kennelly	Neal	Slaughter
Kildee	Nethercutt	Smith (NJ)
Kleczka	Oberstar	Spratt
Klink	Obey	Stark
Klug	Olver	Stokes
Kolbe	Pallone	Studds
LaFalce	Pastor	Stupak
Lantos	Payne (NJ)	Taylor (MS)
Lazio	Pelosi	Thompson
Leach	Peterson (FL)	Thurman
Levin	Pomeroy	Torkildsen
Lewis (GA)	Porter	Torres
Lincoln	Portman	Towns
Lipinski	Poshard	Tucker
Lofgren	Pryce	Upton
Lowey	Quinn	Velazquez
Luther	Rahall	Vento
Maloney	Ramstad	Visclosky
Manton	Rangel	Walsh
Markey	Reed	Ward
Martini	Regula	Waters
Mascara	Reynolds	Watt (NC)
Matsui	Richardson	Waxman
McCarthy	Rivers	Weldon (PA)
McDermott	Roemer	Williams
McHale	Ros-Lehtinen	Wise
McKinney	Rose	Wolf
Meehan	Roukema	Woolsey
Meek	Roybal-Allard	Wyden
Menendez	Rush	Wynn
Meyers	Sabo	Young (FL)
Mfume	Sanders	Zimmer

NOES—211

Allard	Dornan	Knollenberg
Archer	Dreier	LaHood
Armey	Duncan	Largent
Bachus	Dunn	Latham
Baker (CA)	Edwards	LaTourette
Baker (LA)	Ehrlich	Lewis (CA)
Ballenger	Emerson	Lewis (KY)
Barr	Ensign	Lightfoot
Barrett (NE)	Everett	Linder
Bartlett	Ewing	Livingston
Barton	Fawell	LoBiondo
Bateman	Fields (TX)	Longley
Bevill	Flanagan	Lucas
Bliley	Fox	Manzullo
Boehner	Franks (CT)	McCollum
Bonilla	Frelinghuysen	McCrery
Bono	Frisa	McDade
Brewster	Frost	McHugh
Browder	Funderburk	McInnis
Brownback	Gallegly	McIntosh
Bryant (TN)	Ganske	McKeon
Bunn	Gekas	McNulty
Bunning	Geren	Metcalf
Burr	Gillmor	Mica
Burton	Goodlatte	Molinari
Buyer	Goodling	Montgomery
Callahan	Graham	Moorhead
Calvert	Gunderson	Murtha
Camp	Gutknecht	Myers
Canady	Hall (TX)	Myrick
Chabot	Hancock	Neumann
Chambliss	Hansen	Ney
Chapman	Hastert	Norwood
Chenoweth	Hastings (WA)	Nussle
Christensen	Hayes	Ortiz
Chrysler	Hayworth	Orton
Coble	Hefley	Oxley
Coburn	Heineman	Packard
Collins (GA)	Herger	Parker
Combest	Hilleary	Paxon
Condit	Hoekstra	Payne (VA)
Cooley	Hoke	Peterson (MN)
Cox	Holden	Petri
Cramer	Hostettler	Pickett
Crane	Houghton	Pombo
Crapo	Hunter	Quillen
Cremeans	Hutchinson	Radanovich
Cubin	Hyde	Riggs
Cunningham	Inglis	Roberts
Danner	Istook	Rogers
de la Garza	Johnson, Sam	Rohrabacher
Deal	Jones	Roth
DeLay	Kasich	Royce
Diaz-Balart	Kim	Salmon
Dickey	King	Saxton
Doolittle	Kingston	Scarborough
Schaefer	Stenholm	Vucanovich
Seastrand	Stockman	Waldholtz
Sensenbrenner	Stump	Walker
Shadegg	Talent	Wamp
Shuster	Tanner	Watts (OK)
Sisisky	Tate	Weldon (FL)
Skeen	Tauzin	Weller
Skelton	Taylor (NC)	White
Smith (MI)	Tejeda	Whitfield
Smith (TX)	Thomas	Wicker
Smith (WA)	Thornberry	Wilson
Solomon	Thornton	Young (AK)
Souder	Tiahrt	Zeliff
Spence	Traficant	
Stearns	Volkmer	

NOT VOTING—13

Baesler	Hoyer	Schiff
Brown (CA)	Laughlin	Torricelli
Bryant (TX)	Martinez	Yates
Gonzalez	Moakley	
Horn	Owens	

□ 1945

The Clerk announced the following pair:

On this vote:

Mr. Moakley for, with Mr. Horn, against.

Mr. KIM and Mr. SAXTON changed their vote from ''aye'' to ''no.''

Mrs. THURMAN and Mr. BARCIA changed their vote from ''no'' to ''aye.''

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above.

PERSONAL EXPLANATION

Mr. HOYER. Mr. Chairman, I wish to have it noted that I was unavoidably absent on rollcall No. 192. Had I been present, I would have voted ''aye.''

Mr. CANADY of Florida. Mr. Chairman, I move to strike the last word.

Mr. Chairman, it is my intention to move to rise at 9:35 p.m. at the completion of 10 hours of debate under the 5-minute rule.

Mr. CLINGER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to engage in a colloquy with the gentleman from Indiana [Mr. MCINTOSH] regarding his amendment with the gentleman from Tennessee [Mr. BRYANT] to the Tauzin amendment.

Mr. Chairman, the amendment would broaden the scope of the bill's compensation provisions to all of the Clean Water Act, rather than just the section 404 permitting program.

Is it the gentleman's intent, I say to the gentleman from Indiana, to address concerns about EPA's nonpoint source management program?

Mr. MCINTOSH. Mr. Chairman, if the gentleman will yield, that is correct. The gentleman from Tennessee [Mr. BRYANT] and I have an amendment where property owners, members of the agriculture community, and others who are increasingly concerned about the impact of a Federal nonpoint source program on private property rights would receive protection.

In fact, the American Farm Bureau has expressed similar concerns about not only section 319, but the Coastal Zone Management Act as well. They support efforts to address these issues in the context of H.R. 925.

Mr. CLINGER. I share the gentleman's concerns and appreciate his leadership on this issue. As the vice chairman of the Transportation Infrastructure Committee and speaking on behalf of my chairman, the gentleman from Pennsylvania [Mr. SHUSTER], who is presently serving as the Chair, I can assure the gentleman that he is committed to a thorough review of the nonpoint source pollution programs and any other EPA program that might adversely affect private property rights in the context of the Clean Water Act.

In fact, our committee has scheduled a markup of a comprehensive Clean Water Act reauthorization over the next several weeks.

Wetlands reform and flexible nonpoint source pollution programs, both as part of the Clean Water Act and the Coastal Zone Management Act, will be very much a part of the debate. To the extent our hearings and review on nonpoint source pollution indicate a need to impose specific provisions on takings and compensation, we will be happy to work with the gentleman from Indiana, the Farm Bureau, and any other interested party.

Mr. MCINTOSH. I thank the gentleman from Pennsylvania.

Mr. BRYANT of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I yield to the gentleman from Tennessee.

Mr. BRYANT of Tennessee. Mr. Chairman, I would respectfully withdraw my amendment.

AMENDMENT OFFERED BY MR. WYDEN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. WYDEN. Mr. Chairman, I offer an amendment to the Canady substitute.

The Clerk read as follows:

Amendment offered by Mr. WYDEN to the amendment in the nature of a substitute offered by Mr. CANADY of Florida, as amended:

In section 5(a)(2) strike the period and insert '', or''.

At the end of section 5(a), insert:

with respect to an agency action that would prevent or restrict any activity likely to diminish the fair market value of any private homes.

In section 9, insert the following new paragraph after paragraph (4), and redesignate subsequent paragraphs accordingly;

(5) the term ''private home'' means any owner occupied dwelling, including any multi-family dwelling and any condominium.

Mr. WYDEN. Mr. Chairman, most of our citizens look at the title of this legislation. It has a sweeping name, the Private Property Protection Act. When you look at the sweeping title of this bill, one assumes that all American property owners are protected. In fact, this legislation protects only a limited group of private property owners, those property owners whose use or development of their property is regulated by the Federal Government.

The typical homeowner that we all represent, and there are 65 million of them, live in an already-constructed

home, they use their property in a typical fashion, and they are not regulated by the wetlands law, the endangered species law, the reclamation law, and the various laws outlined in this bill, and that is why those 65 million typical homeowners are not protected under the legislation.

I believe that these typical homeowners are going to be surprised that they are not protected. I think they deserve consideration, and it is why I offer this amendment on behalf of myself and the gentleman from Maryland [Mr. GILCHREST], a bipartisan amendment, to make sure that the typical homeowner gets a fair shake and that some needed balance is brought to the legislation.

As written now, the legislation provides exceptions when agencies do not have to pay compensation for agency actions that diminish the value of private property. This amendment that I offer with the gentleman from Maryland simply adds another exception when compensation does not have to be paid, so as to make sure that typical homeowner gets a fair shake.

We stipulate that you would not have to pay compensation when the regulated property owner's activity would actually decrease the value of those homeowners that live in the adjoining area. This amendment would enable Federal agencies to avoid a Hobson's choice of either restricting development and incurring liability to the developer, or allowing the development to proceed, even when this will cause a typical homeowner to suffer a devaluation their property.

Let me use an example very briefly. A property owner wants to develop a 10-unit subdivision. If the Corps of Engineers tells us the developer of the proposed subdivision that one of the units is a wetland and cannot be developed, under the legislation the Corps is liable to pay compensation. The corps's only choices are to write a check or let the developer fill in the wetland. To conserve scarce funds, the Corps often decides to let the developer fill the wetland. Wetlands often help control flooding by acting as sponges to soak up rainfall. When a wetland is filled, the excess water has to find someplace to go, and that could be the basement of one of the neighbors of a homeowner who lives downstream from the development.

Under the bill as it stands now, even if the corps knows that allowing the developer to fill in the wetland might increase the risk of flooding to the homeowner downstream, the corps would have to pay compensation to the developer if it denies the permit.

Under this amendment, the corps could deny the permit to fill in the wetland without incurring any liability, if it was determined that denying the permit was the lesser of the evils, that greater damage would be done to those homeowners who live downstream.

I would also like to note this would help the corps to preserve its limited budget for flood control and other important activities.

Mr. Chairman, I want to thank the gentleman from Maryland [Mr. GILCHREST] who worked with me on this legislation. We feel with this amendment the bill can protect the 65 million typical homeowners and be a true Private Property Protection Act.

Mr. GILCHREST. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I think this is well crafted, well thought out. It gives some consideration to the problem of all property rights for all Americans and not just a few.

Just to make a comment, as we go through this debate and as we begin to ensure the protection of all Americans against insensitive, overregulated bureaucrats, I think we must continue to keep two things in mind: One, all Americans, and not just those few who are filing for Federal permits, all Americans must know that their property is to be protected not just from takings by regulations, but protected from pollution from other people that develop.

□ 2000

The other thing I think we have to keep in mind is the fact that when we manage, I think we would all agree that when we manage where we live, that we cannot manage as if there are no people. I think that is where we got into some problems around the country: ''Let us manage this, and you cannot do that and you cannot do that because we have a certain species that we do not want to become extinct.''

We all know we cannot manage thinking there are no people, but by the same token, we cannot manage thinking there are no species out there that support the resources that support people on the planet.

Mr. Chairman, if we believe people should be compensated when their property is devalued, then let us not fool around. This amendment is based on a bill whose purpose is to ensure that people are compensated in cases where their property is devalued by polluting actions of others.

That bill, our bill, H.R. 971 is the Homeowners Protection Act. Unfortunately, the entire Homeowners Protection Act would not be germane to this bill. Get that, the Homeowners Protection Act, which protects private property, is not germane to this bill; and I hope Members do not miss the irony, protecting homeowners is not germane to a private property rights bill?

However, for today, the amendment that we are now offering is the best we can do. The amendment simply says that agencies need not provide compensation in cases where the proposed regulation is designed to prevent actions which would reduce the value of other private property. In other words, the amendment says that we should not pay people, we should not pay people to refrain from polluting other people's property.

How can any bill entitled the Private Property Protection Act not contain that? You and your property should not be paid to refrain from polluting somebody else's property.

Most environmental law is designed to prevent people from using their property in such a manner that they adversely affect other private property or public property. In my district, every time someone develops a wetland, they increase the amount of runoff into the Chesapeake Bay, thereby very often increasing the toxic levels of nitrogen in the water. This reduces the value of the homeowners who live near the water, because the water is not that clean or productive, and it certainly reduces the value of a person's right to go fishing there.

Mr. Chairman, I ask my colleagues, if they are for all property rights and all people, support the Wyden amendment.

Mr. CANADY of Florida. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I want to point out to all the Members the specific provision that is contained in section 5 of my substitute amendment. In that provision we are covering the sort of situation that the gentlemen who are proposing this amendment are concerned about.

I will say that they go beyond, far beyond, what we do to protect landowners from hazards to the public health or safety or damage to their specific property. What this amendment in effect does is really get the Federal Government into making zoning type decisions and distinctions between properties that are more appropriate for a local zoning board to be making.

By saying that the agency will consider whether a particular permitting action would restrict any activity likely to diminish the fair market value of private homes, they are in fact engaged in the sort of decision-making that a local zoning authority should be engaged in.

Mr. Chairman, the important matter to understand here is that State nuisance laws and other State laws already will provide protection for the interests that are sought to be protected here, and that we should not be establishing this zoning type of consideration at the Federal level.

Mr. WYDEN. Mr. Chairman, will the gentleman yield on that nuisance point?

Mr. CANADY of Florida. I am happy to yield to the gentleman from Oregon.

Mr. WYDEN. Mr. Chairman, what troubles me is this legislation creates a Federal express line where the developer and commercial interests can come in and have their claims addressed, but when it is the typical homeowner, under this bill we say ''Sorry, Charlie, you do not get in the

same place as the commercial interests. Go to the State and local level and see if things will work out.''

That is the reason I think this bill has a double standard, one set of rules for the commercial interests, another set of rules for the typical homeowner, and why we seek to promote some balance.

I thank the gentleman for yielding.

Mr. CANADY of Florida. Mr. Chairman, I think the point we need to understand here is that people have a right to use their property. The presumption the gentleman seem to be operating off of is that people do not have a right to use their property, they do not have a right to the value of their property.

I simply disagree with that. The philosophy behind this bill is that people do have a right to their property. When the Federal Government is going to impose restrictions on them that prevent them from using their properties, and those restrictions significantly diminish the value of that property, they are entitled to compensation.

I understand there is a difference of opinion on that subject. I think what is happening here, Mr. Chairman, is we are clouding that issue. I will not say it is an attempt, but I think the effect of what is going on here is to obfuscate that critical issue, when the interest that the gentleman purports to be protecting, and the gentleman from Oregon, Mr. WYDEN, is my friend, and I accept his good faith in this, however, the interests that the gentleman is attempting to protect here are interests that are already protected by local zoning ordinances.

Let me point out, Mr. Chairman, that the interests that we are attempting to protect do not receive that same sort of protection. I think that is something that is important to understand.

Mr. WYDEN. Mr. Chairman, will the gentleman yield further?

Mr. CANADY of Florida. I yield to the gentleman from Oregon.

Mr. WYDEN. Mr. Chairman, there are instances, of course, where the impacts of pollution are dispersed over a large area that are not covered under local ordinances. There are instances of pollution being dispersed across State lines.

Mr. CANADY of Florida. Reclaiming my time, Mr. Chairman, I think it is important to understand the impact of the Tauzin amendment. The gentleman is talking about pollution. The gentleman is talking about things that are not covered by this bill to begin with.

If the gentleman will look at the scope of the programs we are covering here, the sort of horribles that the gentleman is trotting forth are not possible. We are not going to provide compensation in those circumstances.

Mr. WYDEN. If the gentleman will yield further, I would like to stipulate that I think there are takings, and there are certainly takings that warrant compensation. What I am concerned about is we are not factoring in the consideration for the other people getting hurt.

Mr. CANADY of Florida. Reclaiming my time, what I would like the gentleman to stipulate is that the scope of this bill is such, based on the Tauzin amendment, that we are not going to get into the kind of problems that the gentleman is talking about. It is just not covered.

If the gentleman will look at those particular programs, he will see we are not talking about programs that deal with controlling pollution. That is not covered in this bill.

Mr. WYDEN. If the gentleman will continue to yield, I laid out a problem involving wetlands not covered under the law.

Mr. CANADY of Florida. Mr. Chairman, the bill is very clear on that point. I think what we have here is a red herring that is being raised. I understand what is going on, but I think it is unfortunate that we are not focusing on what the bill actually does. I have no problem with criticizing the bill, but let us focus on what this actually does.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. If this amendment passes, if it becomes part of this bill and it becomes law, the gentleman we began this debate discussing, Mr. Bowles in Texas, will lose his case. It took him 10 years to get the claims court to say that the Federal Government took his property when it said he could not build his house. All he wants to do is build a house on a subdivision lot next to two neighbors who have houses on their subdivision lot.

The gentleman from Maryland [Mr. GILCHREST] needs to pay, I hope, some attention to this. Mr. Bowles is not asking to pollute anybody. To use his property to build a house is not pollution, and to associate all the legitimate uses people put their property to pollution is something the courts have refused to do.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I am happy to yield to the gentleman from Maryland.

Mr. GILCHREST. Mr. Chairman, I do not think the courts have refused to do that. I think the courts have, to a certain extent, adequately dealt with that under the fifth amendment, but just because someone wants to build a house does not mean they are going to pollute anything. As you say, that depends on where the house is built.

Mr. TAUZIN. Let me reclaim my time, Mr. Chairman, and quote from the Court of Claims in the Florida Rock decision, again: ''Government may not circumvent the takings clause by defining an activity as pollution and rendering it noxious by fiat.'' It said in Florida Rock that you cannot get away with that anymore. You cannot tell people in America they cannot farm their land, they cannot build houses on their land, because you consider it pollution.

The court says that protecting wetlands is not protecting against pollution, necessarily. It said in that case, Mr. Chairman, that protecting wetlands for the good of all Americans, which is a good and worthwhile goal, is a public responsibility, not the responsibility of the few landowners in America who happen to own the wetlands.

If we want to protect the wetlands against uses that Mr. Bowles would like to put his lot to in the subdivision of Bresoria County, when all his neighbors built houses, if we want to prevent him from doing that in the guise of protecting wetlands, then we need to pay for that policy, not Mr. Bowles.

The reason Mr. Bowles would lose his case under this amendment is that his two neighbors would suffer when he built his house. Both neighbors would lose some right of view. Their property would be affected by the fact that another residence is close to it.

Under this amendment, there is no test for the diminution of value of the adjacent property owner. Any diminution of value, however significant, is enough to trigger the denial of the property owner's claim for compensation under this act.

In other words, if Mr. Bowles, who fought for 10 years for compensation, should now be faced with this act as amended by my friend, the gentleman from Oregon, what he would find is that the court would say ''Sorry, the Congress said that because your house now obstructs the view of your neighbor's, it has diminished their value to some extent. We are not authorized to provide compensation for you under the private property rights bill passed by the Congress in 1995,'' and so it would be for many other claimants. Claimants who perhaps have very large claims against the government for taking their property would find that those very large claims are lost because of some very small, diminutive, insignificant, almost, diminution of some neighbor's property.

The current bill provides for remedies. It currently says that even though you have a wetlands claim against the Federal Government under this bill, if the action, the activity you want to undertake is forbidden by a legitimate zoning law on the local level, you will not get compensated.

It presently provides that if the activity you are interested in is prohibited by a nuisance law in your State, such as flooding your neighbor, dumping, indeed, pollutants or toxins on your neighbor, if you intend to do that, or if your activity would do that, that you will not receive compensation.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

(By unanimous consent, Mr. TAUZIN was allowed to proceed for 30 additional seconds.)

Mr. TAUZIN. Mr. Chairman, if the purpose of the government's action in

denying the permit is not to protect wetlands in general for the rest of us, is not really to protect endangered species for all the rest of us, but if the purpose is to deny your right to damage your neighbor, that is already in the bill as an exception to compensation.

You do not need this amendment. This amendment will deny legitimate claims for de minimus effects on neighbors. It is not the right thing to do. We ought to defeat it.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Chairman, I thank the gentleman for yielding to me.

First, if the gentleman from Louisiana feels his legislation already takes care of things, I cannot understand why he is objecting so strenuously to mine. I want to make it clear that this legislation now sets out a double standard that treats development interests better than the typical homeowner. Development interests get compensated if their property values are merely diminished, but the neighboring homeowners have to meet a higher standard, requiring physical damage to their properties for the exemption in the bill to apply.

What I would say to my colleagues is if they vote against this amendment, they are saying that developers can come to government agencies and get permits where the developers are going to be hurting neighboring homes, your constituents. When the constituents come to you and complain, and there are far more of them than there are of the developers, you should be ready to tell them why the developer's right to develop is more important than that typical homeowner's right to enjoy their home.

That is what this amendment is all about, trying to provide some balance. The gentleman from Louisiana [Mr. TAUZIN] is right in saying that there are examples of takings that warrant compensation, but there are also examples where in that process, the typical homeowner, who lives every day in a fashion that is not regulated by the wetlands law or the reclamation law, can be hurt in the process.

We are saying in considering compensation, factor in that typical homeowner. I would suggest to my colleagues that if they vote against this amendment, when they have problems in their community, there are homeowners who are going to come and ask why you rejected this opportunity to provide them some protection.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Maryland.

Mr. GILCHREST. I thank the gentleman for yielding.

In response to the gentleman from Louisiana, the agency, in this case the corps, their action prohibits the filling of wetlands, not building the house. Under the amendment, the wetlands destruction, not the house, is the thing that devalues the property.

The other question is does the government, do we the people, have the responsibility to have people feel that they have some sense of public safety, some sense of security.

□ 2015

In the real world, there are problems with filling wetlands, with the people downstream, and I do not care if it is 2 miles downstream, I do not care if it is 300 or 400 miles downstream, there has to be some sensitivity when that regulatory agency gives a permit to build, and that will happen because there certainly will not be enough money in the Federal Government to provide all the money for the takings claims that will result as a result of this legislation. The person downstream who has a pond that is going to be silted over as a result of the destruction of a wetland, that person needs to be brought into the process.

The gentleman from Florida [Mr. CANADY] said earlier that most of that has to do with local zoning ordinance, where do you have your commercial activity, where do you have your residential activity. I think at least in part he is absolutely correct and I would hope that the spinoff, or the result of this legislation, would send a signal to local zoning boards that they had better make sure that they have an understanding that if they are going to manage the growth of their own towns and communities, they have much more responsibility into doing that now if this legislation passes.

The last comment I want to make, the gentleman from Oregon [Mr. WYDEN] and I want to make sure that all property owners are protected under this legislation, and we hope that our colleagues will give us an ''aye'' vote on this amendment.

Mr. FIELDS of Texas. Will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I appreciate the gentleman yielding.

I was just going to propound a question to the gentleman from Oregon [Mr. WYDEN], because I was lost just a moment ago. I do not see two different types of property rights in this particular piece of legislation. If you are talking about a developer, a developer has a right to assert their property right just as a residential homeowner. The residential homeowner, however, cannot come and assert a right against someone else's property when that property has been taken either through an endangered species designation or a wetland declaration. The gentleman lost me with that example.

Mr. WYDEN. Will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Oregon.

Mr. WYDEN. Let me say again that while most people think all property owners are protected under the bill, the only property owners that are protected are those who are operating under some kind of Federal permit, such as a wetland.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. I continue to yield to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. More important, what I think highlights the lack of balance, and I use that word specifically, because there are takings, what highlights the lack of balance is, our friend, the gentleman from Florida, said that the homeowner, instead of getting this express lane, that this bill sets up for the developer, that their consideration is taken care of at the Federal level, the gentleman from Florida says, ''Sorry, Charlie, to the homeowner, you go try and get a fair shake at the local level. We won't be interested in you at the Federal level.''

Mr. GILCHREST. If the gentleman will yield, I would just like to say, does one property owner have the right to degrade the value of another piece of property, of someone else's property? If you do not think they have the right to do that, you ought to vote for the Wyden amendment.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. If I, as an adjoining property owner, do something to diminish your right as an adjoining property owner, I have a civil cause of action. But what we are talking about here is the homeowner, if there is a taking of that homeowner because of a wetland or an endangered species declaration, that homeowner has the exact same right as the property developer if they have a wetland or endangered species declaration. There is no difference.

Mr. WYDEN. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Oregon.

Mr. WYDEN. I make my point. You are talking about property owners that want to develop. There are property owners in America, folks, 65 million of them who just want to live in their homes. They are senior citizens, they are low-income people. They are not developers.

I know that some of my colleagues think that all Americans are covered under this, but only people who want to operate under some kind of Federal permit are covered. That is not the 65 million typical homeowners.

Mr. DEFAZIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, what I just heard was the developer has an absolute right with 10 percent diminishment of any part, tiny fraction of his property under Federal regulation if it goes to the Wetlands Act, Clean Water Act, Endangered Species Act or others. But that the adjoining or downstream property owner has a right of civil action. So what we are saying here is we are creating two categories. If you are a major developer, you have an absolute right to reimbursement by Federal taxpayers if there is a tiny diminishment of the optimal development value of your land, but if you are an adjoining or downstream property owner, you can go to court.

That is what I just heard the gentleman say, civil right of action. I was a county commissioner. We had a gentleman who had an island in the river. He drove a giant belly scraper out there, a D–9 Cat, and he was just terrafirming the land, and this was not allowed under our State land use law but the State land use law had trouble prosecuting him. We had to bring in the Feds to put a stop to that development. The people who wanted that development stopped were the adjoining farm downstream, because he said, ''You know what happens when he builds those berms and he does that? My land floods, I get all these road seeds and pollution and sediment on my land and it ruins my land.''

But you are saying to my farmer downstream and where we use the Clean Water Act for an enforcement, my farmer downstream is now going to have to go to court as opposed to getting the Federal Government to enforce this.

Mr. FIELDS of Texas. If the gentleman will yield, that is not what I am saying. What I am saying is if I as a property owner impact your property, you have a civil cause of action against me for damages.

What we are talking about in this particular piece of legislation, if the Federal Government comes in through a regulatory act and takes your property because of an endangered species declaration or a wetland designation, you have the same right that I have whether you are a developer, a farmer, a private homeowner. There is no distinction.

Mr. DEFAZIO. If I could reclaim my time, the case I am talking about was an individual who was attempting to develop his island and he was restricted by Federal law, by the Clean Water Act, from doing that, and it was the downstream property owners who wanted the action stopped, and the only way they could get him stopped was an action by the Federal Government.

Under this bill, as I understand it, if the Federal Government took that action to restrict those activities which harmed everybody downstream, that gentleman would have to be compensated. It certainly diminished his development value more than 10 percent.

Mr. WYDEN. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to my colleague the gentleman from Oregon.

Mr. WYDEN. I want to come back to the fact that this legislation tries to ensure that pro-development interests get a fair shake. But now we also have to make sure that typical homeowners who are not development interests get a fair shake as well.

I am just struck by the fact that my colleagues are willing to say that the typical homeowner, 65 million of them, are supposed to be satisfied to go off and see what happens at the local level and people who want to develop their property get this Federal Express lane and rapid consideration of their claims. That is not my vision of balance.

Mr. DEFAZIO. I am just trying to get to what was a real-life example. It was a county commissioner, we did use the Clean Water Act to get an enforcement action against this individual, and he obviously felt very aggrieved. He gave lots of money to my opponent.

But the fact is that as I understood the gentleman, my downstream property owners now would have a civil right of action and this gentleman would get compensated by the taxpayers for not doing the egregious development that was going to harm the downstream people.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from Texas. I am trying to get an understanding.

Mr. FIELDS of Texas. Under this legislation, you would be deprived of using the Federal Government to stop an individual's beneficial use and enjoyment of their property. If that person was to lose——

Mr. DEFAZIO. Reclaiming my time, in this case what you are defining as beneficial use is for one person. There were quite a few people downstream who saw it as a detrimental use because it had a negative impact on their property.

Mr. FIELDS of Texas. If the gentleman would yield, what I am saying is a private property owner, a larger developer, has exactly the same rights under this particular piece of legislation. There is no distinction.

Mr. DEFAZIO. Reclaiming my time, again we are back to the point where in this case, Mr. McNutt was his name, and his island in the McKenzie River, I can be very specific, would have a right to be compensated by the Federal Government because he did not engage in development that was detrimental to his neighbors under Federal regulation. If that is the case, this is creating an extraordinary problem.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is important that we get this debate back on the subject matter. The subject matter of this legislation is to protect individual private property owners. There is no intent in this legislation to create a distinction between someone who might be described as a developer and a private homeowner. That is not the intent. The intent is to recognize that everyone has a right under the Constitution to enjoy private property. If the Federal Government comes in and denies the beneficial use and enjoyment of that property through a taking, and under this particular piece of legislation it is specific, weltlands, endangered species, and also some water rights.

We say that if there is a loss, there is a taking, that compensation is given.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding, and I thank him for taking time that I might jump in here.

The gentleman is abundantly correct. Property owners are being described derogatorily tonight in this amendment debate as developers. Mr. Bowles in Texas was not a developer. All he wanted to do was build his house, and that was the filling of the wetland that was denied jim, just to build his house next to his neighbors. That was the so-called filling of wetlands that became a deniable permit application that caused Mr. Bowles to spend 10 years in court. He loses under this amendment. He never gets compensated.

Let me tell Members what the court said on that subject matter, again in Florida Rock. This is the Court of Claims:

> It is impossible to use one's property in a society without having some impact positive or adverse on others. Courts do not view the public's interest in environmental and aesthetic values as a servitude upon all private property but as a public benefit that is widely shared and therefore must be paid for by all.

The court cited a list of other laws passed by this Congress in years past, environmental laws where Congress specified some sort of compensation. For example, the Wilderness Act, the National Trails Systems Act, the Wild and Scenic Rivers Act, and the Water Back Act.

What the court said there, I tell the gentleman from Texas [Mr. FIELDS], was that what these regulatory schemes have in common is that in each case, the propertyowner's interest has been considered and accommodated, not sacrificed on the altar of a public interest.

What you do when you adopt this amendment is you tell Mr. Bowles, who is not a developer, you tell the farmer I talked about earlier who is not a developer, you tell the Cachoneses and the Gautreauxs in Ascension Parish who are not developers, who are homeowners, you tell them that they cannot get recovery because of this little quirk that was adopted on the House

floor late one night that said if developing their property, building on it has any significant, insignificant even, impact upon their neighbors, they cannot recover under the fifth amendment their legitimate compensation rights.

Mr. FIELDS of Texas. Reclaiming my time, the gentleman from Louisiana makes an excellent point. The cases that I have cited today, whether it was an abandoned eagle's nest, the people who have been hurt were not developers. They were just average property owners. The farmers and ranchers in the hill country of Texas who have been affected by the warbler and the vireo, who cannot cut cedar, those are not developers. Or the people west of San Antonio who have had their water rights abrogated and were affected by a fountain darter in two springs, those were not developers. These are average citizens who just want to enjoy the basic constitutional right given to them by our forefathers.

I will be glad to yield to my friend the gentleman from Oregon.

Mr. WYDEN. I thank the gentleman for yielding.

Under this legislation as it is written now, if the developer hurts a huge number of private property owners downstream, that developer can still get compensation.

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Does the gentleman support that?

Mr. FIELDS of Texas. the individual who is developing a piece of property or building a home on a piece of property or have a home on a piece of property already built, they have the same rights. If the Government walks in and takes the value of that property to the limits set out in this legislation, they are due compensation. If I hurt you as an adjoining landowner or if I hurt your downstream interest, you have a cause of action against me in court. The Federal Government has not stepped in and given me any particular advantage.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Maryland.

Mr. GILCHREST. Mr. Chairman, I would like to ask the gentleman just one question. This is what seems to me, without this amendment, this is what the bill, or this goes to the heart of the bill, without this amendment; should we compensate someone to keep them from polluting someone else's property? That is the question.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

(By unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 30 additional seconds.)

Mr. FIELDS of Texas. Mr. Chairman, we are not talking about pollution. We are talking about endangered species and wetlands declaration, and we are saying that when an individual loses the benefit of their property and it is taken by the Federal Government, there is compensation that is given. You know, people can talk about collateral things to try to cloud the issue. This issue is about basic property rights and the protection thereof.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon [Mr. WYDEN] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WYDEN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 165, noes 260, not voting 9, as follows:

[Roll No 193]

AYES—165

Abercrombie	Gordon	Neal
Ackerman	Goss	Oberstar
Andrews	Green	Obey
Baldacci	Gutierrez	Olver
Barrett (WI)	Hall (OH)	Owens
Becerra	Hastings (FL)	Pallone
Beilenson	Hefner	Pastor
Bentsen	Hilliard	Payne (NJ)
Berman	Hinchey	Pelosi
Bishop	Hoyer	Peterson (FL)
Boehlert	Jackson-Lee	Pomeroy
Bonior	Jacobs	Porter
Borski	Jefferson	Poshard
Boucher	Johnson (CT)	Rahall
Browder	Johnson (SD)	Reed
Brown (CA)	Johnson, E. B.	Reynolds
Brown (FL)	Johnston	Richardson
Brown (OH)	Kanjorski	Rivers
Cardin	Kaptur	Roukema
Clay	Kelly	Roybal-Allard
Clayton	Kennedy (MA)	Rush
Clement	Kennedy (RI)	Sabo
Clyburn	Kennelly	Sanders
Coleman	Kildee	Sawyer
Collins (IL)	Klink	Schroeder
Collins (MI)	LaFalce	Schumer
Conyers	Lantos	Scott
Coyne	Levin	Serrano
DeFazio	Lewis (GA)	Shays
DeLauro	Lipinski	Skaggs
Dellums	Lofgren	Slaughter
Deutsch	Lowey	Spratt
Dicks	Luther	Stark
Dingell	Maloney	Stokes
Dixon	Manton	Studds
Doggett	Markey	Stupak
Doyle	Mascara	Thompson
Durbin	Matsui	Thurman
Engel	McCarthy	Torres
Eshoo	McDermott	Towns
Evans	McHale	Traficant
Farr	McKinney	Tucker
Fattah	Meehan	Velazquez
Fazio	Meek	Vento
Fields (LA)	Menendez	Visclosky
Filner	Meyers	Ward
Foglietta	Mfume	Waters
Ford	Miller (CA)	Watt (NC)
Frank (MA)	Mineta	Waxman
Frost	Mink	Williams
Furse	Mollohan	Wise
Gejdenson	Moran	Woolsey
Gephardt	Morella	Wyden
Gibbons	Murtha	Wynn
Gilchrest	Nadler	Zimmer

NOES—260

Allard	Barton	Brewster
Archer	Bass	Brownback
Armey	Bateman	Bryant (TN)
Bachus	Bereuter	Bunn
Baesler	Bevill	Bunning
Baker (CA)	Bilbray	Burr
Baker (LA)	Bilirakis	Burton
Ballenger	Bliley	Buyer
Barcia	Blute	Callahan
Barr	Boehner	Calvert
Barrett (NE)	Bonilla	Camp
Bartlett	Bono	Canady
Castle	Hefley	Pickett
Chabot	Heineman	Pombo
Chambliss	Herger	Portman
Chapman	Hilleary	Pryce
Christensen	Hobson	Quillen
Chrysler	Hoekstra	Quinn
Clinger	Hoke	Radanovich
Coble	Holden	Ramstad
Coburn	Horn	Regula
Collins (GA)	Hostettler	Riggs
Combest	Houghton	Roberts
Condit	Hunter	Roemer
Cooley	Hutchinson	Rogers
Costello	Hyde	Rohrabacher
Cox	Inglis	Ros-Lehtinen
Cramer	Istook	Rose
Crane	Johnson, Sam	Roth
Crapo	Jones	Royce
Cremeans	Kasich	Salmon
Cubin	Kim	Sanford
Cunningham	King	Saxton
Danner	Kingston	Scarborough
Davis	Kleczka	Schaefer
de la Garza	Klug	Schiff
Deal	Knollenberg	Seastrand
DeLay	Kolbe	Sensenbrenner
Diaz-Balart	LaHood	Shadegg
Dickey	Largent	Shaw
Dooley	Latham	Shuster
Doolittle	LaTourette	Sisisky
Dornan	Laughlin	Skeen
Dreier	Lazio	Skelton
Duncan	Leach	Smith (MI)
Dunn	Lewis (CA)	Smith (NJ)
Edwards	Lewis (KY)	Smith (TX)
Ehlers	Lightfoot	Smith (WA)
Ehrlich	Lincoln	Solomon
Emerson	Linder	Souder
English	Livingston	Spence
Ensign	LoBiondo	Stearns
Everett	Longley	Stenholm
Ewing	Lucas	Stockman
Fawell	Manzullo	Stump
Fields (TX)	Martini	Talent
Flanagan	McCollum	Tanner
Foley	McCrery	Tate
Forbes	McDade	Tauzin
Fowler	McHugh	Taylor (MS)
Fox	McInnis	Taylor (NC)
Franks (CT)	McIntosh	Tejeda
Franks (NJ)	McKeon	Thomas
Frelinghuysen	McNulty	Thornberry
Frisa	Metcalf	Thornton
Funderburk	Mica	Tiahrt
Gallegly	Miller (FL)	Torkildsen
Ganske	Minge	Upton
Gekas	Molinari	Volkmer
Geren	Montgomery	Vucanovich
Gillmor	Moorhead	Waldholtz
Gilman	Myers	Walker
Goodlatte	Myrick	Walsh
Goodling	Nethercutt	Wamp
Graham	Neumann	Watts (OK)
Greenwood	Ney	Weldon (FL)
Gunderson	Norwood	Weldon (PA)
Gutknecht	Nussle	Weller
Hall (TX)	Ortiz	White
Hamilton	Orton	Whitfield
Hancock	Oxley	Wicker
Hansen	Packard	Wilson
Harman	Parker	Wolf
Hastert	Paxon	Young (AK)
Hastings (WA)	Payne (VA)	Young (FL)
Hayes	Peterson (MN)	Zeliff
Hayworth	Petri	

NOT VOTING—9

Bryant (TX)	Gonzalez	Rangel
Chenoweth	Martinez	Torricelli
Flake	Moakley	Yates

☐ 2048

The Clerk announced the following pair:

On this vote:

Mr. Moakley for, with Mrs. Chenoweth against.

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. KELLY. Mr. Chairman, on rollcall No. 193, the amendment offered by Mr. WYDEN, I

inadvertently voted "aye." I intended to vote "no."

AMENDMENT OFFERED BY MR. MINETA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE, AS AMENDED, OFFERED BY MR. CANADY OF FLORIDA

Mr. MINETA. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. MINETA to the amendment in the nature of a substitute, as amended, offered by Mr. CANADY:

In section 3(a), strike "any portion" and all that follows through "10 percent" and insert "that property has been limited by an agency action, under a specified regulatory law, that diminishes the fair market value of that property by 20 percent".

Mr. MINETA. Mr. Chairman, because of the plan to rise at 9:35 tonight, I ask unanimous consent that all debate on this amendment end at 9:20 p.m. and that the time available be equally divided and controlled by myself and a Member opposed to the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. DELAY. Mr. Chairman, reserving the right to object, has this been cleared with the leadership?

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from California.

Mr. MINETA. I thank the gentleman for yielding.

Mr. Chairman, I have spoken to the gentleman from Florida [Mr. CANADY] about it, and he is the floor manager on the other side.

Mr. DELAY. Mr. Chairman, I would have to object.

The CHAIRMAN. Objection is heard.

The gentleman from California [Mr. MINETA] is recognized for 5 minutes.

Mr. MINETA. Mr. Chairman, we have just debated and voted on the Goss amendment, which would have altered the 10 percent threshold in the substitute and made it 30 percent instead.

The amendment I am offering with the gentleman from Virginia [Mr. DAVIS] is exactly the same as the Goss amendment except that instead of 10 percent, my amendment would provide a 20 percent threshold. In all other respects, this is the Goss amendment. If you voted for the Goss amendment, you should vote "yes" on my amendment.

If you would have voted for Goss but thought that the 30 percent was a little too high, then you should vote "yes" on the Mineta-Davis amendment.

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to my very fine colleague from Virginia [Mr. DAVIS].

Mr. DAVIS. I thank the gentleman for yielding.

Mr. Chairman, I am pleased to speak for the gentleman's amendment.

I supported the Goss amendment, which took the 10 percent threshold to 30 percent. This moves it to 20 percent, but it is much more reasonable.

I have been in local government for 15 years, and I have sat through hundreds of zoning cases, through a number of condemnation cases and appraisals, and a 10 percent variation, a 10 percent difference is within the margin of error that we see every day with appraisers coming out and appraising the same property.

The 10 percent threshold currently in the bill makes this ripe, nationally, for all kinds of litigation anytime a regulation comes out. Twenty percent threshold is a much more reasonable threshold. Anything from market conditions, interest rates, school boundaries, variations affect property appraisals more than 10 percent in appraisals. We see this every day. Those may be technically exempt from this bill because they are local decisions, but the marginality in appraisings of property vary even with the season.

The fact that a regulation comes in and then appraisals come in showing a 10 percent difference I think puts this at a dangerous threshold. To preserve this bill and make it credible, we need the legislation to raise the threshold to 10 percent. The presumption here would be to raise it to a 20 percent level. I think it is reasonable. I am happy to support the amendment. I hope my colleagues who supported the Goss amendment will support this, and others who thought that might have been too high at 30 percent, I remind you this legislation says 33 percent. It would come down to the 20 percent level.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to my colleague from Idaho.

Mr. CRAPO. I thank the gentleman from California.

Mr. Chairman, I ask this question of either of the sponsors of the amendment. And I ask those in the Chamber to please listen to the answer to this question because I think it is very important.

The question that I have has been discussed by both of the sponsors of the amendment in discussing it that they are changing the percentage from 10 percent to 20 percent.

The question I have is: Does it also change—excuse me—from 30 percent to 20 percent.

Mr. DAVIS. From 10 percent to 20 percent.

Mr. CRAPO. My question is: Does it apply to the total?

Mr. DAVIS. It applies to the total property, not just to a portion.

Mr. CRAPO. That is the question. Does that change also that portion of the act which simply is talking about the specific property impacted to say we are talking about all of the property owned by the property owner?

Mr. DAVIS. The answer is "yes."

Mr. MINETA. It is the same as the Goss amendment. In this instance, it just changes it from 30 percent to 20 percent, and the Goss amendment had 210 votes.

Mr. DAVIS. The answer is that instead of the small parcel which could be covered under the existing legislation, a 10 percent diminution of that, that this is the entire property.

Mr. CRAPO. That is a bigger difference, then, than simply changing the percentage from 10 percent to 20 percent as in the bill.

Mr. DAVIS. I think it is reasonable.

Mr. MINETA. Reclaiming my time, I reiterate again that this is the same as the Goss amendment. In that regard, there is no change.

So, Mr. Chairman, I feel this is a fair and equitable amendment. It does not gut the bill. Just as there were 210 who voted for the Goss amendment, I think the same people ought to be voting to make sure that the Mineta-Davis amendment in this instance to change it to 20 percent should pass.

Mr. BARR. Mr. Chairman, I move to strike the last word.

Mr. Chairman, with all due respect to my good friend and learned colleague from Virginia, those of us who just voted a few moments ago or just a little bit ago against the Goss amendment did not vote against the Goss amendment because it was 30 percent versus 29 or 28 or 25 or 27; we voted against it because we believe that the fifth amendment to our Constitution should not be up for bid. We are engaged right now in a bidding war. 30 percent, 20 percent, 10 percent, next we will have an amendment for 15 percent.

The point, Mr. Chairman, is we need to listen to the people of this country who spoke loud and clear and very explicitly on this issue in the November 8 election. That is why many of us are in this Chamber this evening. Those people, citizens, voters, property owners across this land said property rights mean something. Those voters spoke loud and clear, they said we want you in the Congress to uphold the Constitution of this land. It does not say that the Government can take 40 or 50 or 30 or 29 or 20 percent of your property with impunity, without any compensation. It says if the Government takes a piece of property, and this body is now debating a bill, a piece of legislation that finally brings that home to the people, to the property owners of this country, we should not be engaged in the unseemly business this evening of auctioning off the fifth amendment.

□ 2100

This amendment is effective, as was the prior amendment, and it ought to be defeated so that we again stand up and say to the property owners of this country, "No longer shall the Government be able to run roughshod by diminishing the value of your property."

Tell the Government to back off, to let property owners rely on the Constitution. This amendment ought to be defeated.

Mr. DAVIS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just take 2 minutes, and I say to my friend from

Georgia, and he is my friend on this, ''We're not in an auction. It's already a 10-percent threshold. We're not starting from ground zero, and 10 percent is what my friend feels is a reasonable number and members of the committee feel is reasonable, but 10 percent is a margin of error when you compare any two or three appraisals. I've looked at hundreds of these through my time in local government, and any time a regulation comes into play, and you can put the appraisals together, show a 10-percent loss, we're in court on litigation, paying with Federal dollars for efforts that in many cases have nothing to do with the regulation. I think 20 percent is a much more reasonable level, gets us beyond that traditional margin of error, and it's for that reason that I support this amendment.''

Mr. Chairman, I yield back the balance of my time.

Mr. CRAPO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it is very important for those who are considering this legislation to understand we are not talking about simply the issue of whether to change the percentage from 10 percent to 20 percent in this bill. There is a much more critical change that is being made that was not discussed in the previous bill—it was not understood very well, I think, in the last debate, and I think it has got to be critically understood in this debate.

The bill, as it now stands, says that when the Federal Government seeks to regulate property, if they are going to single out a piece of the property and call that piece of the property a wetland or address a specific portion of one's property to cause them to fill Federal requirements in the way they use their property, then it is that property that is singled out, that is looked at to see whether the Federal Government is impacting its value.

This amendment would change that and in a dramatic way increase the burden that is faced by the property owner in a way that probably will make it so that the Federal Government does not have to worry about compensating property owners in most of the cases that we deal with because the property that is being impacted would have to be mixed, if my colleagues will, with all of the other property owned by that property owner.

That means, just to give my colleagues an example, if a person owned a 100-acre farm, a small farmer owned a 100-acre farm, and the Federal Government came out and said, ''One of the acres on your farm is a wetland, and we're going to require you to stop farming on that 1 acre or require you to do something with that 1 acre,'' even if the Federal Government took the entire acre, this amendment would not allow for compensation to be made because the impact would have to be mixed in with the other 99 acres. In fact, the Federal Government under this amendment could literally take 29 of his entire 100 acres entirely, and he still would not be entitled to any compensation by the Federal Government for that impact on his property.

This is a massive change in this legislation. It is not a 10-percent to 20-percent change, and the Members of this House need to understand what is being done here to change the entire direction of this statute.

Mr. Chairman, I think it is also important that we remember the reason that we are here tonight. We are not here tonight because there is a concern about big developers. We are not here tonight because we are concerned about big large property owners around the country. Those who are large developers or large property owners can defend themselves very adequately in our current court structure. It is onerous, it is expensive to them, but they have the resources to fight back. It is the rest of America that is being overridden by the Federal regulatory bureaucracy that we are here to try to defend.

We are here trying to say that, when the Federal Government comes out to the private property owners in this country and says that they have to use their property in a way that benefits the whole, that there is some social purpose that we are going to say is so important that private property owners have to lose the use of their property or have to be forced to use their property in a certain way, that that social goal should be compensated. We are not talking here so much about whether the Government has the right to take the entire property. We are talking about whether the Government has the right to regulate our property to the point that we cannot use it for the purposes that we intended and then force us not to have to obtain compensation as long as we own enough property that they can mix it in and say they have not taken more than 30 percent of the entire value of what we own.

Mr. Chairman, it is critical to us in America that we recognize the importance of protecting this strong statement in favor of private property rights in telling the people of America that we would not water it down to let nearly a third of the value of their entire holdings be taken before we will permit that.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

I think we are in need of this sort of an amendment. It comes from the former chairman of the House Committee on Public Works, the ranking minority member who fully understands this well, and we are in great danger of getting into a de minimis situation where we will all be overwhelmed with litigation, and to better make this case, Mr. Chairman, because of his expertise I now yield to the gentleman from California [Mr. MINETA].

Mr. MINETA. Mr. Chairman, the important thing is that since the discussion of the Goss amendment a number of Members have come up to me to ask whether or not there is going to be anything further in terms of a change. It seems to me that 20 percent is a fair and equitable compromise, and frankly the kinds of arguments we are hearing now were the same ones that we heard earlier on the Goss amendment, and I am frankly ready and willing to go with a vote right now.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Texas who is going to please the assembly, and I am delighted to be an accomplice in his happy news.

Mr. DELAY. Mr. Chairman, I appreciate the gentleman from Massachusetts [Mr. FRANK] yielding to me.

If Members will listen up, if Members will listen up, there will not be any more votes tonight. We will continue to debate on the Mineta amendment, but we will rise before we take any more votes tonight.

Mr. FRANK of Massachusetts. Let me take back my time to announce to the Members, and let me do the color. My colleagues have now heard the play by play. This means we are ahead because we wanted to go to a vote now, but the gentleman, as the whip, has got some work to do. So we are not going to be able to vote on this tonight so the whip can do some whipping, and I say to my colleagues, ''If you go home early, you won't be whipped. I just want you to understand that.''

So, Mr. Chairman, now that people understand the state of play, we will come back tomorrow morning and vote on the 20 percent.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield further to the gentleman from California.

Mr. MINETA. Again, Mr. Chairman, it seems to me that the amendment offered by my colleague, the gentleman from Virginia [Mr. DAVIS], and I is a fair and equitable compromise.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield back the balance of my time.

Mr. BRYANT of Tennessee. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to weigh in also on this issue. I must stand up in strong opposition to this amendment, and, as has been alluded to earlier in the speeches, I am a strong supporter of the fifth amendment rights to protect property owners and their right to their land, and what we are talking about here is the equivalent to taking of property as if they bought it. The type of taking that we are talking about is simply no different than if we signed the deed of property over, and in fact it is even worse in that we still own the property and have to pay taxes on it.

I simply state that the people ought to be rightful and fully compensated, and I agree with the gentleman from

Georgia who says this should not be a bidding war. What we are doing here is a 100-percent taking. They are entitled to 100 percent. The fifth amendment talks about the 100 percent. I think 10 percent is the minimum we ought to allow in this situation.

My good colleague, the gentleman from Virginia, talks about the appraisals and the variances in those, and I think the 10-percent margin certainly allows for that variance. I say, ''I, too, believe that, if you're going to take the property, you ought to be compensated 100 percent for it.''

Mr. MICA. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Tennessee. I yield to the gentleman from Florida.

Mr. MICA. Mr. Chairman, I really did not plan to speak on this, but I have to address my colleagues and say, ''You might just as well take a gun and go and rob people of their life savings under the pretenses of the amendment that's being offered here.''

Mr. Chairman, we have to really look at what is being done here. People who have worked their entire life for home, or for property, or for business, and they are saying that we can come in, the government can come in, and take 20 percent of it before they are due any compensation. that is just not right. That is just not right.

The way this bill is structured with its current language does give the citizens some recourse, and if my colleagues are going to say that government can come in and regulate our lives, can steal from us in this fashion, then they support this amendment, but again I say to my colleagues, ''You go back and explain to your constituents, your moms and your pops who have worked all their lives, people who have acquired a piece of property—most people today don't even have 20 percent equity in their home, or their business or their property—but you're going to say that the U.S. Government can come in and take that property from you without compensation.''

Until we get to the 20-percent level, Mr. Chairman, is that fair, is that just, is that the way we want to treat the men, and women and wage earners of this country?

I can give my colleagues good examples of businesses that I have worked in and property that I have been involved in in which I do not even have 10-percent profit after working 20 years, but it is okay for the Federal Government to come in, pass regulations to deprive me of the use of that property, the use of it, the property that I have worked and slaved for or that my mom and dad have worked for, to protect their property.

Again I think that we have got to look at this just like any other situation where the government comes in and ruins property, takes property and fails to compensate us for that property, and that is why I strongly support the 10 percent provision.

I do not support the amendment that is being offered by my colleague today.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I was kind of thinking that we were stalling for 9:35 and that somebody might want to make a motion to rise. We have debated this at some length now, and I do not know that anybody can add anything else to it.

We have acknowledged that there will not be another vote tonight, so maybe somebody could make the motion to rise and my colleagues could quit talking about something that has been debated for the last hour and a half.

Mr. Chairman, I yield back the balance of my time.

☐ 2115

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I appreciate the statement made by my friend just a moment ago, but some of us are concerned about this amendment, and we do not want to leave it unanswered tonight, because this amendment does sound seductive. It sounds palatable. It sounds as if it is a compromise. And someone mentioned just a moment ago, it sounds as if we are auctioning off a basic constitutional right, until you stop and realize that some of us believe that any taking, any loss whatsoever, should be compensated by the Federal Government.

But as was explained earlier by the gentleman from California [Mr. POMBO] in the debate, he put the 10-percent figure in the legislation as a sensible offer to settle some loss by the property owner, a loss that was greater than just some de minimis loss.

I think it is important for people to understand that this is a visceral issue with many of us. We have seen the effects of takings, both in terms of endangered species and in wetland declarations, and the effect this has had on families, property owners, basic property owners, average men and women in our congressional districts.

I think it is important to think about this just a moment. I literally have thousands of small property owners in my Congressional District, people who own, say, 100 acres. When you talk about the loss of 10 percent, which is in this legislation, that is a lot to swallow by some people, a tenth of their property. But when you bump that up, double it to another 10 percent, arriving at 20 percent, that is even more difficult. And we are taking about property that has been in some families for generations. My family is an example of that.

I think it is also important to look at some of the large effects, some things that have happened. Judge Bunton, a Federal Judge in Texas, ruled that Texas had to develop a plan to regulate the flow of water in the Comel Srpings and the San Marco Springs. They did this for a one inch fountain. The ruling presented a real problem because the Edwards Aquifer, which was affected by this particular decision, was the sole source of drinking water for one and a half million residents of San Antonio, which is our Nation's 9th largest city. It has been estimated that complying with the judge's ruling could result in a 68 percent reduction in available water. It would have a devastating effect on San Antonio, Baxer County, and six other adjacent jurisdictions, not to name the farmers and ranchers west and in that particular area.

When I start thinking about 10 percent or 20 percent, how do you allocate some of the costs of a decision like that, because there is no alternative source of water to replace the Edwards Aquifer. It is estimated it would take five to ten years for significant amounts of non-aquifer water to become available at a cost of $500 million to $1.5 billion. That is clearly unacceptable.

Furthermore, if you look at some of the initial estimates of trying to maintain water flow at the Comel Springs based on the worst case scenario of a drought, you could have an expense of $9.6 billion annually in spending; $5.2 billion in an annual reduction in total output for the City of San Antonio, a $3.3 billion annual reduction in personal income in San Antonio, a $2.6 billion annual reduction in wages and salaries, a $1.3 annual reduction in retail sales. You can lose 136,000 jobs in San Antonio because of one Federal court decision based on endangered species, a decision that goes to the heart of basic and fundamental water rights in our particular state.

How do you go about allocating all of these costs, whether it is 10 percent or 20 percent? So when some people say it is insignificant and here we are at a late hour on the floor of the House of Representatives trying to suggest that an amendment to ratchet that percentage from 10 to 20 percent does not have an effect, causes no harm, I find that hard to deal with.

I come back to what I said earlier: What do we say to our constituents? I think that is an important question that all of us must answer now, because we are going to have to answer that question when we go before our rotary clubs, our chambers, our town meetings.

Mr. WAMP. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I came to the well today to explain that I had derived my livelihood before I came to Congress in the real estate industry, in the private sale of real estate from one individual to another. And I want to kind of bring this into perspective as we are talking tonight about private property owners and even some talk of developers earlier tonight, because I want to share with you when you are talking about how much property is this debate about.

Well, one acre of land, roughly 42,000 square feet of property, let's say we have one acre of land in Tennessee, 20 percent of one acre of land in Tennessee in my home city is about a building lot, about enough property to get a building permit to build your home on it. Twenty percent of land is a lot of land. We are talking about a building lot out of a simple acre of land in Chattanooga, Tennessee. That is too much. Ten percent in a lot of ways is too much.

So from a private property standpoint, from the little guy who may own a piece of land, a small piece of land, 20 percent is simply too much, and 10 percent is still an awful lot of land that the Federal Government can take before they have to justly compensate that landowner.

That is the private property owner's perspective. I am here tonight to defend the developers who earlier tonight were kind of under fire. I do not know what is wrong with developing property in this country. At one point I think that was a pretty good thing to do. I would like to see it be a good thing to do again.

So from a developer's standpoint, in my home city of Chattanooga, the Austin family, a distinguished family, developing a shopping center, they went and got an option on the property, and I know they had a big supermarket tenant that was coming into this shopping center.

I know the story. They went before the planning commission, they got it all approved. They had a small wetlands, I think it was 4,000 square feet, in some multiacre site, a little small portion of this. I mean, the whole deal, a $1 million land sale, down the tubes because of the Federal Government intervention.

At what point do we say wait a second here? We have got more Federal Government than we need. And I am here to say developing property is a good thing. People who build, who create in this country, we have got to protect private business people in this country, protect the real estate industry.

The great American dream is to own your own property, and we have got to protect the small guy and the landowner. We have to protect business people out there trying to create jobs and help other people in this country as well.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. WAMP. I yield to the gentleman from California.

Mr. POMBO. I would like to ask the gentleman a question. I heard you say you were in the real estate market, you were a realtor. In your travels throughout your business, have you ever known anybody to buy a piece of property, a home, a single-family home, with 10 percent down or 15 percent down? Have you ever run across that at all?

Mr. WAMP. With 15 percent down payment on the property? That is correct.

Mr. POMBO. What would happen if we took 19 percent of their value away?

Mr. WAMP. They would not be able to sell that property, and it would just stymie the industry, and it would be a very inequitable situation we would be agreeing, and I wholeheartedly agree with your argument.

Mr. POMBO. The Federal Government would have in effect taken away their entire equity in the land and the bank would own what was left.

Mr. WAMP. All of their equity, and most of the property in this country is leveraged at a very high level to begin with. So you are cutting into the equity, the savings, and the investment of the citizens of this country.

Mr. POMBO. Do you think that maybe small property owners may be hurt by losing 20 percent of their property?

Mr. WAMP. The little people are going to be hurt. That is why I drew the correlation of one acre of land, a little small property owner, who maybe they want to subdivide that property and sell a building lot off a piece of property they inherited from their parents, and they want to be able to do that. The Federal Government could intervene here and take a small portion, the whole value of their property and all of their equity could be lost because of more Federal Government than our Founding Fathers ever bargained for.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. WAMP. I yield to the gentleman from Idaho.

Mr. CRAPO. Mr. Chairman, I would like to ask the gentleman from Louisiana if he would engage with me in a colloquy.

Earlier today as we were discussing how this bill operates, the question of whether there is going to be a clear requirement that the agencies pay whatever the level is came up. Section 7 entitled ''Limitations'' basically states that this act will be subject to the availability of appropriations. As I understand it, that means that we are not trying to create an entitlement that runs without the oversight of Congress.

The question then comes, does the agency have to pay? I understand that the previous section of the act says the head of the agency may transfer or reprogram appropriated funds, and if insufficient funds exist for payment to satisfy the judgment, it will be the duty of the agency to seek an appropriation.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment, and would observe that we had a debate on a 30-percent threshold, that for some reason did not generate nearly as much resistance as the debate now on the 20-percent threshold. For some reason, the later we go in the evening, the more emotional the debate becomes. But this was thought to be a compromise effort coming down from 30-percent. The resistance seems to be growing the longer that we go on with the discussion.

I want to commend the gentleman from California [Mr. MINETA], because what he has done is very important. It signals the possibility of bipartisan agreement on a very important part of this bill. I would urge that we still consider strong support of the bill.

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. DAVIS. Mr. Chairman, let me just put into perspective to my friends, I think we are all for property rights. My affairs in local government overturned one of the largest downzonings in northern Virginia history that took away property rights. It is the basis of Western civilization, the right to own and enjoy property.

The problem with the bill as it is currently written is any part of a larger parcel that is affected with a 10-percent diminution in value then is in line to get the appraisals and go get paid by the Federal Government. Almost every regulation that comes down that affects a parcel of property is going to affect it 10-percent, because the variance in appraisals is more than 10-percent on any given day when you take it.

That is the problem. That is what we are trying to remedy. Now, is this perfect? No. It is not perfect. But we have seen no resistance on the other side to try to tinker with this and change what right now is going to put every regulation, put property owners affected by every regulation in line, because it does not take much to get a 10-percent change. It just takes two appraisers. That has been my experience year after year.

That is my concern. That is what we are trying to remedy. We are not trying to stop people from developing their property. The 20-percent threshold to me seems reasonable. We had 50 Republicans vote for 30-percent earlier on. I appreciate the efforts to try to bring this to a bipartisan conclusion.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from California.

Mr. MINETA. I thank the gentleman for yielding.

Mr. Chairman, we are getting on toward 9:35, and I just wanted to have one last thought here if possible. Everyone who has spoken against the Mineta-Davis amendment voted no on Goss. On the other hand, 210 Members voted aye. Those 210 Members I assume, if they are consistent in their politics, will vote aye tomorrow.

Now, how can Members on the other side of the aisle vote for 30 percent and not for 20 percent? Others who did not vote because they were not here or voted no because of the 30-percent figure have come up to me in support of

our modest effort and this modest change. So it seems to me that tomorrow all of us will have the chance to put us over the top and have the Mineta-Davis amendment accepted.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding.

It may well be. I would tell the gentleman from California [Mr. MINETA] that some of these Members walked in without hearing the debate, did not know that it was 30 percent of the whole of the property instead of the affected area, and may in fact want to vote against this amendment, too.

□ 2130

Mr. CONYERS. Mr. Chairman, I reclaim my time. That is a possibility, but there are also a lot of other possibilities. I think it is very clear, Mr. Chairman, that a 30-percent threshold would be supported by the same people that would now be asked to support a 20-percent threshold.

Mr. RIGGS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman I intend, for my colleagues' benefit, to engage the gentleman from Florida [Mr. CANADY], the distinguished subcommittee chairman, in a colloquy that does not pertain to the amendment at hand.

Mr. Chairman, I am a strong supporter of the Private Property Protection Act, and very much opposed to the amendment presently pending before the House. I believe this is one of our most important provisions of the Contract With America.

I do, however, have one concern. I think it is important to engage in a colloquy to clarify one aspect of the legislation.

Section 2 of the statute requires payment of compensation to the owner of property when the use of that property has been limited by agency action. Section 6 of the bill then defines ''property'' to include ''the right to use or receive water.''

As the gentleman knows, water is the heart of the West. The needs of a varied group of users, including residents, commercial and industrial interests, farmers, fishermen, and Indian tribes are governed by a complex set of laws and agreements. Often these laws and agreements are managed by the Bureau of Reclamation.

While users are often guaranteed a certain allotment of acre feet of water every year, there is usually a contractual provision anticipating shortage situations. A drought or other circumstance may necessitate of Bureau of Reclamation to reduce a user's allotment. Such a decrease by agency action is expressly not deemed a breach of contract because the action is anticipated by contract, and should not be viewed as a taking requiring compensation.

Mr. Chairman, I take this opportunity to make certain that this legislation is not intended to supersede these existing contractual provisions. Can the distinguished subcommittee chairman and the manager of the bill provide assurance that water allocation actions by the Bureau of Reclamation and other actions by the Bureau of Reclamation and other Federal agencies that are expressly anticipated by contractual or similar legal arrangements will not be considered compensable agency actions under the bill?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, I can assure the gentleman that the intent of the statute is not to provide compensation to water users in such circumstances. Where a user is guaranteed an allotment of water, but that allotment is reduced in a way that is recognized and anticipated by the user's contract with the Government, the reduction would not be a limitation under this bill requiring compensation.

Mr. RIGGS. Mr. Chairman, I thank the gentleman for his clarification and for his hard work on this legislation.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from Idaho.

Mr. CRAPO. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I would say to the gentleman from Louisiana [Mr. TAUZIN], we just got yielded some time. Maybe we can finish that now.

Mr. Chairman, the gentleman knows the provisions I am looking at. I am looking at the provisions in sections 6 and 7 that talk about payment.

My question is, Mr. Chairman, to the gentleman, are we assured in this statute that an agency must pay compensation when a judgment has been rendered or when a claim has been accomplished under the statute?

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, absolutely. In fact, the legislation specifically says that the agency must provide money out of its own appropriated funds for the payment of these claims and give the agency the right to reprogram money within its budget to do that.

If it does not do that, Congress, of course, has the authority to make sure it does the next time it visits this Congress.

Mr. CRAPO. Just to follow up on that, Mr. Chairman, if an agency failed to pay a claim and then stated their reason was they did not have money in their claim fund or whatever part of their budget was allocated to payment of claims, as I read the statute, it says that if there are insufficient funds in the agency's budget, that the agent shall transfer or reprogram any appropriated funds available to the agency to accomplish that.

So, as I read that, Mr. Chairman, that would mean that in the very next budget cycle, when the agency had a full budget, so to speak, that they would be required to reprogram funds out of their budget to satisfy this obligation, is that correct?

Mr. TAUZIN. Mr. Chairman, if the gentleman will continue to yield, as I understand that obligation, it would become the first obligation of the agency in the next fiscal year, and they would be obligated to reprogram money to do that.

Mr. CRAPO. In that context, then, the agency would not be able to continuously, budget cycle after budget cycle, dodge the obligation of payment here by simply programming funds around or saying that the funds were insufficient?

Mr. TAUZIN. I suspect an agency might try, but the law says they cannot, and I suspect that a lawsuit would lie against them for mandamus by some citizens, or perhaps even this Congress might want to do something with an agency that wants to violate the law every year.

Mr. CRAPO. Mr. Chairman, I would ask the gentleman one other question. On section 5, as we have talked earlier today, subsection 2 says, ''No compensation is made under this act with regard to damage to specific property, other than the property whose use is limited.'' We have debated that language here in other contexts, but I wanted to make it clear, Mr. Chairman, that this was not a wide exemption for all kinds of different arguments to be made by the agency that there is some specific property benefited, is that correct?

Mr. TAUZIN. If the gentleman will continue to yield, that is correct, Mr. Chairman. If the gentleman reads the language, it says that the primary purpose of the agency regulations denying the activity was in fact to prevent harm to someone else.

The CHAIRMAN. The time of the gentleman, Mr. RIGGS, has expired.

Mr. CANADY of Florida. Mr. Chairman, I move that the committee do now rise.

The CHAIRMAN. The question is on the motion offered by the gentleman from Florida [Mr. CANADY].

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. MCHUGH) having assumed the chair, Mr. SHUSTER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, had come to no resolution thereon.

PERMISSION FOR CERTAIN COMMITTEES TO SIT TOMORROW, FRIDAY, MARCH 3, 1995, DURING 5-MINUTE RULE

Mr. BONILLA. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the five-minute rule: the Committee on Commerce, the Committee on Economic and Educational Opportunities, the Committee on the Judiciary, and the Committee on Transportation and Infrastructure.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

Mr. WISE. Mr. Speaker, reserving the right to object, the minority simply wants to say it has been consulted in all these cases and does agree.

Mr. Speaker, I withdraw my reservation of objection.

Mr. SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members are recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. WELDON] is recognized for 5 minutes.

[Mr. WELDON of Florida addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

[Mr. OWENS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. TOWNS] is recognized for 5 minutes.

[Mr. TOWNS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Colorado [Mr. HEFLEY] is recognized for 5 minutes.

[Mr. HEFLEY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. FILNER] is recognized for 5 minutes.

[Mr. FILNER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. SMITH] is recognized for 5 minutes.

[Mr. SMITH of Michigan addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

FEDERAL FOOD ASSISTANCE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized for 60 minutes.

Mrs. CLAYTON. Mr. Speaker, a compelling case can be made against the proposal to convert Federal nutrition programs into block grants.

That case will be made tonight.

Over the next 2 hours, the American public will hear from many of our colleagues about the dangers of certain provisions of H.R. 4, the Personal Responsibility Act.

That is the bill that contains provisions to slash school lunches and breakfasts.

That bill will remove thousands of women, infants and children from the WIC Program. National nutrition standards will be eliminated by the bill. And States will be able to transfer as much as 24 percent of nutrition funds for non-nutrition uses.

But, the impact of this proposed bill goes even deeper.

Retail food sales will decline by $10 billion, farm income will be reduced by as much as $4 billion and unemployment will increase by as many as 138,000.

The security of America's economy is at stake.

From grocery stores, large and small, to the farmer and food service worker—everyone will suffer. Most States will lose money.

But, the case becomes even more compelling when viewed in a broader context.

The House Appropriations Committee is pushing a recession package that, when combined with the proposed cuts in the nutrition programs, will squeeze those most in need in ways we have not seen in America, since the Great Depression of the 1930's.

Nearly $2 billion will be cut from education programs, including money for drug free schools and educational support for the disadvantaged.

Also $3 billion will be cut from programs that move teenagers from school to work, including complete elimination of the Summer Jobs Program.

Our seniors and veterans do not escape this blind axe

Billions will be cut in federally assisted senior citizen housing. The 2 million needy senior citizens who benefit from the Fuel Assistance Program may go cold. That program will be completely eliminated.

That committee's bill cuts $50 million in funds for veterans' medical equipment and facilities.

Billions of the money saved by these cuts will go to the top 3 percent wage earners in the United States in the form of a 50 percent cut in the capital gains tax.

They want capital gains cuts. We want an increase in the minimum wage. They want block grants. We want healthy Americans.

They want a full plate for those with money. We want to restore Federal food assistance programs. And, we will. The nutrition of our citizens should not be left to chance.

Mr. Speaker, all of the nutrition programs are important.

I would like to highlight one of them to demonstrate the poor judgment of those pushing passage of H.R. 4.

That is the WIC Program. WIC works.

It is a program that services low income and at risk women, infants, and children.

Pregnant women, infants 12 months and younger, and children from 1 to 5 years old, are the beneficiaries of the WIC Program.

For every dollar this Nation spends on WIC prenatal care, we save up to $4.21.

The budget cutting efforts we are experiencing are aimed at reducing the deficit.

The deficit is being driven by rising health care costs.

When we put money into WIC, we save money in Medicaid. The equation is simple.

Those who have a genuine interest in deficit reduction can help achieve that goal by investing in WIC.

The WIC Program embraces the unborn; provides nurturing and care; is devoted to maternal health; helps insure life at birth; and promotes the growth and development of millions of our children.

And, it saves us money.

WIC works. Let's keep it working.

The Committee on Economic and Educational Opportunities has proposed radical changes in the school lunch and WIC programs.

If these changes stand, 275,000 women, infants, and children will be removed from the WIC Program. Nutritious meals served in 185,000 family day care centers will be eliminated. School food programs will be reduced by $309 million.

In contrast, the Agriculture Committee has proposed keeping the Food Stamp Program as an entitlement. The committee is to be commended.

It seems inconsistent, however, to retain food stamps as an entitlement, a program that has had some problems with fraud and abuse, while block granting the WIC and school lunch programs.