have been asserted, even before the provision was repealed. Yet, these parks have not been paved by public highways.

Congress began creating wilderness areas in 1964—12 years before Revised Statute 2477 was repealed. Section 5 of the Wilderness Act specifically preserves existing private rights.

It has been 20 years since Revised Statute 2477 was repealed and over 30 years since the creation of many major wilderness areas. During the 30 years of the policy of wilderness the same practice that the provision in the supplemental seeks to continue was in effect.

Yet, during those 30 years, we have not seen any of our wilderness areas covered with roads under Revised Statute 2477.

In Alaska, where 60 percent of the wilderness areas exist, we have already dealt with the issue. The Alaska National Interest Lands Conservation Act has numerous provisions that specifically deal with access to wilderness areas. Nothing in this provision changes the law regarding rights-of-way in Alaska.

On the contrary, the provision seeks to keep the pre-existing policy and specifically denies the Secretary of the Interior the right to unilaterally change the policy contrary to what Congress has said many times and what the courts have said many times. As a matter of fact, Congress has spoken three times in the past 2 years on this and stated that the Secretary cannot change the existing law and policy by regulation or by edict.

The people who claim this provision will lead to roads across wilderness areas and parks already created by Congress are just plain wrong.

What is at issue here are areas that are not yet wilderness or that have been recently added by Executive action to our parks and monuments.

Mr. President, every time Congress has addressed that subject, it has protected valid existing rights, even in the creation of national parks and wildlife refuges.

Wilderness areas by definition don't have any roads. The environmental groups and the Department of the Interior are seeking to cut off valid rights-of-way in certain areas of the West so that those areas may be proclaimed wilderness.

I hope that the Senate understands this. If the Secretary of the Interior and these groups are allowed to prevail, then areas that do have existing valid rights-of-way, which should by law be given some consideration and may ineligible to become wilderness areas, could be created as additional wilderness and national park areas by Executive order or secretarial edict.

If they can keep the R.S. 2477 right-of-way from being recognized under State law, as they have been created for the past 130 years, then those areas would be roadless and eligible for wilderness designation by Congress.

That is the issue here. There are valid, existing rights-of-way across some of these areas. They have been used for decades by the public in the West. Those areas are not capable of being established as wilderness areas. But that is not for us to decide here.

All this provision does is maintain the status quo. If there are valid existing rights under R.S. 2477, they had to be created more than 20 years ago, before 1976.

The provision simply prevents the Secretary of the Interior from prejudging the issue in the ongoing review of which remaining Federal areas should be wilderness. This only preserves rights-of-way that already exist. It does not create new rights or new roads.

I hope that the Senate will seriously consider the issue that is coming before us today regarding Revised Statute 2477. Our intent is merely to keep the policy that has existed in the past and which has been protected by every act of Congress that I know of. The valid existing rights were protected. Those rights have been defined as far as rights-of-way under State law for 130 years.

This Secretary of the Interior now wants to have them decided under Federal law that his regulations would establish. That is contrary to the policy of Congress. It is contrary to the decisions of the courts of the United States, and it should not be done by secretarial edict.

As I said, we have acted in the National Highway System Designation Act of 1995, in the 1996 Interior appropriations bill and in the 1997 Interior appropriations bill to prevent those regulations from being issued. Now the Secretary wishes to announce a policy. That policy is that in the future the validity of the rights will be determined by Federal law. That is contrary to a whole series of court decisions and contrary to the acts of Congress that specifically recognize valid existing rights under State law.

Mr. President, I hope that this is going to be a short day. But I want to tell the Senate that it is our intention, as Senator BYRD has announced, to enforce the cloture motion. I call again on the Senate to vote for cloture. Give the managers of this bill the control that comes from the cloture process, and we will assure this bill passes to provide money to those in the disaster areas. The bill affects disasters in 33 States, Mr. President. We will give this bill to the conference and to the President as quickly as possible.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 208

Mr. STEVENS. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 208.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill insert the following:

None of the funds made available in the Foreign Operations, Export Financing, and Related Programs, 1997, (as contained in Public Law 104–208) may be made available for assistance to Uruguay unless the Secretary of State certifies to the Committees on Appropriations that all cases involving seizure of U.S. business assets have been resolved.

Mr. STEVENS. Mr. President, this is an amendment that we hope will bring about an awareness of Government officials of Uruguay of a very sad situation with regard to the fishing assets from Washington State and Alaska that were entered into in a joint venture with a seafood company in Uruguay.

What happened was that the assets of the Americans were seized after they were in Uruguay territory, and the joint venture that was supposed to be forthcoming was dissolved by actions of the Uruguay citizens.

I offer this amendment sort of in frustration, trying to see if we can work out with the Uruguay Embassy here and officials in the State Department at Montevideo a resolution of this problem.

I hope that it has the salutary effect of calling the attention of the Uruguay Government to a very unsatisfactory development with regard to our business relationships.

I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 208) was agreed to.

Mr. STEVENS. Mr. President, this is the time for filing of second-degree amendments, I remind Senators. It is also the time set for the vote on cloture motion.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will read.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 672, the supplemental appropriations bill.

Trent Lott, Ted Stevens, Mike DeWine, Bob Bennett, Tim Hutchinson, Richard G. Lugar, Pete Domenici, Pat Roberts, Connie Mack, Frank H. Murkowski,

Richard Shelby, Craig Thomas, Chuck Grassley, Christopher S. Bond, Michael B. Enzi, and Jeff Sessions.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the call of the quorum has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on S. 672, the supplemental appropriations bill, shall be brought to a close?

The yeas and nays are required.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 100, nays 0, as follows:

[Rollcall Vote No. 57 Leg.]

YEAS—100

Abraham	Feingold	Lugar
Akaka	Feinstein	Mack
Allard	Ford	McCain
Ashcroft	Frist	McConnell
Baucus	Glenn	Mikulski
Bennett	Gorton	Moseley-Braun
Biden	Graham	Moynihan
Bingaman	Gramm	Murkowski
Bond	Grams	Murray
Boxer	Grassley	Nickles
Breaux	Gregg	Reed
Brownback	Hagel	Reid
Bryan	Harkin	Robb
Bumpers	Hatch	Roberts
Burns	Helms	Rockefeller
Byrd	Hollings	Roth
Campbell	Hutchinson	Santorum
Chafee	Hutchison	Sarbanes
Cleland	Inhofe	Sessions
Coats	Inouye	Shelby
Cochran	Jeffords	Smith (NH)
Collins	Johnson	Smith (OR)
Conrad	Kempthorne	Snowe
Coverdell	Kennedy	Specter
Craig	Kerrey	Stevens
D'Amato	Kerry	Thomas
Daschle	Kohl	Thompson
DeWine	Kyl	Thurmond
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Warner
Dorgan	Leahy	Wellstone
Durbin	Levin	Wyden
Enzi	Lieberman	
Faircloth	Lott	

The PRESIDING OFFICER (Mr. ALLARD). The Senate will please come to order.

On this vote, the yeas are 100, the nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. STEVENS. Mr. President, Senator BYRD and I are overwhelmed by the support of the Senate for this bill. I hope that will be demonstrated in the hours to come.

Mr. CHAFEE. Mr. President, might we have order, please? It is very difficult to hear.

The PRESIDING OFFICER. The Senate will please come to order.

The Senator from Alaska.

Mr. STEVENS. Mr. President, we would like to work up a schedule, rotating from one side to the other with amendments. I want to state to the Senate the amendments that have been filed touch or concern every one of our 13 subcommittees. Those subcommittees' staffs are standing by now to confer with any Member who really wants to pursue one of these 109 amendments that have been filed.

I ask the Chair to help us keep order. We would anticipate, for the information of the Senate, with the concurrence of the two leaders, that we would proceed with the D'Amato amendment and then the Bumpers amendment and, if possible, another amendment and have our first series of stacked votes sometime around 12:30 to 1 o'clock.

We will keep the Senate informed, but I do want the Senate to know we will try to stack votes so that none will occur prior to approximately 12:30 to 1 o'clock.

The PRESIDING OFFICER. The Chair recognizes the Senator from New York.

AMENDMENT NO. 166

(Purpose: To rescind JOBS Funds, extend the transition period for aliens receiving SSI funds, and for other purposes)

Mr. D'AMATO. Mr. President, I ask unanimous consent that the Reid amendment be laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. I ask that amendment No. 166 be called up and that Senator FEINSTEIN's name be added as an original cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO], for himself, Mr. CHAFEE, Mr. DEWINE, Mr. SPECTER, Mrs. FEINSTEIN, and Mrs. BOXER, proposes an amendment numbered 166.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 44, strike all after line 19, through line 2 on page 45, and insert in lieu thereof the following:

''JOB OPPORTUNITIES AND BASIC SKILLS

(RESCISSION)

Of the funds made available under this heading in Public Law 104–208, there is rescinded an amount equal to the total of the funds within each State's limitation for fiscal year 1997 that are not necessary to pay such State's allowable claims for such fiscal year.

Section 403(k)(3)(F) of the Social Security Act (as in effect on October 1, 1996) is amended by adding after the '','' the following: ''reduced by an amount equal to the total of those funds that are within each State's limitation for fiscal year 1997 that are not necessary to pay such State's allowable claims for such fiscal year (except that such amount for such year shall be deemed to be $1,000,000,000 for the purpose of determining the amount of the payment under subsection (1) to which each State is entitled),''.''

On page 75, strike all after line 10 through line 22 on page 80, and insert in lieu thereof the following:

''TITLE VI—SUPPLEMENTAL SECURITY INCOME AMENDMENT

''SEC. 601. EXTENSION OF SSI REDETERMINATION PROVISIONS.

''(a) IN GENERAL.—Section 402(a)(2)(D) of the Personal Responsibility and work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(D) is amended—

''(1) in clause (i)—

''(A) in subclause (I), by striking the date which is 1 year after such date of enactment and inserting in lieu thereof September 30, 1997; and

''(B) in subclause (III), by striking the date of the redetermination with respect to such individual and inserting in lieu thereof September 30, 1997; and

''(b) EFFECTIVE DATE.—Subsection (a) takes effect as if included in the enactment of section 402 of the Personal Responsibility and Work Opportunity Act of 1996 (8 U.S.C. 1612).''

Mr. D'AMATO. Mr. President, on behalf of myself, Senator CHAFEE, Senator DEWINE, Senator FEINSTEIN, and Senator SPECTER, I call up this amendment because, notwithstanding the attempt—and I appreciate it—by the Appropriations Committee initially to deal with a very vexing problem, the problem of immigrants and the problem of legal immigrants and the problem really dealing with legal immigrants, most of whom are, a good percentage are disabled and who are elderly who would otherwise be cut off August 22, notwithstanding that they came into the country legally, that they are currently receiving benefits, that if these benefits were to be cut off in some States, they would be faced with little, if any, help.

In other States, the burden would be a tremendous one on some of the local municipalities and the States. This amendment would continue the existing funding of those legal immigrants—let's understand, we are talking about people who came into this country legally; we are talking about people who obeyed the law; we are talking about, for most cases, senior citizens, elderly, and disabled—to continue their SSI benefits.

Mr. President, it seems to me that this is a prudent way in which to handle what could otherwise be a very disastrous problem for 500,000 people, most of whom are elderly, in this country. That is a half-million people. That is a lot of people who would be facing tremendous hardship, many who have no one in a position to be of any kind of assistance. For others, without their SSI payments and cut off from food stamps, their families would be in perilous situations even attempting to give them modest help.

Let me say that I am deeply appreciative of the leadership that has been displayed by the Senate majority leader, the chairman of the Senate Appropriations Committee, and our distinguished colleague from West Virginia, in attempting to deal with this problem in a way that will give us additional time.

Again, we are not talking about people who came into this country illegally, people who are trying to take advantage of the system. We are taking an opportunity to give the Congress of the United States and the President sufficient time to work out a program that will see to it that the system is not abused but, by the same token, see to it that people are not disadvantaged as a result of the significant work of the Congress in bringing about workfare as opposed to welfare.

Let me say what the situation is in terms of New York. In New York, we are talking about 80,000 legal immigrants who now would be facing termination of benefits—80,000. Again, Mr. President, the vast number who are senior citizens, many of them have tremendous language barriers, many of them have been in this country for a number of years, some not long enough to qualify for Social Security benefits, all of them here legally. Mr. President, 70,000 of these people are in the city of New York.

What an incredible impact that would be to the city, to the State, and to other communities. As I look around, I see my colleagues from California, who have the same kind of problem. I see my colleague from Rhode Island. It is a tremendous problem that would be created. That was never our intent in terms of reforming the welfare system. Ours was to create an opportunity for workfare, not a system that entraps people. Ours says to those who are capable of going out and holding a job or getting into a job training program that you just cannot take advantage of the system. But I do not believe it was one in which we envisioned just cutting off those people who cannot do for themselves. We are a compassionate country. We are a country which is ready and recognizes the need to help those citizens who cannot do for themselves.

So, let me say this. The Social Security Administration estimates that SSI recipients who received notices of possible termination of benefits are made up of—let me just give you an idea who these half a million people are: 72 percent are women; 41 percent are over the age of 75; 18 percent are over the age of 85. Are we going to say to those people, 18 percent over the age of 85, ''go out and get a job''? What are we going to do?

Mrs. BOXER. Will the Senator yield on that point for a question?

Mr. D'AMATO. Certainly.

Mrs. BOXER. Mr. President, I thank the Senator from New York for offering this amendment. I say to him, and I am sure Senator FEINSTEIN will amplify this, that this is so crucial to our State, as he has said, and I know the Senator is aware—and I will put this in the form of a question—that in the budget agreement that was reached among all parties, this issue was recognized. What the Senator from New York is doing is carrying over this agreement, that these people need the certainty of assistance because they are very old, they are very frail, they are very disabled, and what the Senator is doing is, in essence, saying that that agreement ought to really apply right now and these people should not be under the threat of a cutoff. So he is restoring SSI to legal immigrants until all the new details are worked; am I correct in that?

Mr. D'AMATO. That is correct. What we are doing is providing the Congress, as well as these people, an additional 6 weeks from August 22. A good number of these people during this period of time will be qualified as citizens, understanding, if you look at the age category of them, many of these people are elderly, there was never an impetus. It is very difficult. They have language barriers, disabilities, problems in communication and transportation. The immigration offices are swamped with those people who are attempting and who are eligible for citizenship.

When you look at this, if close to 20 percent are over 85, we are talking about almost 100,000, and most of them women, who are over the age of 85, who may have disabilities, who may have language problems just trying to qualify them for citizenship. In some cases, they will not have to take the ordinary test. But how do we get them that information? How do we get them there in time? It cannot be done between now and August 22. New York City Mayor Giuliani is engaged in an outreach program to contact many of these elderly immigrants and give them an opportunity to qualify for full citizenship; therefore, they would not have to be concerned with the cut off in benefits.

So for all of those reasons, this additional time will also give us and our colleagues an opportunity—as well as the administration—to examine what the program will be in the fullness of time after October 1.

Mrs. BOXER. Mr. President, I ask the Senator to add me as a cosponsor.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the Senator from California, Senator BOXER, be added as an original cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, I thank Senator CHAFEE for his support and leadership and, again, the leaders of the Appropriations Committee, Senator STEVENS, and the ranking minority member from West Virginia, Senator BYRD, for their leadership, for their compassion in understanding and finding the resources to make this extension available. Senator BYRD has always demonstrated a great compassion and concern for senior citizens in particular, and they are the ones who would be most victimized if we were not to continue this action. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, I rise to support the D'Amato-Chafee resolution. I am very pleased to be a cosponsor. I want to point out that two cities in this Nation are impacted more than any other, and that is the city of Los Angeles and the city of New York. In California alone, there are 310,000 legal immigrants currently receiving SSI benefits. Under the present law, they all go off on August 22, regardless of need.

I want to clear the air somewhat, because the administration proposal, accepted by the Budget Committee, does not cover elderly legal immigrants. In other words, if you are 85 years old and monolingual in another language, you cannot get a job, but come August 22, under the agreement, you would be out on the streets. Either you are homeless or else it is a transfer to the local government to be picked up by the counties' general assistance grant.

This proposal of Senator D'AMATO's essentially takes that August 22 deadline and extends it to October 1, giving us time to work with the administration, work with the Appropriations Committee and try to see if there is not a better solution.

If only disabled are covered, which is currently the case under the proposed bipartisan agreement, this means that only refugees and asylees who have exhausted the 7 years would be eligible for SSI only if they are disabled. This impacts 61,360 people in California; 60 percent of those who are disabled and 40 percent of the elderly would not be affected by this legislation.

So we have a ways to go in reconciling what is really out there in terms of problems of people who are elderly and the proposal that is part of the bipartisan agreement. The D'Amato proposal extends that deadline by 2 months and gives us an opportunity to work this out. I think it is extraordinarily important that that happen.

Additionally, I pay my compliments to the Senator from Rhode Island. Senator CHAFEE and I have a bill which would extend SSI for all of those who are presently covered by SSI, not prospectively, not for newcomers, but for those people already in this country for whom we have certain responsibilities who are unable to have any other source of income to support themselves. Our bill, I think, is the long-term solution that is the most viable.

So I thank Senator D'AMATO—he is also a cosponsor of the Chafee-Feinstein bill—for offering this, and I am very hopeful that a dominant majority of this body will see the wisdom in adopting it.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

AMENDMENT NO. 145

(Purpose: To rescind JOBS Funds, extend the transition period for aliens receiving SSI funds, and for other purposes)

Mr. D'AMATO. Mr. President, for the purpose of technical adjustment, I ask unanimous consent that the clerk instead report No. 145 in place of amendment No. 166 and that that be the pending amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, so that the RECORD properly reflects the cosponsors, in addition to myself, they are Senator CHAFEE, Senator DEWINE, Senator SPECTER, Senator FEINSTEIN, Senator KOHL, Senator MOYNIHAN, and Senator KENNEDY as well.

The PRESIDING OFFICER. Without objection, amendment No. 166 is withdrawn.

The amendment (No. 166) was withdrawn.

The PRESIDING OFFICER. The clerk will report amendment No. 145.

The legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO], for himself, Mr. CHAFEE, Mr. DEWINE, Mr. SPECTER, Mrs. FEINSTEIN, Mr. MOYNIHAN, Mrs. BOXER, Mr. KOHL and Mr. KENNEDY, proposes an amendment numbered 145.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 44, strike all after line 19, through line 2 on page 45, and insert in lieu thereof the following:

''JOB OPPORTUNITIES AND BASIC SKILLS

(RESCISSION)

''Of the funds made available under this heading in Public Law 104–208, there is rescinded an amount equal to the total of the funds within each State's limitation for fiscal year 1997 that are not necessary to pay such State's allowable claims for such fiscal year.

''Section 403(k)(3)(F) of the Social Security Act (as in effect on October 1, 1996) is amended by adding after the ',' the following: 'reduced by an amount equal to the total of those funds that are within each State's limitation for fiscal year 1997 that are not necessary to pay such State's allowable claims for such fiscal year (except that such amount for such year shall be deemed to be $1,000,000,000 for the purpose of determining the amount of the payment under subsection (1) to which each State is entitled),'.''

On page 46, after line 25, insert the following:

''Public Law 104–208, under the heading titled 'Education For the Disadvantaged' is amended by striking '$1,298,386,000' and inserting '$713,386,000' in lieu thereof.''

On page 75, strike all after line 10 through line 22 on page 80, and insert in lieu thereof the following:

''TITLE VI—SUPPLEMENTAL SECURITY INCOME AMENDMENT

''SEC. 601. EXTENSION OF SSI REDETERMINATION PROVISIONS.

''(a) IN GENERAL.—Section 402(a)(2)(D) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(D) is amended—

''(1) in clause (i)—

''(A) in subclause (I), by striking 'the date which is 1 year after such date of enactment' and inserting in lieu thereof 'September 30, 1997'; and

''(B) in subclause (III), by striking 'the date of the redetermination with respect to such individual' and inserting in lieu thereof 'September 30, 1997'; and

''(b) EFFECTIVE DATE.—Subsection (a) takes effect as if included in the enactment of section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612).''

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, first, I congratulate Senator D'AMATO for his work on this amendment which will mean so much to so many people who he has well described as being the frailest in our society.

I also pay tribute to Senator FEINSTEIN with whom I have worked on a program similar to this for the long-term solution, as she pointed out. It may well be that we will turn to that when we start the new fiscal year.

I also want to salute Senator DEWINE, who is not on the floor at this moment. I hope he will be here soon. But I wanted to pay tribute to him because he has worked very hard on it.

Mr. President, I would like to extend my thanks to the distinguished chairman of the Appropriations Committee, the Senator from Alaska, and the distinguished ranking member of that committee, the Senator from West Virginia, who have agreed to accept this amendment. I am very appreciative of that.

I am speaking on behalf of 3,750 legal immigrants—legal immigrants—in my State who would face the loss of these SSI benefits but for the passage of this legislation, which I hope will be accepted in the House likewise. That group of 3,750 Rhode Island seniors, as the Senator from New York has described, fits in that typical pattern of 18 percent being over 85 and so forth.

Mr. President, this is a good amendment. What it does, it gets us through the remainder of this fiscal year and gives us a little breathing time.

Mr. President, as you know, in the underlying bill there is a block grant of $125 million. This replaces that. I think that is wise because a block grant would cause a lot of problems in its distribution, trying to set up a new system to get the money out. The continuation of the existing system of the SSI benefits is, I believe strongly, the right way to go.

So this is an occasion where I think we can all celebrate a little bit. I was strongly supportive of the welfare reform bill that we passed last year. I believe in it. I think it is working.

At the time when we foresaw the difficulties that were going to come up under this particular group, I supported legislation to take care of them. That did not pass. I believe it was the legislation of the Senator from the State of California. It did not pass. But now we are attacking that problem.

As I mentioned before, I think it is coming out in a very satisfactory way. So I want to thank the Chair. And, again, I do want to point out that Senator DEWINE is deeply interested in this, as is Senator SPECTER. Senator DEWINE may be on the floor a little later. I want to extend my appreciation to his work on this and also to the leadership of both parties in the Senate for permitting this to be accepted.

Thank you very much.

Mr. D'AMATO. Mr. President, I understand that there may be somebody in opposition. But at this point, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. D'AMATO. Mr. President, let me simply say, I am just going to look at one statistic again and put it in terms of not just saying 18 percent of all of those are over the age of 85. We are talking about 90,000 people, seniors—90,000. Many of them, again, are disabled. Many of them have problems with the language. All of them are here in this country legally. Let us understand that. Let us understand that three-quarters of those people, better than 65,000, are women.

Are we really going to say to grandmothers, grandparents, to the elderly, to the frailest of the frail, ''No more will we meet even your minimum needs''? That is not what this country is about. That is certainly not what I intended nor do I think any Members intended when we voted for the reform of the welfare system. I voted for that. I think we did the right thing.

I think we can make this bill a much better bill by not only continuing this program now, but then we will argue, and it will give us an opportunity for those to come forward and have a fuller discourse in the future. But certainly, certainly, we should not terminate it now.

Again, I want to thank the chairman of the Appropriations Committee, Senator STEVENS, and the ranking member, Senator BYRD, for their understanding and their support of this legislative correction. It is a correction. It is one. And there is nothing wrong with saying we can do it better, we erred at this point in time. I did.

Let me tell you, I was concerned that there were many people who were taking advantage of the system. There were those who said and pledged, ''Yeah. We'll take care of our elderly, our relatives,'' and instead of doing that, they gamed the system and put them right into SSI. Well, that is wrong. We should see to it that that does not take place. But for us now to say, with one fell swoop all of them will be disadvantaged who are presently receiving, that is something that I would not in good conscience support.

I yield the floor.

Mr. DEWINE. Mr. President, I am pleased to join with my colleagues from New York and Rhode Island, Senator D'AMATO and Senator CHAFEE, in offering this amendment to extend Supplemental Security Income [SSI] coverage to disabled, legal immigrants until the end of the fiscal year. This amendment is consistent with the recent agreement between the congressional leadership and President Clinton to allow disabled, legal immigrants to continue receiving SSI and Medicaid benefits.

First, let me commend my friends from New York and Rhode Island, Senator D'AMATO and Senator CHAFEE, for their extraordinary efforts on behalf of legal immigrants. It is safe to say that the bipartisan agreement to restore SSI and Medicaid benefits to disabled, legal immigrants would not have been made without their leadership.

Plain and simple, this is an issue of fairness—fairness to those who played

by the rules to become legal immigrants, only to see those rules changed to their detriment.

While the budget agreement provides hope to legal immigrants, a temporary measure is needed to protect those immigrants who would stand to benefit from the budget agreement. That's the purpose of the amendment we are offering today. As my colleagues know, the 1996 welfare law bans legal immigrants from receiving SSI benefits beginning August 22, 1997—1 year after the day the law was signed. This 1-year transition period was designed to give legal immigrants time to obtain citizenship without losing eligibility, and to provide State and local governments time to adjust to increased demand for general assistance.

The Social Security Administration estimates that roughly 525,000 legal immigrants currently receiving SSI could lose benefits under current law. Of that number, roughly 3,000 are from Ohio—and more than half of those immigrants, roughly 1,700 reside in Cuyahoga County. Many of these immigrants will seek and obtain citizenship and thus, can still receive SSI. However, many disabled immigrants currently receiving Federal support may not be able to become citizens. It is this population that stands to lose the most if current law is not changed.

The Jewish Community Federation of Cleveland brought to my attention several families that would be affected if the law is not changed. Lev and Ada Vaynshtock, ages 64 and 60 respectively, came to this country from Moldova in 1991. They reside in Cleveland.

Ada has passed her citizenship exam and is eagerly waiting to become a U.S. citizen. Lev's memory is getting worse and worse after open-heart surgery, and may never become a citizen. Both currently are eligible for SSI. Ada certainly will be able to retain her SSI eligibility when she gains citizenship, but Lev stands to lose this eligibility. If he outlives Ada, he will have no benefits at all—unless we act to change the law.

They are just one of many elderly Russian families—families that because of mental or physical disability, stand to lose their SSI benefits later this summer. It is for them, and for countless others, that compelled a bipartisan group of Senators to seek changes in the law to protect elderly people.

Let me emphasize to my colleagues that our efforts on behalf of disabled legal immigrants does not alter the key policy changes made in last year's welfare and immigration reform bills. Our efforts do not alter the basic policy change made last year that sponsors of legal immigrants need to take more financial responsibility for legal immigrants. Newly arrived immigrants still will have to abide by the 1996 welfare and immigration laws.

Again, we're here to help those already here, those already disabled immigrants who played by the rules. Although Congress and the President have made a commitment to help this population, it may not be until the beginning of the fiscal year before that relief is provided. We cannot hold disabled, legal immigrants hostage to the legislative process, especially when they stand to lose benefits in a few short months.

Again, our efforts have been bipartisan. I want to commend the chairman of the Appropriations Committee and the chairman of the Finance Committee, Senator STEVENS and Senator ROTH, and of course our majority leader, Senator LOTT, for working to place a temporary measure in the existing bill. The amendment we offer today simply expands that effort, to ensure that all immigrants who stand to retain their benefits because of the budget agreement are not denied benefits while the details of this agreement are worked out. What this amendment offers is certainty—the certainty that these immigrants will continue to receive benefits for an additional 6 weeks.

In short, the budget agreement reflects our long-term commitment to fairness. By passing this amendment, we can take a short-term first step to realize that long-term goal.

Mr. MOYNIHAN. Mr. President, I rise as an original cosponsor of the amendment offered by my colleague from New York to extend Supplemental Security Income [SSI] benefits to elderly and disabled legal immigrants through the end of September. Under last year's welfare legislation, which I opposed, these individuals are to lose their SSI benefits in August. The budget agreement recently reached would restore SSI benefits to many of these individuals. I support that effort, although more should be done. This amendment will ensure that there is no interruption of SSI benefits while legislation necessary to implement the budget agreement is considered.

It is a welcome measure of compassion where there has been too little of late.

Mr. KOHL. Mr. President, I rise today as an original cosponsor of the Chafee-D'Amato amendment regarding SSI benefits to legal immigrants and refugees. I am pleased to support this important first step to correct a significant mistake of last year's welfare bill.

As you know, this amendment would extend the eligibility of disabled and elderly legal immigrants to the Supplemental Security Income Program. These people, including approximately 5,000 in my home State of Wisconsin, were scheduled to lose their SSI benefits in August of this year. As my colleagues from California, New York, Rhode Island, and elsewhere have explained, many others would have been similarly affected all across the country.

While many legal immigrants will become citizens by the August deadline, without this amendment, State officials estimate that approximately 3,000 elderly and disabled legal immigrants living in various Wisconsin communities would have been cut off from their only source of support. These are people who cannot work and who would not be able to live or take care of their families without outside help. If the Federal Government abandoned them, their most basic needs—shelter, food, medical help—and the accompanying costs, would have fallen on the shoulders of, and quite potentially overwhelmed, State and local resources.

Wisconsin has already decided to continue medical assistance to SSI recipients. And the recently hatched budget deal contains even more comprehensive remedies for the next fiscal year—two encouraging bits of news. Nonetheless, the extension of benefits from August to October will provide crucial help until those long-term remedies take effect.

Mr. President, I supported the new welfare law. Policy reforms to move people from welfare to work were laudable and long overdue. Yet throughout the welfare debate I also supported numerous attempts, all of which failed, to soften the bill's restrictions on benefits to legal immigrants and refugees.

Simply put, the welfare bill went too far. It was too harsh on legal immigrants who come to this country with every intention of working hard and contributing to our economy and cultural melting pot. It also was too harsh on refugees and asylees who come to this country to escape persecution in their native lands. To this latter group, the United States made and continues to make a unique commitment of assistance and guidance to help them rise above adversity and build a new life for themselves and their families.

Wisconsin has been enriched by many different ethnic groups throughout its history. That said, I would like to take this occasion to discuss a population that has been hit particularly hard by the welfare changes—the Hmong and other highland peoples—who came to Wisconsin and other parts of the country as refugees from Southeast Asia. Since coming, they have faced the challenges of integrating into American society. Many arrived in this country illiterate because they did not have a written language at home and have had a difficult time fulfilling the educational requirements of the citizenship application. In August, many of the Hmong would have lost the SSI benefits that they have relied upon to cope with these challenges.

Like most legal immigrants before and since, the Hmong and their children have strengthened our communities. But some of my colleagues may not know of the Hmong's invaluable contribution to the United States before ever setting foot in Wisconsin or anywhere else on American soil.

Mr. President, Americans owe a debt of gratitude to the Hmong. Most of them fled their native country at the

end of the Vietnam war, fearing retribution for having fought for the United States alongside American soldiers and helping us through what was a very difficult time in our history.

While no disabled or elderly legal immigrants should be left without help, I am particularly pleased to cosponsor the Chafee-D'Amato amendment on behalf of the Hmong. It would be unconscionable to abandon the Hmong in their time of need. They put their lives on the line in defense of all that Americans hold dear—our freedom, our prosperity, and our way of life. Today, Congress has taken a very small step toward repaying their priceless service to all Americans.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. The Senator from California sought recognition on this amendment?

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Chair.

I would just like to add to my earlier comments with some of the specific numbers from each of the big States of people that would not be covered by the bipartisan budget agreement.

These are elderly people.

In California it is 163,900. In Florida it would be 44,310. In Illinois 13,360; in Massachusetts 13,410; in New York 65,340; and in Texas, 32,640. These are people who are above the age of 65.

It is my understanding that the administration, with Members in the other House, may have reached an agreement whereby they would agree to try to certify some of these people as disabled. But, nonetheless, these are the people, at least in the statistics of the Social Security Administration, who would be dropped off come August 22 for sure right now.

I think this is living testimony, in terms of numbers of people, to the argument that Senator D'AMATO, Senator CHAFEE, and I are making that: Let us extend this by 2 months and see what we can do to effect a reasonable system where people will not become homeless or a major transfer onto county general assistance rolls.

I thank the Chair and yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I hope all Members understand, however, we are entirely in agreement with statements made so far concerning these legal immigrants who will be covered by this procedure. Hopefully, pursuant to the budget agreement, we will continue a policy of caring for people who are here legally now.

But I hope everyone, including the Immigration Service, is on notice it applies to those who are here now. In the future, I hope that we will enforce the commitment made by those who sponsor legal immigrants to maintain those people that they sponsor in the event they become indigent and cannot support themselves. That is the commitment that we must see carried forward once again in our basic law of protecting immigration.

Again, it is my desire at this time, Mr. President, to ask the Senate to set aside the D'Amato amendment. This amendment and the Bumpers amendment will be voted upon sometime before 1 o'clock today. That is our hope. There may be further proceedings with regard to the D'Amato amendment. I do not want to jeopardize them. But I do ask unanimous consent that we temporarily set aside the D'Amato amendment at this time so we may proceed with the Bumpers amendment.

The PRESIDING OFFICER (Mr. HUTCHINSON). Without objection, it is so ordered.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the Reid amendment be temporarily set aside while I offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 64

(Purpose: To strike section 310, relating to R.S. 2477 rights-of-way)

Mr. BUMPERS. Mr. President, I call up amendment No. 64.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 64.

Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 50, strike lines 1 through 11.

Mr. STEVENS. Will the Senator yield at this point?

Mr. BUMPERS. Yes.

PRIVILEGE OF THE FLOOR

Mr. STEVENS. Mr. President, I ask unanimous consent that Anne McInerney be given privileges of the floor during the duration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, for Members of this body who have not dealt with this issue on the Energy and Natural Resources Committee, this is a slightly complex amendment. I am going to simplify it as best I can. We have had several hearings in the Energy Committee on it, but it deals with an issue that sounds so bizarre you would not believe it was actually on the statute books of this country.

In 1866, Congress passed a bill which has become popularly known as R.S. 2477, Revised Statute 2477. What that law did, as part of the 1866 mining law, was to validate public highways built across unreserved public lands.

That does not mean much, so here it is. The United States owns 350 million acres of land in the lower 48 States. Since 1866, we have set aside millions and millions of acres in wilderness areas, national parks, monuments, all kind of things since 1866. But bear in mind, the R.S. 2477 statute said ''unreserved lands,'' so that meant all of the public lands the United States owns that have not been set aside for another purpose. The effect of that, of course, was, from 1866 until 1976 when it was repealed, anybody who claimed a footpath, almost a cow trail, a sled trail, hiking trails, almost anything would qualify as a highway under the language in this bill.

A lot of highways were built under these R.S. 2477 rights-of-way between 1866 and 1976, and we are not contesting a single one of those.

What we are saying is, the provision put in this bill by the Senator from Alaska [Mr. STEVENS] simply says we are going to let State law determine what is and is not a public, valid right-of-way.

This, admittedly, is primarily an Alaska, Utah, and probably Idaho issue. It does not affect my State. There are some of the Western States that have these rights-of-way. But in any event, here is what the law said as we passed it in 1866. ''[T]he right-of-way for the construction of public highways across public lands, not reserved for public uses, is hereby granted.''

As I say, that includes dogsled trails, that includes footpaths, it includes any kind of a path. And there are literally thousands and thousands of them that have been claimed.

Mr. President, I will come back to how the language in this bill will work in just a moment. But listen to this. The State of Alaska has passed a law making every section line in Alaska a right-of-way and subject to having a highway built on it. I am reluctant to say this, but if you build on just half the rights-of-way that Alaska is claiming, you would not be able to travel. There would be too many roads to get around.

In any event, I want to make it crystal clear that this amendment has nothing to do with existing highways that have been built under the 1866 law.

Mr. President, there have never been regulations crafted to deal with this issue. In the 1930's there was sort of a half-hearted regulation, but not really anything.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Now, Mr. President, I want to make another point crystal clear, and it is this: When I said a moment ago that the effect of this amendment would allow State law to determine what constitutes a valid existing

right-of-way, it would take away the Secretary of the Interior's ability to determine what was a highway. In short, all of these thousands and thousands of so-called R.S. 2477 right-of-way claims all over the West would become valid.

Now, bear in mind, there is another facet to this, and that is the Secretary in January of this year set out a policy which effectively repealed a policy established by Donald Hodel when he was Secretary of Interior in 1988. The Hodel policy—it is not a regulation; we have never had a rule or regulation, it was simply a policy statement—was that just about anything could qualify as a highway.

Now, whether the Hodel policy stated that the States shall have exclusive rights to determine what a right-of-way is, I do not really know right now, but I can tell you, if section 310 passes, State law will determine what is going to happen to thousands of rights-of-way in this country that cross national parks, wilderness areas, monuments, and any other land in the West that was set aside after these claimed rights-of-way existed.

Let me give an example. Assume that there are 20 rights-of-way that the State of California would claim cross Yosemite National Park. They claim those rights-of-way were established before Yosemite became a national park. It was unreserved Federal land before, and these rights-of-way were across that Federal land. Later on, we establish Yosemite National Park. Under this section, if the Stevens language stays in this bill, which has absolutely no business being in this bill, but if my amendment is defeated, that means that California law will dictate what highways can be built across Yosemite National Park—not the National Park Service, not the Federal Government, but the State of California.

Think of all the thousands of rights-of-way that could be claimed in Alaska. Mr. President, just for openers, here are some of the claims that have been filed. These are not all the claims that Alaska, Utah, Idaho, and other States have as to what constitutes a valid right-of-way. These are the ones that have actually been filed with the Secretary of Interior and requested to be declared an existing valid right-of-way on which they can build a four-lane superhighway, if they desire. Alaska has 256 claims on file, but they have God knows how many—thousands that they could claim. Idaho has 2,026 on file, and Utah has 6,173 claims filed in the Secretary's office. Those are a lot of potential highways across Federal lands, and the Federal Government could not stop them no matter what kind of highway they wanted to build.

When I started off telling you how bizarre this was, just think about that. When we held our first hearing in the Energy Committee on what to do about these so-called R.S. 2477 rights-of-way, I may have been dense, but it took me a long time to understand that we were really talking about something serious. I never heard of anything so bizarre in my life. Yet, the chairman of the Appropriations Committee—we all represent our States, and I am not holding him guilty of anything. I am just saying the rest of us do not have to follow suit. He is chairman of the committee and he puts this in a supplemental appropriations bill designed to aid areas hurt by natural disasters, including help for the people of Arkansas. There is $6.5 million for debris removal in streams as a result of a tornado on March 1 in Arkansas. There is $3.5 million in this bill to allow an all-black community just outside Little Rock to tie into the Little Rock sewer system. Virtually the entire community of College Station was wiped out, a community of less than 500 people, and they cannot build new homes or borrow money to build new homes until they get on the sewer system. And the chairman, very graciously, and the committee, very graciously, accepted my amendment to put $3.5 million in there to accomplish that. How many nights did we look at the Dakotas and Minnesota, which was a veritable lake?

Mr. President, do you know the name of the bill we are considering? It is the emergency supplemental appropriations bill. The R.S. 2477 issue is no emergency. The language I am trying to strike was put in there and it had nothing to do with any kind of disaster or emergency. It was put in there to accommodate primarily the States of Alaska, Utah, and Idaho. I have nothing against any of those States, but I tell you what I do have, I do have a strong feeling about protecting the citizens of this country and the Federal lands which they all own. Some of it is in my State—admittedly, not as much as in Alaska and some Western States—but every single Member of the U.S. Senate has a solemn obligation, occasionally, to stand on their hind legs and say no to such things as this.

Every Senator has or will have a letter on his desk from Secretary Babbitt saying he will strongly urge the President to veto this $8 billion bill if this provision is left in it. Why wouldn't he? My point is, why are we, U.S. Senators, holding the people of North Dakota, South Dakota, and Minnesota hostage to an amendment that should not be on this bill? It is not an emergency. It is not even an appropriations measure.

Mr. President, I get terribly exercised about things like this because I think I have a solemn duty to bring this to the attention of the Senate. In January of this year, Secretary Babbitt, not popular with Western Senators—but that has nothing to do with this amendment. What it does have to do with this amendment is whether or not we are going to allow every single State who can identify a pig trail that was used by human occupants any time between 1866 and 1976, across lands that have subsequently been made national parks, monuments, and wilderness areas, whether we are going to allow those States to determine that those trails are now highways and then build highways on them with no input from the Secretary.

So Secretary Babbitt, in January of this year, issued a policy—not a rule, not a regulation, but a policy. Here is what his policy said. It defines a highway to be ''a thoroughfare used by the public for the passage of vehicles carrying people or goods.'' Now, Secretary Babbitt's policy also allows for the abdication of State law to the extent consistent with Federal law, which, of course, makes Federal law dominant, as it should be.

Nobody is trying to punish Alaska. Nobody is trying to punish Idaho. Nobody is trying to punish Utah. What we are trying to do is say these sacred parks and monuments that we have developed over the years—Yellowstone, Yosemite, Bryce Canyon, Saguaro, you name it—you cannot let the States just walk in and willy-nilly start building highways across those places. If you do not vote for my amendment, that is precisely what you are voting for.

Mr. President, I hope the Senate will pay attention to this issue—as I say, this is an arcane issue. Most people in this country do not have a clue that a law such as R.S. 2477 ever existed. I want to get help to the people of my State who have been devastated by tornadoes. I want to get help to people in California who have suffered from floods, to the Dakotas and Minnesota, one of the most awesome things we have ever watched on television. This bill is designed to help them. That is what a compassionate, caring government does.

One of the reasons I voted against the constitutional amendment to balance the budget is because it would have prohibited the Congress from appropriating money to help people who had suffered that kind of disaster because it would unbalance the budget. You could not do it without a 60 percent vote of both Houses, and if you did not get it, they just suffered. That is what would happen a lot of times.

I am not going to belabor this. I have made the point as well as I can. I see the junior Senator from Alaska on the floor. I yield the floor.

Mr. MURKOWSKI. Mr. President, I appreciate the remarks of my friend from Arkansas. But the Senator from Arkansas says that this is not an emergency, and, as a consequence, this particular provision that is in the appropriations supplemental should not be here. Well, he is absolutely wrong because this is an emergency. It's a raid on the Western States of this Nation. The reason it is a raid, Mr. President, is because we are going to change the rules all of a sudden. Why are we changing the rules? Because the Secretary of the Interior doesn't want the States to continue to have the rights that we have had for 130 years. We have had a law for 130 years, a law that ensures access across public lands, which

specifically addresses that there was some kind of a highway, some kind of an access in existence prior to October 21, 1976.

Now, the Secretary of the Interior proposes to take this authority away from the States and give it to the Federal Government. That is why it is an emergency. We are fighting for survival. Here is a picture of my State of Alaska. I hope the Senator will take a good look at it, because here is Alaska today, Mr. President—a State with 33,000 miles of coastline. You can see our highway system here. We had one new highway built in the last 20 years, the Dalton Trail, which parallels the pipeline. This is an area one-fifth the size of the United States, Mr. President.

If the motion to strike prevails by the Senator from Arkansas, our traditional access routes will be eliminated. Let me show you a map, Mr. President, of the State of Arkansas. There is the highway system in Arkansas, Mr. President; it's a fully developed State. It has been a State of the Union for over 100 years. My State has been in existence for 39 years. Here is a map of Arkansas today—roads all over the place. They are necessary for the economy of the area. I don't take issue with the road system. These roads came about in the development over a long period of time in the State, as we would anticipate. So there we have the basic issue.

The Senator from Arkansas says that virtually any access across public land would be provided if indeed this portion that he wants to strike remains in the legislation. Well, let me tell you, as chairman of the committee with jurisdiction over R.S. 2477, I'll just say that the rights-of-way are the future vitality of our State.

Despite all the rhetoric that has been made about this provision, it simply amounts to a tightening of a permanent moratorium placed on the Federal Government last year. It is that simple. What we want to do is keep in place the law as it has been for 130 years, keep the departmental regulations as they have been codified since 1932, I believe, and again in 1974.

Now, the only thing that has changed in this debate is the level to which the administration will go to provide scare tactics to influence this process. Let me state here that I find some of the rhetoric coming out of the Interior Department concerning this provision absolutely reprehensible.

I have a copy of a letter the Secretary of Interior sent to the chairman of the Appropriations Committee last week. At best, this letter shows an alarming ignorance of the history, topography, and the economy of the Western States. At worst, it shows the level of deceit that this administration is evidently willing to go to in order to mislead the American public about this issue.

Now, in this letter there is a claim that a provision in this bill will create some 984,000 miles of new highways in Alaska, based on a 1923 Alaska law creating section-line rights-of-way. That is a fallacy, Mr. President. This is in a State—my State—which currently has just over 13,000 total miles of roads, along with the marine highway system. Alaska has a population of about 600,000, a budget deficit, and the last road built in Alaska cost more than $6 million per mile, down from Whitehorse to Skagway, the U.S. portion.

If you take the miles the Secretary is talking about in his scare letter, you would have to spend just roughly $6 quadrillion to build these proposed roads in our State—more money than even the current administration could even dream up in taxes.

The Secretary contends that this is going to happen because the section-line law exists in Alaska. Here are some facts about that. The State has had a section-line law on the books since 1923. That is the one correct statement in Secretary Babbitt's letter. The State has had the ability to assert section lines since 1923. There are no current rights-of-way based on section lines in Alaska. The State has never filed a section-line right-of-way. We have the right, but we also have the self-discipline. According to the Governor's office during last year's hearing, the State has no intention to ever file a section-line right-of-way. The fact is, section lines have little or no practical application as transportation corridors in Alaska due to the difficulty of the terrain.

Second, the Secretary also states:

> My efforts over the past several years have been directed to establish a clear, certain, and fair process to bring these claims to conclusion . . . the public will be poorly served by Congressional action that has the effect of rescinding the Department's current orderly manner of proceeding to deal with the right-of-way claims.

I find that statement interesting, considering what the Secretary wrote us in 1993, which was:

> I have instructed the BLM to defer any processing of R.S. 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations.

So, in fact, the administration's orderly process of dealing with these claims is to take no action whatsoever.

Well, Mr. President, the fact is, if an R.S. 2477 was not in existence on October 21, 1976, it will not and cannot, by definition, be created now. This is what the statement of my friend from Arkansas suggests will lead to simply an open and arbitrary selection of areas across public land. He said, ''Just about anything, anybody, any excuse, will get you access.'' It will not, Mr. President. It is misleading and it is inappropriate to suggest that. You must have had in existence on October 21, 1976, evidence of utilization of that area as a trail, as a highway, some kind of route.

Let me show you what we have here, Mr. President. This is a map made in 1917, before Alaska became a State. What it shows here is rather interesting, because this is what this issue today is all about. It is about access, early access. The two definitive identifiers in red here are winter stage lines and U.S. Government winter U.S. trails to Fairbanks. We didn't have a highway system. These two large red routings were trails, winter trails. In the summertime, they were used as wagon trails. That was access into the interior. Today, these two represent highways. These greens are the R.S. 2477's that provide access routes across public lands, so that we can get from Fairbanks out to McGrath, we can get from Nome out to the gold fields, across public lands.

Let me show you why it is so important in Alaska relative to having the assurance of access across public lands. This is Alaska. Every color you see is a Federal withdrawal, Mr. President. Take a look at it. Federal withdrawal. Now, how in the world are we going to get from the southern part of the State to the northern part of the State through all these colors, because the only area that the State controls are the white areas? We have to have access. This law gives us that access. That is why this is an emergency. It is an emergency because the Secretary wants to take that authority away. We have had the authority for 130 years.

Look at what we have done with it, relative to highways in Alaska. We haven't wandered all over the place. We have 13,000 miles of roads. But we have to have access, and that is why it is so vital that this matter be addressed now. We have to have access down from Prudhoe Bay. We have a little, tiny corridor, 3 miles wide. This is all Federal withdrawal. How are we going to get east and west if we don't have this provision? We simply can't get there from here. So while it doesn't mean much from the standpoint of the constituents in Arkansas, who have a State that is fully developed with a road system that looks like this, we have a situation where it is the lifeblood and the future of our State to have the assurance that we are going to have access, because the Federal Government basically owns our State.

The Secretary wants to take that authority away from us. The senior Senator from Alaska and I and the Senators from Utah are all sensitive to the realities associated with this. This is our lifeblood. We have to have it. It is an emergency. It is necessary now. The administration and the Secretary want to take the authority away from the States and give it to the Federal Government. We all know what that means, Mr. President. That means disaster.

The fact is, again, if an R.S. 2477 was not in existence on October 21, 1976, it will not and cannot, by definition, be created now. So when we look at those old maps of Alaska, we have to go back and ascertain and prove that we have had a trail, we have had a sled dog

trail, we have had a regular route of access. If we can prove that, then we have a right to public access across the land. That is what this issue is all about. It is a legitimate States rights issue. The only thing is, most of the States aren't affected anymore. But some of the Western States are, and it is our lifeblood.

The problem, of course, is the prevailing attitude of the Secretary of the Interior, who basically controls public land in our State—his particular attitude toward allowing us—which we can do under current law—to get across those public areas. But that is going to be taken away. And as a consequence of that, Mr. President, we are at the absolute mercy of the Secretary of the Interior if the motion to strike by my friend from Arkansas prevails.

I am not going to speak about what happened in Utah last fall. The Senators from Utah are here to state that. It is a perfect example of what happens when a small cadre of administrative officials take it upon themselves to decide how America's public lands should be used. I have worked with my friend from Arkansas for a long time. We have been able to work on many issues that we agree upon. But during that time, we have had different approaches to some issues. In 1995, a number of Western Senators, upset about the Department of the Interior's proposed regulations on R.S. 2477, sought to place the language in the proposed highway bill overturning the effect of the proposed regulations.

Many of my colleagues will remember that the final passage of that bill was delayed until late in the evening until we could resolve the issue during the day. The Senator from Arkansas and I met to discuss the issue. We didn't come out with any finality about how to solve the R.S. 2477 debate. But we did agree for the time being placing a moratorium on the Department from issuing any regulations. That made sense.

So in the 1995 national highway bill there appeared a 1-year moratorium on the department from issuing any rules or regulations on the issue. For the most part, this held the status quo, as it has been for the past, as I said, 130 years in terms of R.S. 2477 right-of-way.

I, along with a number of Western Senators, introduced Senate bill 1425 last Congress to set out an orderly process by which people can submit their right-of-way claims to the department to seek formal recognition. My friend from Arkansas opposed that, and in the end we agreed upon compromise legislation that passed out of the committee. The compromise legislation placed a permanent moratorium on the Government by stating, ''No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 shall take effect unless expressly authorized by an act of Congress subsequent to the date of enactment of this act.''

It is this language that was placed in last year's Omnibus Appropriations Act, and is law today. We agreed to only prevent final rules and regulations in the hope that the Department would work on developing a more reasonable recognition process that could be submitted to Congress for approval. Unfortunately, it has been about 8 months now since that legislation passed, and there is no indication that the Secretary has any intention of submitting regulations. Instead, what the Secretary has decided now to do is to shred the longstanding departmental policy regarding R.S. 2477 regulations and replace it with his own. That is why this is an emergency now. It is the lifeblood of the Western States who are still developing and need access, and need the assurance that we will be able to cross public land as long as we are able to prove that we have traditionally used that access route prior to 1976—a wagon trail, a snow machine trail, a dog sled trail. And it doesn't mean much in New York. It doesn't mean much in Arkansas. But in Alaska that is how we can get there from here. We simply have to have that assurance.

The real difference between the provision in the bill before Congress today and the permanent moratorium passed last year is that there is less likelihood that the administration will be able to find a way to skirt around congressional intent with this provision.

Mr. President, in my State these were coveted promises that we were advised would be available to us when we accepted statehood—that we would have the opportunity to access across public land based on traditional utilization, trails, rights, and so forth.

To make the statement that almost anywhere indiscriminately one could claim a route across public land, or parks, or recreation areas is absolutely absurd. The only areas, again, that have any justification for consideration under R.S. 2477 are the historical areas of use prior to 1976 across unreserved public lands.

So, Mr. President, as we conclude this debate, I encourage my colleagues to dismiss the rhetoric suggested by my friend from Arkansas who is, obviously, carrying the weight of the Secretary of the Interior. But when he makes statements that just about anybody or any excuse is justifiable in coming across public land is unrealistic. When he suggests that this is no emergency and should not be on the appropriations supplemental, he is wrong because it is an emergency. They are going to take this away from us by administrative fiat. That is the bottom line.

So here we are today, Mr. President, responsibly; 13,000 miles of road, an area one-fifth the size of the United States. This action by the Secretary of the Interior would eliminate the right that we have as a State, and the commitments that we had coming into the Union, to have the assurance that we would have continued access across public land.

So I encourage my colleagues on this vote to recognize the significance of what this means to Western States. This was a promise made by the Federal Government—a commitment that they are proposing to take away. It is unrealistic. It is unjust.

This belongs in here because we need the continued assurance that we will have an opportunity, and in an orderly manner, to pursue, if you will, access that was guaranteed when Alaska became a State and when other Western States came into the Union.

I yield to the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague from Alaska for the excellent remarks he has made. He has summarized this as well as anyone could. He is an expert in this area.

And I compliment my colleague from Utah for the work he is doing in this area. He is a great leader in this area. I personally appreciate the leadership that he has provided. He will show through descriptive evidence some of the problems that we have.

Let me just say this: I also want to thank Senator STEVENS, the senior Senator from Alaska. Both he and Senator MURKOWSKI have provided our colleagues with a good overview of where the situation now stands, why the language in the supplemental appropriations bill is necessary, and why Senators should oppose the amendment of our good friend and colleague, Senator BUMPERS.

I want to commend Senators MURKOWSKI and STEVENS for their leadership on this matter. They know and understand the issue better than anyone else in this body. When it comes to preserving rights-of-way over public lands for State and local governments, there are no better advocates than the two of them, and certainly the senior Senator from Alaska, who himself served in the Interior Department. I am pleased to join with them today, and I thank them on behalf of the citizens of my State for leading this effort.

For several years now the Department of Interior and the U.S. Congress have been at odds over that Department's effort regarding vested property rights essential to states and local governments throughout the west. On at least three occasions, Congress has blocked promulgation of Interior Department regulations intended to regulate retroactively the terms and conditions of the establishment of certain highway rights-of-way vested between the middle of the last century and 1976.

As Senator MURKOWSKI indicated, the Department of Interior, frustrated by Congress, is now attempting to do indirectly that which it cannot do directly. The Department is attempting to implement the blocked regulations under the guise of a new policy guidance issued on January 22 of this year. This

guidance promotes a concept of Federal law which preempts State law, in spite of the fact that Federal courts have found State property laws applicable to issues such as vesting and scope of the right-of-way as a matter of Federal law.

What is at stake here for those of us in the West is the preservation of what amounts to the primary transportation system and infrastructure of many rural cities and towns. The rights-of-way in question are found in the form of dirt roads, cart paths, small log bridges over streams or ravines, and other thoroughfares and ways whose development and use was originally authorized in 1866 during the homesteading activities that led to the establishment of western communities. They have been created over time and by necessity. In many cases, these roads are the only routes to farms and ranches; they provide necessary access for school buses, emergency vehicles, and mail delivery. These highways—and we are obviously not using the term ''highway'' in the modern sense—traverse Federal lands, which in Utah comprises nearly 70 percent of Utah's total acreage, and they have been an integral part of the rural American landscape for over a hundred years. Congress created these rights-of-way in 1866; Secretary Babbitt is now attempting to eliminate, if not devalue, them in 1997.

Let me set forth for my colleagues, in as brief a form as possible, the black letter principles applicable to this issue and why the disposition of this matter is so critical to those of us representing public lands States.

As has been stated, Revised Statutes 2477 states, in its entirety:

SEC. 8. And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. (§8 of the Act of July 26, 1866, 14 Stat. 253, later codified at 43 U.S.C. §932, repealed October 21, 1976.)

In 1976, Congress adopted the Federal Land Policy and Management Act of 1976 (FLPMA) that repealed these 26 words known as R.S. 2477. At the same time, Congress included language protecting these valid existing rights, thus making the actions of the Department of Interior after passage of FLPMA subject to those rights. FLPMA explicitly states this:

Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this act * * * All actions by the Secretary concerned under this Act shall be subject to valid existing rights. (FLPMA §§701 (a) and (h), 43 U.S.C. §1701 notes (a) and (h).)

From 1938 until the repeal of R.S. 2477 in 1976 by FLPMA, regulations published by the Department of Interior made it clear that the executive branch had no role to play in determining or regulating the validity or scope of R.S. 2477 rights-of-way. The regulations explicitly stated that:

No application should be filed under R.S. 2477, as *no action on the part of the Government is necessary*. 43 C.F.R. §2822.1–1 (1972, emphasis added).

They further provided that:

Grants of rights-of-way referred to in the preceding section become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses. 43 C.F.R. §2822.2–1 (1972).

In other words, the grant of a right-of-way was a unilateral offer that vested automatically upon an act of acceptance. A published Interior Department decision said essentially the same thing as early as 1938:

This grant [R.S. 2477] becomes effective upon the construction or establishing of highways, in accordance with the State laws, over public lands not reserved for public uses. No application should be filed under this act, as no action on the part of the Federal Government is necessary.'' (56 I.D. 533 (May 28, 1938).)

The current published Interior regulations state that if administration of any pre-existing right-of-way under regulations promulgated pursuant to FLPMA would diminish or reduce any rights ''conferred by the grant or the statute under which it was issued, * * * the provisions of the grant of the then existing statute shall apply.'' This language was explained in the Department's final rulemaking as follows:

In carrying out the Department's management responsibilities, the authorized officer will be careful to avoid any action that will diminish or reduce the rights conferred under a right-of-way grant issued prior to October 21, 1976.

FLPMA also provides:

Nothing in this title [43 U.S.C. §§1761 et seq.] shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted or permitted. However, with the *consent* of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title. (43 U.S.C. §1769 (emphasis added).)

These explicit provisions make it clear that the local and the State governments that hold R.S. 2477 rights-of-way have always been entitled to exercise them in accordance with their duly constituted authority and in accordance with the applicable provisions of State law without interference from the Federal Government. No action by Congress would allow any interference by Federal agencies with the exercise of these rights in accordance with State law. The current Department of Interior regulations merely confirm Congress' intent that the agencies honor these vested property rights.

Past efforts to define any of the key words in the original R.S. 2477 statute and to determine their original intent have created many different and varied opinions. Words such as ''construction'' and ''highway'' have been the subject of many analyses by lawyers and other experts on public land issues. Even Secretary Babbitt in his policy guidance of January 22 provides a definition of a ''highway'' as it pertains to R.S. 2477 that, in my opinion, is inconsistent with legal precedents. For example, Federal courts have honored the common law definition of ''highways,'' which basically requires only that the route be open to the public to travel at will. Here are just a few of the statements the courts have made which elucidate this point:

The act of Congress [43 U.S.C. 932—then R.S. 2477] does not make any distinction as to the methods recognized by law for the establishment of a highway. It is an unequivocal grant of right of way for highways over public lands, without any limitation as to the method for their establishment, and hence a highway may be established across or upon such public lands in any of the ways recognized by the law of the State in which such lands are located. Any other conclusion would occasion serious public inconvenience. (*United States* v. *9.947.71 Acres of Land*, 220 F. Supp. 328 (D. Nev. 1963), quoting *Smith* v. *Mitchell* (1899) 21 Wash. 536, 58 P. 667, at 668.)

The parties [including the Department of Interior of the United States] are in agreement that the right of way statute [R.S. 2477] is applied by reference to state law to determine when the offer of grant was accepted by the construction of highways.

In Colorado, and in Utah, the term ''highways'' includes footpaths.

Highways under 43 U.S.C. 932 can also be roads formed by the passage of wagons, etc., over the natural soil.

In Colorado, mere use is sufficient: ''It is not required that 'work' shall be done on such a road, or that public authorities shall take action in the premises. Use is the requisite element, and it may be by any who have occasion to travel over public lands, and if the use be by only one, still it suffices.''

The Secretary's new policy states that ''a highway is a thoroughfare * * * for the passage of vehicles carrying people or goods from place to place.'' This policy blatantly ignores the history of legal decisions in this area by insisting that a R.S. 2477 right-of-way must provide for the passage of a vehicle. How did the Secretary arrive at this definition? By what authority can he overlook decades of legal opinions and insert his own philosophy or interpretation of the original statute to create this critical definition? There can be no solid foundation upon which he takes this leap of interpretation, except his own desire to rewrite these opinions to say or mean something different. The decisions stand for themselves. This body cannot allow the Secretary's new policy guidance to go unchallenged.

Let me underscore the importance of this issue by stating several critical facts.

First, it is clear from the record that the Department of Interior understood that FLPMA did not grant authority to the Bureau of Land Management [BLM] to diminish any prior valid existing rights. It is also clear that many counties in western States have been maintaining the transportation infrastructure across Federal lands for many decades without interference from the Federal land managing agencies, particularly the BLM, according to legal and regulatory precedents.

However, current actions by Interior and the Department of Justice contradict these express provisions of FLPMA. For example, the Secretary's new policy guidance of last January states that the BLM should not process R.S. 2477 assertions in the absence of a demonstrated, compelling, and immediate need to make such determinations. Thus, BLM has been precluded from addressing R.S. 2477 questions administratively, to the extent it might otherwise have done so.

And, Department of Justice officials have been telling county governments that they cannot maintain their R.S. 2477 rights-of-way without first obtaining the permission of the BLM. It is a catch-22 of a serious nature. The BLM is not addressing R.S. 2477 rights-of-way on the lands they manage, while right-of-way holders are being told they cannot exercise the rights unless BLM addresses them first. For this reason, several western counties have been sued by the United States, based on complaints that assert that the counties have violated the law by maintaining roads without first seeking permission from the BLM or the National Park Service. These complaints, as well as other public statements made by Department of Justice officials, assert that permission from the land managing agencies is required before a county can take any action to exercise its rights.

The BLM or the Justice Department has told more than one county in Utah that they should seek FLPMA rights-of-way, more accurately described as conditional use permits than true rights-of-way, because there is no R.S. 2477 process in place and because BLM cannot authorize activities on R.S. 2477 rights-of-way without first going through a process. Counties are threatened with lawsuits if they exercise their rights as they have in the past.

I recently brought this matter and these current facts to the attention of Attorney General Janet Reno in a letter detailing the history of R.S. 2477. Among several things, I asked her if she was aware of Secretary Babbitt's policy guidance of January 22 and whether her office was consulted as to the legal sufficiency of terms defined within the policy. I asked her because, in the end, if this or any other government policy is challenged in court, the Department of Justice will have to defend it, and the lack of consistency on definitions and other wording contained in that policy could lead to insupportable and unnecessary litigation. Her response to my letter indicates that while her office was aware of the Secretary's January policy statement, she does not say conclusively that Justice was consulted. The letter closes by stating that ''the final determination (on the policy guidance) * * * rests with the Secretary.'' The answer to my query is obvious.

This is interesting in light of the fact that the chief of the General Litigation Section of the Environment and Natural Resources Division at the Department of Justice wrote a letter to the Department of Interior's solicitor on January 29 asking that Secretary Babbitt's policy guidance be modified to reflect any future adjudication of R.S. 2477 rights-of-way claims. The Secretary later released a memorandum dated February 20 making this clarification in the policy statement.

My point in raising this matter is this: when it comes to establishing a new policy on such a technical issue as R.S. 2477 rights-of-way, where the definition of key words and phrases—like ''highway'' and ''construction''—is of paramount importance, the Government's own legal authorities who may have to defend those definitions should be consulted.

To say the least, this situation is intolerable for holders of R.S. 2477 rights-of-ways. Attempts to rectify this situation in an amicable fashion, either through regulation or legislation, have proved futile. Now, Secretary Babbitt is skirting both the letter and spirit of recent congressional direction regarding R.S. 2477 rights-of-way through his policy guidance of last January. If he is serious about bringing closure to this matter once and for all and in a way that is in the best interests of the public and local and State governments that hold R.S. 2477 rights-of-way, then I encourage him to work with the Congress, not against it.

Mr. President, some claim that R.S. 2477 rights-of-ways are nothing more than dirt tracks in the wilderness with no meaningful history, whose only value to rural counties arises from the hope of stopping the creation of wilderness areas. Nothing could be further from the truth. No one is suggesting that we turn these rights-of-way into six-lane, lighted highways with filling stations, billboards, and fast food restaurants, as Secretary Babbitt alluded to in his recent letter threatening a veto recommendation if this bill is not amended. Yet, these rights-of-ways constitute an important part of the infrastructure of the western States.

My colleagues can think of it this way: Let's say your front yard belonged to someone else—the Federal Government, for example—and the gravel driveway was the only way to get to your house from the street. The Secretary's policy guidance would have the effect of denying you the use of your driveway. You would have to haul your groceries to your front door from the street.

A simple illustration, perhaps, but one that shows the importance of these R.S. 2477 rights-of-way to the people in the West.

There is no pressing environmental reason to change the R.S. 2477 rules other than to make Federal land more pristine than it has been since the pioneers settled the West. In most cases in Utah, this is absolutely impossible, since some of Utah's R.S. 2477 rights-of-way, like Utah State Highway 12 near Bryce Canyon National Park, are paved and heavily traveled. What would those opposing the full exercise of these rights-of-way have the State of Utah do—dig up the blacktop, remove the pavement, erase the yellow markings, and reclaim this road in the form it existed prior to 1866? That is ludicrous. And, we may as well sell off Bryce Canyon because no one will be able to get there. The right-of-way has been developed over time with improvements to it pursued in the name of protecting public safety and welfare.

Mr. President, any disposition of issues related to rights-of-way across public lands is of utmost concern to States like Utah with public lands. These rights-of-way provide the backbone of our transportation infrastructure and have deep historic and traditional roots in the overall development of the West. There are regulatory and legal precedents that should be followed and adhered to when these rights-of-way are administered. The Secretary's policy guidance of January 22 is not consistent with this law, precedent, or custom, which is why the language in the supplemental appropriations bill is necessary.

I urge my colleagues to reject the Bumpers amendment.

I thank my colleagues from Alaska and I thank my colleague from Utah for their leadership on this matter, and in particular I would like to thank my colleague from Utah for allowing me to go first here because I am conducting a hearing over in the Judiciary Committee and I need to get back. So I am grateful to him for his courtesy in allowing me to do this. I hope that our colleagues will vote down the Bumpers amendment. It just plain is not fair to the West. What Secretary Babbitt is doing is not fair to the West. In fact, it is extreme and it flies in the face of many precedents of law that have existed and do currently exist.

Mr. President, I yield the floor.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I ask unanimous consent that privileges of the floor be granted to Cordell Roy for today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNETT. I thank the Chair.

There is an old line in politics that applies in campaigning that says when you are explaining, you are losing. And there would be those who say, because of the technicalities of the explanations we have to give about this fairly technical matter, we are probably losing the issue.

However, if you are explaining, it does not necessarily mean you are wrong. I am going to do my best to try to be as simple in my explanation today because we are not wrong on this one. This is not an issue where the Senators from the Western States are trying to do something improper for the rest of the country, something parochial just for ourselves. These are fundamental issues and they should be clearly explained and understood.

I would like to focus on one road and one circumstance that will help explain this matter. I picked this road because it is perhaps the most controversial R.S. 2477 road in all of Utah. It has a very romantic name. Its been called the Burr Trail. I do not know who Burr was, and I do not know what trail he or she made across this land in the first place. I suppose at some point somebody will tell me all of that. Frankly, as I read about it in the newspapers and heard people talk about the Burr Trail before I became a Senator, I had visions of a footpath going through a forest. That is what a trail means to me. And then I was elected to the Senate and had to get into the details.

This is, Mr. President, a picture of the Burr Trail. As the Presiding Officer can clearly see, this is a road. It is 28 feet wide. It is a well-traveled road. I have been on it. No, I did not need an all-terrain vehicle to get on it. I was on it in a street-legal vehicle, driving along it. It is used, whatever Mr. or Mrs. Burr anticipated, as the principal way the residents of Garfield County can get from one end of that county to another. It happens to run through the Capitol Reef National Park. It was with the full consent of the Federal Government that the western Burr Trail across BLM lands was improved. The lands in dispute have to do with the 8 miles of road that go through the Capitol Reef National Park.

This sign the Presiding Officer cannot see, as far away as he is, says, ''Entering Capitol Reef National Park.'' I would call your attention to this sign as a guidepost because I am now going to show you a second picture of the Burr Trail taken somewhat after the first one, and here again is the identifying sign to show you where we are. There is one difference. If you would remember from the first picture, you will see that this is a blind curve. As you are coming down the Burr Trail here, if there is traffic coming the other way, you are not going to be able to see it. It is a blind curve. There could be an accident. Under R.S. 2477, the responsibility of maintaining the Burr Trail lies with the county. They own it. It is a right-of-way that they have received according to Federal law. The county went out and cut off 4 feet of land. As I said, the Burr Trail is 28 feet wide. As it got to this particular point, it narrowed to only 20, so the county decided to widen it to 24—not 28, not widen this curve as wide as the rest of the road but just take 4 feet off so you get a little bit of a view around the blind curve. They did that under their existing rights established by the Congress.

Well, the reaction that occurred in the Interior Department would have had you believe they had gone into Yellowstone National Park and bulldozed Old Faithful. Interior officials were sent from Washington, DC, to Garfield County, sat down across the table from Garfield County officials and demanded that those officials immediately sign over their right to any meaningful management authority over the right-of-way. They also assured them that if county officials did not, they could face the full power and force of the Federal Government in Federal courts in the form of an aggressive legal action.

This is not the only sin these county officials committed by creating an opportunity to see around the corner, by taking 4 feet off of an area that was, they understood, legitimately within their right-of-way. When they took this action, they did not realize they were setting off such an enormous controversy.

County officials did some other things on this road. They also made some improvements where the washboard effect had been created. They made some improvements where there had been debris that got on the road. They did changes in a normal maintenance circumstance, and for this they are now in Federal court with the full force of the U.S. Justice Department accusing them of all kinds of terrible environmental sins.

I am sorry, Mr. President, I do not see the terrible environmental sin, going from the first circumstance of this kind of a curve to this circumstance; of taking a road that is 28 feet wide, narrows going around that curve to 20, and saying, no, we will make it go around the curve at 24 feet. I do not know that this merits the kind of wrath that has been brought down by the Interior Department on the officials of Garfield County. But that is what we are faced with.

That is what we are talking about here, Mr. President. It has little or nothing to do with the road. It has little or nothing to do with the county maintaining this kind of right-of-way. It has to do with is who is going to make the decisions. The Federal Government is determined they will make the decisions whether the Congress gives them the right to do it or not. They will ride roughshod over the rights of the States and the counties whether the Congress gives them the authority or not. When the Congress specifically refused to give them the authority, this Secretary of the Interior said, ''All right, if the Congress won't give me the authority, I will usurp it. I will take it on my own and see if the Congress has the willingness to demand that I live up to prior agreements.''

That is what this amendment is all about, a demand that the administration live up to prior agreements. That is what it is all about, the issue of can the States depend on the acts of Congress in terms of maintaining their existing rights.

Mr. President, I would like to show you another picture. This one is not as controversial as the first pictures we have just seen. Those who say R.S. 2477 roads are mere trails, R.S. 2477 roads are mere footpaths, here is a picture of an R.S. 2477 road in the State of Utah. Why do I pick this particular one? Not because it is paved; there are plenty of R.S. 2477 roads in Utah that are paved. I picked this one because this is the road that millions of tourists will take when they come to the newly created Grand Staircase-Escalante National Monument. This is the road those tourists will have to use to come see the 1.7 million acres that the President spoke about so lyrically on the south side of the Grand Canyon last September. It runs for about 70 miles.

If we decide that the Secretary is right and the Federal Government has jurisdiction over this road, I can tell you what the counties will decide. You take away their property rights in this road and the counties will say, ''Since you have taken our property rights, you maintain the road. It is not our road anymore, let's allow the Federal Government maintain it.'' This is the kind of responsibility we are going to give to the Bureau of Land Management if we accept the motion of the senior Senator from Arkansas.

Frankly, as a member of the Appropriations Committee, I do not want that responsibility. I do not want to take on additional Federal financial burdens. When there is a county more than willing and able to maintain the road, I say, why don't we let it do it? We will not let it do it because the Secretary of the Interior says, ''We want jurisdiction. We want jurisdiction over this road. We cannot trust the county to maintain the road.''

I ask you, Mr. President, does this demonstrate that the county cannot be trusted to maintain the road?

No, the real issue is that there are a number of roads in rural Utah that the Federal Government officials want closed. That is why they want to take away the property rights of those roads away from the counties, because they wants the roads closed. They want the roads shut down. The impact of shutting down the roads will be that, ultimately, people will move from the county because they cannot conduct commerce anymore. Ultimately, they would like to see southern Utah rid of human beings except those who work in motels and in fast-food places, people who have tourist oriented jobs. But they want no other jobs down there because they do not want any other economic activity in southern Utah to continue.

Mr. MURKOWSKI. I wonder if my friend from Utah will yield for a question?

Mr. BENNETT. I will be happy to yield.

Mr. MURKOWSKI. Isn't a good deal of this debate about exactly what a highway is? And hasn't the Secretary, in effect, taken the assumption that he has the authority to change the terminology of what a highway is?

Mr. BENNETT. I ask my friend from Alaska if he has a definition of what a highway is, in these circumstances. If he would share it with the Senate, I will be happy to yield the floor to allow him to do that.

Mr. MURKOWSKI. I might just add, has my friend from Utah concluded his statement?

Mr. BENNETT. I probably concluded prior to the time when I quit talking, but I got carried away.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Alaska.

Mr. MURKOWSKI. I thank my friend from Utah for yielding. I would like to highlight, specifically for the benefit of my friend from Arkansas, who is back on the floor, what this debate is about. It is about what a highway is.

Looking at the State of Arkansas, it is quite clear what a highway is. A highway is, as indicated on the highway map of the State of Arkansas, extended networks of access across the State, traditionally used for recreation, commerce, and so forth. The question we have here before us is the definition by the Department of Interior, how they are defining a highway. In 1988, the Department, after months of discussion and consultations with the Western States, developed its official policy on the R.S. 2477 right-of-way. That policy worked in conjunction with the States, as they defined historically what a highway was. I will quote this definition, because this is what this debate is boiling down to:

A definite route on which there is free and open use for the public. It need not necessarily be—

And this is the key.

It need not necessarily be open to vehicular traffic, for pedestrian or pack animal or trail may qualify.

It does not have to be for an automobile; pedestrian, pack animal, trail may qualify. That is where we have been in this debate up until now, and that is why it is appropriate that this be in here, to ensure that we will have that definition as opposed to what the Secretary of Interior has arbitrarily proposed in changing it.

He proposes to state that, through an action used prior to October 21, 1976, ''by the public for the passage of vehicles [cars] carrying people or goods from place to place.'' That is the change. That is the significance. He is doing this arbitrarily. He is saying that no longer is pedestrian access or pack trail or wagon trial adequate. It must be vehicles.

Mr. President, in 1917 they did not have very many vehicles in Alaska. We do not have very many today. But the point is, we have trails. We have to have the right, as evidenced by those trails, as we look at the restrictions that Federal withdrawals have placed on our State. And here they are, Mr. President. How in the world are we going to get across Federal lands? All these colors—the brown, the green, the cream—these are the Federal holdings in the State of Alaska. The only thing that belongs to the State that we have access through are the white areas.

The point I want to make is, how in the world are we going to get a highway across from the Canadian border to the Bering Sea without crossing Federal land? We cannot do it. How are we going to get north? How are we going to cross all these Federal areas without this basic right that we had when we became a State 38 years ago? We are simply not going to be able to do it, unless we have this law that states specifically that the interpretation of a highway is for pedestrians, pack animals, to qualify. Because, Mr. President, if you look again at Alaska today, this is our highway network. That is where we are. That is our highways, 1,300 miles. We have a road north-south to Seward, a road over to the Canadian border. We have nothing to the west—absolutely nothing. This is an area one-fifth the size of the United States.

My point is, under the law as it is currently stated, you must have proof of a traditional route across public land, prior to 1976, to qualify. The Secretary proposes to change that. He would say you have to have had a road. That eliminates Alaska. It eliminates much of Utah, and several other Western States are affected. That is where we are.

I am reading from a definition of ''highway.''

The term ''highway'' is the generic name for all kinds of public ways. Whether they be carriage ways, bridle ways, foot bridges, turnpike roads, railroads, canals, ferries, navigable rivers, they are considered highways.

But that is going to change under this definition. So, clearly what we are talking about is keeping in place the law that has been for 130 years in the departmental regulations as they have been codified since 1932, and again in 1994.

The fact is, if R.S. 2477 was not in existence prior to October 1976, it will not and it cannot be, by definition, created now. So there is no threat here to public land. There is no threat to the parks. This is all a smokescreen.

The reality is, we will simply be assured of having the rights-of-way across public land that we were promised as opposed to it being taken away. So I urge my colleagues to recognize the significance of what this inclusion means, why it is appropriate that it be there, why it is an emergency right now, and why I encourage all Members to reflect on the significance of this. The motion proposed by the Senator from Arkansas should be stricken, because it simply does not belong in the sense of his offering the amendment to strike this section.

So, I see my friend, the senior Senator from Alaska, is seeking the floor. I yield the floor at this time, other than again to remind all my colleagues, what we are trying to do here is keep in place a law that for 130 years has provided us with the protection, the assurance that we would be able to cross public land if, indeed, we had valid proof that we had used the routes prior to 1976. So we would have the assurance of being able to proceed with the orderly development of our State.

I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I have been involved in this issue now for a substantial portion of my life. I was in the Interior Department during the Eisenhower administration, 1955 to 1961. At the end of that period, I was the Solicitor of the Interior Department. During that period, we obtained statehood for Alaska. The whole question of what our rights would be as a State was debated at length, not only in the Congress but in the White House and the old Bureau of the Budget.

The Revised Statute 2477 was the basis for really the modernization of the West. And when we came to the period of the seventies—and I was here as a Senator—when the proposal was made to repeal R.S. 2477 in 1974, I had a very long debate with Senator Haskell of Colorado at the time, and we subsequently did not pass the bill in that Congress.

In 1976, when the rights-of-way bill was brought up again, we discussed at length the protections that would assure that the commitment that was being made to the Western States, in general, and Alaska, in particular, would be ironclad. So at my insistence, the 1976 act contained three specific statements.

The first one is in section 701(a):

Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.

Again in section 701(f):

Nothing in this Act shall be deemed to repeal any existing law by implication.

And in section 701(h):

All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

Starting in 1993, the Secretary of Interior attempted to ignore all of those guarantees and say that as manager of the Federal lands, he has the inherent right to ignore that law and to issue regulations to change this concept, so that the valid existing rights will be determined by Federal law and not by State laws as they have for 130 years. There has never been, before this administration, any attempt to define the rights-of-way across Federal land by Federal law. They have been determined by the general law of each State, and ours are no exception in Alaska.

But very clearly, we have three times now spoken here in the Congress to try and stop this move by the Secretary of the Interior and his Department to change this tradition. We did it in the National Highway System Designation Act, we did it in the Interior appropriations bill for 1996, and the Interior appropriations bill for 1997. Now, however, what we are trying to stop is his announcement of a policy which will govern all Federal lands. It is not regulation, it is a statement of policy now.

Congress prohibited the use of funds, we prohibited the issuance of regulations, but now he says he is going to announce a policy, a new edict, and that is that there is a Federal law pertaining to rights-of-way and they will define that and it will not be based on State law at all.

What we are talking about, as my colleague from Alaska has said and the Senators from Utah have said, is the process by which all of the West obtained the rights-of-way that ultimately became the road system of the West.

In Alaska, because of our situation prior to statehood, the Federal Government built the highways when we were a territory, and it built one main road. It was really built for the aid of the war effort. The Alaska highway came up through Canada, and then came down through Alaska at our eastern border, and came to our major city of Anchorage. It came through Fairbanks and then down into the Anchorage area. That was one main road. Since then, we have built some arterials off that. We had a long time convincing the Congress that we were a State and we ought to have equal treatment under the National Highway Acts. Now we have that.

Now we come to the period where this administration wants to assert, by virtue of Federal supremacy, a concept that, on over 100 million of acres of land that were reserved by the Congress in 1980—and, incidentally, they were specific in terms of recognizing valid existing rights at that time, too—now this administration wants to say none of these rights under the Revised Statute 2477 shall be recognized on Federal lands in Alaska, period.

The Federal Government owns more than 68 percent of Alaska's land. As my colleague has pointed out, the State of Alaska is a checkerboard with Native land, Federal land, and State land and very little private land. But the right of access to the private land through the State land and the Native land is of necessity such that rights-of-way across some Federal lands are required if we are to have a road system to serve the State as a whole ultimately.

This is not a simple question for Alaskans. What it really comes down to is a question of can we trust the Federal Government? We had a long debate here that went on for 3 years. The record is absolutely clear that the Congress, at that time, agreed that we had these rights and that they had to be protected if Revised Statute 2477 was to be repealed. I have to say, from 1976 to 1993, there was no question about it. But now, because of the onslaught of a direct mail advertising campaign by extreme environmental groups who have painted us as being the arch devils of management, they claim that we are trying to establish some new rights across Federal lands. By definition, none of the rights that could vest after 1976—they are all prior to 1976, and they were protected by Congress and they were across lands that were not reserved in 1976.

I think the real problem here is the people who are doing this are unwilling to accept the decisions made by Congress. Every Congress has said we are not going to interfere with valid existing rights. Again, these rights are vital to a State such as ours. I really cannot deal with it without going back over a whole history of what has been done in our State.

Let me say, our amendment is simple. It continues the same policy the Congress has voted on three times now, and it says this new policy concept of the Department of the Interior—not a regulation, not a rule, both of those were prohibited by past actions, not an order that was also prohibited—but this new concept of a policy, they can't do it in any way. If they want to do it, they can send up a proposal to Congress, let us debate it, and we will see what the law will be for the future, and we will see as a result of what they are doing if there is any compensation due to the people whose rights are condemned by Federal action. This is a way around the whole concept of trying to compensate people for the absolute extinguishment of rights that were created and protected by Congress through past actions.

Some have suggested that almost a million new miles of roads and claims would be asserted by virtually anybody, anyone. Mr. President, I tire at trying to answer false statements like that. As my colleague has said, we have 18,000 miles of roads in an area one-fifth the size of the United States now. We can only build those roads with highway funds that are available, and at the cost of roads, it is just not possible for us to contemplate a million miles of road. We are not contemplating even doubling what we have now. We are contemplating just some small roads to connect various villages and communities that are near the road system that exists now, and even that will be over a period of years.

This is a process that we believe that the Congress ought to recognize. We create no new rights-of-way across Federal land. We only recognize those that were in existence before 1976, and we preserve those rights once more on the same basis that they have been available throughout this country for 130 years based upon State law. The courts have asserted, past administrations have asserted—I don't know of anyone, as I said, in the past who has asserted that there was a Federal law that determined how rights-of-way were created across Federal land.

There is the specific right-of-way concept where people are coming and asking permission to cross Federal land to build pipelines or build transmission lines for various uses of Federal land, and that is what the Trans-Alaska Pipeline Right-of-way Act was all about.

But we believe that in terms of what we are doing now, I am told—I don't know if Senator MURKOWSKI mentioned this—we asked the Department of Natural Resources of Alaska to tell us what rights-of-way might be capable of being asserted. There were 1,900 originally reviewed, and 700 were found to be on State land. Of the remaining 1,200, about 560 appeared to qualify as potential rights-of-way. The State deferred 400 of those because they crossed Federal withdrawals. That is to be looked at at a later time, and we are now proceeding with very few of them. I have been told that so far, we have used about 10 of these rights-of-way in the time that we have been a State, which is now almost 40 years. Mr. President, you don't use them until the highway system gets to the point where you can use them to extend it on out. So Congress protected those rights-of-way for the future so that when the highway system starts to expand, it will be possible to get to those communities.

My last comment to the Senate will be this. My colleague and I labor here for land that is so far away that we are closer to Tokyo than we are to Washington, DC. We spend a great deal of our time trying to convince the Congress to keep the commitments that were made to us as we sought and fought for statehood because we wanted to be partners in the Union.

Now it seems that people from other States are doing everything they can to turn us back into a federally dominated territory. That is why we are here on the floor. We wanted to be a State to protect our rights. That is our No. 1 duty, to see to it that the commitments made to our State are kept by the Federal Government. And it is very hard to do right now. It is very hard to do when there are people in the administration who want to just be those who dictate to our State.

I cannot emphasize this enough to the Senate, this is not a new subject. We have done in this bill what we did three times before. We have acted to prevent the Secretary of the Interior continuing on this course of trying to change the law that guarantees the protection of valid existing rights under Revised Statute 2477.

Mr. President, I mentioned my own background on this subject. But I have to say, one of the reasons that I am concerned about it is because, as a young lawyer in the Interior Department, I remember some of the fights that existed in the 17 Western States that had public lands before we became a State. This same battle took place before, but in different ways, where agencies of the Federal Government just tried to block the use of lands. But no one ever thought of creating a Federal rights system and taking unto themselves the power to determine what rights existed prior to that time.

That is what the Department is trying to do now. They are trying to say, ''Wait a minute. We're the managers of this land. All this land is still under our domination and, therefore, we're

going to tell you how you cross this land.''

The Department of the Interior has done something—I used to tell our people in the Interior Department when I was there: ''We do not own this land, you and I. We are the stewards of this land. It's owned by the people of the United States.'' But if you hear these people talk now in the Department of the Interior, it is their land. They own it.

I have to tell you, Mr. President, it will be a cool day in Hades when Alaskans will allow them to do that. I hope that the Senate will stand by us in this battle, which is just a continuation of battles we have fought here on many other issues to protect our rights as a State.

These rights ultimately will be used by the State of Alaska to build public highways. We do not have a county system. Our population base is small. We have a borough system, but basically the roads in Alaska are built by the State. So in our State the rights are basically protected by the State and the State nominates those areas where it wants to proceed to utilize the rights-of-way that were created prior to 1976.

I do think, Mr. President, that if there is anything that I would like to leave with the Senate, it is that at some time or other every Senator is going to have to come out here and say, ''In the days gone by, a compromise was reached regarding an issue in my State, and the decision was made and put into law.''

All I want you to do is recognize an act of a prior Congress in committing the United States to a course of action that must be followed now if States rights are to mean anything. This is a basic States rights issue to me, to have the ability to provide the expansion of the transportation system to meet the growing needs of people in a frontier area. If the Senator's amendment is adopted, the Secretary of the Interior will be free to issue an edict that future rights in Alaska will be determined by the Secretary of the Interior.

What does that do? It returns us back to 1958, to the territorial days. We would not be a State. No State is dominated by a Cabinet officer. We were as a territory. We had an Office of Territories in the Department of the Interior when I was at the Department of the Interior. And Alaska was one of the desks in the Office of Territories. That person carried all of the decisions of the Secretary of the Interior with regard to Alaska. As a matter of fact, Alaska used to call him the ''Great White Father.'' Well, there is not a Great White Father for Alaska now. There are 100 Senators here and 435 people over there who have something to do with making decisions regarding what happens to the rights of the people of the State of Alaska.

I urge the Senate to stand by us and maintain the course, that we will live by the law and not by edicts of changing personnel in changing administrations as the years go by.

Mrs. BOXER. Mr. President, I rise today to discuss Senator BUMPERS' amendment to strike section 310 of the supplemental appropriations bill related to rights-of-way across public lands.

I support Senator BUMPERS' amendment because it strikes language in the supplemental appropriations bill which is not only highly controversial and bad for public lands, but it also has nothing to do with emergency funding—the purpose of this supplemental appropriations bill.

Rights-of-way is a principle of property use that allows for continued use of a pathway across public land when it can be proven that the path existed before the land was reserved for Federal designation—so a road that existed prior to the designation of the Yosemite National Park would be a valid right-of-way.

In our Nation, any individual or local government can claim a right-of-way. The validity of this claim must then be determined.

In 1988, then Secretary of the Interior Hodel developed policy guidelines for dealing with right-of-way claims over public land.

The Hodel policy effectively deferred authority over rights-of-way determination to States and provided very broad guidelines to assist States in making these determinations. The guidelines allowed for a right-of-way to be granted if merely a large rock or vegetation was removed from an area. Once a right-of-way authority is granted, a small dirt footpath through Yosemite National Park could be converted to a six-lane paved highway.

The Hodel policy makes it much easier for right-of-way claims to be asserted through many of our most precious environmental areas—including designated national parks, wildlife refuges, and wilderness areas.

In January 1997, Secretary Babbitt revoked the Hodel policy, and instituted revised policy guidelines in an effort to put the Federal Government back in charge of protecting our remaining Federal lands.

The Babbitt policy establishes a Federal process whereby right-of-way claims are evaluated. This policy would not allow a six-lane highway to tear up our precious national parks. It would ensure the rights-of-way be granted only for major roads that require such authority. And any alteration of the land would be susceptible to all Federal environmental regulations.

Secretary Babbitt is unable to follow normal procedure for regulations—proposing rules in the Federal Register, receiving public comment, and promulgating final rules—because of provisions included in the past two Interior appropriations bill which prohibit such actions. In fiscal year 1996, the Secretary was entirely prohibited from promulgating rules concerning rights-of-way; and for fiscal year 1997, the Secretary is only able to propose such rules if expressly authorized by an act of Congress.

If we are not allowed to move forward with Secretary of Interior Babbitt's policy, States will have the authority to determine the validity of existing rights-of-way claims. We therefore create the potential for destruction of valuable Federal lands—lands that belong to all the people of our Nation.

Vast areas may be prohibited from wilderness designation because of right-of-way claims that scar the land. In my State of California, the current number of claims is relatively low. However the potential for claims is thought to be quite high. The Bureau of Land Management estimates that the 12 claims currently pending cover hundreds of miles of roads through California's unique wilderness areas.

Remaining land in California's Mojave Desert, Death Valley, and Joshua Tree poses a serious potential problem should there be a right-of-way claim.

With the California Desert Protection Act, Congress was finally able to protect these unique lands. The language of the bill now threatens the very protection we worked so hard to achieve.

There are few remaining natural lands which have been held in trust by the Federal Government for all people to enjoy. These precious natural resources must be held to a high uniform standard which protect only valid rights-of-way claims while promoting environmentally responsible management of our Federal lands. These are Federal lands, and as such should be governed by Federal policy and procedure.

In a letter to Chairman STEVENS and Senator BYRD, Director of the Office of Management and Budget Frank Raines and Secretary of Interior Bruce Babbitt have both stated that they will recommend the President veto this legislation should this language be included. This is not the time to risk veto of legislation which will provide necessary aid and disaster relief to those who desperately need it.

We saw the disastrous results that occurred from the salvage logging rider. This amendment is just that—an unnecessary, antienvironmental rider which could devastate our remaining public lands.

I urge my colleagues to support Senator BUMPERS' amendment. We must not prevent the administration from establishing necessary procedures for dealing with remaining right-of-way claims.

Mr. BAUCUS. Mr. President, I rise today to speak in favor of Senator BUMPERS' motion to strike section 310 from the Supplemental Appropriations Act. This section should be removed from the Supplemental Appropriations Act for two reasons. First, it could harm our Nation's wilderness areas, national parks, and wildlife refuges. Second, it is wrong as a matter of principle to tie controversial issues to

flood disaster relief. We simply should not play politics when people's lives are in the balance.

In 1976, Congress enacted the Federal Land Management Policy Act and thus repealed an 1866 statute that allowed practically unrestricted road construction across our public lands. Congress agreed, however, to recognize the legitimacy of highways constructed as of 1976.

In essence, the appropriations rider reinstates a 1988 policy that broadly defined highways to include foot paths, pack trails, and even dog-sled routes. If these paths are recognized as highways constructed prior to 1976, then they can be upgraded and enlarged to full roads, even if they run through existing wilderness areas, national parks, or wildlife refuges. These areas are national treasures. They are visited by millions of Americans every year. We should not let them be roaded without careful thought and deliberation.

This rider hits close to home for me. This provision could allow roads to be built through spectacular wilderness in Montana. Often, we have to speculate about what the effect of a piece of legislation will be. In this case, speculation is not necessary.

An R.S. 2477 claim has been filed to build a road through the middle of one of Montana's most popular wilderness areas. Fortunately, that claim was recently rejected by the Department of the Interior. If this rider becomes law, this and other claims could be granted with devastating effect to our Nation's wilderness areas.

Equally disturbing, this section could prevent Montana roadless areas from being designated as wilderness in the future. I have carried bills in the Senate to designate Montana's spectacular Rocky Mountain Front as wilderness. This is an area of soaring mountain peaks, crystal clear streams, and untrammeled meadows. Bills to designate this area as wilderness have received bipartisan support and have passed the Senate.

If section 310 becomes law, the Rocky Mountain Front and other roadless lands in those bills could be denigrated. If section 310 becomes law, the Senate may lose its right to decide whether to designate those lands as wilderness.

And section 310 applies to more than wilderness lands. Section 310 would even affect our national parks and wildlife refuges.

But this vote is about more than the roads that could be built across our Nation's wildlands.

This vote is also about people who have suffered through an unusually harsh winter in Montana and are seeking disaster relief. This vote is about people in North Dakota who have suffered devastating floods.

Let me read what the paper in my State's capitol wrote yesterday about Section 310. In an editorial entitled ''An Ugly Kind of Politics,'' the Helena Independent Record writes:

This sort of thing might be business as usual in Washington, but we think the specter of Clinton being forced to veto a flood-relief measure because of tacked-on skulduggery is way out of line. We suspect it wouldn't sit too well either with flood victims in the Dakotas—and, perhaps, potential flood victims in Montana as well. Politics is seldom pretty, but this is downright ugly.

Mr. President, I agree with this assessment, and I ask unanimous consent that the complete text of this editorial be printed in the RECORD.

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

[From the Helena Independent Record]

AN UGLY KIND OF POLITICS

It might not be anything new to the halls of the Congress, but that doesn't make recent stealth legislation by Alaska's senior senator any easier to take.

Sen. Ted Stevens, R-Alaska, is chairman of the Appropriations Committee, which is writing an emergency bill authorizing $5.5 billion in relief for flood victims.

This is vital, must-pass legislation that everybody agrees needs quick approval. So Stevens tacked onto the bill a pet piece of new legislation that would make it far easier to build roads through federal parks, refuges and wilderness areas.

The measure, based on a Civil-War era law, would give the government less control over right-of-way claims.

Contending the legislation would make the federal government effectively powerless to prevent the conversion of foot paths, sled-dog trails, jeep tracks, ice roads and other primitive transportation routes into paved highways, Interior Secretary Bruce Babbit urged President Clinton to veto the measure if Stevens' provision remains in the bill when it reaches his desk.

This isn't the only deceptive legislation going on. The Alaska Wilderness League is complaining that Stevens and other representatives from that state are trying to rig the federal budget process to allow oil drilling in the Arctic National Wildlife Refuge.

The league says lawmakers may have to vote against a balanced budget deal to save the wilderness area.

According to oil-drilling foes, Alaskan politicians are working to have colleagues include estimated oil drilling revenues of $1.3 billion into budget allocations without mentioning that the revenues will have to come from opening the wildlife refuge to development.

This sort of thing might be business as usual in Washington, but we think the specter of Clinton being forced to veto a flood-relief measure because of tacked-on skulduggery is way out of line. We suspect it wouldn't sit too well either with flood victims in the Dakotas—and, perhaps, potential flood victims in Montana was well. Politics is seldom pretty, but this is downright ugly.

Mr. BAUCUS. Mr. President, the American people are losing faith in our political system. And they are losing faith because of the way that politics is played. Because of this type of rider.

How will the disaster victims in the Dakotas feel if their aid is delayed because some want to play a game of poker where the stakes are incredibly high? Where the stakes are the blankets that flood victims need to stay warm or where the stakes are pumps that are needed so that people can drink clean water?

And what of the people in other states?

Oregon stands to receive almost $140 million from the Supplemental Appropriations bill.

Louisiana, $116 million.

For other states such as Maine, Vermont, and Virginia, the amount of the funds is somewhat smaller, but the need is no doubt just as great.

People in all fifty states receive funds from this bill. People in all fifty states will be affected if we allow politics to delay this bill.

This money will help Americans who have lost their homes, their businesses, and all of their earthly possessions. To block this funding or to delay it through the use of these types of riders is just plain wrong.

To force the American people to accept new roads through their national parks or wilderness areas, just to get their disaster relief is equally wrong.

Mr. President, the Supplemental Appropriations bill is the wrong place to play politics. I ask my Senate colleagues to vote to strike these riders as a matter of policy and as a matter of principle.

Mr. STEVENS. Mr. President, as I have already reviewed in some detail, section 2477 of the Revised Statutes, R.S. 2477, granted rights-of-way for the construction of public highways across unreserved Federal lands.

Congress passed this law in 1866 and the provision was later recodified at section 932 of title 43 of the United States Code.

By permitting travel across Federal lands, R.S. 2477 facilitated the settlement of the West. The rights-of-way granted pursuant to R.S. 2477 remain land access routes for rural residents.

R.S. 2477 was repealed in 1976 by section 706 of the Federal Land Policy and Management Act [FLPMA]. Again, I point out to my colleagues, section 701(a) of FLPMA expressly states that ''Nothing in this Act * * * shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.''

Further, section 701(f) says that nothing in FLPMA ''shall be deemed to repeal any existing law by implication.'' And section 701(h) specifically states that ''All actions by the Secretary concerned under this Act shall be subject to valid existing rights.''

Three times in the same act Congress made it clear that nothing in FLPMA gave the Secretary of the Interior the power to terminate valid existing rights. We meant it then and we mean it now. The Secretary is ignoring the law and all existing precedents with his proposed policy that effectively terminates valid existing rights under R.S. 2477, which for over 120 years have been determined under State law.

Regulations in place in 1976 provided that the validity of the right-of-way should be determined by State law. Likewise, Federal courts have found State property laws control assertions of an R.S. 2477 right-of-way.

In Alaska, which we still call the Last Frontier, R.S. 2477 rights of way are still being used by miners, trappers, and others traveling across specific tracts of unreserved public land.

The Interior Department in the 1980's saw the need for the Federal Government to recognize these trails for what they were—public access routes. Interior adopted a policy in 1988 which for the most part kept Alaskans out of court.

Elsewhere, Federal courts were being asked to quiet title on lands with an R.S. 2477 right of way, and these courts looked to State law to decide if there had been construction of a highway.

In August 1994, Interior published new proposed regulations which would have established Federal definitions for key terms in R.S. 2477. According to Interior, where there was a conflict between the Federal definitions and State law, under the proposed regulations the Federal rules would prevail.

This approach would have redefined existing property rights. It would also have the incongruous result of having some R.S. 2477 rights of way quiet title actions adjudicated under State law and others under Federal law.

Soon after Interior proposed these new rules, resolutions were introduced in the House and Senate urging the Secretary to withdraw them. The comment period was subsequently extended through August 1995.

In late 1995, Congress placed a 1-year moratorium on any rulemaking regarding R.S. 2477 rights of way. The fiscal year 1996 Interior appropriations law, enacted in 1996, also included a similar moratorium.

Congress acted a second time in 1996. Section 108 of the General Provisions of the fiscal year 1997 Interior appropriations law permanently requires congressional authorization of any rules and regulations developed by agencies to address the recognition, validity, and management of R.S. 2477 rights of way.

This measure, agreed to by Congress last fall, was not vetoed, nor was there ever a threat of veto that I was made aware of.

However, in January 1997, the Secretary sought to evade this law by issuing ''policy guidance'' which provides a process for recognizing R.S. 2477 claims only ''where there is a demonstrated, compelling, and immediate need.'' This process is similar to that in the disputed regulations which Congress has prohibited by law since 1995. Issuance of this policy circumvents the legal requirement to have congressional approval of agency rulemaking concerning R.S. 2477 rights-of-way.

Section 310 of the supplemental appropriations bill, S. 672, prohibits the use of funds appropriated for fiscal year 1997 and thereafter ''to promulgate or implement any rule, regulation, policy, statement or directive'' issued after October 1, 1993, regarding the rights-of-way Congress granted by R.S. 2477. The October 1, 1993, date makes it clear that Interior cannot do by policy what it by law cannot do by regulation. Under section 310, Interior can continue to implement Federal policy with respect to R.S. 2477, but only those policies and regulations previously agreed to prior to the attempted change that Congress has repeatedly rejected.

Section 310 is needed to enforce the requirement that Congress first authorize any rules regarding R.S. 2477 rights-of-way. Allowing the January 1997 policy to remain in place vitiates the Administrative Procedures Act and the express directives of the Congress, which were approved by the President.

Section 310 will not, as some suggest, open up Alaska's wilderness areas and parks to almost a million new miles of roads upon the assertion of claims by ''virtually anyone.''

First, as I have said, section 310 only tightens the standing mandate that agencies obtain specific authorization from Congress, which includes our elected representatives of public lands States, before issuing rules that would effectively deny valid, existing property rights under R.S. 2477 in those States.

In short, this provision creates no new rights-of-way across Federal land which were not in existence before 1976. It merely preserves rights-of-way which were established at least 20 years ago, but still have not been recognized by the Interior Department.

R.S. 2477 rights of way are not exempted from environmental, health and safety, and other laws to protect the public.

Second, with respect to all existing rights of way, I am assured by the Governor of Alaska that our State will not be paved over. The Alaska Department of Natural Resources completed a study recently to identify the list of rights of ways my State might assert as public highways under R.S. 2477.

Some 1,900 were initially reviewed, but 700 were found to be on State land and not subject to this Federal law.

Of the remaining 1,200, only 558 appear to qualify as R.S. 2477 rights of way.

So far the State of Alaska has filed only one quiet title action.

The State of Alaska also advises me that it will not file rights of way across section lines, unless of course there is a preexisting trail that otherwise constitutes an R.S. 2477 right of way.

Asserting rights of way across section lines alone would be a fruitless exercise. Mere geography tells us that we don't need roads across mountain tops.

Cost is another reason. I'm advised that it costs $6 million to build 1 mile of road in my State.

I proposed section 310's funding restrictions in good faith, with the confidence of having stood on this floor over 20 years ago debating the legislation that ultimately became FLPMA.

On July 8, 1974, the Senate debated S. 424, the bill that the Senate passed in the 93d Congress and was reintroduced in the 94th Congress as S. 507. S. 507 was the bill that ultimately became FLPMA.

In July 1974, I was assured by Senator Haskell, chairman of the relevant subcommittee within Interior and Insular Affairs, that our young State would have the same chance as other Western States to develop a road system based on the pattern of use its settlers established and the laws the State enacted.

Senator Haskell told this Chamber it was the intent of Congress that all existing R.S. 2477 rights-of-way would be determined according to the law of the State the right-of-way was in. In fact Senator Haskell cited a specific North Dakota case, Koleon versus Pilot Mound Township, as the basis for the committee's understanding of the law. That case said an R.S. 2477 right-of-way is established ''if there is use sufficient to establish a highway under [the] laws of the state.'' I refer my colleagues to the CONGRESSIONAL RECORD of July 8, 1974, page S22284.

Today, I am proposing that we uphold the intent of the Congress of 20 years ago and the intent of the 104th Congress as well.

Last fall Congress agreed to a provision in the fiscal year 1997 appropriations law requiring agencies to seek congressional authorization of R.S. 2477 rulemaking. Section 310 of the supplemental asks nothing new, it merely prevents Interior from doing by agency policy what Congress prohibited it from doing by formal rulemaking.

I urge my colleagues to reject this amendment so that Interior understands it cannot circumvent the will of Congress through sleight of hand.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. Does the Senator yield the floor?

Mr. STEVENS. I was going to go to this other desk and see if I could get the Senator from Arkansas into a colloquy regarding the timing of the votes that we might have.

Mr. BUMPERS. I am very amenable, I say to the Senator. I would suggest a 20-minute time limit on the remainder of this amendment equally divided.

Mr. STEVENS. May I ask that the cloakrooms check that out and get us a time that is agreeable. The timeframe is agreeable to me, but I think some Members may be out of the building now, and we want to get the time set.

But why doesn't the Senator take the floor now?

I will yield the floor.

As soon as we can get worked out between the leadership on the two sides the timeframe that can be agreed to as to the vote on this amendment and on the D'Amato amendment——

Mr. BUMPERS. I understand that our side needs to check. We have people coming and going. I assume that is what the Senator has concern about.

Mr. STEVENS. That is correct.

Mr. MURKOWSKI. I believe there may be a second degree pending.

Mr. BUMPERS. There will not be a second degree.

Mr. STEVENS. It is my understanding that the Parliamentarian will rule that the other two amendments are not properly drawn under the process of cloture for those to be considered.

I will state, though, that the suggestion made by Senator MCCAIN was a good one. When we get to conference, if we do with this provision, I intend to find some way to accommodate his suggestion that we ask the Secretary to come forward with a proposal to be debated that might set the policy for future utilization of these rights-of-way throughout the West. We will pursue that in conference.

But there will be no other amendment, my friend.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, I will not belabor the points that have been made time and again here.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, I had a Senator ask me earlier if I felt that I was right about this amendment. Let me answer that question for any Senator who would ask the same question. I have never felt more comfortable with a position in my life than I do on this. It has nothing to do with Alaska or Utah or Idaho. What it has to do with is saying this language of the senior Senator from Alaska, No. 1, has no business in this bill; No. 2, if it did, it is a terrible amendment; No. 3, men and women of good will could sit down and work out a sensible policy for the Department of the Interior and require them to report back to us with regulations or something else.

But under the existing law, what the amendment of the Senator from Alaska does is to return the determination of whether these thousands and hundreds of thousands of miles of claimed rights-of-way constitute a highway within the definition of the Hodel policy. It is a question of whether or not we are going to allow rights-of-way simply because they were claimed to be there before 1976 when we repealed R.S. 2477, whether we are going to allow the use of those rights-of-way to cross wilderness areas, national parks, monuments, all kinds of protected Federal areas.

I submit to you that the people of this country, if they knew the substance of this debate, that we were actually considering the Stevens amendment to this bill, if they knew what the implications of that were, they would be up in arms. I cannot believe—not to denigrate my good friends from these Western States who have a deep and abiding interest, an understandable and deep and abiding interest, in this issue—I cannot believe that more than 3 percent of the people of this country would condone granting applications for highways across these areas because there was some kind of a footpath or a trail or something else, even vegetation that had been tromped down.

Under the Hodel policy in 1988, Donald Hodel had a policy that said: If you have cut high vegetation, you had a lot of weeds and you cut them down, that constitutes a highway.

Have you ever heard anything as ridiculous as that in your life?

Mr. MURKOWSKI. Would the Senator from Arkansas yield for a question?

Mr. BUMPERS. Yes.

Mr. MURKOWSKI. I thank my friend.

I wonder if the Senator from Arkansas feels it is appropriate that the Secretary of the Interior arbitrarily has gone ahead and changed the definition of what a highway was. Is it right for the Secretary to take a previous policy that was worked out in conjunction with the States where there was a definitive highway definition in the historical terms—and I quote—''as a definite route or right-of-way that is freely open for all use, it need not necessarily be open to vehicular traffic, or a pedestrian or pack animal trail may qualify''—and as a consequence, isn't it true that this was the policy of the Department of the Interior until earlier this year when Secretary Babbitt, behind closed doors—not a public policy; behind closed doors, without consultation—unilaterally changed this definition? And isn't it true that the new definition now reads, ''a thoroughfare used prior to October 21, 1976, by the public for the passage of vehicles carrying people or goods from place to place''? He changed the definition.

Is that, I ask my friend from Arkansas, appropriate and fair and part of a public process, or, indeed, is that not a simple dictate by the Secretary who arbitrarily changes the interpretation of what was Federal law? Is that right, I ask my friend from Arkansas, and correct?

The PRESIDING OFFICER (Mr. GREGG). The Senator from Arkansas.

Mr. BUMPERS. Let me answer the question this way, Senator. I did not hear a single soul complain when Donald Hodel established his policy in 1988. It is only the Babbitt policy of 1997 that seems to be objectionable.

There is no question, if you want to raise the question about the authority of the Secretary to issue a policy, if Secretary Hodel has the right to issue a policy, why does his successor, Bruce Babbitt, in 1997, not have the right to reverse that policy?

Let me go ahead and say that the Senator quoted the Hodel policy correctly, but he did not go quite far enough. Here is what Donald Hodel's policy said about the requirements needed to prove what constitutes construction of a highway: ''Construction is a physical act of readying the highway for use by the public according to the available or intended mode of transportation, foot, horse, vehicle, et cetera.'' Horse—that is right—vehicle, foot, those all constitute highways.

His policy goes on to say, here are some examples of what constitutes construction of a highway: ''removing high vegetation.'' Go out and cut the weeds, it becomes a highway. ''Move a few large rocks out of the way,'' it becomes a highway, or ''filling in low spots''—all of those may be sufficient to show construction for a particular use.

Now, Senator, let me ask you a question, does that make any sense to you?

Mr. MURKOWSKI. I will respond relative to the issue that is before the Senate here, and that is the manner in which the Secretaries—Hodel on one occasion and, today, Secretary of the Interior Babbitt—have acted.

First of all, as I indicated, Secretary Babbitt, behind closed doors, without consultation with Western States, unilaterally changed the definition. Don Hodel did not. Don Hodel worked out a policy in conjunction with the States defining a highway and its history, and it was done in consultation with the States.

My friend from Arkansas should recognize that is a significant difference. This Secretary is moving on his own volition to interpret as he sees fit. The previous Secretary of the Interior brought in the Western States affected and they worked out a definition and a process. Now the definition has changed to any vehicles, and the appropriateness of that is what I question the Senator from Arkansas with regard to the motivation.

It is here that one Secretary developed a public process.

Mr. BUMPERS. Mr. President, I reclaim the floor.

We ought to pin a Medal of Freedom on Bruce Babbitt.

Mr. MURKOWSKI. Where?

Mr. BUMPERS. He revoked a policy that said any time you mow high weeds, apply to us and we will give you a right-of-way to build a four-lane highway over that footpath. Move a few rocks out of the way, we will consider that a highway and allow you to build on it. Fill in a few low spots, we will make it a highway and you build it. Even if it is across a national park or across a wilderness area or across a national monument, a historic area that we have set aside. Can you think of anything more insane than giving States the right to build highways across Federal lands no matter where they are, simply because somebody mowed some high weeds or because somebody moved a few rocks?

While I am at it, Senator, before I get into it with you, let me also point out, here is the Babbitt policy. This is the policy that reversed the 1988 Hodel policy. I want you to listen to this. I have a letter from Bruce Babbitt in which he says he will urge the President to veto this bill if the Stevens amendment is not taken out of it. I ask unanimous consent to have that printed in the RECORD.

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

THE SECRETARY OF THE INTERIOR,
Washington, DC, April 30, 1997.

Hon. TED STEVENS,
Chairman, Committee on Appropriations,
U.S. Senate, Washington, DC.

DEAR SENATOR STEVENS: I am writing to express strong opposition to the provision concerning Revised Statute 2477 that I am informed you intend to include in the pending Emergency Supplemental and to a proposed amendment by Senator Craig concerning application of the Endangered Species Act to the operation, maintenance and repair of flood control structures.

In light of my strong concerns, if either of these proposals or similar extraneous and controversial endangered species amendments are included in the emergency Supplemental when it is presented to the President for his signature, I would be compelled to recommend that he veto the legislation.

R.S. 2477. Two decades after the repeal of R.S. 2477, the profusion of unresolved pre-1976 claims presents a planning and management problem for federal land managers and other landowners, and uncertainty for potential right-of-way holders and users of public land. My efforts over the past several years have been directed to establishing a clear, certain, and fair process to bring these claims to conclusion.

I am informed that your provision would prohibit the expenditure of funds in 1997 and thereafter to ''promulgate or implement any rule, regulation, policy, statement or directive issued after October 1, 1993 regarding the recognition, validity, or management of any right of way established pursuant to R.S. 2477.'' I am also informed that proposed report language states that it is the intention of the provision to ''restore the prior practice of deferring to the law of the State in which a right of way is located for purposes of determining the recognition, validity, and management of such right of way.''

The public will be poorly served by Congressional action that has the effect of rescinding the Department's current orderly manner of proceeding to deal with right-of-way claims and, at the same time, prevents the Department from issuing final rules governing claims under R.S. 2477. The proposed language does not clarify the process for handling right-of-way claims under R.S. 2477, but would add to the uncertainty and confusion of that process.

If the proposed provision requires the Department and the courts to defer to state law, as the proposed report says it does, the consequences could be devastating. Such a requirement could effectively render the Federal government powerless to prevent the conversion of footpaths, dog sled trails, jeep tracks, ice roads, and other primitive transportation routes into paved highways. The proposed amendment could even result in a decision validating a right-of-way that runs through the secure area of a military installation. Under your proposal, the military could be prevented from regulating traffic on these alleged rights-of-way.

That result would be fundamentally inconsistent with modern statutes that provide access to and across Federal lands, and would fatally undermine the principles these laws embody, such as public land retention, comprehensive land planning, public involvement in land use decisions, compliance with environmental laws, and mitigation of negative environmental impacts.

The practical implications of the blanket adoption of state law can be seen, for instance, in Alaska, where state law first adopted in 1923 and later upheld in the state Supreme Court provides for a claim of highway easement either 66 or 100 feet wide, across each section line in the entire state. These sections cross the state on a grid one mile apart, both horizontally and vertically. Thus state law purports to create over 984,000 miles—almost one million miles—of ''highways'' in the State of Alaska, roughly 300,000 miles of which cross National Wildlife Refuges, 160,000 miles of which cross National Parks, and 137,500 miles of which cross conveyed lands of Native Alaskans.

In some states, state law may not differentiate between Federal and private lands for purposes of right-of-way claims. Deferring to state law could result in R.S. 2477 rights-of-way being granted over private property that has long since passed out of Federal ownership.

Endangered Species Act. Senator Craig's proposed amendment would provide a broad exemption from the provisions of sections 7 and 9 of the Endangered Species Act for operation, maintenance, repair and reconstruction of any Federal or non-Federal flood control project, facility or structure.

The Department agrees with the need to minimize flood damages and to protect residents in flood prone areas. In January 1997, the Fish and Wildlife Service implemented the emergency provisions of the Endangered Species Act for the California counties that were declared Federal disaster areas to facilitate rapid and effective response to damaged flood management systems that minimize the risks to life and property. On February 19, 1997, the Director of the Service issued a policy statement further clarifying and articulating our emergency policy under the ESA, which allows disaster response measures to be implemented immediately without prior consultation with the Service under section 7 of the ESA.

The proposed amendment goes far beyond the FWS policy and the current provision of the ESA. It would waive compliance with the Act in a broad range of non-emergency situations. Routine operation and maintenance would be exempt if their purpose was compliance with any current Federal, state or local public health or safety requirement, even if there is no emergency in effect or reasonably anticipated.

Under the amendment, for example, virtually all Federal and non-Federal projects in the Columbia River basin could be exempt from ESA requirements. If these projects were no longer required to protect endangered fish stocks, such as Pacific salmon, other public agencies and the private sector would have to significantly increase their conservation efforts to compensate for the expected loss of important fishery resources that would occur. This could have severe, long-term economic impacts for the logging, mining, irrigation, navigation, water supply, recreation, and commercial fishing industries in the region.

The Department strongly supports the proper operation and maintenance of flood control facilities to avoid threats to human life and property. We also strongly support the protection and conservation of important natural resources. The proposed amendment assumes that these two goals are inconsistent and mutually exclusive. I believe they are not. As the February 19 policy statement demonstrates, it is possible to reconcile both goals, protecting human life and property without abandoning the Nation's commitment to protection of our natural heritage.

Sincerely,

BRUCE BABBITT.

Mr. BUMPERS. Now, Mr. President, I hate to read to my distinguished colleague, but it will be helpful to clarify the record about this ''terrible'' Babbitt policy. He did not think it was a good idea to allow the States to come in here and claim a right-of-way simply because somebody moved a few rocks out of the way no matter where it was located.

Mr. STEVENS. I want to talk to you about that, in particular, if the Senator will yield.

Mr. BUMPERS. I yield.

Mr. STEVENS. That is initiation of a highway. You move a few rocks, you cut down the right-of-way, you eliminate—it does not say ''weed''—the brush, and you start to build a highway. The question before Hodel at the time was, what is the initiation of highway, not what is a right-of-way?

I say to my friend that highways today came from wagon trails. In my State, some of our highways came from dog sled trails, from the trails that were cut by people who did use horses in those days, or by people who use snowshoes when they were delivering mail on their backs with packs. Some of them were developed in the 1920's, 1930's, 1940's, 1950's, 1960's, until 1976. They are today, but we have not had the money or capability to extend the highways because there are other problems of getting to those areas before we turn them into highways. They are not different from the roads that lead to Arkansas or, as I remember my youth, the slow train through Arkansas. That is a highway now. Maybe they leave Arkansas now rather than go in as they did in those days, but what I am telling you is we are asking for nothing more than what was the process of modernization throughout the West. It was by foot, by wagon, by horse trail. Then when there were vehicles, there were vehicles.

But in our State, we have areas where vehicles have not yet been on the ground. A substantial part of our State cannot be reached by road. You know that. It can only be reached by air. We still have the process of extending those roads out into those areas so we can have surface transportation.

You cannot turn R.S. 2477 into a right-of-way over which a vehicle has gone and protect our rights.

Mr. BUMPERS. Senator, let me answer that by saying the fact that Alaska was, until recently, a frontier State, as was all of the West not too many years ago. To suggest that simply because the West was settled by pioneers who made wagon tracks or where they had footpaths where they tried to get to the West, to suggest that all of those routes across Federal lands—let me finish, sir.

Mr. STEVENS. That was Federal lands.

Mr. BUMPERS. That is the very point I am getting ready to make.

Simply because somebody drove a covered wagon or group of covered wagons over land heading west, or it was a footpath used by people who walked on it, to suggest those paths now constitute a highway, simply by mowing weeds on it, by moving a few rocks and showing that you did some construction, how foolish can we be?

Mr. STEVENS. That is the very basis of the western highway system today,

those rights-of-way that went across Federal lands. The whole West was Federal land.

Mr. BUMPERS. And anything you built prior to the repeal of this law in 1976 is yours. Nobody is trying to take that away from you.

Mr. STEVENS. In 1976, Alaska was 18 years old. We were just trying to get in the Highway Act.

Mr. BUMPERS. I want to make two points, one to the junior Senator from Alaska. When he talks about how Bruce Babbitt did all of this behind closed doors last year—with no consultation—last year, the Senator will recall that we tried our very best through a public process to come up with a definition of these roads. As a matter of fact, the Secretary went through the process of trying to develop a rule as to what a road was, issued it for public comment, got over 3,000 comments, and the Senators from Alaska went ballistic and said, ''No, we do not want any part of that. We are not about to let you.'' You remember when we blocked him from proceeding further with that.

Then you come here today saying this should have been done in a more sensible way, when it was the Senators from that side of the aisle who stopped him from doing it.

Mr. STEVENS. Will the Senator yield?

Mr. BUMPERS. Yes, I yield.

Mr. STEVENS. There is no sensible way for an edict to come from Washington denying the right of a State under Federal law. I am not seeking a more sensible way. I am telling him No! No! No! You cannot do this. If we cannot get that between us, then you do not understand me. You cannot do this. This is a right of our State.

Mr. BUMPERS. The Senator has no right to complain. He says to the Secretary, ''No, no, no.'' He should not come to this floor squawking, because he stopped the Secretary from trying to come up with some kind of a sensible rule.

So, in 1997, and I have been trying to get to this for about 15 minutes, here is the policy that the Secretary of the Interior issued. It is a good, sane, sensible policy. If the Stevens amendment on this bill stays in, he torpedoes this policy of 1997, and we go back to the abomination called the Hodel rule.

Now, you choose. If you think the Hodel rule was right—as I say, by moving a few stones, mowing a little grass, anything to try to make it look like you have been doing a little construction, or you listen to the policy developed by Secretary Babbitt, and here is the first item:

An entity wishing the Secretary or any agencies of the Department of Interior to make a determination as to whether R.S. 2477 right-of-way exists shall file a written request with the Interior agency having jurisdiction over the lands underlying the asserted right-of-way, along with an explanation of why there is a compelling and immediate need for such a determination.

Surely, nobody objects to that.

The request should be accompanied by documents and maps that the entity wishes the agency to consider in making its recommendations to the Secretary. If, based on the information provided, the agency does not believe a compelling and immediate need for the determination exists, it should, without further examination, recommend the Secretary defer processing until final rules are effective.

That is the policy, ''until final rules are effective,'' and there is absolutely nothing wrong with that.

No. 2, ''The agencies shall consult the public land records, maintained by BLM to determine the status of the lands over which the claimed right-of-way passes. If such lands were withdrawn''—that means the Federal Government took the lands out and made a wilderness area of them, or a national park or some other Federal purpose; that is what is called reserving the lands—''if they determine that these lands have been withdrawn by the Federal Government or otherwise made unavailable pursuant to R.S. 2477 at the time the highway giving rise to the claim was allegedly constructed and remained unavailable through October 21, 1976, the agencies will recommend the Secretary deny the claim.''

Now, all that says is, if this was not a claim for an existing right-of-way prior to the time we repealed R.S. 2477, it should be denied. Nobody would argue with that. That is the reason we repealed R.S. 2477, was to stop the nonsense.

No. 3, ''If the lands were not withdrawn, reserved or otherwise available''—now, that means that the Federal Government had not taken the land and used it for some other purpose such as a national park, ''the agency will examine all able documents and maps and perform an on-site examination to determine whether construction on the alleged right-of-way had occurred prior to the repeal of R.S. 2477 on October 21, 1976.''

Again, the agency will deny the claim if it had not been a right-of-way prior to the repeal of 2477.

No. 4, Highway: ''The agency shall evaluate whether the alleged right-of-way constitutes a highway.''

Here is the key to this whole thing. ''A highway is a thoroughfare used prior to October 21, 1976.''

That is the date of the repeal. An alleged right-of-way constitutes a highway if it was a thoroughfare prior to the repeal of 2477.

If the agency determines that the alleged right-of-way does not constitute a highway, the agency will deny the claim. Why shouldn't they? That is the reason we repealed it. We don't want any claims coming in on highways that were not in existence at the time we repealed the law.

Mr. MURKOWSKI. Will my friend yield?

Mr. BUMPERS. No. I will finish reading, and then I will yield the floor.

The role of State law: He says, ''In making its recommendations, the agency shall apply State law in effect from 1976 to the extent that it is consistent with Federal law.''

Mr. MURKOWSKI. It is Federal law now.

Mr. BUMPERS. Let me finish, please.

All he is saying is that in this ruling the State law will apply as long as it is consistent with Federal law. To do anything else, to issue a rule of any other kind, gives the States carte blanche over all unreserved Federal land. They will decide what a right-of-way is. They will decide which ones they want to build roads on.

Finally, ''The agency will make recommendations on the above-described issues to the Secretary, and the Secretary will approve or disapprove of those recommendations.''

Mr. STEVENS. Will the Senator yield just for one second and answer one question?

Mr. BUMPERS. All right.

Mr. STEVENS. What the Secretary is doing now concerns taking action under the Federal Land Policy and Management Act, and section 701(h) of the law is specific ''All actions by the Secretary concerned * * * shall be subject to valid existing rights.'' By what power does he redefine now what was a valid existing right in 1976? He wasn't Secretary in 1976. What happens to the women who are out there in those small villages and cities today? They have to be flown into town to go to the hospital. It is going to take a few miles to get the roads to them. And we are going to get the roads to them, as long as we have the right to build the roads. We have the ability to deliver mail by road rather than by air. The Senator from Arkansas and others have been telling us, ''Stop that subsidy for Alaska.'' And for their mail, it costs $100 million more a year to deliver mail in Alaska because it all goes by air rather than similar places in the southern 48 because there it goes by road.

By what right does this Secretary of the Interior determine what was a valid existing right in 1976?

Mr. BUMPERS. First, the first thing the Secretary has to do before he can approve an application is to determine whether it was a valid existing right before 1976.

Mr. STEVENS. No, he doesn't. The law is the law. There were laws in place in 1976 which defined those rights. He is now going to try to redefine the law to determine whether they were existing rights in 1976.

Mr. BUMPERS. Let me ask this question. What right does Don Hodel have to set out what an existing right was in 1988?

Mr. STEVENS. I am glad the Senator asked that question of me.

If you want to look at what happened, Secretary Hodel approved in 1988 a series of proposals that came to him from the Bureau of Land Management, the Park Service, and the Fish and Wildlife Service within his Department. He did not write that. He approved the work of a series of bureaus in his Department. It was not what this

Secretary is doing. This Secretary is coming along as the Secretary and issuing an edict to change all of that. This, in 1988, was the work of long-term public servants who had great experience in managing.

As a matter of fact, if you want to look at the 1993 report to Congress on R.S. 2477 by the Department of the Interior—I have it right here—you will see that there was consultation with the Governors, there was consultation with the State directors in Utah and Alaska, the areas where there was a substantial amount of R.S. 2477 claims.

One of the things that I might add to this, my friend, is our Governor, who is a member of the party of the Senator from Arkansas, sent word to the current Secretary of the Interior that he was disturbed because he was not consulted before this was done. In the prior time, when the tables were turned and there was a Democratic Governor in the State of Alaska, Secretary Hodel did consult with him. He consulted with him. They had memos from the State. They had memos from Utah. They had memos from the BLM, Park Service, Fish and Wildlife Service, from throughout the West. That is what Hodel approved.

Mr. MURKOWSKI. Will the Senator yield on this subject?

Mr. STEVENS. Hodel approved a series of papers that were presented by those agencies, and said—his statement is a one-page statement, which the Senator has been reading. So the words that the Senator was reading were not Hodel's words. The Secretary's approval is on a memorandum from the Assistant Secretary for Fish and Wildlife, Assistant Secretary for Minerals and Management, the BLM, and it is an approval of the policy statement concerning R.S. 2477. Hodel did not develop that policy. The Department developed it. All the agencies developed it in consultation with the States involved, and with the State offices of the various portions of this Department.

So the Senator is overlooking that.

Mr. BUMPERS. The Senator from Alaska is saying that Donald Hodel, who was Secretary of the Interior, had nothing to do with the development of policy—that the Department did it. Now does the Senator separate the Secretary of the Interior from the Department of the Interior?

Mr. STEVENS. All Hodel had to do was sign his name to one page. He did not do it. It was the Department that developed this policy after consultation with a series of States and a series of agencies.

Mr. MURKOWSKI. Will the Senator yield?

Mr. BUMPERS. Everybody knows exactly why Don Hodel came up with that policy—because the Western Senators threatened him probably with death if he didn't. Everybody knows that policy was crazy. It was done for political purposes. We all know that. I am not going to debate that.

Mr. STEVENS. That sounds like something people accuse me of. I have been threatened with death.

Mr. BUMPERS. I have never accused the Senator of being political.

Did the Senator want to ask a question?

Mr. MURKOWSKI. Mr. President, I ask if the Senator from Arkansas is aware of the circumstances under which the Secretary of the Interior initiated his arbitrary decision recognizing what the law says. I have a chart here. I will ask my friend from Arkansas relative to what R.S. 2477 says. The statute's authority grants right-of-way for the construction of highways over public lands not reserved for public use. We have defined, if you will, what it means as far as a highway is concerned.

Mr. BUMPERS. Let me interrupt.

Mr. MURKOWSKI. It is defined specifically under the law as pedestrian, or a pack animal trail may qualify. The Department's own regulations in 1938, state when a grant becomes self-effective. The grant refers to the section becoming effective upon the construction or establishment of a highway in accordance with the State law. That is the law of the land, the State law over public lands not reserved for public use. ''No application should be filed under R.S. 2477, as no action on the part of the Federal Government is necessary.'' That is the law.

What Secretary Babbitt is doing is saying you have to file. He is changing and reinterpreting the law 20 years after it was repealed.

I ask the Senator if that is not a correct interpretation of what this Secretary is doing. He is changing the law. He is saying you must file. The law says you don't have to file.

Is not that correct? I ask my friend from Arkansas. Is he not redefining the law?

Mr. BUMPERS. We repealed that in 1976. That law was repealed. We are not debating that.

Mr. MURKOWSKI. That is what prevailing regulations stated during the entire time that the act was in effect. What this Secretary has done, unlike Hodel, who met with all the other Governors—let me add for the RECORD at this time the letter from our Governor dated January 29 to the Secretary.

DEAR MR. SECRETARY: I wish to express my dismay about your issuance of a revised policy on R.S. 2477 rights-of-way determinations without consultation with the State of Alaska or, to my knowledge, other Western States. The department not only failed to seek comment or input from Alaska, it did not even pay the courtesy of informing the state that it planned such a revision. Further, the department did not even notify the state when it released the revised policy publicly.

Don Hodel didn't do that. Don Hodel met, my friend, the senior Senator said, with a Democratic Governor of my State and consulted on the policy. He did it publicly in an open process. It was the input of the Western States that brought the withdrawn definition and policy together. This Secretary changed that definition and simply suggested that it be the passage of vehicle traffic, and that is contrary to the law.

Mr. President, I ask unanimous consent the letter from Governor Knowles be printed in the RECORD.

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

STATE OF ALASKA,
OFFICE OF THE GOVERNOR,
Juneau, AK, January 29, 1997.

Hon. BRUCE BABBITT,
Secretary of the Interior, U.S. Department of the Interior, Washington, DC.

DEAR MR. SECRETARY: I write to express my dismay about your issuance of revised policy of RS 2477 rights-of-way determinations without consultation with the State of Alaska or, to my knowledge, other Western states. The department not only failed to seek comment or input from Alaska, it did not even pay the courtesy of informing the state that it planned such a revision. Further, the department did not even notify the state when it released the revised policy publicly.

This initiative is troubling not only because it violates the spirit of the Congressional prohibition on further interior development of RS 2477 policy contained in last year's appropriations bill, but because it expressly revokes the department's 1998 policy that was negotiated over several months with Alaska and other Western states. The new policy undermines several provisions that were carefully crafted to the Alaska situation, for instance the definition of ''highway.''

Mr. Secretary, I wish to maintain a good working relationship with the Department of the Interior, but this requires a bilateral effort. I will discuss this RS 2477 issue with you at our appointment next Tuesday.

Sincerely,

TONY KNOWLES,
Governor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I don't think many minds are being changed with this debate. I don't see any reason to pursue it because we have a 180-degree difference of opinion on it. I personally think that the law is fairly clear on it. The policy of Donald Hodel is clear. He didn't consult with the public. He consulted with the two Senators from Alaska and the Governor of Alaska, and perhaps some other Senators from the West, which is understandable. The only reason I know that is not because I know it for a fact. It is just that I know he issued a policy that was very pleasing to those Senators.

Mr. STEVENS. Will the Senator yield right there?

Mr. BUMPERS. Yes.

Mr. STEVENS. Does the Senator recall who was in the majority in the Congress at that time?

Mr. BUMPERS. I know who the executive branch was. I know who the President of the United States was.

Mr. STEVENS. Hodel did not consult with these Senators because the management of the Congress was under the party of the Senator from Arkansas at

that time. If there was any complaint about what Hodel did, that should be in the RECORD. At the time, the Congress did not object to what Hodel did because it was the process that came through consultation with Western States, Western Governors, with the agency's State offices throughout the West and was sent up to him by the Assistant Secretaries for Fish and Wildlife and the Bureau of Land Management up to the Secretary for approval. That is not what is happening now.

Mr. BUMPERS. I have to make this point one more time. The Senator talks about Don Hodel consulting with everybody. Bruce Babbitt had 3,000 comments from the public. Why is it that Don Hodel with a few Republican Senators and Congressmen around him developed a policy—why was that so wonderful with a few people sitting behind a closed door to decide the policy, and Bruce Babbitt gets 3,000 comments? And what happens? The first thing that happens is an amendment on an emergency supplemental, which has absolutely no business being there, to stop him from implementing a ruling. Three thousand people have commented on it.

It just depends on whose ox is being gored. We all know that.

Mr. STEVENS. Will the Senator yield for just a second? This has nothing to do with whose ox is being gored. I am surprised there are only 3,000. After all, all they have to do is press a button, and say, ''Send out another 3 million direct mail pieces to all of these people that are involved in this extreme environmental movement in this country.'' And I would be surprised if it was only 3,000. But those people aren't the Governors of the Western States. They aren't the Senators that represent Western States. And they are not the people within the BLM and others who are professionals in this field. This is coming at us now as edict on high. This is supremacy of the Federal Government. I have to tell you. I have dedicated my life against that. I think the Senator should remember that. We have been out here before saying you can't make laws from the executive branch. It must come through Congress.

Mr. BUMPERS. Mr. President, let me just say this to the Senator from Alaska. It isn't often that I say this. But when I read the Senator's comment on this emergency supplemental and I realize what the effect of it would be, for once in my life thank God for the supremacy of the Federal Government.

I yield the floor.

Mr. MURKOWSKI addressed the Chair.

Mr. STEVENS. Will the Senator yield for just a second?

The PRESIDING OFFICER. Who seeks recognition?

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I believe the senior Senator from Alaska would like to make a statement.

Mr. President, while my senior Senator addresses the Senate floor schedule, let me remind the Senator from Arkansas once again——

Mr. STEVENS. Will the Senator yield?

Mr. MURKOWSKI. I suggest the absence of a quorum.

Mr. STEVENS. No. No.

Mr. President, I ask unanimous consent that at 2:10 today there be 5 minutes equally divided in the usual form prior to a vote on or in relation to the D'Amato amendment No. 145, to be immediately followed by a 4-minute time period equally divided in the usual form prior to a vote on or in relation to the Bumpers amendment No. 64, and that further, prior to the votes, no other amendment be in order to these amendments or to the language proposed to be stricken.

The PRESIDING OFFICER. Is there objection?

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. MURKOWSKI addressed the Chair.

Mr. BUMPERS. I am not sure I understood that. We are going to have 5 minutes of debate on D'Amato?

Mr. STEVENS. There is 5 minutes equally divided on D'Amato. That was the request of your side, I might say to the Senator, and then a vote on the D'Amato amendment. And then there will be, after that vote, 4 minutes equally divided on the Senator's amendment to strike, and there would be a vote on the Senator's amendment. Neither will be subject to amendment after this agreement.

Mr. BUMPERS. And this will all begin when? The first vote will take place at——

Mr. STEVENS. At 2:10 p.m.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STEVENS. Mr. President, if I get the agreement, I will ask later that the second vote will be a 10-minute vote, but I cannot do it yet. I thank the Senator.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I think we have gone on perhaps long enough on this, but there are a few things that need to be said relative to the debate that has just occurred. And while my friend from Arkansas indicated that we had repealed FLPMA, with regard to FLPMA, I think it is important the record reflect that under R.S. 2477 we established and have always maintained the basis for determining the right of public access across public lands.

So that has been maintained in the law. I think it is further noteworthy to recognize that the Hodel policy recognized the historic use of a route. If it was historically a footpath, it was recognized as a footpath. If it was a wagon trail, then it was recognized as a wagon trail. If it was a wagon trail that was used in general commerce over an extended period of time, then it justified obviously inclusion under the concept of R.S. 2477.

In summation, Mr. President, what is happening here I think is a result of what happened as late as last year in Utah where we had a perfect example of a small group within the administration taking it upon themselves to decide for all Americans how our public lands should be used. As the debate has indicated, those of us from Alaska are particularly sensitive, as we can speak from long personal experience on this topic. All of the experience teaches us that decisions affecting the use and classification of our public lands must be left in the hands of a public process, not one Secretary of the Interior who decides on his own as a consequence of actions within the Department, without a public policy, that he is going to change the procedure unilaterally and redefine what constitutes an adequate method of transportation across public lands, and that is what this Secretary did, unlike Secretary Hodel.

Actions from this administration put the public's right to participate in the decisionmaking process, as far as I am concerned, on the endangered species list.

Mr. President, allowing this administration, and that is what the proposal from the Secretary of the Interior does, to rewrite public land law use through the enactment of regulations is much the same as putting the fox in charge of the chicken coup.

The reason we in Alaska are a little reflective upon this is the history of our State. In 1966, the Secretary of the Interior—we entered into statehood in 1959—Secretary Udall decided on his own to intercede in Alaska and simply stopped processing land selections authorized under the Statehood Act. We entered into the State of the Union with a commitment of 104 million acres. The land was being transferred to the State. He stopped the process. He did not ask anyone, just did it. In January 1969, he withdrew all public lands in Alaska from all forms of appropriation except mining claims—no public input, no congressional action. This was the so-called land freeze, superfreeze. A few other names which would be inappropriate in this Senate Chamber come to mind.

It happened again in 1978, deja vu, this time with Jimmy Carter, who stepped in and decided on his own what was best for the management of our public lands, and using the 1906 Antiquities Act he created 17 national monuments. These monuments encompassed slightly more than 56 million acres of land, an area the size of the State of South Carolina. It did not stop there. This was followed in short order by Secretary of the Interior Cecil Andrus who withdrew an additional 50 million acres. In total that arbitrary action by the Secretary of the Interior withdrew

105 million acres. That is more than the entire State of California. All this land was withdrawn from multiple use without any input from the people of Alaska, any input from the public, any input from Members of Congress.

I ask you, can you understand why we are sensitive? With all these actions held over Alaska's head, we were forced to cut the best deal we could. Twenty years later, the people of our State are still struggling to cope with the weight of these decisions. When they say you forget history, why, I say you are doomed by it, doomed to repeat it if you do not remember. So as long as we stand in this Chamber people will not be allowed to forget what happened when the public and the Congress are excluded from the public land management decisions.

When my friend from Arkansas says that this does not belong in this legislation, that it does not belong because it is not an emergency, he is absolutely wrong. It is an emergency. This is an action arbitrarily proposed by the Secretary of the Interior now. It is contrary to law, and it has to be stopped.

Mr. President, again, the fact is if R.S. 2477 was not in existence on October 21, 1976, it will not and it cannot by definition be created now. We have no problem with that. We want that to be the case. What we do not want is the Secretary to arbitrarily suddenly come to the conclusion that if vehicle travel has not proceeded over these routes prior to October 21, 1976, there is no justification for inclusion.

So in closing, Mr. President, I wish that we did not have to address this issue at this time, but it is an emergency for the Western States. It belongs on the first legislative vehicle that we can get the attention of the Congress relative to taking action. I thought we put this to an end in a bipartisan manner last year when we enacted a permanent moratorium on future actions by the Department, but that was not good enough for the Secretary. So behind closed doors this Secretary has sought to disregard the spirit and the intent of our previous action.

We have no other alternative, Mr. President, but to pursue this in a manner to continue to have available the viability of historical transportation routes that were in existence across our State, so that we can bring our State together, recognizing the huge amount of Federal withdrawal that is evidenced on this chart by the colored areas that represent all Federal withdrawals as compared to the white areas which simply address the State holdings. So one can readily see the necessity of having the option to establish, if you will, access routes across traditional trails that existed that were dog sled routes, or footpaths, that were used for commerce prior to that 1976 date. We simply have to have the assurance that that will remain as the law of the land and we can continue to allow, after our short 39 years of existence as a State, the development of our State, we can be bound together. That is why it is an emergency and that is why I commend my good friend and senior Senator for putting this in this legislation because there is no question it is an emergency of the highest nature in the State of Alaska and certainly affects the other Western States as well as we have seen the withdrawal of 1.6 million acres under the Antiquities Act in Utah by this administration.

I thank the Chair and I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska, Senator.

Mr. STEVENS. I want to remind the Senate now, and I will do so later just prior to the vote, in this year's Interior appropriations bill, signed by the President last fall, after serious negotiation with the administration, conducted by the previous chairman of this Appropriations Committee, at my request this section was put in that bill, section 108:

> No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management or validity of a right-of-way, pursuant to Revised Statute 2477, 43 U.S. Code 932, shall take effect unless expressly authorized by an act of Congress subsequent to the date of enactment of this act.

Now, that was the compromise last year as we began this fiscal year. We believe it is an emergency when we return to Washington to find that the Secretary of the Interior has issued a policy, a statement, edict, fiat, whatever you want to call it, but he has in effect changed the law, in his opinion, purported to change the law in a way that he believes is not covered by that very strong statement:

> No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management or validity of a right-of-way, pursuant to Revised Statute 2477. . . shall take effect unless expressly authorized by an act of Congress subsequent to the date of enactment of this act.

That is this Congress. We have very clearly said, and the President of the United States agreed, that any change regarding the validity of rights-of-way shall be authorized by an act of Congress, and yet if we do not take this action that is in this bill that policy statement will guide all members of the Interior Department with regard to approval of the applications of Western States for rights-of-way under the law, a law that was agreed to in 1976 and expressly reserved all existing rights-of-way.

I think it is a very clear issue, notwithstanding all of the flak that is out there in these direct mail pieces that are stimulating every newspaper from here to Washington State. It is just too bad that editors have not learned how to read because if they would read what the law is, I do not see how they can come to the conclusions that they do in some of the editorials I have read today. I hope the Members of the Senate are not swayed by those editorials because they certainly are not based upon the law or the facts of the situation.

Mr. President, I will suggest the absence of a quorum awaiting my friend. We do have some matters that we can take care of. I might state for the information of the Senate that we have an indication from the Parliamentarian that only 33 of the 109 amendments that were filed are proper under cloture. Members should consult, if they wish to do so, the staff of either side to find out the situation with regard to their amendment. Senator BYRD and I have agreed that if we can we would like to cooperate with Members on matters that are true emergencies, particularly for those people who are from the disaster States, and there are 33 of those, Mr. President. But we are compelled to rely upon the actions of the Parliamentarian under the rule unless we can find some way to accommodate the changes that would be necessary to validate the amendments involved. So I urge Members of the Senate to determine whether the amendments they have filed prior to cloture are now valid after cloture.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceed to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate stand in recess until 10 minutes after 2.

There being no objection, at 1:42 p.m., the Senate recessed until 2:10 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. GREGG).

SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT OF 1997

The Senate continued with the consideration of the bill.

AMENDMENT NO. 145

The PRESIDING OFFICER. The question recurs on amendment No. 145 by the Senator from New York.

There are 5 minutes equally divided.

Who yields time?

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I ask unanimous consent that Senator GRAHAM of Florida, Senator WYDEN, and Senator LAUTENBERG be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, make no mistake about it, I support the provisions that have broken the chain of