ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672
9406 HOUSE RESOURCES

II

105TH CONGRESS
1ST SESSION

S. 477

To amend the Antiquities Act to require an Act of Congress and the consultation with the Governor and State legislature prior to the establishment by the President of national monuments in excess of 5,000 acres.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 1997

Mr. HATCH (for himself and Mr. BENNETT) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To amend the Antiquities Act to require an Act of Congress and the consultation with the Governor and State legislature prior to the establishment by the President of national monuments in excess of 5,000 acres.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE.**
4 This act may be cited as the "National Monument
5 Fairness Act of 1997".

1 **SEC. 2. CONSULTATION WITH THE GOVERNOR AND STATE**
2 **LEGISLATURE.**

3 Section 2 of the Act of June 8, 1906, commonly re-
4 ferred to as the "Antiquities Act" (34 Stat. 225; 16
5 U.S.C. 432) is amended by adding the following at the
6 end thereof: "A proclamation under this section issued by
7 the President to declare any area in excess of 5,000 acres
8 to be a national monument shall not be final and effective
9 unless and until the Secretary of the Interior submits the
10 Presidential proclamation to Congress as a proposal and
11 the proposal is passed as a law pursuant to the procedures
12 set forth in article 1 of the United States Constitution.
13 Prior to the submission of the proposed proclamation to
14 Congress, the Secretary of the Interior shall consult with
15 and obtain the written comments of the Governor of the
16 State in which the area is located. The Governor shall have
17 90 days to respond to the consultation concerning the
18 area's proposed monument status. The proposed procla-
19 mation shall be submitted to Congress 90 days after re-
20 ceipt of the Governor's written comments or 180 days
21 from the date of the consultation if no comments were re-
22 ceived.".

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105TH CONGRESS
1ST SESSION

H. R. 1127

To amend the Antiquities Act to require an Act of Congress and the concurrence of the Governor and State legislature for the establishment by the President of national monuments in excess of 5,000 acres.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 1997

Mr. HANSEN (for himself, Mr. CANNON, and Mr. COOK) introduced the following bill; which was referred to the Committee on Resources

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A BILL

To amend the Antiquities Act to require an Act of Congress and the concurrence of the Governor and State legislature for the establishment by the President of national monuments in excess of 5,000 acres.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE.**
4 This Act may be cited as the "National Monument
5 Fairness Act of 1997".

1 **SEC. 2. CONSULTATION WITH THE GOVERNOR AND STATE**
2 **LEGISLATURE.**
3 Section 2 of the Act of June 8, 1906, commonly re-
4 ferred to as the "Antiquities Act" (34 Stat. 225; 16
5 U.S.C. 432) is amended by adding the following at the
6 end thereof: "A proclamation under this section issued by
7 the President to declare any area in excess of 5,000 acres
8 to be a national monument shall not be final and effective
9 unless and until the Secretary of the Interior submits the
10 Presidential proclamation to Congress as a proposal and
11 the proposal is passed as a law pursuant to the procedures
12 set forth in Article 1 of the United States Constitution.
13 Prior to the submission of the proposed proclamation to
14 Congress, the Secretary of the Interior shall consult with
15 and obtain the written comments of the Governor of the
16 State in which the area is located. The Governor shall have
17 90 days to respond to the consultation concerning the
18 area's proposed monument status. The proposed procla-
19 mation shall be submitted to Congress 90 days after re-
20 ceipt of the Governor's written comments or 180 days
21 from the date of the consultation if no comments were re-
22 ceived.".

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and second time by unanimous consent, and referred as indicated:

By Mr. MURKOWSKI:

S. 691. A bill entitled the "Public Land Management Participation Act of 1997"; to the Committee on Energy and Natural Resources.

By Mr. REID:

S. 692. A bill to require that applications for passports for minors have parental signatures; to the Committee on Foreign Relations.

By Mr. D'AMATO:

S. 693. A bill to amend the Internal Revenue Code of 1986 to provide that the value of qualified historic property shall not be included in determining the taxable estate of a decedent; to the Committee on Finance.

By Ms. SNOWE:

S. 694. A bill to establish reform criteria to permit payment of United States arrearages in assessed contributions to the United Nations; to the Committee on Foreign Relations.

S. 695. A bill to restrict intelligence sharing with the United Nations; to the Committee on Foreign Relations.

S. 696. A bill to establish limitations on the use of funds for United Nations peacekeeping activities; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BENNETT (for himself, Mr. D'AMATO, Mr. HELMS, Mr. DODD, Mr. ASHCROFT, Mrs. HUTCHISON, and Mr. BROWNBACK):

S. Res. 82. A resolution expressing the sense of the Senate to urge the Clinton Administration to enforce the provisions of the Iran-Iraq Arms Non-Proliferation Act of 1992 with respect to the acquisition by Iran of C-802 cruise missiles; to the Committee on Foreign Relations.

By Ms. SNOWE:

S. Con. Res. 24. A concurrent resolution expressing the sense of Congress on the importance of the Eastern Orthodox Ecumenical Patriarchate; to the Committee on Foreign Relations.

S. Con. Res. 25. A concurrent resolution expressing the sense of the Congress that the Russian Federation should be strongly condemned for its plan to provide nuclear technology to Iran, and that such nuclear transfer would make Russia ineligible under terms for the Freedom Support Act; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MURKOWSKI:

S. 691. A bill entitled the "Public Land Management Participation Act of 1997"; to the Committee on Energy and Natural Resources.

THE PUBLIC LAND MANAGEMENT PARTICIPATION ACT OF 1997

Mr. MURKOWSKI. Mr. President, I will take this opportunity to rise this afternoon to introduce a very important piece of legislation that I know the occupant of the chair will find interesting. It is called the Public Land Management Participation Act of 1997.

This legislation is intended to put the word "public" and the populace back into public land management and the word "environment," back into environmental protection.

Passage of this act will ensure that all the gains that we made over the past quarter of a century in creating an open, participatory Government which affords strong environmental protection for our public lands are really protected.

For those who thought that those battles were fought and won with the passage of the National Environmental Protection Act in 1969 and the Federal Land Policy Management Act in 1976, I have some bad news. There is one last battle to be fought.

Standing in this very Chamber on January 20, 1975, Mr. President, Senator Henry "Scoop" Jackson of Washington State spoke to the passion Americans feel for their public lands. He said:

> The public lands of the United States have always provided the arena in which we Americans have struggled to fulfill our dreams. Even today dreams of wealth, adventure, and escape are still being acted out on those far-flung public lands. These lands and the dreams—fulfilled and unfulfilled—which they foster are part of our national destiny. They belong to all Americans.

I quote and emphasize, Mr. President, "They belong to all Americans."

Amazingly—there exist today legal authorities by which the President, without the public process or congressional approval, can create vast land management units called national monuments, world heritage sites, and biospheric reserves.

Special management units which affect how millions of acres of our public lands are managed. What people can do on those lands is also affected, what the future will be for surrounding communities.

That is a powerful trust to bestow on anyone, even a President.

On September 18, 1996, the good people of Utah woke up to find themselves the most recent recipient of a philosophy that says, "Trust us. We are from the Government, and we know what is best for you." On that day, standing not in Utah but in the State of Arizona, our President invoked the 1906 Antiquities Act to create 1.7 million acres of national monument in southern Utah.

Notice, Mr. President, he did not do this in Utah. He did it in Arizona. One can only assume he might have had some protests if he had done it in Utah. The withdrawal, however, took place in Utah. It created a 1.7 million acre national monument in the southern part of the State. By utilizing this antiquated law, the President was able to avoid—that's right, avoid—Nation's environmental laws and ignore public participation laws as well. With one swipe of the pen, every shred of public input and environmental law promulgated in this country over the past quarter of a century was shoved into the trash heap of political expediency.

What happened in Utah last fall is but the latest example of a small cadre of administration officials deciding for all Americans how our public lands should be used. It is by no means the only one, Mr. President. As the Senator from Alaska, I have had a great deal of personal experience in this area.

In 1978, President Jimmy Carter created 17 national monuments in Alaska covering more than 55 million acres of lands. That is an area about the size of South Carolina. He withdrew these lands, with the stroke of his pen—no public process, no hearing, no participation from the State. This was then followed in short order by Secretary of the Interior Cecil Andrus, who withdrew an additional 50 million. A total of 105 million acres, Mr. President. All this land was withdrawn for multiple use without any input from the people of my State, the public, or the Congress of the United States. With over 100 million acres of withdrawn land held over Alaska's head, like the sword of Damocles; we were forced to cut the best deal we could. Twenty years later, the people of my State are still struggling to cope with the weight of these decisions.

I would not be here this afternoon if the public, the people of Utah and Congress, had not been denied a voice in the creation of the Grand Staircase-Escalante National Monument. I would not be here if environmental protection procedures had not been ignored.

But the people were denied the opportunity to speak, Mr. President. Congress was denied its opportunity to participate, and environmental procedure was simply ignored. The only voice we have heard was the President's. Without bothering to ask us what we thought about it, he told the citizens of Utah and the rest of the country that he knew better than we did what was good for us.

Now, this is an administration that prides itself in a public process. There was no public process here, Mr. President. We had been debating for some time the issue of Utah wilderness. It was ongoing, but the President, for political expediency, took it upon himself to invoke the Antiquities Act. It has been a long time since anyone has had the right to make those kind of unilateral public land decisions for the American public. Since the passages of the Federal Land Policy and Management Act in 1976, we have had a system of law underpinning public land use decisions. Embodied with this law is public participation. Agencies propose an action, they present the action to the public, the public debates the issue. The public can then appeal bad decisions, the courts resolve the disputes, and the management unit is then created.

Where was this public process, Mr. President, in the special use designation of 1.7 million acres of Federal land in southern Utah? The answer is clear. There wasn't any. Since the passage of the National Environmental Policy Act

of 1969, activities which affect the environment are subject to strict environmental laws. Does anyone believe there was no environmental threat posed by the creation of a national monument?

Imagine how the sensitive natural features of the high desert environment would respond to the rhythmic pounding of unlimited hiking boots worn by legions of adoring visitors as they tromp through the area. Where is the NEPA compliance documentation associated with this action? There is not any.

The creation of specialized public use designations such as national parks and wilderness areas are debated within the Halls of Congress, right here. These debates provide for the financial and legal responsibilities which come with the creation of special management units.

Where are the proceedings from those debates? There aren't any, Mr. President. They simply don't exist because, in the heat of an election year, the administration determined that the public process, environmental analyses and congressional deliberations were simply a waste of time.

Mr. President, either you believe in a public process or you do not; you can't have it both ways. If we can no longer trust the administration to involve the public in major land use decisions, then where does it fall? It falls right here to the Congress.

Mr. President, the legislation which I offer today will require any future designations of national monuments, world heritage sites, or biospheric reserves to follow the public participation principles laid down under existing law over the past 25 years. No poetic images, no flowery words, no smoke and mirrors, just good old-fashioned public land management process.

Before these special land management units can be created, my legislation will require that the agencies gather and analyze resource data affected by the land use decisions, full public participation in the creation of these units with all appeal rights protected; compliance with the National Environmental Policy Act; congressional review and ratification, and Presidential signature.

No longer will an administration be able to sidestep public participation and environmental reviews to further political agendas. Nobody—not even the President of the United States—should be above the law.

The Public Land Management Participation Act will make all future land use decisions a joint responsibility of the public, the Congress, and the President – no more loopholes.

I don't question the need for national monuments, world heritage sites, or biospheric reserves. Sometimes they are needed to protect historic treasures, natural resources, et cetera. But if they are to serve the common good, they must be created under the same system of land management law that has governed the use of the public domain for the past 25 years.

There has always been a sacred bond between the American people and the lands they hold in common ownership. No one, regardless of high station or political influence, has the right to impose his will over the means by which the destiny of those lands is decided. This legislation reestablishes that bond.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 691

SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Land Management Participation Act of 1997."

SEC. 2. PURPOSE.

The purpose of this Act is to ensure that the public and the Congress have both the right and a reasonable opportunity to participate in decisions that affect the use and management of all public lands owned or controlled by the Government of the United States.

SEC. 3. CLARIFICATION OF PUBLIC AND CONGRESSIONAL ROLE IN DECLARATION OF NATIONAL MONUMENTS.

The Antiquities Act (16 U.S.C. 431a) is amended by adding the following new section:

"431b. PUBLIC AND CONGRESSIONAL ROLES IN NATIONAL MONUMENT DECLARATIONS.—(a) The Secretaries of the Interior and Agriculture shall provide an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans relating to the declaration of national monuments upon the lands owned or controlled by the Government of the United States pursuant to the authority of the Antiquities Act (16 U.S.C. 431).

"(b) In addition, the Secretary of the Interior and Agriculture shall, prior to any recommendations for declaration of an area,

"(i) ensure compliance with all applicable federal land management and environmental statutes, including the National Environmental Policy Act (40 U.S.C. 4321-4370d);

"(ii) cause mineral surveys to be conducted by the Geological Survey to determine the mineral values, if any, that may be present in such areas;

"(iii) identify all existing rights held on federal lands contained within such areas by type and acreage; and

"(iv) identify all State lands contained within such areas.

"(c) After such reviews and mineral surveys, the Secretary of the Interior or Agriculture shall report to the President his recommendations as to what lands owned or controlled by the Government of the United States warrant declaration as a national monument.

"(d) The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to declaration as national monuments of each such area, together with a map thereof and a definition of its boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. After the effective date of Public Land Management Participation Act, a recommendation of the President for declaration of a national monument shall become effective only if so provided by an Act of Congress."

SEC. 4. CLARIFICATION OF PUBLIC AND CONGRESSIONAL ROLES IN WORLD HERITAGE SITE LISTING.

Section 401 of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a-1) is amended

(1) in subsection (a) in the first sentence, by

(A) inserting "(in this section referred to as the Convention)" after "1973"; and

(B) inserting "and subject to subsections (b), (c), (d), (e), and (f)" before the period at the end;

(2) in subsection (b) in the first sentence, by inserting ", subject to subsection (d)," after "shall"; and

(3) adding at the end the following new subsections:

"(d) If the area proposed for designation is not wholly contained within an existing unit of the National Park System, the Secretary of the Interior and Agriculture:

"(1) shall provide an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans relating to the designation of any lands owned by the United States for inclusion on the World Heritage List pursuant to the Convention."

"(2) After such review, the Secretary of the Interior or Agriculture shall report to the President his recommendations as to what lands owned by the United States warrant inclusion on the World Heritage List pursuant to the Convention."

"(3) The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to the designation of any lands owned by the United States for inclusion on the World Heritage List pursuant to the Convention. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. After the effective date of Public Land Participation Management Act, a recommendation of the President for designation of any lands owned by the United States for inclusion on the World Heritage List shall become effective only if so provided by an Act of Congress."

"(e) The Secretary of the Interior or Agriculture shall object to the inclusion of any property in the United States on the list of World Heritage in Danger established under Article 11.4 of the Convention unless

"(1) The Secretary has submitted to the Speaker of the House and the President of the Senate a report describing the necessity for including that property on the list; and

"(2) The Secretary is specifically authorized to assent to the inclusion of the property on the list, by a joint resolution of the Congress enacted after the date that report is submitted.

"(f) The Secretary of the Interior and Agriculture shall submit an annual report on each World Heritage Site within the United States to the Chairman and Ranking Minority member of the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, that contains the following information for each site:

"(1) An accounting of all money expended to manage the site.

"(2) A summary of Federal full time equivalent hours related to management of the site.

"(3) A list and explanation of all nongovernmental organizations contributing to the management of the site.

"(4) A summary and account of the disposition of complaints received by the Secretary related to management of the site.".

SEC. 5. CLARIFICATION OF PUBLIC AND CONGRESSIONAL ROLES IN THE DESIGNATION OF UNITED NATIONS BIOSPHERE RESERVES.

Title IV of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a-1 et seq.) is amended by adding at the end the following new section:

"Sec. 403. (a) No Federal official may nominate any lands in the United States for designation as a Biosphere Reserve under the Man and Biosphere Program of the United Nations Educational, Scientific, and Cultural Organization.

"(b) Any designation of an area in the United States as a Biosphere Reserve under the Man and Biosphere Program of the United Nations Educational, Scientific, and Cultural Organization shall not have, and shall not be given, any force or effect, unless the Biosphere Reserve is specifically authorized by an Act of Congress.

"(c) The Secretary of the Interior and Agriculture shall provide an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans relating to the designation of any lands owned by the United States as a Biosphere Reserve under the Man and Biosphere Program of the United Nations Educational, Scientific, and Cultural Organization.

"(d) After such review, the Secretary of the Interior or Agriculture shall report to the President his recommendations as to what lands owned by the United States warrant inclusion as a Biosphere Reserve.

"(e) The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to the designation of any lands owned by the United States for inclusion as a Biosphere Reserve. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. After the effective date of Public Land Participation Management Act, a recommendation of the President for declaration of a Biosphere Reserve shall become effective only if so provided by an Act of Congress.

"(f) The Secretary of State shall submit an annual report on each Biosphere Reserve within the United States to the Chairman and Ranking Minority member of the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, that contains the following information for each reserve:

"(1) An accounting of all money expended to manage the reserve.

"(2) A summary of Federal full time equivalent hours related to management of the reserve.

"(3) A list and explanation of all nongovernmental organizations contributing to the management of the reserve.

"(4) A summary and account of the disposition of the complaints received by the Secretary related to management of the reserve."

SECTION-BY-SECTION ANALYSIS OF S. 691

SECTION 1. SHORT TITLE

Public Land Management Participation Act of 1977.

SECTION 2. PURPOSE

To ensure that the public and the Congress have both the right and a reasonable opportunity to participate in decisions that effect the use and management of all public lands owned or controlled by the Government of the United States.

SECTION 3. CLARIFICATION OF PUBLIC AND CONGRESSIONAL ROLE IN DECLARATION OF NATIONAL MONUMENTS

This section amends the Antiquities Act by adding language that requires future National Monument Declarations be proceeded by full public participation and Congressional Ratification.

3(a) Directs the Secretaries of Interior and Agriculture to develop regulations that allow Federal, State, and local governments and the public to comment on and participate in the National Monument declaration process.

3(b) Directs the Secretaries to conduct mineral surveys and identify all existing rights on lands contained within proposed National Monument boundaries.

3(c) Authorizes the Secretaries of Interior and Agriculture to make recommendations to the President lands which warrant inclusion in a National Monument.

3(d) Authorizes the President to make recommendations to the Congress lands which warrant inclusion in a national monument. Further states that no declaration of a monument shall become effective until so provided by an Act of Congress.

SECTION 4. CLARIFICATION OF PUBLIC AND CONGRESSIONAL ROLES IN WORLD HERITAGE SITE LISTING

This section amends the National Historic Preservation Act by adding language that requires future World heritage Site designations be proceeded by full public participation and Congressional ratification.

d(1) Directs the Secretaries of Interior and Agriculture to develop regulations that allow Federal, State, and local governments and the public to comment on and participate in the World Heritage Site Listing process.

d(2) Authorizes the Secretaries of Interior and Agriculture to make recommendations to the President lands which warrant inclusion in a World heritage Site.

d(3) Authorizes the President to make recommendations to the Congress lands which warrant inclusion in a World heritage Site. Further states that no declaration of a World heritage Site shall become effective until so provided for by an Act of Congress.

(e) Directs the secretaries of Interior and Agriculture to object to the inclusion of property in the United states on a list of World heritage in Danger without explicit approval to do so by a joint resolution of Congress.

(f) Requires the Secretaries of Interior and Agriculture to submit an annual report to Congress detailing the cost of operating each World heritage Site, who contributed to the management of the site, and how any complaints about the site were handled.

SECTION 5. CLARIFICATION OF PUBLIC AND CONGRESSIONAL ROLES IN THE DESIGNATION OF UNITED NATIONS BIOSPHERE RESERVES

This section amends the National Historic Preservation Act by adding language that requires future Biosphere Reserve designations be proceeded by full public participation and Congressional ratification.

(c) Directs the Secretaries of Interior and Agriculture to develop regulations that allow Federal, State, and local governments and the public to comment on and participate in the Biosphere Reserve declaration process.

(d) Authorizes the Secretaries of Interior and Agriculture to make recommendations to the President lands which warrant inclusion in a Biosphere Reserve.

(e) Authorizes the President to make recommendations to the Congress lands which warrant inclusion in a national monument. Further states that no declaration of a Biosphere Reserve shall become effective until so provided for by an Act of Congress.

(e) Directs the secretaries of Interior and Agriculture to object to the inclusion of property of the United states without explicit approval to do so by a joint resolution of Congress.

(f) Requires the Secretaries of Interior and Agriculture to submit an annual report to Congress detailing the cost of operating the site, who contributed to the management of the site, and how any complaints about the site were handled.

By Mr. REID:

S. 692. A bill to require that applications for passports for minors have parental signatures; to the Committee on Foreign Relations.

PASSPORT LEGISLATION

Mr. REID. Mr. President, today I rise to introduce legislation which will help resolve a serious problem that plagues this Nation. Last year, and unless we do something this year, 1,000 young boys and girls will be abducted from their home and taken to foreign countries. Most of them will never come back to this country. These are young people who have every right to be in this country, but one of their parents gets a passport and takes them someplace.

This legislation I am introducing involves a young boy by the name of Mikey Kale. His father was Croatian. His father got a passport signed—not notifying the mother—and went to Croatia. This is one of the happy endings of these stories. This young boy was allowed to come home with his mother—not allowed to come home. She went through a lot of time and effort and spent a lot of money to get him so she could bring him home.

Most of the time the children never return. For example, Mr. President, this last week on ABC's "Prime Time," they featured a case very similar to the Mikey Kale case, a case that involved a mother who took a daughter to Costa Rica. She did not have custody of the child. Sole custody was awarded to the father. A warrant was issued for her arrest. For more than 3 years this father has searched, and suffered, trying to get back his daughter. He has been unable to do so. It appears, even pursuant to that television program, that they know where the child is, but because of the complexity of the law in Costa Rica, the child has not been allowed to return.

Extradition law, generally, does not include child abduction. So most parents are stymied. I repeat, 1,000 young boys and girls each year are abducted in this manner. Usually, these abductions take place during or after a contentious divorce, sometimes even by an abusive parent, many times by an abusive parent. At a time when these children are most vulnerable and most uncertain about their future, they are snatched and taken to a foreign country.

The tragedy of this wrong is best illustrated by an ordeal forced upon people from the State of Nevada. No family should have to go through what

within each state that is managed by each of the four agencies, individually.

Table 2.1: Percentage of Each State's Acreage Managed by the Four Federal Agencies, as of September 30, 1993

State[a]	Total acres	Acres managed by four federal agencies	Agencies' percentage
Alabama	32,678,400	798,465	2.44
Alaska	365,481,600	239,509,874	65.53
Arizona	72,688,000	29,807,616	41.09
Arkansas	33,599,360	3,219,380	9.58
California	100,206,720	42,987,699	42.90
Colorado	66,485,760	23,437,010	35.25
Connecticut	3,135,360	6,092	0.21
Delaware	1,265,920	23,968	1.89
District of Columbia	39,040	6,926	17.74
Florida	34,721,280	3,836,610	11.05
Georgia	37,295,360	1,391,611	3.73
Hawaii	4,105,600	528,732	12.88
Idaho	52,933,120	32,437,748	61.28
Illinois	35,795,200	339,475	0.95
Indiana	23,158,400	212,275	0.92
Iowa	35,860,480	39,996	0.11
Kansas	52,510,720	135,772	0.26
Kentucky	25,512,320	778,815	3.05
Louisiana	28,867,840	1,363,174	4.72
Maine	19,847,680	168,516	0.85
Maryland	6,319,360	97,906	1.55
Massachusetts	5,034,680	65,184	1.29
Michigan	36,492,160	3,729,649	10.22
Minnesota	51,205,760	3,626,258	7.08
Mississippi	30,222,720	1,498,890	4.96
Missouri	44,248,320	1,600,992	3.02
Montana	93,271,040	26,745,613	28.68
Nebraska	49,031,680	527,205	1.08
Nevada	70,264,320	56,845,790	80.90
New Hampshire	5,768,960	735,068	12.74
New Jersey	4,813,440	103,369	2.15
New Mexico	77,766,400	22,920,318	29.47
New York	30,680,960	56,258	0.28

(continued)

State[a]	Total acres	Acres managed by four federal agencies	Agencies' percentage
N. Carolina	31,402,880	2,003,825	6.38
N. Dakota	44,452,480	1,694,152	3.81
Ohio	26,222,080	251,460	0.96
Oklahoma	44,087,680	410,556	0.93
Oregon	61,598,720	32,104,965	52.12
Pennsylvania	28,804,480	588,636	2.04
Rh· le Island	677,120	1,497	0.22
S. Carolina	19,374,080	741,851	3.83
S. Dakota	48,881,920	2,636,447	5.39
Tennessee	26,727,680	1,019,636	3.81
Texas	168,217,600	2,299,264	1.37
Utah	52,696,960	32,446,350	61.57
Vermont	5,936,640	364,391	6.14
Virginia	25,496,320	2,088,739	8.19
Washington	42,693,760	11,598,482	27.17
West Virginia	15,410,560	1,083,988	7.03
Wisconsin	35,011,200	2,003,012	5.72
Wyoming	62,343,040	30,103,822	48.29
Total	**2,271,343,360**	**623,113,504**	**27.43**

Note: Acreage totals may not add due to rounding.

[a]For our analysis, we included the District of Columbia as a state.

Source: GAO's analysis of data provided by the Departments of Agriculture and the Interior.

Table 2.2: Acreage of Each State Managed by the Four Federal Agencies, as of September 30, 1993

State[a]	Forest Service	Bureau of Land Management	Fish and Wildlife Service	National Park Service	Total acreage managed
Alabama	661,309	110,983	14,892	11,501	798,485
Alaska	22,124,288	88,860,328	76,321,744	52,203,513	239,509,874
Arizona	11,247,052	14,255,889	1,672,499	2,692,176	29,867,616
Arkansas	2,540,103	291,166	285,135	102,976	3,219,380
California	20,621,894	17,284,258	238,780	4,842,767	42,987,699
Colorado	14,471,811	8,309,082	63,910	592,207	23,437,010
Connecticut	24	0	342	6,327	6,692
Delaware	0	0	23,968	0	23,968
District of Columbia	0	0	0	6,926	6,926
Florida	1,136,796	25,277	240,662	2,433,876	3,836,610
Georgia	863,980	0	470,064	57,567	1,391,611
Hawaii	1	0	272,278	256,453	528,732
Idaho	20,442,914	11,848,706	47,061	99,065	32,437,746
Illinois	270,760	227	68,346	142	339,475
Indiana	191,593	0	7,802	12,880	212,275
Iowa	0	378	37,955	1,663	39,996
Kansas	108,175	0	27,131	466	135,772
Kentucky	682,679	0	2,040	94,097	778,815
Louisiana	602,090	309,611	439,454	12,019	1,363,174
Maine	53,040	0	44,319	71,158	168,516
Maryland	0	0	39,308	58,600	97,906
Massachusetts	0	0	12,127	53,057	65,184
Michigan	2,852,172	74,854	112,940	689,883	3,729,849
Minnesota	2,820,193	150,104	422,762	233,199	3,626,258
Mississippi	1,153,507	57,211	185,521	102,651	1,498,890
Missouri	1,487,022	2,232	45,619	66,120	1,600,992
Montana	16,847,192	8,076,362	600,274	1,221,784	26,745,613
Nebraska	351,973	7,493	162,183	5,556	527,205
Nevada	5,805,929	47,969,220	2,292,739	777,902	56,845,790
New Hampshire	722,753	0	3,042	9,273	735,068
New Jersey	0	0	55,002	48,367	103,369
New Mexico	9,323,059	12,888,035	326,581	382,643	22,920,318
New York	13,446	0	23,602	49,210	86,258
N. Carolina	1,239,318	0	395,700	368,807	2,003,825
N. Dakota	1,105,789	60,223	455,788	72,351	1,894,152

(continued)

State[a]	Forest Service	Bureau of Land Management	Fish and Wildlife Service	National Park Service	Total acreage managed
Ohio	217,942	0	7,772	25,746	251,460
Oklahoma	301,448	2,338	96,891	9,880	410,556
Oregon	15,660,825	15,722,868	525,901	195,371	32,104,965
Pennsylvania	513,170	0	9,960	65,508	588,638
Rhode Island	0	0	1,492	5	1,497
S. Carolina	610,682	0	104,638	26,331	741,651
S. Dakota	2,011,604	279,085	191,413	54,344	2,636,447
Tennessee	628,590	0	44,891	46,155	1,019,636
Texas	754,843	0	375,673	1,168,748	2,299,264
Utah	8,108,302	22,147,772	100,156	2,090,120	32,446,350
Vermont	350,294	0	5,928	8,169	364,391
Virginia	1,649,524	0	117,449	321,766	2,088,739
Washington	9,167,362	351,753	135,797	1,943,549	11,598,462
West Virginia	1,032,121	0	1,708	50,158	1,083,988
Wisconsin	1,519,089	160,167	188,179	135,577	2,003,012
Wyoming	9,258,719	18,394,684	56,748	2,393,471	30,103,622
Total	**191,525,377**	**267,640,286**	**87,375,963**	**76,571,878**	**623,113,504**

Note: Acreage totals may not add due to rounding.

[a]For our analysis, we included the District of Columbia as a state.

Source: GAO's analysis of data provided by the Departments of Agriculture and the Interior.

Table 3.2: Acres Managed by the Four Federal Agencies and Percentage With Conservation Restrictions, by State, as of September 30, 1993

State[a]	Acreage managed	Acreage with conservation restrictions	Percentage of land with conservation restrictions
Alabama	798,465	69,068	8.65
Alaska	239,509,874	150,786,769	62.96
Arizona	29,867,616	8,471,260	28.36
Arkansas	3,219,380	662,726	20.59
California	42,967,699	33,356,998	77.8[illegible]
Colorado	23,437,010	5,774,565	24.[illegible]
Connecticut	6,692	6,669	99.6[illegible]
Delaware	23,968	23,968	100.00
District of Columbia	6,926	6,926	100.00
Florida	3,836,610	2,846,197	74.19
Georgia	1,391,011	699,239	50.25
Hawaii	528,732	528,732	100.00
Idaho	32,437,746	9,673,448	29.82
Illinois	339,475	99,421	29.29
Indiana	212,275	33,705	15.88
Iowa	39,996	39,618	99.05
Kansas	135,772	27,597	20.33
Kentucky	778,815	138,407	17.77
Louisiana	1,363,174	544,033	39.91
Maine	168,516	127,477	75.65
Maryland	97,906	97,906	100.00
Massachusetts	65,184	65,184	100.00
Michigan	3,729,649	917,658	24.60
Minnesota	3,626,258	1,467,556	40.47
Mississippi	1,498,890	300,676	20.06
Missouri	1,600,992	181,204	11.32
Montana	26,745,613	7,412,851	27.72
Nebraska	527,205	182,833	34.68
Nevada	56,845,790	9,532,809	16.77
New Hampshire	735,068	117,242	15.95
New Jersey	103,369	103,369	100.00
New Mexico	22,920,318	4,105,267	17.91
New York	66,258	72,912	94.41
N. Carolina	2,003,825	395,353	49.67
N. Dakota	1,694,152	528,891	31.22

(continued)

State[a]	Acreage managed	Acreage with conservation restrictions	Percentage of land with conservation restrictions
Ohio	251,460	33,595	13.36
Oklahoma	410,556	147,291	35.88
Oregon	32,104,965	7,096,777	22.10
Pennsylvania	588,636	109,580	18.62
Rhode Island	1,497	1,497	100.00
S. Carolina	741,651	207,050	27.92
S. Dakota	2,636,447	442,905	16.80
Tennessee	1,019,636	468,411	45.94
Texas	2,299,284	1,581,821	68.80
Utah	32,446,350	7,402,687	22.82
Vermont	364,391	110,208	30.24
Virginia	2,088,739	676,222	32.37
Washington	11,598,462	4,793,535	41.33
West Virginia	1,083,988	190,641	17.59
Wisconsin	2,003,012	369,411	18.44
Wyoming	30,103,622	7,466,862	24.80
Total	**623,113,504**	**271,096,949**	**43.51**

Note: Acreage totals may not add due to rounding.

[a]For our analysis, we included the District of Columbia as a state.

Source: GAO's analysis of data provided by the Departments of Agriculture and the Interior.

Federally Managed Land Encumbered for Conservation Purposes by Legislative or Administrative Restrictions

Over the 29-year period from June 30, 1964, through September 30, 1993, the amount of federal land managed by the Forest Service, BLM, FWS, and NPS that had legislative or administrative restrictions placed on its use for conservation purposes increased from about 51 million acres in fiscal year 1964, to about 131 million acres in fiscal year 1979, and to about 271 million acres in fiscal year 1993. Of the 1964 acreage, FWS and NPS had about 50 million of the nearly 51 million acres, and the Forest Service and BLM had the remainder. The percentage of these four agencies' lands that had conservation restrictions was about 7 percent in fiscal year 1964, nearly 19 percent in fiscal year 1979, and nearly 44 percent in fiscal year 1993. The acreage with conservation restrictions may change in future years as congressional decisions are made about the designation of additional land for such things as wilderness and national parks. For example, the California Desert Protection Act of 1994 (Public Law 103-433) designated an additional 7.7 million acres of BLM, NPS, and Forest Service lands as wilderness and created three new parks from BLM land.

All of the lands managed by FWS and NPS are generally considered to be restricted for conservation purposes: Both of these two agencies had substantial increases in the amount of land they were responsible for between fiscal years 1964 and 1993. Generally, the Forest Service and BLM do not restrict all lands for conservation purposes. Rather, they manage their lands for multiple uses to best meet the present and future needs of the American people and to sustain, in perpetuity, outputs of various renewable natural resource commodities and to provide for other uses. However, some Forest Service and BLM lands have special or unique qualities that warrant protection through restrictions that are placed on how the lands are to be managed and used. The portions of Forest Service and BLM lands that have had legislative or administrative restrictions placed on their use for conservation purposes increased from the end of fiscal year 1964 through fiscal year 1993. Restrictions on such things as the use of motorized equipment, construction of buildings and roads, development of commercial enterprises, and landing of aircraft are imposed at the time the land is legislatively or administratively set aside for conservation purposes.

Wilderness area designations are authorized by the Wilderness Act of 1964 (16 U.S.C. 1131). As of September 30, 1993, 96 million acres of Forest Service, BLM, FWS, and NPS land had been designated as wilderness by the Congress. Another 33 million acres had been designated as wilderness study areas. Until a decision has been made by the Congress about which wilderness study areas should be named as wilderness areas, these acres

are protected for conservation purposes and therefore are not available for other purposes, with certain exceptions. Wild and scenic river designations are made pursuant to the Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271 et seq.). Since that time, over 1 million acres of federal lands along rivers have been designated by the Congress as part of the National Wild and Scenic Rivers System.

The fact that land has a restriction that sets it aside for conservation purposes does not preclude all activities within the designated area. For example, although the Wilderness Act restricts access to, and the development of, a given wilderness area, the "wilderness" designation generally allows, among other things, the existence of administrative structures, the development of minerals and the grazing of livestock in those instances where valid existing rights have already been established, access to private lands inside the wilderness, and use of nonmotorized recreational vehicles. Similar restrictions and allowances apply to wilderness study areas.

A principal protection afforded by a wild and scenic river designation is the prohibition of water resource projects that may divert or hinder the flow of the river. Road construction, hunting, fishing, and mining and mineral leasing may be permitted under some circumstances, depending on the classification of the river and whether the activities are consistent with the values of the area being protected and other federal and state laws.

Most of the federal acreage with conservation restrictions is located in 13 western states. Figure 3.1 shows, as of September 30, 1993, the percentage of land in each of these states managed by the Forest Service, BLM, FWS, and NPS (as reflected in the shading of each state) and the percentage of that land that is further restricted for conservation purposes (as reflected by the number shown within each state).

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release
September 18, 1996

Establishment of the Grand Staircase-Escalante National Monument

By the President of the United States of America

A Proclamation

The Grand Staircase-Escalante National Monument's vast and austere landscape embraces a spectacular array of scientific and historic resources. This high, rugged, and remote region, where bold plateaus and multi-hued cliffs run for distances that defy human perspective, was the last place in the continental United States to be mapped. Even today, this unspoiled natural area remains a frontier, a quality that greatly enhances the monument's value for scientific study. The monument has a long and dignified human history: it is a place where one can see how nature shapes human endeavors in the American West, where distance and aridity have been pitted against our dreams and courage. The monument presents exemplary opportunities for geologists, paleontologists, archeologists, historians, and biologists.

The monument is a geologic treasure of clearly exposed stratigraphy and structures. The sedimentary rock layers are relatively undeformed and unobscured by vegetation, offering a clear view to understanding the processes of the earth's formation. A wide variety of formations, some in brilliant colors, have been exposed by millennia of erosion. The monument contains significant portions of a vast geologic stairway, named the Grand Staircase by pioneering geologist Clarence Dutton, which rises 5,500 feet to the rim of Bryce Canyon in an unbroken sequence of great cliffs and plateaus. The monument includes the rugged canyon country of the upper Paria Canyon system, major components of the White and Vermillion Cliffs and associated benches, and the Kaiparowits Plateau. That Plateau encompasses about 1,600 square miles of sedimentary rock and consists of successive south-to-north ascending plateaus or benches, deeply cut by steep-walled canyons. Naturally burning coal seams have scorched the tops of the Burning Hills brick-red. Another prominent geological feature of the plateau is the East Kaibab Monocline, known as the Cockscomb. The monument also includes the spectacular Circle Cliffs and part of the Waterpocket Fold, the inclusion of which completes the protection of this geologic feature begun with the establishment of Capitol Reef National Monument in 1938 (Proclamation No. 2246, 50 Stat. 1856). The monument holds many arches and natural bridges, including the 130-foot-high Escalante Natural Bridge, with a 100 foot span, and Grosvenor Arch, a rare "double arch." The upper Escalante Canyons, in the northeastern reaches of the monument, are distinctive: in addition to several major arches and natural bridges, vivid geological features are laid bare in narrow, serpentine canyons, where erosion has exposed sandstone and shale deposits in shades of red, maroon, chocolate, tan, gray , and white. Such diverse objects make the monument outstanding for purposes of geologic study.

The monument includes world class paleontological sites. The Circle Cliffs reveal remarkable specimens of petrified wood, such as large unbroken logs exceeding 30 feet in length. The thickness, continuity and broad temporal distribution of the Kaiparowits Plateau's stratigraphy provide significant opportunities to study the paleontology of the late Cretaceous Era. Extremely significant fossils, including marine and brackish water mollusks, turtles, crocodilians, lizards, dinosaurs, fishes, and mammals, have been recovered from the Dakota, Tropic Shale and Wahweap Formations, and the Tibbet Canyon, Smoky Hollow and John Henry members of the Straight Cliffs Formation. Within the monument, these formations have produced the only evidence in our hemisphere of terrestrial vertebrate fauna, including mammals, of the Cenomanian-Santonian ages. This sequence of rocks, including the overlaying Wahweap

and Kaiparowits formations, contains one of the best and most continuous records of Late Cretaceous terrestrial life in the world.

Archeological inventories carried out to date show extensive use of places within the monument by ancient Native American cultures. The area was a contact point for the Anasazi and Fremont cultures, and the evidence of this mingling provides a significant opportunity for archeological study. The cultural resources discovered so far in the monument are outstanding in their variety of cultural affiliation, type and distribution. Hundreds of recorded sites include rock art panels, occupation sites, campsites and granaries. Many more undocumented sites that exist within the monument are of significant scientific and historic value worthy of preservation for future study.

The monument is rich in human history. In addition to occupations by the Anasazi and Fremont cultures, the area has been used by modern tribal groups, including the Southern Paiute and Navajo. John Wesley Powell's expedition did initial mapping and scientific field work in the area in 1872. Early Mormon pioneers left many historic objects, including trails, inscriptions, ghost towns such as the Old Paria townsite, rock houses, and cowboy line camps, and built and traversed the renowned Hole-in-the-Rock Trail as part of their epic colonization efforts. Sixty miles of the Trail lie within the monument, as does Dance Hall Rock, used by intrepid Mormon pioneers and now a National Historic Site.

Spanning five life zones from low-lying desert to coniferous forest, with scarce and scattered water sources, the monument is an outstanding biological resource. Remoteness, limited travel corridors and low visitation have all helped to preserve intact the monument's important ecological values. The blending of warm and cold desert floras, along with the high number of endemic species, place this area in the heart of perhaps the richest floristic region in the Intermountain West. It contains an abundance of unique, isolated communities such as hanging gardens, tinajas, and rock crevice, canyon bottom, and dunal pocket communities, which have provided refugia for many ancient plant species for millennia. Geologic uplift with minimal deformation and subsequent downcutting by streams have exposed large expanses of a variety of geologic strata, each with unique physical and chemical characteristics. These strata are the parent material for a spectacular array of unusual and ??diverse soils that support many different vegetative communities and numerous types of endemic plants and their pollinators. This presents an extraordinary opportunity to study plant speciation and community dynamics independent of climatic variables. The monument contains an extraordinary number of areas of relict vegetation, many of which have existed since the Pleistocene, where natural processes continue unaltered by man. These include relict grasslands, of which No Mans Mesa is an outstanding example, and pinon-juniper communities containing trees up to 1,400 years old. As witnesses to the past, these relict areas establish a baseline against which to measure changes in community dynamics and biogeochemical cycles in areas impacted by human activity. Most of the ecological communities contained in the monument have low resistance to, and slow recovery from, disturbance. Fragile cryptobiotic crusts, themselves of significant biological interest, play a critical role throughout the monument, stabilizing the highly erodible desert soils and providing nutrients to plants. An abundance of packrat middens provides insight into the vegetation and climate of the past 25,000 years and furnishes context for studies of evolution and climate change. The wildlife of the monument is characterized by a diversity of species. The monument varies greatly in elevation and topography and is in a climatic zone where northern and southern habitat species intermingle. Mountain lion, bear, and desert bighorn sheep roam the monument. Over 200 species of birds, including bald eagles and peregrine falcons, are found within the area. Wildlife, including neotropical birds, concentrate around the Paria and Escalante Rivers and other riparian corridors within the monument.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

NOW, THEREFORE, I WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Grand Staircase-Escalante National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the document entitled "Grand Staircase-Escalante National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 1.7 million acres, which is

the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from entry, location, selection, sale, leasing, or other disposition under the public land laws, other than by exchange that furthers the protective purposes of the monument. Lands and interests in lands not owned by the United States shall by reserved as a part of the monument upon acquisition of ti .e thereto by the United States.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to diminish the responsibility and authority of the State of Utah for management of fish and wildlife, including regulation of hunting and fishing, on Federal lands within the monument.

Nothing in this proclamation shall be deemed to affect existing permits or leases for, or levels of, livestock grazing on Federal lands within the monument; existing grazing uses shall continue to be governed by applicable laws and regulations other than this proclamation.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, to implement the purposes of this proclamation. The Secretary of the Interior shall prepare, within 3 years of this date, a management plan for this monument, and shall promulgate such regulations for its management as he deems appropriate. This proclamation does not reserve water as a matter of Federal law. I direct the Secretary to address in the management plan the extent to which water is necessary for the proper care and management of the objects of this monument and the extent to which further action may be necessary pursuant to Federal or State law to assure the availability of water.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of September, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

WILLIAM J. CLINTON

GSE National Monument / UGS Circular 93 / The White House

UGS Home

Grand Staircase-Escalante National Monument

Testimony to the Energy and Natural Resources Interim Study Committee of the Utah Legislature

By M. Lee Allison,
State Geologist and Director
of the Utah Geological Survey

Wednesday, October 16, 1996

I have been asked to testify today on two subjects:

1. **Energy and mineral resources in the Grand Staircase - Escalante National Monument**
2. **Mineral resources in Utah that could be exchanged for trust land inholdings**

It is the mission of the Utah Geological Survey to provide the best scientific and technical information we can, to you and to the public. As advisors under contract to the Trust Lands Administration, we are making information available to you and other decision makers to ensure that the citizens of Utah and the school children of Utah get fair compensation for the resources they own. Therefore, we are attempting to undertake a comprehensive inventory of the energy and mineral resources within the monument. This morning I will quickly summarize what we have found thus far.

RESOURCES

Most of you are already aware of the vast coal resources in the Kaiparowits coal field. I will detail the newest information on the amount of coal in a moment. Before that however, I would like to summarize the other mineral inventories in the monument. I need to state up front that these are geologic resources in the ground. In some cases the economics, the technologies, or the transportation infrastructure are not present to justify developing them at this time.

First, we conservatively estimate that there are between 2 and 4 trillion cubic feet of **natural gas** within the coal beds (coalbed methane) of the Kairparowits coal field. This is based on a range of gas contents comparable to other coal fields in Utah and nearby states. At current market prices of $1.20 to $1.35 per Mcf, this would be worth $2.5 - 5 billion.

The **Upper Valley oil field** lies partly in national forest and partly in the monument. The field currently produces about 250,000 barrels of oil per year or about 1% of Utah's oil production

The western part of the **Circle Cliffs tar sands** deposit holds an estimated 447 million barrels of oil.

Conoco and Rangeland Exploration have been carrying out an exploration and leasing program in the Kaiparowits Plateau region for the past year and announced plans to expand their drilling program. They stated they identified 30 to 50 geologic structures capable of holding 100 million barrels of oil per structure. The UGS has compiled a map of

geologic structures that are widely known in the geologic community [refer to map]. As you can see, they extend throughout the monument and surrounding region. Although we have not made our own independent study of these structures, we believe that Conoco's maximum estimates of oil potential are not unreasonable. I need to emphasize that although the exploration potential is there, the probability of finding that much oil is very small.

There are four small **alabaster quarries** in the monument that supply high quality material for sculpting. About 300 tons of alabaster are recovered each year with a wholesale value of about $500 per ton.

We also estimate there are as many as 3 million tons of high grade **zirconium-titanium ore** in a 40-50 mile long belt running south from Escalante. These are strategic and critical minerals currently stockpiled by the Dept of Defense.

Now let me elaborate on the **Kaiparowits coal field**. It contains over 62 billion tons of coal making it by far the largest coal field in Utah. In fact, it contains 3/4 of all the coal in Utah. These figures are from a new report by the US Geological Survey. That report has just been made public in the last two weeks.

[Map of Grand Staircase-Escalante National Monument and Kaiparowits Coal Field]

Kaiparowits coal has very low sulfur content meaning it will burn cleanly in power plants to generate electricity.

Our analyses of recoverable coal are shown on the sheet we have handed out. The USGS determined that 32 billion tons of the resource are not recoverable because the coals are too thick -over 14 feet; too thin - less than 3.5 feet thick; too deep- over 3000 feet; or dip too steeply - over 12 degrees. The UGS believes another 7.5 billion tons between 3.5 and 6 feet thick are also not recoverable because they are too thin.

This leaves 22.75 billion tons minable. Assuming a conservative recovery of 50%, we have 11.375 billion tons of coal that could be produced and sold. [For comparison, on the Wasatch Plateau, current longwall mining commonly recovers 60-70% of minable coal.] We calculate the share of recoverable coal on school trust lands in the monument at about 876 million tons. The actual amount that might produced in the Kaiparowits coal field could be larger using higher recovery rates. The amount would also increase if longwall mining machines were built that could cut coal seams thicker than 14 feet. Some Kaiparowits coal seams are over 20 feet thick.

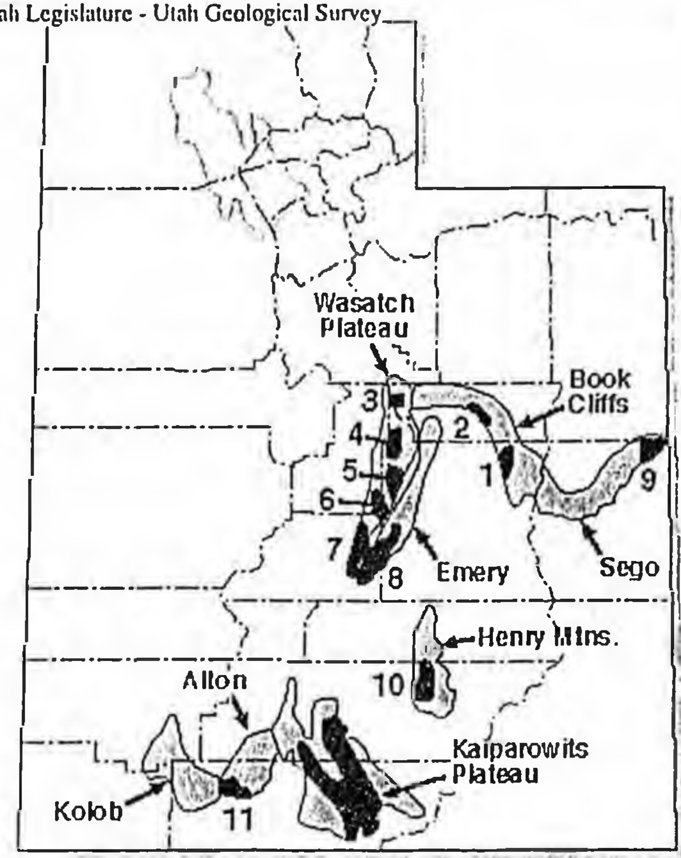
Also, the State of Utah would normally expect to receive a 50% share of royalties from production of the 10.4 billion tons of coal on federal lands in the monument. [Summary of the Coal Resources of Kaiparowits Plateau and Its Value]

Kaiparowits Coal Resource Data
(derived by the Utah Geological Survey from U.S. Geological Survey Open-file Report 96-539)
All figures in billions of short tons

Resource Category	Federal	Private	State	Total
In-place	57.2	0.3	4.8	62.3
Estimated minable	20.88	0.11	1.75	22.74
Estimated recoverable	10.44	0.05	0.87	11.36

COMPARABLE RESOURCES

The UGS has been undertaking a preliminary inventory of federal coal and other energy resources left in Utah.



Undeveloped federal coal areas
Prepared by the Utah Geological Survey
October 10, 1996

The map shows the general location and size of the unleased and leased-but-not-yet-developed federal coal tracts that have potential to be mined. We have identified approximately 1.6 billion tons of minable coal in the Wasatch Plateau, Book Cliffs, Alton, Sego, Emery, and Henry Mtns coal fields that we believe could be mined and produced [see Table 1 {table below}]. However, there are some concerns with many of the deposits we identified: for example, southern Wasatch Plateau coals have high sodium; Sego coals are in amongst oil and gas fields; Emery coals have both higher ash and sulfur values; to recover the full 700+ million tons in the Henry Mtns and Alton fields would require strip mining. If they were mined underground, the amount of recovery would drop from about 90% of the coal in place to about 50%. There would likely be opposition to mining in these two areas because of their proximity to Capitol Reef NP and Bryce Canyon NP. The eastern half of the Alton coal field is already deemed 'unsuitable for mining' because it might be visible from locations within Bryce Canyon.

Undeveloped Federal Coal Areas
prepared by the Utah Geological Survey, Oct. 10, 1996

Area	Est. Rec. Tons	Comments
Leased But Unmined		
Area	**Est. Rec. Tons**	**Comments**
1. Geneva South	28 MM	faulting, higher sulfur
2. Sunnyside North	45 MM	higher sulfur
3. Winter Quarters	35 MM	faulting
Proposed for Lease		
Area	**Est. Rec. Tons**	**Comments**
4. East and Trail Mtns	140 MM	some deep cover
Unleased Areas		
Area	**Est. Rec. Tons**	**Comments**
5. N and S Horn Mtn	170 MM	high sodium, some deep cover
6. Flagstaff Peak	60 MM	poorly known, little data
7. Old Woman Plateau	135 MM	some faulting
8. Emery Coal Field	155 MM*	higher ash and sulfur
9. Sego Coal Field	130 MM	oil & gas conflicts
10. Henry Mtns	500 MM*	environmental concerns
11. Alton Coal Field	200 MM*	environmental concerns
Grand Total	**1,598 MM***	

*includes surface minable as well as underground minable reserves.

ALTERNATIVES

In addition to the presently undeveloped coal in Utah, there are between 100 and 200 million tons of coal reserves remaining in currently active coal mines on federal lands. Those active federal leases are another resource available for exchange.

Other federal resources include producing oil and gas fields and coalbed methane deposits. Oil production is declining in Utah and is just half of what it was 10 years ago. Gas production however is increasing and coalbed methane is turning out to be a significant source of natural gas.

CONCLUSIONS

In our view it is questionable whether the federal government has sufficient coal and other resources in Utah comparable to the school trust's coal in the Kaiparowits coal field, let alone the trust's other energy and mineral resources within the Grand Staircase - Escalante National Monument.

At the current production rate of 28 million tons per year, the 1.6 billion tons of mineable coal left in Utah will be completely mined out in 60 years; less than that if all of that coal cannot be developed. In comparison, the coal in the Kaiparowits coal field would last over 400 years at Utah's current rate of mining.

GSE National Monument / UGS Home

Memo

To: The Cabinet

From: Governor Michael O. Leavitt

Subject: Direction on Public Land Issues in Utah

Date: October 11, 1996

The debate over protecting public land in Utah has been going on for nearly two decades. The Bureau of Land Management (BLM) has spent more than $10 million, an amount that does not include the money spent by the state, local government, business and the general public. Literally hundreds of hearings have been held and thousands upon thousands of comments have been written, read and heard.

Public/private consensus efforts, such as the one sponsored by the Coalition for Utah's Future, have attempted to reach agreement. For over a year, the Coalition focused on Emery County and came very close, but in the end did not succeed.

In 1995, I joined our Congressional Delegation in a renewed effort to develop a balanced wilderness proposal. We believed that the time was right. It seemed with a Democratic administration and a Republican Congress that the necessary checks and balances were in place to achieve equity. Once again, that did not prove to be the case.

Complicating matters even more, on September 18, 1996, President Clinton invoked a provision of the 1906 Antiquities Act establishing the Grand Staircase - Escalante National Monument. His secrecy, lack of process and the blatant political nature of his action have widened the gap even further. This debate is becoming increasingly complicated and deeply emotional. It is dividing our people.

The past month I have spent considerable time reflecting on our state's approach to these dilemmas. I have concluded that we must redirect our course.

Years of dealing with these problems have led me to a key conclusion: Utahns share a common love of the land. There is a disagreement on how to protect sensitive lands but a common desire to preserve them. For decades our efforts have revolved around our conflicts. It is time to build on what unites us.

Accordingly, after consulting with legislative leaders, our Congressional Delegation and local officials, I am proposing some new policy directives. I do not want to represent this as a united proposal. It is not. It is my best thinking on these issues at this time. If someone can show me a better alternative I am willing to listen. Until that time I will pursue the following course:

I. Incremental Wilderness Strategy

I must impress that my desire is to find on overall solution to the designation of wilderness. If it ever becomes evident that we can resolve wilderness in a comprehensive way I am prepared to continue forward toward a balanced solution. However, the road to resolution must begin with a willingness to agree on something. I have spent enough time walking the land and looking at maps with people from all sides of this dispute to know that there are areas of

. agreement. For now, this administration will withdraw from the "numbers game" where the argument centers around acreage figures that have become largely symbolic. Our efforts will be devoted to finding a contiguous grouping of Wilderness Study Areas where differences are small and agreement is great. They do exist. Once we have identified an area that most have agreed upon for wilderness protection, we will pose this challenge to all sides of the debate: let's quit arguing and take some beginning steps. Incremental progress is superior to perpetually deferred perfection. After nineteen years of debate, let's do something, let's actually designate wilderness.

This administration proposes that both sides agree in advance that "more wilderness is needed." For now, we need not agree on "how much more." It will be a start and we can build from there, step by step. This process will provide a foundation of agreement. Once we have passed legislation on this piece, a second step can be taken and so forth.

Will we ultimately agree on everything? Perhaps not. But we CAN and SHOULD designate wilderness. Time and weaving a pattern of trust will take us a long way.

II. Grand Staircase - Escalante National Monument

I have previously made strong public statements regarding my deeply felt belief that President Clinton did not keep public trust in the way he used executive power to create the Grand Staircase - Escalante National Monument. I have also made it clear that I did not find the idea of a monument inconsistent with proposals I have made for the protection of the region. Without any modification in my objection to the President's's tactics, it is now time to look forward and begin the process of planning the monument. In my personal conversations with the President and in his public statements, the President has guaranteed that state and local governments will be full players in the development of the area's management plan. It will be the policy of this administration to fully engage as a partner in the planning process. If the President and Secretary "make good" on their promises, the state will not only come to the table, we will bring resources with us, including talented people and money. Done properly, this monument can become a national showcase for environmental management. Done improperly, it could devastate an area already in severe economic peril. I am prepared to fully utilize the Consistency Review provisions of the Federal Land Policy and Management Act to ensure Utah's involvement in the process is adequate. In addition, we must move forward quickly to find a beneficial and fair exchange for school trust lands.

III. Preserving Basic Protections

In 1976 this nation made an important public policy decision. Congress passed landmark legislation (Federal Land Policy and Management Act) requiring great deliberation and careful process in determining how public lands would be used. That act, and other related legislation, contains protections for states and local communities. It is the policy of this administration to assure that our state is not denied those protections. We will defend Utah's interest against abuses of our existing protections and we will seek additional protections where they are currently inadequate.

The President's recent use of the Antiquities Act to create the new monument in Utah was a clear example of inadequate protection. Our system of government was constructed to prevent one person from having that much power without check or balance from another source. This law was originally intended to provide emergency power to protect Indian ruins and other matters of historic importance. Over ninety years the federal courts have allowed a gradual expansion of the powers. The President's recent proclamation was a classic demonstration of why the founders of this nation divided power. Power unchecked is power abused. Utah and other states need protection from further abuses of the 1906 Antiquities Act. This administration will join other states in support of appropriate amendments.

Another example of a process being abused is Secretary Babbitt's wilderness re-inventory. In 1979, after three years of vigorous debate and discussion, the BLM established a criteria for wilderness. Neither side of the debate particularly liked the criteria, but it was arrived at through a fair and deliberate process. The Secretary of Interior has now decided to review again certain lands to determine if they have wilderness potential. However, the Secretary has decided to create a "new" criteria, substantially different than the one used since 1979 and is being applied uniquely in Utah. The law requires that the Secretary go through a process to change the criteria. It is not something he can do on a whim or at his discretion. In addition, the Secretary's "review" includes state trust land. That land is owned by the school children of our state. This is a clear violation of the protections contained in law. These are actions this administration

. cannot ignore and it will be our policy to resist them.

IV. Land Preservation and the Economic Resettlement of Rural Utah

Land preservation decisions must consider the relationship between the land and the local economy. Many rural jobs are tied to public lands in mining, agriculture and tourism. However, all of these industries are not growing in the number of new job opportunities. This administration announced in July of 1994 a policy pertaining to the economic resettlement of rural Utah. That policy is reaffirmed. We intend to intensify our efforts and will challenge the national government to be responsive to the needs of their action in Southern Utah have created.

Historically, whenever the federal government has determined that a local interest is subordinate to the national interest, then some form of federal assistance is provided. We should all focus on developing real economic opportunities for rural Utah counties in order to build a more diversified and sustainable economy.

Return to the Initiatives.
Return to Home Page.

Matter of trust

By Lucinda Dillon
Deseret News staff writer

Editor's note: Utah's trust lands again made headlines when President Clinton created the Grand Staircase-Escalante National Monument. But what are these lands and why should the average Utah care about them? In a five-part series, Deseret News staff writer Lucinda Dillon looks at the politics and players that shape Utah's trust lands and the fortunes of Utah schools.

Barneys Canyon Gold Mine is visible on the Oquirrh mountainside, dwarfed to the south by Kennecott's Bingham copper production and nestled between the pit and the landmark smelter tower.

In Moab, tourists peddle pedal their mountain bikes over land that sells for $40,000 per acre.

From there, down the Colorado River near the Arizona border, a dusty slab of coal is exposed on the southeast corner of the Kaiparowits Plateau.

And in the state's West Desert, west desert, there is nothing as far as the eye can see. Cattle graze on expanses where optimists believe any site could be the next mining birthplace of a little known mineral or resource.

These are the locations where concerns of animals and opportunists collide; where environmentalist views of wilderness protection crash against the interests of schoolchildren in underfunded, crowded Utah classrooms.

These are Utah's institutional trust lands, designated primarily to benefit schoolchildren with the profits made off the leases, the mining and the sale of these lands.

Utah's Permanent School Trust Fund, through which this money finds its ways to its beneficiaries, reached record totals at the end of the 1996 fiscal year. The fund was almost $106 million, up from $39 million in 1990.

Trust lands -- both the phrase and what these two simple words represent -- came into the state spotlight this fall when President Bill Clinton designated the Grand Staircase-Escalante National Monument in southern Utah.

Utah schoolchildren were an unlikely component in the heated discussion

. surrounding the designation.

Clinton stole jobs, said Kane County residents; he orchestrated an egregious political ploy, said the state's conservative congressional contingent. The monument's proponents went on the offensive, praising Clinton's preservation of an area rich in beauty and scientific value.

In the fervor, a few vocal devotees to the school trust lands expressed outrage at the designation. Millions in potential revenue -- what might be gleaned from 175,000 trust land acres now imprisoned within the monument boundaries -- is in limbo.

Margaret Bird, trust lands expert for the Utah State Office of Education, reminded people that the federal government had already taken control of about 200,000 acres as contained in American Indian reservations, national parks, forests and monuments.

That's a problem because the rules governing national parks strictly restrict what types of activities can occur on them. Careful consideration is given to the impact on the areas' wildlife, archaeological and environmental well-being. Such restrictions nearly eliminate money-making potential of trust lands in these areas.

So trust land managers try to trade these areas for others. But that hasn't worked well in the past.

The federal government already owes up to its eyeballs, Bird said. "Would you extend credit to someone like that?"

The act was the equivalent of stealing textbooks and hot lunches from schoolchildren, according to other trust land advocates.

It's been more than 100 years since the land-rich federal government first turned over about 7 million acres to Utah in state trust lands.

There were conditions to that arrangement. In exchange for the trust lands, officials in the fledgling Beehive State said they wouldn't tax the federal lands that make up the other 70 percent of the state.

So, what are these trust lands? Whose trust is involved? Why should Utahns care about a scratchy patch of dirt on the Kaiparowits Plateau or a few plots covered by scrub brush near St. George?

"It's vitally important," said Bird, who has been fighting on behalf of trust lands for nearly 25 years. "This is a monumental asset, and we must care for it. That hasn't always happened."

Utahns should care because of the resources masked beneath the barren and dusty exterior. Coal. Coal-bed methane gas. Gold. Oil.

When Clinton, on the virtual eve of the national election, swaggered into the West to claim 1.7 million Utah acres for a new national monument, it was highway robbery, according to guardians of the trust lands.

Here's what trust land advocates see:

- About 175,000 acres of school trust lands within the area designated to be the

Grand Staircase-Escalante National Monument.

- Estimates by the U.S. Geological Survey that show 62 billion tons of coal tucked beneath the Kaiparowits coal basin.
- The knowledge that schools -- through the trust lands -- own one-ninth of that coal.
- The fact that coal sells for $20 per ton.
- That royalties on coal production are 8 percent -- about $1.60 per ton.
- Between 10 percent and 30 percent of the coal is recoverable.

Therefore, knocking those 175,000 acres out of moneymaking potential is a $1 billion to $3 billion hit for the trust's fund.

"We expect a written commitment from the president to compensate our schools with full value," reads a statement by Scott Bean, superintendent of Utah's schools.

Just after the September monument announcement, made outside Utah at the Grand Canyon, Bean came as close as he dared to calling a joke the president's guarantee of a equal land swap. Clinton had said he would exchange all trust lands within the monument for land outside its boundaries.

In the world of trust lands and land exchanges -- when the future and livelihoods of Utah's young people are at stake -- it is too simplistic to evaluate a piece of land by its size alone.

A patch of ground does not equal a patch of ground.

Rather, the land's value is measured by what is underneath the dusty topsoil. Coal? Minerals? Gas? Is it rich with resources, or valuable only for the brush off which a herd of cattle might feed? Is it close to anything valuable: a lucrative housing development? Or close to something distasteful?

In other words, it's no bargain to get an acre of barren land in Emery County in exchange for a Kaiparowits Plateau plot.

Previous land exchanges arranged with the federal government have never been completed. Once the government makes good on those, how much valuable land is left? Bean wondered after the monument designation.

"We expect all disputes over value to be resolved in favor of our children and the president committed in his speech," he said in a statement. "We expect full compensation to be expedited."

For many Utahns, the conflict over the monument designation is all they know about state trust lands.

"Ninety-nine percent of people probably have no idea what trust lands are," said Dave Hebertson, a spokesman for the School and Institutional Trust Lands Administration. "And the monument is the reason that 1 percent knows what they do."

By statute, title to the trust lands is vested in the state as trustee to be administered for the financial support of the trust beneficiaries.

But "the state's trust" oversimplifies a monstrously complex and political system of management for these lands, so simply designated to be managed for the benefit of common school and other institutional beneficiaries.

As it is with discussions about water, the simplicity of dirt and land is beguiling.

The century is pockmarked with lawsuits and legal fights over land values and land use. This trend has not changed.

This year, the State Institutional Trust Land Administration spent more than $2 million -- 40 percent of its annual budget -- arguing legal details of this land's value.

This trust land arena is muddied with its politics and players.

Over the years there has been scandal, sweet deals and fraudulent practices, land giveaways and broken promises.

Now, a relatively new board of directors leads the trust lands into the 21st century.

Ruland Gill, the board's president, says the administration is taking control over the buyer-driven system that has plagued the administration and drawn criticism in the past. The board operates more like a real estate developer, he said.

The members acknowledge the lands' tumultuous history. No. 1 on a list of "Critical Success Factors" recently adopted by the board is to "conduct business and agency activities with honesty and integrity."

The administration has a better accounting system now. It has re-evaluated its land inventories and adjusted lease agreements to better benefit the beneficiaries.

"We're in a much better position to avoid the kind of mistakes we've made in the past," said David Terry, trust land administration director. "We're in a position to limit the size of the mistakes we make."

The new board and Terry's staff are committed to a better process that " keeps everything aboveboard." Not that anything shady happened before, he said, but an open, public process about the way 3.7 million acres of trust lands are managed will prevent some of the criticism that has included bad management and favoritism, he said.

"We're definitely not trying to act in a vacuum here."

The following is an outline of the groups and players that affect the trust lands:

The land

Someone who stands at the steps of the Utah State Capitol can look west on a clear day and see the Salt Lake International Airport. It's 6 miles as the crow flies to the terminal of the region's busiest travel hub.

If that person shifts his position and looks to the south, there are no landmarks to mark the area 6 miles away; it's about the area where 3300 South meets I-15. But

that space -- from the Capitol to the airport and the same distance out to the south -- is about the area encompassed in a township.

Township boundaries were the main measuring unit when Utah first got the trust lands 100 years ago.

The townships had 36 one-mile-square sections, and that's how Utah got its 7 million acres doled out. Most states received two separate parcels within a township. Utah was so arid -- and the land considered less valuable -- it was given four.

Fifty years passed between settlement and statehood, so many of the choice lands along the Wasatch Front already had been designated for settlement by the time trust lands were distributed. Consequently, the early trust land map looked like a checkerboard dotting the rural areas.

The original 7 million acres is now about 3.7 million. Over time, much of the land has been sold.

The beneficiaries

"Common schools" in Utah, represented by the Utah State Office of Education, have the largest share of the beneficiary pie -- about 95 percent.

School officials nationwide fend off attacks against their financing.

In Utah, a group of lawmakers would like to stop funding education through property taxes. Utah spends less to educate its students than any other state. Purse strings are tight; even a generous appropriation from the Legislature pays bare-bones expenses but not much else.

Many lawmakers and other state officials would like to see more school funding come from the Permanent Trust Fund.

Eleven other institutions, including the state's universities, the State Schools for the Deaf and Blind and Utah State Hospital, command a fraction of the assets.

The money man

State Treasurer Ed Alter is in charge of investing the more than $100 million that make up the trust's permanent fund.

Revenue into the permanent fund comes from several sources: fees paid by farmers who graze animals on the land, royalties from wells or sales of trust lands.

Most of the $5.5 billion in the state's operating budget goes in and out quickly -- it comes in through property, sales and other taxes plus federal funds and other sources and goes out in department expenses and salaries. Because the trust has long-term investing potential, Alter calls it a "bit of a novelty."

"It's kind of exciting for us," said Alter, who coordinates with beneficiaries and institutional trust land administrators but ultimately makes final decisions about investments.

About a year ago, the Utah Legislature changed the Money Management Act and

gave Alter the power to invest trust money in stocks. Wise, aggressive investing in a variety of funds has paid off -- about $10 million in interest from the trust permanent fund went into Uniform School Fund coffers last year.

The managers

In 1994, on the 100-year anniversary of the designation of Utah trust lands, the Utah Legislature said something was dreadfully wrong with the way the state was managing its trust lands.

By statute, it took trust lands from the Utah Division of State Lands and created a separate division, the State Institutional Trust Lands Administration Board, sometimes called SITLA.

With a long history of mining industry work in the mountain and Western states, Terry was hired by the board of directors 14 months ago to supervise the division.

Questar Corp. Vice Chairman Ruland Gill heads the seven-member board, whose members are recommended by a task force and appointed by Gov. Mike Leavitt.

Terry has a few top priorities for the board: to get the administration to operate more like a business, to reposition assets so land protected by other jurisdictions gets traded for acreage with which the division can do something, and to work on a positive recognition of state trust lands.

And everyone wants to boost money in the fund. Their goal? $200 million in the fund by 2002.

There are the steady contributors to the fund. For example, lease profits from the gold mined at Barneys Canyon contribute about $1 million into state trust land coffers each year.

There are sales from Christmas tree permits sold and land sales.

And there are the benefits not yet realized.

Most of the easily recognized bodies of ore throughout the state are mined out, so the untapped Basin and Range region in the desert of western Utah could be a spot for riches. There's no reason to believe the lucrative gold belt near Carlin, Nev., extends across the border into Utah -- but there's no reason to believe it doesn't.

The bulldog

Margaret Bird feels like a full-time whistle blower.

It was Bird who came to state schools attorney Doug Bates in the mid-1980s. She said she'd been doing a little research, and that it appeared the schools had been cheated out of about $21 million by bad management related to some coal leases. It turns out the schools had indeed been cheated, Bates said.

Thus began Bird's career as a trust lands advocate.

She attends most board meetings, lobbies the Legislature, meets with governor. Technically, she works part-time for the State Office of Education with the charge to stay on top of all issues related to the trust lands.

She's done that and more. Over time, Bates said, Bird has saved the trust fund millions with her tenacious scrutiny of trust lands dealings.

Wilderness watchers

Bird considers the nationwide effort to protect wilderness to be the trust's greatest threat. At every turn wilderness advocates raise issue with land use and its impact on animals, plants and landscape.

When Clinton designated the monument this fall, the Southern Utah Wilderness Alliance dismissed any negative impact on education funding. 'The monument will cost each of Utah's schoolchildren one egg-salad sandwich each year -- a small price to pay for the protection for some of our greatest natural wonders,' Ken Rait, head of the alliance, said at the time.

Monday: The junkyard dog of trust lands.

Published 15 December, ©; 1996 Deseret News Publishing Co.

The Salt Lake Tribune
Thursday, October 17, 1996

MONUMENT IS COSTLY, EXPERT SAYS

BLM Can't Compensate Utah School-Trust Fund

BY MIKE GORRELL
THE SALT LAKE TRIBUNE

The Bureau of Land Management (BLM) does not have enough coal in Utah to compensate the school-trust fund for potential revenues lost when the Grand Staircase-Escalante National Monument was created, legislators were told Wednesday.

State Geologist M. Lee Allison told the Energy, Natural Resource and Agriculture Interim Committee that the terrain within the newly designated southern Utah monument was a potential energy wonderland, with estimates of:

-- 11.4 billion tons of recoverable coal, ``the premier coal resource'' in the lower 48 states.

-- 3 billion to 5 billion barrels of oil.

-- 2 billion to 4 trillion cubic feet of coal bed-methane gas.

-- Several billion cubic feet of natural gas and deposits of relatively obscure minerals such as alabaster, titanium and zirconium.

By contrast, Allison said, BLM lands in Utah contain an estimated 1.6 billion tons of unleased coal.

It would take less than 60 years to mine that total, whereas the Kaiparowits coal field in the monument ``could supply our needs for more than 400 years,'' he said.

Consequently, State and Institutional Trust Land Administration director David Terry said ``it may be impossible'' for the BLM to live up to President Clinton's promise that school-trust funds within the 1.7 million-acre monument can be traded for BLM lands of equal value elsewhere.

The state's figures for the monument's resources are grossly overestimated, said Southern Utah Wilderness Alliance (SUWA) issues coordinator Ken Rait.

``They must be operating in some other world. Dozens of coal leases have been dropped out there [at the monument] because [mining companies] have found it uneconomic to develop. This pie-in-the-sky estimate is totally unrealistic.''

BLM state director Bill Lamb and Cedar City district manager Jerry Meredith told legislators that their agency has set up two teams to develop and implement a management plan for the new monument. That includes devising a procedure by which school-trust land sections -- deeded to Utah at statehood to raise money for public education -- within the monument are traded for BLM lands of equal value outside of the area.

Initial emphasis is likely to be on state sections among 25,000 acres of coal leases that Andalex Resources wants to mine in the southern Kaiparowits Plateau.

Although the preparation of an environmental impact statement on the proposed mine will proceed, most observers believe the monument was created specifically to kill the mine.

Revised figures released Wednesday by the Governor's Office of Planning and Budget show that each of the seven state sections in the proposed mine would generate about $18 million (a maximum of $1,035,151 annually) for the school fund.

Rait said the new figures confirm SUWA's argument that the economic return is inconsequential ``$2 per pupil on an annual basis -- a small price to pay for the protection of some of our greatest natural wonders."

But to Margaret Bird, who represents trust beneficiaries for the Utah Department of Education, Andalex's mine represents less than 1 percent of the Kaiparowits coal field, which, fully tapped, could yield at least 70 times more money for the fund.

That's the important sum total, she said. If the BLM does not have enough coal to replace that, ``get the checkbook out. It's important to every American that their government should not be a thief."

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HJR

49

HOUSE COMMITTEE REPORT

(9)
Date Referred to Committee: January 23, 1998 **FURTHER REFERRALS:**

Date of Committee Action: 1/29/98

The RESOURCES Committee considered: **SSHJR 49**

SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 49
NAT'L FOREST ROAD-BUILDING MORATORIUM

Relating to opposition to a moratorium on the building of roads in the roadless areas of national forests.

recommends it be replaced with the following committee substitute CSSSHJR49(RES)

[✓] the same title
[ ] a new title

[ ] additional referral to ______ Committee
[ ] attached amendment(s)

ADOPTS: ______ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) ______

[✓] zero fiscal note(s) ______

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______

[ ] zero fiscal note(s) ______

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
[signature]	DYSON	✓			
[signature]	WILLIAMS	✓			
[signature]	GREEN	✓			
[signature]	HUDSON	✓			
[signature]	HOULE			✓	

CHAIR'S SIGNATURE [signature] Co-

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

NO.
BILL VERSION: HJR 49
PUBLISH DATE:

Revision Date:
Title: "Relating to opposition to a moratorium on the building of roads in the roadless areas of ....."
Sponsor: Williams
Requestor: House Resources Committee

Department Affected: Legislative Affairs Agency
BRU: All
Component: All

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0

REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact to the Legislative Affairs Agency.

Prepared By: Karla Schofield, Deputy Director *Karla Schofield* Phone: 465-3852
Division: Administrative Services Date: 1/30/98

Approved By: Pamela A. Varni, Executive Director *Pamela A. Varni*
Agency: Legislative Affairs Agency Date: 1/30/98

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov. , & Impacted Agency(ies).

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Representative William K. Williams

Sponsor Statement

House Joint Resolution 49

The Forest Service recently announced a sweeping two-year moratorium on development of 'roadless' areas of national forests. Although the announced 'land freeze' appears to have exempted the Tongass National Forest from the policy, that is not necessarily the case.

The public has 30 days to comment on the roadless policy, after which the Tongass could be included in the moratorium. Also, the Chief of the Forest Service, Mike Dombeck, has said that the final, long term policy will apply to all forests.

The resolution speaks to the inappropriate manner in which the White House is dictating management of our national forests. The Forest Service has turned the public process upside down by announcing their policy first, then searching for scientific evidence to support their position and reaching out for public participation.

The resolution also speaks to the Tongass Land Management Plan. We spent over 10 years and $13 million dollars revising how we manage the Tongass. It would be wrong to come back later with unilateral amendment which alters the balance struck in the plan.

I urge your swift passage of the resolution, as the 30 day public comment clock is ticking

CS FOR SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 49(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

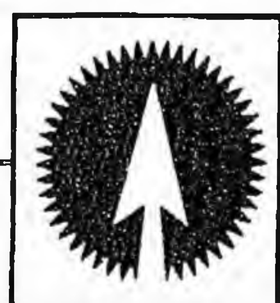
Sponsor(s): REPRESENTATIVES WILLIAMS, Austerman, Hodgins, Hudson

A RESOLUTION

1 **Relating to opposition to a moratorium on the building of roads in the roadless**
2 **areas of national forests.**
3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**
4 **WHEREAS** the Clinton Administration has directed the United States Department of
5 Agriculture to establish an interim policy regarding roadless areas in national forests; and
6 **WHEREAS** the United States Department of Agriculture, Forest Service, is
7 considering a proposed two-year moratorium on the building of roads in those roadless areas;
8 and
9 **WHEREAS** the National Forest Management Act of 1976 requires that amendments
10 to a forest plan be done in accordance with regulations that, among other things, allow the
11 public to participate in the development, review, and revision of land management plans for
12 national forests such as the Tongass National Forest and the Chugach National Forest; and
13 **WHEREAS**, after an extensive public process, the Tongass Land Management Plan
14 has already considered the management of roadless areas on the Tongass National Forest; and
15 **WHEREAS** the application of such a moratorium to the Tongass National Forest
16 would be a unilateral amendment to the Tongass Land Management Plan, which the Forest

1 Service has just revised at a cost to taxpayers exceeding $13,000,000; and
2 **WHEREAS**, under the Tongass Land Management Plan, the United States Department
3 of Agriculture, Forest Service, plans to offer an average of only 200,000,000 board feet of
4 timber annually, which is far below the 300,000,000 board feet needed for the timber industry
5 as determined by the Governor's Timber Task Force; and
6 **WHEREAS** the proposed moratorium could eliminate the timber industry that remains
7 in Southeast Alaska by reducing the allowable sale quantity on the Tongass National Forest
8 to nearly zero; and
9 **WHEREAS** application of the proposed moratorium in the state also violates the spirit
10 of the "no more" provision of the Alaska National Interest Lands Conservation Act
11 (ANILCA), which prohibits federal agencies from establishing new wilderness areas in the
12 state without an act of Congress;
13 **BE IT RESOLVED** that the Alaska State Legislature opposes any moratorium on the
14 development of the roadless areas of national forests that overrides the forest planning process
15 provided for by the National Forest Management Act of 1976, which allows full public
16 participation in decisions affecting the multiple use of national forest lands; and be it
17 **FURTHER RESOLVED** that the Alaska State Legislature opposes any moratorium,
18 restriction, or unilateral amendment to the Tongass Land Management Plan and the Chugach
19 Land Management Plan that overrides the forest planning process required by the National
20 Forest Management Act of 1976, which allows full public participation in decisions affecting
21 the multiple use of national forest lands.
22 **COPIES** of this resolution shall be sent to the Honorable Bill Clinton, President of the
23 United States; the Honorable Al Gore, Jr., Vice-President of the United States and President
24 of the U.S. Senate; the Honorable Dan Glickman, Secretary of Agriculture; and to the
25 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the
26 Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Alaska Forest Association, Inc.



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Statement of Support
House Joint Resolution 49

The forest products industry in Southeast Alaska is heavily dependent upon the purchase of timber from the Tongass National Forest. The Tongass Land Management Plan Revision of 1997 has greatly reduced the land within the Tongass that is available for timber harvest from 1.7 million acres to a mere 676,000 acres, and the maximum average annual allowable sales quantity from 520 million board feet (mmbf) to 267 mmbf. This is considerably below the amount the industry needs to sustain the remaining mills in the region. The promises made by Congress in 1990, at the time the Tongass Timber Reform Act was made law, that sufficient volume would be made available to sustain direct timber employment in Southeast Alaska have now proven to be hollow.

The impact on Southeast Alaska of the reduced harvest of Tongass timber has been drastic. Thousands of jobs have been lost through mill closures, and Federal payments to communities in the form of timber receipts have fallen to a tiny fraction of what they were previously. Recently released data indicate that timber receipts this year will be down by 83 percent compared to last year. This money is used for schools and road maintenance, so the decline hurts all the residents of the region.

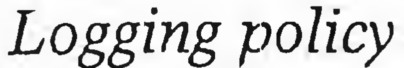
Now comes the Clinton Administration with its proposed roadless moratorium. This policy is being superimposed upon the National Forest System in violation of the national Environmental Policy Act and the National Forest Management Act, both of which require a public process, not unilateral government actions unrelated to sound science and public review. The government's new roadless policy is top-down management of the worst sort. It subverts public process and asserts a political strategy in place of sound, scientific, professional forest management. It is bad public policy and is aimed only at promoting the radical environmental agenda of stopping all logging on federal land. The much-touted 'exemption' for the Tongass and other Western forests is not, in fact, an exemption, but an announcement that the policy will be applied through a different mechanism; that is, through forest plan amendments.

The recent TLMP revision took more than 10 years to write and cost the taxpayers more than $13 million. It includes protection of some 90 percent of the roadless areas remaining on the Tongass. The Chugach Land Management Plan revision is just beginning, and the Chugach National Forest is more than 98 percent roadless. Application of the new roadless policy to the Chugach amounts to predetermining the plan revision in the direction of no development at all. Among other consequences, this will effectively prevent the Forest Service from addressing the growing spruce bark beetle devastation through active forest management. In the case of both Alaska national forests, the roadless policy is unnecessary and very harmful to Alaska's economic future.

forests, the roadless policy is unnecessary and very harmful to Alaska's economic future.

The estimated impact on the Tongass timber program is 202.5 mmbf per year over the life of the plan. Given an Allowable Sale Quantity of 267 mmbf, and expected offerings of around 200 mmbf, it doesn't take a rocket scientist to figure out that this would finally spell the end to industrial logging in the Tongass. Furthermore, full implementation of the roadless policy (whether through direct application or through a plan amendment) will immediately result in a further reduction in timber receipts— amounting to as much as $2.5 million in FY98. Alaska simply cannot afford this government boondoggle into anti-development politics.

In short, the government's proposed roadless policy is bad for national forests, bad for the American public, and particularly bad for Alaska. The Alaska Forest Association urges the legislature to take immediate action to protest this terrible public policy by quickly passing House Joint Resolution 49. We should send a message to the Clinton Administration on behalf of Alaskans and on behalf of our counterparts in other states, that the Alaska people will not tolerate the Administration's attempts to force a radical agenda upon the people of this state and of this country.



Logging policy

Continued from page 1

feels its input is being ignored, Smith said.

"I think it is very possible that we simply will act in the Congress to hold the Clinton administration to its word and its plan, not to end run us with a new political proposal," he said.

Mike McCurry, White House press secretary, said Wednesday he didn't think the Forest Service would act without input from key members of Congress.

"They've been talking to all those who have got some stake in the economic livelihood of the forests and uses of the forests," McCurry said.

"They're not going to adopt any new roadless policies without first taking input from all interested parties, and I would presume that they would want to consult very closely with members of the Senate as well."

1/16/98

K.D.N.

Smith: Logging policy based mostly on politics

By SCOTT SONNER
Associated Press Writer

WASHINGTON (AP) — It is "very possible" Congress will act to blunt President Clinton's new logging policy if he goes forward with an anticipated moratorium on harvests in roadless areas of national forests, a senator said Thursday.

"They are dictating to Congress a policy that is more based on politics than good forest policy," Sen. Gordon Smith, R-Ore., said in an interview. "These are extremists who are simply trying to subvert all responsible policy on good forest health management."

The extremists include Vice President Al Gore and environmentalists who are "pushing a policy that has little to do with science," he said.

> *'President Clinton is no longer executing the nation's laws, he's dictating this nation's laws.'*
> — Rep. Helen Chenoweth, R-Idaho

Rep. Helen Chenoweth, R-Idaho and chairwoman of a House subcommittee with jurisdiction over national forests, expressed similar concerns.

"President Clinton is no longer executing the nation's laws, he's dictating this nation's laws," she said in a statement.

The Forest Service is expected in the next two to three weeks to unveil a policy that could ban logging on millions of acres where there are no roads.

Forest Service officials briefed congressional aides on the progress on the policy Thursday, but several aides said few details were provided. Forest Service spokesman Chris Wood said no final decisions have been made.

Smith and Chenoweth are among several Western Republicans who have been pressing the administration to exempt from the policy forests in Alaska, the Pacific Northwest and Columbia River Basin, on grounds that new management plans are being developed or are already in place there.

Critics fear that if a new roadless policy is implemented, the Forest Service will be unable to make good on Clinton's promise to log 1 billion board feet of timber from national forests in Oregon and Washington under a plan in effect there since 1993.

"All I'm saying is we have a Northwest forest plan. We have a Columbia Basin plan in the works. A lot of time and effort have gone into the development of these policies," Smith said.

"Don't do an end run on the people of the Northwest who want to believe still in the word of this administration."

The Republican-led Congress likely will respond in a "hostile" manner if it

See 'Logging policy,' page 3

ALASKA RAINFOREST CAMPAIGN

CONSERVING FOREST HABITAT FOR FISH AND WILDLIFE IN COASTAL ALASKA

Statement in opposition to HJR49
"Opposition to a moratorium on the building of roads
in the roadless areas of national forests"
by Alaska Rainforest Campaign

HJR49 opposes including Alaska's Tongass National Forest in the proposed moratorium on new roads in roadless areas of the country's national forests. The Alaska Rainforest Campaign strongly opposes HJR49

The findings statements in HJR49 show a misunderstanding of the roadless policy and the new Tongass forest plan

The Tongass plan did not consider "management of roadless areas on the forest." There was no alternative in the plan that would have concentrated logging in areas where roads already exist or areas easily reachable by helicopter logging. The Forest Service simply assumed that the majority of Tongass timber had to come from roadless areas without studying any alternative. We estimate that some 8 BILLION board feet of timber some 80 years worth of supply – lies within 1 mile of the existing road system. Not all of that timber can be harvested without undue environmental impact, but it does provide a substantial timber base for a new way of managing the Tongass

The resolution says 200 million board feet of timber annually "is far below the level needed for the timber industry that remains in the area." In reality, the Forest Service's own economic study (Brooks and Haynes) said timber demand through the year 2002 would be between 96 to 112 million board feet

The resolution says "the proposed moratorium could eliminate the timber industry that remains in Southeast Alaska." In reality, there is more than 400 million board feet of Tongass timber under already contract -- timber that would be unaffected by the moratorium. At current harvest levels, that 400 million board feet is some 4 years' worth of supply – more than enough to keep today's timber industry going while new management of roadless areas is considered.

Ideally, every forest plan would have already fully considered new management options for roadless areas. Especially in Alaska, these areas are critical to protecting hunting, sport fishing, commercial fishing, water quality and wildlife. However, the Tongass forest plan did not consider any meaningful protection for roadless areas, so it cannot be a reason to exclude the Tongass from the proposed moratorium

Please do not move HJR49 from House Resources Committee

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CHUGACH ALASKA CORPORATION

HJR 49

Testimony of Michael F. G. Williams January 29th 1998

My name is Michael Williams and I am a Vice President of Chugach Alaska Corporation. We are here today to give our support to HJR 49.

Chugach Alaska Corporation is an Alaskan Native Corporation, established under the Alaska Native Claims Settlement Act. As part of this Act, significant areas of land were conveyed to the Corporation, including 73,000 acres situated in the Carbon Mountain area, some 25 miles east of the Copper River. Access to this property requires a road to be built across part of the Chugach National Forest. The original Settlement Agreement between Chugach and the Federal Government recognized this, and guaranteed Chugach a right of way to its property, across federal land.

It is not only the Carbon Mountain tracts that will be affected by the Clinton proposal on No New Roads. CAC owns approximately one million acres of land, rich in natural resources of which approximately 40% requires road access across Forest Service lands.

We are very concerned that the moratorium on no new roads, will delay or kill Chugach's plans to log the Carbon Mountain area, and the exploitation of its natural resources in other areas.

The social consequences of the proposed moratorium are:

- The roadless policy will frustrate the intent of ANCSA by making it impossible for Alaska Natives to achieve a fair and just settlement of aboriginal land claims and prevents the realization of "...maximum participation by Natives in decisions affecting their rights and property... ".
- The roadless policy will frustrate the intent of ANILCA by disrupting the balance struck between preservation, traditional use and economic utilization.
- This roadless policy will result in costly and time consuming appeals and litigation thereby harming local economies and disrupting the flow of business.
- The Forest Service is already subverting their own planning regulations under Title 36 of the Code of Federal Regulations which require the agency to solicit tribal and Alaska Native input into all planning processes that impact management of Native and Indian owned lands.

The economic consequences of this action will be:

- If Chugach cannot get access to its land across federal lands, the Company will be restricted from developing its resources valued in excess of 1 billion dollars.
- Employment value (i.e. payroll) for such development is estimated to be about 25% of total value which makes jobs lost by this roadless policy worth about $250 million from Chugach alone.
- The impact of loss of resource revenue is statewide due to the ANCSA 7(i) sharing provisions between Regional and Village Corporations.

This proposal is bad policy because :

- The Forest Service actions have been developed in a vacuum. They forget that their policies impact inholders and adjacent landowners.
- No provision is being made in the roadless policy to acknowledge valid existing rights of adjacent State and private lands and inholdings.
- 98.8 % of the Chugach National Forest is inventoried as roadless, virtually all of this roadless area is either within or adjacent to Conservation System Units which will result in an automatic lock-up of almost the entire National Forest under the proposed roadless area policy.

Conclusion:

With so much of the Chugach National Forest and the State of Alaska already protected and in a "roadless" condition there is no public need for this policy in Alaska.

HJR 49

ROADLESS AREA DECISION CALLED "BITTERSWEET"
Tongass Exempted But Chugach Included In Withdrawals

(JUNEAU) -- Legislative leaders reacted angrily to Thursday's announcement by the U.S. Forest Service that it is instituting an eighteen-month moratorium on construction in so-called "roadless areas" of the National Forest System. The Tongass National Forest in Southeast Alaska was exempted from the sweeping mandate, as were several other national forest areas in the Pacific Northwest which have recently revised or amended their management plans. The Chugach National Forest in Southcentral Alaska was not exempted, however.

"The Clinton Administration is turning the public process on its ear," said Representative Bill Williams (D-Saxman). "They've implemented their policy first, then they're going to go through the public process. This runs counter to the spirit of many environmental laws, which mandate research first, then decisions, all based on sound scientific evidence and public comment. They've reached a conclusion and are now setting about constructing a hypothesis to support it," Williams said.

"It's a bittersweet decision for Alaska," Williams said. While we're glad they've exempted the Tongass from this withdrawal, they've included the Chugach and that will slow or stop efforts to manage the enormous spruce bark beetle problem they have there."

The decision, announced this morning in Washington, DC, allows the public thirty (30) days to comment on the decision and Williams urged Alaskans to contact the Forest Service and register their concerns. The roadless areas withdrawals are part of the Forest Service's proposed New Tranportation Policies, which include a major overhaul of the forest road system. The public will have sixty (60) days to comment on the overall plan.

"I hope every Alaskan will take the time time to write or call the Forest Service," Williams said. "The roadless moratorium is going to have grave economic and social consequences for timber dependent communities everywhere. This policy is like a doctor who kills his patient, performs an autopsy to find out what's wrong, the tries to apply a cure," Williams said. "How many timber operators are going to be left after two years of greatly reduced harvests?"

# # #

HJR

52

HOUSE COMMITTEE REPORT

(9)
Date Referred to Committee: January 26, 1998 | FURTHER REFERRALS:

Date of Committee Action: 2/26/98

The RESOURCES Committee considered: HJR 52

HOUSE JOINT RESOLUTION NO. 52 — OPPOSE AMERICAN HERITAGE RIVERS

Relating to opposition to the designation of any rivers in Alaska as American Heritage Rivers under the American Heritage Rivers initiative.

recommends it be replaced with the following committee substitute ______ [ ] the same title [ ] a new title

[ ] additional referral to ______ Committee
[ ] attached amendment(s)

ADOPTS: ______ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) | APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______ | [ ] fiscal note(s) ______

[✓] zero fiscal note(s) ______ | [ ] zero fiscal note(s) ______

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
Fred Dyson	Dyson	✓			
W.K. Williams	Williams	✓			
[illegible]	Green	✓			
Ramona L. Barnes	Barnes	✓			
Beverly Masek	Masek	✓			
Scott Ogan	Ogan	✓			
Bill Hudson	Hudson	✓			
Reggie Joule	Joule	✓			

CHAIR'S SIGNATURE Bill Hudson   Scott Ogan

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HJR 52

Revision Date:
Title: Oppose American Heritage Rivers

Sponsor: Rep. Hudson
Requester: House Resources Committee

Dept. Affected Legislative Affairs Agenc
BRU All
Component All

Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost:

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by House Resources Committee
Division Co-Chairman Bill Hudson

Phone 465-6820
Date 2/26/98

Approved by
Agency

Date

Alaska State Legislature

REPRESENTATIVE
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House Of Representatives
House District 34

Memo

To: **House Resources Committee**
Representative Bill Hudson
Representative Scott Ogan

From: Representative James / Myrna McGhie

Date: February 9, 1998

Re: Request for hearing on HJR 52

Attached is the packet for HJR 52: to oppose the American Heritage Rivers Initiative. Representative James is requesting a hearing on this Resolution at your earliest convenience. Thank you very much.

Alaska State Legislature

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House Of Representatives
House District 34

American Heritage Rivers Initiative

Sponsor Statement

Representative Jeannette James

HJR 52: Relating to opposition to the designation of any rivers in Alaska as American Heritage Rivers under the American Heritage Rivers initiative.

Many of you will be wondering, "What is the American Heritage River initiative?" It has not been a widely publicized program. President Clinton first announced it on February 4, 1997 in his State of the Union message. Then in May and September there were announcements in the Federal Register. Since his State of the Union message President Clinton issued Executive Order 13061 directing agencies to establish and implement the initiative.

The program has two objectives: (1) to enhance our citizens' enjoyment of the historic, cultural, recreational, economic and environmental value of our rivers and (2) to protect the health of our communities by delivering federal resources more effectively and efficient. The President's purpose is to support communities within existing laws and regulations by providing them with better information, tools and resources, and encouraging local efforts deserving of special recognition.

We wonder. It all sounds very good, and quite innocent, just like so many federal Acts and Initiatives in the past. They all seem innocent and even beneficial until they begin touching the lives and rights of real people.

For instance, it was a false promise when people were told there is a self-defense provision in the Endangered Species Act.

- Shuler kills grizzly bear after it attacked him late one night. Federal officials rendered the provision a nullity saying that Mr. Shuler was at fault for going into the "zone of imminent danger." That zone happened to be his own back yard.

It was a false promise when they adopted Wilderness legislation saying that there was a provision to protection of "valid existing rights." The promise was that no private land would be taken into wilderness areas without the consent of the owner, that only federal land would become wilderness, and that no buffer zones would be created. Not so!

- Kathy Stupak-Thrall of the Upper Peninsula of Michigan has been compelled to fight government attorneys who say the provisions have no meaning, or don't apply to her private property and her "valid existing rights." These lawyers say that Congress didn't know what the language of the phrase "valid existing rights" meant. Therefore, they can interpret it anyway it wishes.

I would say there is good reason for the distress throughout our country regarding the President's American Rivers proposal. A legacy of lies, betrayals and broken promises are attached to these types of well-intentioned, pleasant sounding, feel-good programs.

Many states are joining with U.S. Representative Helen Chenoweth of Idaho who has introduced legislation asking for the complete withdrawal of the initiative. There are three areas of concern: 1) the lack of congressional approval, 2) the vague language and absence of definitions, and the excess federal control over private property and state water rights. As a sovereign state, it also conflicts with our rights to control and manage our navigable waters.

One important point is that congress should be making rules and regulations Respecting Federal lands and resources, not the president or his appointees. We are again faced with the President stepping beyond the boundaries of his office. As Chenoweth stated in a press release after a House Resources Committee meeting:

> "We are doing things exactly backwards here today. Instead of Congress making the proposal and the Administration commenting on it, we are actually in a position today of taking testimony not on the creation of a new program, but on how to stop it."

In addition, there is no justification of the need for such an initiative, and the details of the initiative are insufficient. It does not include any details on how the cleanup will be accomplished, what will actually be done, or who will do the work. Allowing for the public process is another concern. There has not been sufficient time to allow the public to review and comment on the initiative. Some people even think something sneaky is going on. They believe it is just another intrusion of the federal government and a way to get control of all our lands. It is one important reason that this initiative should be stopped. I urge you now to vote yes on this legislation.

Draft Testimony of Kathleen Benedetto
February 1998
Resolution Opposing Designation of any Rivers in
Alaska as American Heritage Rivers
Under the American Heritage Rivers Initiative
before the
ALASKA STATE LEGISLATURE

INTRODUCTION:

My name is Kathleen Benedetto. I am the Executive Director of *the Minerals Exploration Coalition (MEC),* a non-profit advocacy group for the multiple use of public lands. Specifically MEC works to maintain access for mineral entry on these lands. Our membership, including 30 corporations, represents a diverse group of professionals and companies engaged in mineral exploration and development.

I have over twenty years experience in the minerals industry as an exploration geologist and activist. In 1993 I co-founded the Women's Mining Coalition to work on responsible mining law reform. I have worked closely with the Western States Coalition, the Alliance for America and other grassroots organizations. The common thread for these groups is a commitment to improving and modernizing national environmental policy by promoting a strong conservation ethic that recognizes our most important resource, people, as part of the environment.

Today I am pleased to testify before your Legislature in support of your resolution *opposing designation of any rivers in Alaska as American Heritage Rivers under the American Heritage Rivers Initiative*, established by President Clinton through Executive Order 13061.

COMMENTS:

MEC believes that if a river is designated as an American Heritage River, the designation will be used to restrict mineral access to public lands within the watershed. Each new land use program presented by the Administration

further restricts access to public and private lands for mineral development, grazing, timber harvest and motorized recreation.

These restrictions are put in place under the auspices of saving the environment without regard for the impact that they will have on people. In some cases the restrictions do not provide any environmental benefit and may actually contribute to degradation of the environment and wildlife populations and habitat.

The continued ability to access and harvest the rich mineral resources of this country is critical. Mineral and other natural resources are the source of new money and the raw materials needed in manufacturing. Each American requires over 40,000 pounds of mined materials annually. These mined materials are necessary to provide a clean healthy environment for society.

For example, gold is an important component in all electronic equipment, including telephones, computers and satellite technology. Gold filaments allow us to reach out and touch our family, friends, and neighbors, and even those folks we may not see eye to eye with. It is used to trigger the deployment of air bags and in the protective clothing used by firefighters.

Mineral and other natural resources are plentiful throughout the United States and the rest of the world. Access to and distribution of those resources is where problems arise. On occasion these problems are the result of terrain or lack of infrastructure. However, in most situations these problems are artificial and have been created by political decisions.

The demand for natural resources will not decrease. Unchecked, political decisions restricting access to resources will go beyond negatively impacting rural communities and public land states, to impacting urban areas and the world community as a whole.

THE INITIATIVE:

I applaud the efforts of the Alaska Legislature and encourage them to pursue passage of **House Joint Resolution NO. 52**, opposing designation of any

Alex Annett with the Heritage Foundation, in 'Good Politics, Bad Policy: Clinton's American Heritage Rivers Initiative,' (see attachment) identified the five most serious problems with the initiative:

1. It violates a number of constitutional and statutory provisions;
2. It is wasteful and inefficient;
3. IT REDUCES THE ROLE AND AUTHORITY OF STATES;
4. It threatens property rights; and
5. It "serve[s] political purposes."

It is my observation that when the Clinton administration has been unsuccessful with a legislative initiative they choose to circumvent Congress and the democratic process by issuing an executive order. This has been most apparent in their environmental and land use policies.

During the 104th session of congress a serious effort was made to pass The American Heritage Areas Bill. As a result of the UNESCO designation of *Yellowstone as a World Heritage Site in danger* because of the proximity of the Crown Butte mine project, and the concerns of private property organizations throughout the country, the omnibus American Heritage Areas Bill did not pass. During the 1997 State of the Union Address, President Clinton, announced the American Heritage Rivers Initiative. The Initiative is a watered down version of the American Heritage Areas Bill. To the uninitiated the program appears to be rather benign. And has often been described as a pork barrel project--just an opportunity to bring in some federal dollars. Even if this was the case, the whole concept flies in the face of the efforts to reduce the size of government. It is a giant step backwards. AHRI expands federal bureaucracy, increases centrally planned conservation through punitive regulation. And it does not encourage locally driven incentive based conservation efforts.

Finally, look at the list of Executive Orders and Initiatives issued by the administration that are affecting resource and recreation based communities, rural school districts, and specific industries or companies: No logging in the Tongass National Forest, twenty year moratorium on mineral entry in the New World Mining District and the Sweet Grass Hills, denial of access to coal

reserves in Montana, no oil and gas drilling -- ANWR, severely restricted drilling in the Lewis & Clark and Helena Deerlodge National Forest, the American Heritage Rivers Initiative, signing the Global Warming Protocol, Al Gore's Clean Water Initiative, administrative rewrite of the BLM 3809 regulations governing hard rock mining, and most recently the emergency moratorium of timber harvest within "roadless areas."

I encourage Alaska to sign the resolution opposing the American Heritage Rivers Initiative, **House Joint Resolution NO. 52**. Congress needs support to stop the Administration from usurping their constitutionally delegated responsibilities.

###

Committee on Resources

Witness Testimony

Statement of
WILLIAM PERRY PENDLEY
President and Chief Legal Officer
Mountain States Legal Foundation
707 Seventeenth Street, Suite 3030
Denver, Colorado 80202
303-292-2021; FAX 303-292-1980
before the
Resources Committee
United States House of Representatives
Washington, D.C.
September 24, 1997

Introduction

As this Committee has discovered, there is great distress throughout the country regarding the proposal of President Clinton to implement his American Heritage Rivers Initiative. There is good reason for such concern. For the legacy of these types of well-intentioned, pleasant-sounding, feel-good programs is of broken promises. The American people are told that such programs are for their benefit, to assist them in fulfilling their environmental and economic objectives while being assured that their rights will be protected and their liberties secure.

We are told, for example, that there is a self-defense provision in the Endangered Species Act, yet in the only instance of a man compelled to make use of that provision--Mountain States Legal Foundation's (MSLF's) client John Shuler of Dupuyer, Montana--the provision has been rendered a nullity by federal officials. Mr. Shuler, who killed a grizzly bear after being attacked late one night, is told that he is at fault for going into the "zone of imminent danger;" that is, his own yard.

We are told, on the adoption of wilderness legislation, that "valid existing rights" will be protected, that no private land will be taken into the wilderness area without the consent of the owner, that only federal land will become wilderness, and that no buffer zones will be created. Yet in the Upper Peninsula of Michigan, MSLF's client Kathy Stupak-Thrall has been compelled to fight, for nearly a decade, government lawyers who assert that those provisions have no meaning, or at least no applicability to her private property and her valid existing rights. (These are the lawyers who have the audacity to assert that when Congress adopted the "valid existing rights" language it had no idea what that phrase meant and therefore the federal government can interpret it in any manner it wishes.)

We are told that the prohibition against motorized vehicles in wilderness areas will be interpreted in a common sense fashion, that it is not a strict liability provision and thus requires what almost every federal law requires, mens rea, or criminal intent. Yet when a man, in the midst of a dangerous, howling blizzard, accidentally, or out of necessity, or out of emergency, finds himself in such a wilderness area on a motorized vehicle, he is told he is guilty regardless of his intent or the need or the emergency. Common sense and more importantly, the law, takes a back seat to a radical agenda.

To whom do such victims turn when the provisions ostensibly adopted for their protection are ignored, or worse yet, violated? Certainly not to Congress, where the essential compromises that permitted federal

legislation to go forward are too quickly forgotten and the victims are told that intervention by Congress should not take place since "the matter is in litigation." No wonder the American people are concerned with President Clinton's rivers initiative.

One Reason for Concern: The National Natural Landmarks Program

One reason for the public's concern is what took place rega 'ing the National Natural Landmarks program, which first came to the public's attention in a seven-part s .s of articles written by the late Warren Brookes that began on January 17, 1991, and ran through January 29, 1991, in **The Washington Times**.

Under the National Natural Landmarks program, the National Park Service (NPS) designated property as a National Natural Landmark. Ostensibly this program was established under the authority of the Historic Sites Act of 1935, 16 U.S.C. 461, et seq. However, the Historic Sites Act speaks only of a "prehistoric or historic district, site, building, structure, or object . . . ." 16 U.S.C. 470w. The word "natural" is nowhere to be found in the Historic Sites Act. Nonetheless, citing the Historic Sites Act, federal regulations defined a National Natural Landmark as any area "within the boundaries of the United States . . . that contains an outstanding representative examples(s) of the nation's natural heritage, including terrestrial communities, aquatic communities, landforms, geological features, habitats of native plant and animal species, or fossil evidence of the development of life on earth." 36 C.F.R. Ch. 1 (July 1, 1992 Edition) 62.2.

While the NPS insists that such a designation carries no special meaning, the National Natural Landmark designation exposes the land to local land-use restrictions, and to local, state, and federal bureaucrats. The NPS, for example, used the designation to target future land acquisitions. More than 587 such landmarks were designated throughout the country. In the process it seems National Park Service employees have violated the law by surveying private property without the permission of the landowner. A 1992 investigation revealed that "land may have been evaluated, nominated, and designated without the landowners' knowledge or consent." According to one NPS document, "The question of secrecy and publicity is a hot topic which will undoubtedly come back to haunt us over the years if this document becomes generally available to the public."

While this particular program has been applied throughout the nation, Western landowners were singled out for abuse, intrusions, and attempts to seize their property. In 1989, a landowner in Idaho discovered that the National Park Service, without his knowledge or permission, had proposed that his property be designated as a National Natural Landmark. As a result of that proposal, to which the landowner objected strenuously, federal officials refused to issue permits or to take actions requested by the landowner. To make matters worse, it appears the proposed designation took place at the request of a private citizen who then used the National Park Service's listing of the property as grounds for attempting to prevent the issuance of various permits and other authorizations to the landowner. No wonder the American people are concerned.

The Initiative Violates Federal Law and the Constitution

A.Only Congress May Make Rules and Regulations Respecting Federal Lands and Resources.

The U.S. Constitution grants specific powers to each of the three branches of Government. Under the Property Clause, the United States Congress is given exclusive and unlimited power over public lands and resources retained by the United States and not passed to the states or individuals.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;

U.S. Constitution, Article IV, 3, Cl. 2. (Emphasis added). Title to lands under navigable waters were passed to the states, unless there was a federal reservation, Pollard v. Hagan, 44 U.S. 212, 230 (1845). Lands under non-navigable waters were retained by the United States. State of North Dakota v. United States, 972 F.2d 235, 236 (1992).

The Property Clause establishes "full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them." Utah Power & Light Co. v. United States, 243 U.S. 389, 404 (1917). See also McKelvey v. United States, 260 U.S. 353, 359 (1922) (stating that under the Property Clause, Congress "may sanction some uses [of the federal lands] and prohibit others, and may forbid interference with such as are sanctioned."). Congress may also use this power to achieve objectives not within the scope of enumerated federal concerns. In Light v. United States, 220 U.S. 523 (1911), the Court held that the United States possessed plenary power to control the use of public lands and could exercise that power for any "national and public purpose." Id. at 536.

Congress may also legislate against activity taking place off federal property when such legislation is necessary to effectuate the Government's power to regulate the use and occupancy of federal lands and to protect these lands from damage. The authority for such legislation is found in the Necessary and Proper Clause. U.S. Constitution, Art. I, 8. It empowers Congress "[t]o make all Laws which shall be necessary and proper for carrying into Execution" the powers enumerated elsewhere in the Constitution. In order to justify federal action under this Clause, the government must show the existence of a means-to-end relationship between the action and the exercise of one of its enumerated powers. McCulloch v. Maryland, 17 U.S. 316, 421 (1819), contains the classic statement of this rule:

Let the end be legitimate, let it be within the scope

of the Constitution, and all means which are

appropriate, which are plainly adapted to that end . . .

are constitutional.

This grant of authority over federal lands does not extend to the Executive branch. The Presidents' legislative authority is limited to "recommending to [Congress'] Consideration such Measures as he shall judge necessary and expedient." U.S. Constitution, Article II, 3, Cl. 1. The President is also empowered to "take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States." Id. at Cl. 4. The President may not act as a lawmaker in the absence of a delegation of authority or mandate from Congress. Independent Meat Packers Asso. v. Butz, 526 F.2d 228, 235 (8th Cir. 1975), cert. den., 424 U.S. 966.

Specifically, the President cannot develop and enact the American Heritage Rivers initiative without Congressional authority or mandate. The American Heritage River initiative will impact federal lands under non-navigable rivers, federal lands under navigable rivers that were reserved to the United States, and all federal lands adjacent to all selected rivers. Since the Property Clause grants Congress exclusive control over federal lands, the American Heritage River initiative exceeds the President's Constitutional powers and deprives Congress of its Constitutional responsibility of open debate and vote on issues and legislation involving federal public lands. The President cannot act on this program until he receives such authority or such a mandate.

B.Only Congress May Regulate Interstate Commerce.

The power of the United States over waters that can be used as interstate highways arises from the Commerce Clause of the Constitution.

The Congress shall have power . . . to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

U.S. Constitution, Article 1, 8, Cl. 3. This power includes the power to regulate navigation so that waterways can be utilized for the interests of the commerce of the whole country. United States v. Appalachian Electric Power Co., 311 U.S. 377, (1940). See also Gilman v. City of Philadelphia, 70 U.S. 713, 724-725 (1866). Congress' power over interstate navigation not only includes keeping the waterways clear of obstructions, but also includes the power to improve and enlarge their navigability. United States v. Chandler-Dunbar Co., 229 U.S. 53, 59 (1913).

This grant of authority over United States waters does not extend to the Executive branch. The Presidents' legislative authority is limited to "recommending to [Congress'] Consideration such Measures as he shall judge necessary and expedient." U.S. Constitution, Article II, 3, Cl. 1. The President is also empowered to "take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States." Id. at Cl. 4. The President may not act as a lawmaker in the absence of a delegation of authority or mandate from Congress. Independent Meat Packers Asso. v. Butz, 526 F.2d 228, 235 (8th Cir. 1975), cert. den. 424 U.S. 966.

Specifically, the President cannot develop and enact the American Heritage Rivers initiative without Congressional authority or mandate. The American Heritage River initiative will impact navigable and non-navigable rivers, thus impacting interstate commerce. Since the Commerce Clause grants Congress exclusive control over interstate commerce and United States waters, the American Heritage River initiative exceeds the President's Constitutional powers and deprives Congress of its Constitutional responsibility of open debate and vote on issues and legislation involving interstate commerce and United States waters. The President cannot act on this program until he receives such authority or such a mandate.

C.President Clinton's Initiative Usurps Inherent State Powers Reserved Under the Tenth Amendment.

The Constitution of the United States created a federal Government of enumerated powers. James Madison wrote:

[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.

U.S. v. Lopez, 115 S.Ct. 1624, 1626 (1995) (citing The Federalist, No. 45, pp. 292-293).

Under the federal system, federal and state governments coexist. The federal government is one of limited, enumerated powers, while state governments have inherent undefined powers. The Tenth Amendment states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Constitution, Amendment 10. Enumerated federal powers were included to protect the fundamental liberties of the people, and the adoption of the Bill of Rights strengthened the protection of fundamental rights by placing restrictions upon federal governmental actions. The Supremacy Clause modifies this

coexistence by nullifying state laws that conflict with the Constitution, treaties, or other laws of the United States. This Clause states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Constitution, Article 6, 2.

When Congress exercises one of its enumerated powers and intends to occupy an entire field of law, such as commerce, or the President exercises one of his enumerated powers, the federal government has plenary power and the states have residual power in that specific field. The control and regulation of fields of law such as land-use and zoning, property, and water have traditionally been left within the province of the individual states, in that they are not part of the enumerated powers designated in the Constitution.

President Clinton cannot develop and enact the American Heritage Rivers initiative without Congressional authority or mandate. The American Heritage River initiative infringes upon powers reserved to the states. Thus, the American Heritage River initiative exceeds the President's enumerated powers and violates the Tenth Amendment.

D.The President's Initiative Violates NEPA and FLPMA.

1.National Environmental Policy Act.

In creating the National Environmental Policy Act of 1969 (NEPA), Congress declared:

[I]t is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures . . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

42 U.S.C. 4331(a). This national environmental policy also sets forth the proposition that the federal government would:

(3) attain the widest range of beneficial uses of the environment . . . . (4) preserve . . . . wherever possible, an environment which supports diversity and variety of individual choice; (5) achieve a balance between population and resource use which will permit high standards of living . . . .

42 U.S.C. 4331(b). In an effort to implement NEPA, Congress created the threshold requirement imposing a duty on federal agencies to prepare an environmental impact statement (EIS) for major federal actions.

[A]ll agencies of the Federal Government shall---

(C) **include in every recommendation or report** on proposals for legislation and other **major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official** on---

(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the

relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented . . . . Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the . . . . public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes.

42 U.S.C. 4332(C) (emphasis added).

In order to comply with NEPA, the federal government has published 40 C.F.R. 1500, et seq., to ensure that all agencies act according to the letter and spirit of the law. The regulations specifically state, "All agencies of the Federal Government shall comply with these regulations." 40 C.F.R.

1507.1. In an effort to simplify an agency action dealing with "major" or "significantly", the Council on Environmental Quality (CEQ) adopted 40 C.F.R. 1508.18, creating a "unitary standard." Under the standard, if a court determines an action is "significant," it should also find that the action is "major." National Ass'n for advancement of Colored People v. Wilmington Medical Center, Inc., 584 F.2d 619 (3d Cir. 1978). A finding that a federal action is "major" and "significantly" impacts the environment requires the preparation of an EIS.

a. Major Federal Actions

"Major" federal actions are described as:

[A]ctions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (40 C.F.R. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities . . . new or revised agency rules, regulations, plans, policies, or procedures . . . .

40 C.F.R. 1508.18.

Despite these guidelines, most courts have approached the "major" determination on a case-by-case basis. Since generalization is quite difficult when dealing with NEPA cases, cases appear to turn on the magnitude and size of the action to determine if the action has a potential impact on the human environment. Large projects with the potential of substantial impacts will be "major" actions. The following are examples of cases that have identified "major" actions:

Monroe County Conservation Council, Inc. v. Volpe, 472 F.2d 693 (2d Cir. 1972) - a $14 million bridge with 60 percent federal funding;

Jones v. United States Dep't of Housing and Urban Development, 390 F.Supp. 579 (E.D.La. 1974) - the conversion of a large federally subsidized housing project with a major change in use;

NRDC, Inc. v. Grant, 341 F.Supp. 356 (E.D.N.C. 1972) - a 66-mile water channel project costing $1.5 million with $706,000 of federal funding;

Douglas County v. Lujan, 810 F.Supp. 1470 (D.Or. 1992) - the designation of critical habitat for endangered species affecting approximately 6.9 million acres.

Catron County v. U.S. Fish and Wildlife Service, No. 94-2280, 1996 U.S. App. Lexis 1479 (10th Cir. Feb.2, 1996) - NEPA and ESA are not mutually exclusive and the FWS must follow regulations in designating critical habitat.

It is readily apparent that the American Heritage Rivers initiative is a major federal action. It has the potential of effecting all fifty states, depending upon the individual rivers selected for designation. Once selected and designated, management activities and projects on the river can impact federal, state, and local government lands and private lands. Thus, an EIS should have been prepared for this initiative.

b. Significant Actions

"Significantly" is described as:

Significantly as used in NEPA requires considerations of both context and intensity:

(a) *Context*. This means that the significance must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action . . . .

(b) *Intensity*. This refers to the severity of impact . . . . The following should be considered in evaluating intensity . . . .

(1) Impacts that may be both beneficial or adverse. . .

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial . . . .

(5) The degree to which the possible effects on the human environment are highly uncertain . . . .

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about future consideration . . . .

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts . . . . Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts . . . .

40 C.F.R. 1508.27.

When deciding on the need to prepare an EIS, an agency must evaluate whether the nature of the action is such that significant environmental impacts could occur, not whether the agency has adequately considered the significance of the federal action. Daniel R. Mandelker, NEPA Law and Litigation, 8.06[4][a] (2d Ed. 1995). The Court of Appeals for the Tenth Circuit has held that when reviewing administrative decisions not to issue an EIS, the court must, first, utilize the "hard look" doctrine, and, second, if a "hard look" was

utilized, determine whether the agency's decision was arbitrary and capricious. Park County Resource Council, Inc. v. USDA, 817 F.2d 609 (10th Cir. 1987) and Committee to Preserve Boomer Lake Park v. Department of Transportation, 4 F.3d 1543 (10th Cir. 1993). A "hard look" will include an evaluation of the possible effects of the proposed action, which effects have been broadly defined by NEPA.

Effects include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable . . . . Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

40 C.F.R. 1508.8.

The American Heritage Rivers initiative will significantly affect the environment of each watershed or community containing a designated heritage river. The federal government will be providing funds and expertise to assist in implementing measurable results, such as water resource protection, river restoration, protection of historic and cultural resources, revitalization of local and regional economies, and implementing sustainable development. The Executive branch failed to evaluate any potential effects associated with this initiative, thus violating NEPA. An EIS must be prepared.

2. Federal Land Policy and Management Act.

The Property Clause establishes "full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them." Utah Power & Light Co. v. United States, 243 U.S. 389, 404 (1917). See also McKelvey v. United States, 260 U.S. 353, 359 (1922) (stating that under the Property Clause, Congress "may sanction some uses [of the Federal lands] and prohibit others, and may forbid interference with such as are sanctioned."). Congress may also use this power to achieve objectives not within the scope of enumerated federal concerns. In Light v. United States, 220 U.S. 523 (1911), the Court held that the United States possessed plenary power to control the use of federal lands and could exercise that power for any "national and public purpose." Id. at 536.

Utilizing its enumerated power found in the Property Clause, Congress declared that it is the policy of the United States that the present and future use of federal lands be projected through a land-use planning process coordinated with other federal and State planning efforts, that Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate federal lands for specified purposes, and that Congress also delineate the extent to which the Executive may withdraw lands without legislative action. 43 U.S.C. 1701(a).

In enacting FLPMA, Congress retained its authority over federal lands by limiting the role of the President and the Executive branch to specific federal land withdrawal limits and to resource inventorying and management activities. Congress did not delegate federal land dedication and designation powers to the President or the Executive branch. Without congressional authority, the development and implementation of the American Heritage Rivers initiative violates FLPMA.

Conclusion

Finally, I would draw the attention of Congress to the decision of the United States Supreme Court in Printz v. United States, its last decision before adjourning in June. It was in Printz that the Court held the Brady Act, and its requirement that state officers enforce a federal program, unconstitutional.

The opinion makes fascinating and educational reading as Justice Scalia gives a history lesson on the origins of our federal system, the views of its creators, and the manner in which it has been interpreted for 200 years. Although Justice Scalia based his holding on the Tenth Amendment ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."), he noted that "numerous constitutional provisions" ensure "dual sovereignty."

To those who assert that those provisions are "formalistic" impediments to the "era's perceived necessity," Scalia responded, "[T]he Constitution protects us from our own best intentions . . . the temptation to concentrate power in one location as an expedient solution to the crisis of the day." Justice Scalia's statement has particular meaning to those of us who have heard, much, much too often, that there is an environmental crisis, so we must give up our right to own and use private property as well as other constitutional guarantees.

We are the inheritors of the greatest political system ever devised by humankind, which recognizes, uniquely, that "all men are created equal, [and] are endowed by their Creator with certain unalienable rights, [including] life, liberty, and the pursuit of happiness." However, with that freedom comes an obligation, as the Constitution commands, to "secure the blessings of liberty to ourselves and our posterity. . . ."

We hear a lot today about the legacy that we pass on to our children and grandchildren--our posterity--the national debt, the environment, our diverse society. However, the most important legacy we can leave, that we are duty bound to leave, is the Constitutional system entrusted to us by our Founding Fathers. It would be the greatest tragedy if out of apathy, or expediency, or short-term self interest, we allowed the destruction of the only thing that ensures that we remain a free people.

As Justice Oliver Wendell Holmes once wrote, "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way. . . ."

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Larry E. Craig
United States Senator
313 Hart Senate Office Building
Washington, D.C. 20510

Dirk Kempthorne
United States Senator
304 Russell Senate Office Building
Washington, D.C. 20510

Congress of the United States
The Idaho Delegation

Mike Crapo
Member of Congress
437 Cannon House Office Building
Washington, D.C. 20515

Helen Chenoweth
Member of Congress
1727 Longworth House Office Building
Washington, D.C. 20515

September 23, 1997

The Honorable Kathleen A. McGinty
Chair, Council on Environmental Quality
Old Executive Office Building, Room 360
Washington, D.C. 20502

Dear Chairman McGinty:

We are writing you once again regarding the American Heritage Rivers initiative. As you know, on August 14, 1997 we sent you a letter outlining our objections to the initiative. Since you have decided to continue with this initiative, we are requesting that no rivers in Idaho be designated as American Heritage Rivers.

We have enclosed a copy of our original letter to you, but we would like to reiterate the underlying principles for why we object to this initiative — the increase in federal bureaucracy and the continued shift of control over water from the states to the federal government. The initiative creates another layer of federal bureaucrats for local citizens to trudge through as they try to manage their rivers. Furthermore, it establishes the federal government as the ultimate authority in river protection. Yet, who knows better than the local citizens what is best for them?

The citizens of Idaho have continually demonstrated they can work together to strike a balance between protecting their rivers and using them as valuable economic resources. Over the years, Idaho has worked to protect the Payette River, designate the Salmon River, and others, as Wild and Scenic Rivers and worked to ensure Southern Idaho farmers have one of the most expansive irrigation systems in the world while ensuring high water quality in the Snake River. Furthermore, Idaho has struck a balance between using dams to provide the lowest cost and cleanest electricity in the nation, an irrigation system which sustains Idaho agriculture and vital flood control while maintaining the beauty of Idaho's rivers.

More recently, Idaho residents have come together in support of river cleanup. As you know, the Coeur d'Alene River Basin is contaminated from more than a century of mining activities. Many of these activities were sanctioned by the federal government. Yet now, the federal government

is spearheading a multi-billion dollar lawsuit against the mining companies and citizens of North Idaho, while no cleanup is occurring in the Basin outside of the Superfund area. The local residents are concerned, as they should be, that cleanup activities have been delayed because the process is locked up in litigation. However, local residents have united to support legislation which would settle the lawsuit and implement cleanup activities. Local communities, without the federal government, are working to clean up the Coeur d'Alene Basin.

In addition, since the May 19, 1997, announcement for the initiative in the *Federal Register* we have received an overwhelming number of comments from the people of Idaho, opposing the American Heritage Rivers initiative.

Idaho's rivers are some of the most majestic and beautiful rivers in the country. Idahoans have worked together to protect their rivers without additional federal control or expense. Because of this and the opposition we have heard from the people of Idaho, we, the elected federal representatives for Idaho, request, as you offered, that no rivers within the borders of the great state of Idaho be designated as American Heritage Rivers.

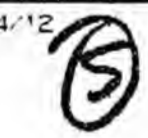
Sincerely,

Larry E. Craig
United States Senator

Dirk Kempthorne
United States Senator

Mike Crapo
Member of Congress

Helen Chenoweth
Member of Congress



BC-ID--Heritage Rivers, Bjt,440
Idaho delegation gets administration commitment
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LEWISTON, Idaho (AP) In response to a request from the state's Republican congressional delegation, the Clinton administration will not designate any Idaho waterways as American Heritage Rivers.

U.S. Sens. Larry Craig and Dirk Kempthorne and U.S. Reps. Helen Chenoweth and Michael Crapo asked Kathleen McGinty, chairman of the White House Council on Environmental Quality, to make sure none of the state's rivers get the distinction.

They contend Idaho residents have worked together to protect their rivers without additional federal control or expense, and they oppose what they consider the administration's effort to shift more control over water to the federal government.

``Who knows better than the local citizens what is best for them?" the delegation asked in a letter to McGinty. ``The citizens of Idaho have continually demonstrated they can work together to strike a balance between protecting their rivers and using them."

Elliot Diringer, a spokesman for the White House Council on Environmental Quality, said the administration will honor the Idaho delegation's request.

Members of Congress have the prerogative of vetoing a designation within their congressional districts. But Diringer said McGinty hopes the Idaho request is the product of broad consultation with communities throughout the state.

``It is not entirely clear to me why there seems to be such suspicion because, as Ms. McGinty emphasized over and over again, there are no new regulations in this initiative," Diringer said. ``It is a way to help communities re-establish themselves with their rivers and avail themselves of federal resources that have been authorized by Congress."

Liz Paul, associate director of Idaho Rivers United, said Friday that the White House has plenty of other good candidates for the American Heritage Rivers designation.

``But we are disappointed about the way this is turning out," she said. ``I think our congressional delegation is out of line in making this type of request. I think if any of those local citizens are interested in pursuing this program, our congressional delegation has put the brakes on it prematurely. They are dictating to the people of Idaho that you shall not participate."

Chenoweth spokesman Chad Hyslop said the congressional delegations in Colorado and Texas also are expected to ask the administration not to designate any waterways in their states.

He said Chenoweth still plans to try to push her bill to eliminate all funding for the American Heritage Rivers initiative.

(LAST UPDATED BY AT 2:45 PM ; SEP 27, 1997)

PLEASE ENTER A REQUEST.

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August 14 1997

The Honorable Kathleen A. McGinty
Chair, Council on Environmental Quality
Old Executive Office Building, Room 360
Washington, D.C. 20502

Dear Chairman McGinty:

The following are comments from Idaho's united Congressional delegation on the American Heritage Rivers Initiative as described in the *Federal Register*, Volume 62, No. 96, Monday, May 19, 1997.

Let us be clear - we have serious concerns with the initiative. We are not only concerned about the initiative itself, but the manner in which it was advanced. It is a clear effort on the part of the Administration to bypass the Constitutionally directed lawmaking power of Congress and our system of checks and balances. Congress has not authorized this initiative and has not appropriated money for this program. Additionally, the Council on Environmental Quality (CEQ) is not granted the power to govern or regulate rivers or watersheds within sovereign states. As such, this initiative represents a challenge of Congress's power and the rights of states, in line with the protections guaranteed in the Fourteenth Amendment.

We have other objections beyond this fundamental concern. For example, this initiative actually works against its stated goals: to streamline the federal process dealing with river protection. There are existing federal and state authorities that are charged with the mission of regulating water resource planning and allocation. In addition, there are nearly a hundred grass roots watershed councils across the nation that are accomplishing the same objectives as the initiative, but they have local input as opposed to federal control. The initiative creates an unnecessary, additional layer of bureaucracy that will make it more difficult for private individuals to continue to develop and use water resources that have in the past been controlled by state and local government entities.

Another concern relates to the effort to obtain local input regarding the designation of rivers as an American Heritage River. While we support obtaining local input, we question whether the initiative is designed to achieve a truly representative sample. This is because the local input is based upon what is referred to as "river communities." Any small group, environmental organization or local civic club could be defined as a "community." The initiative redefines communities, watersheds, and jurisdictional boundaries to create this governing entity, which will then have the power to decide the "length of the area" to be designated "whether it be an entire watershed, the length of an entire river, or a short stretch of a river, and may cross jurisdictional boundaries."

Because these communities have no set definition and because of the diverse, and often conflicting set of opinions, this may cause real communities to become fragmented. Worse, there is no guarantee that private property owners will be included in any decisions made by this river community. In fact, a river could be designated over the specific protests of local private property owners whose land would most be affected.

This potential threat to property rights is a serious one. There are no safeguards written into the initiative to protect the rights of property owners. On the contrary, it appears the initiative could result in rezoning properties, thereby disallowing legitimate uses or development. It's also feared that property values will decline because of the designation.

Another major concern with this initiative is that the designation of a river is essentially permanent. While CEQ may claim that a river can be undesignated at any time, according to the wishes of the local community, there is no defined process for undesignation. As you are aware, the needs and wishes of communities change and a community may decide it no longer wants to have that section of river designated.

The process by which this initiative was proposed is flawed, as well. It is in violation of the National Environmental Policy Act (NEPA), which requires an Environmental Impact Statement (EIS) to be filed for any federal action which would significantly impact our environment. No EIS was filed. Furthermore, NEPA requires a ninety-day public comment period for any EIS. A mere three weeks was originally provided for public comment. While we appreciate the extension of the comment period to sixty days, it was only after extensive public outcry.

Despite all of these significant problems with the initiative, there is still one more that cannot be ignored. If this initiative were to be enacted, it would conflict with the Idaho Constitution. Article XV, Section 1 of the Constitution of the State of Idaho, as approved by the U.S. Congress, states: "The use of all waters ... [is] subject to the regulations and control of the state...." Additionally, Idaho Code 42-101 states: "All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose." Idaho clearly has jurisdiction, control, and sovereignty over water within her own borders and any federal attempt to usurp or interfere with that authority will be aggressively resisted.

As you can see, we have some serious reservations about your American Heritage Rivers initiative. Our concerns can be summed up into three basic areas: the lack of Congressional approval, the vague language and absence of definitions and the excess federal control over private property and state water rights.

We thank you for extending the comment period to sixty days, but we request you withdraw this initiative and allow the local stakeholders and the state to use their current laws to govern their water.

Sincerely,

Helen Chenoweth
Member of Congress

Mike Crapo
Member of Congress

Larry E. Craig
United States Senator

Dirk Kempthorne
United States Senator

U.S. REPRESENTATIVE
HELEN CHENOWETH
First District - Idaho

NEWS RELEASE

FOR IMMEDIATE RELEASE
August 15, 1997

CONTACT: Chad Hyslop
(208) 338-5181

Chenoweth takes stance for states' rights, legislative process

to hold oversight hearing on Rivers Initiative

COEUR D'ALENE, IDAHO--Idaho's entire Congressional delegation joined U.S. Rep. Helen Chenoweth (R-Idaho) this week in a joint letter to Kathleen McGinty, chairman of the President's Council on Environmental Quality emphasizing the delegation's "serious concerns" with the American Heritage Rivers Initiative and asking for its complete withdrawal.

In addition, Chenoweth will chair a special House Resources Committee oversight hearing on H.R. 1842, legislation she drafted and introduced which will eliminate funding for the initiative. The September 24 hearing, before the full Resources Committee, will focus on the local impacts of the initiative, threats to private property, state water sovereignty, the cost of the program, and usurpation of Congressional authority.

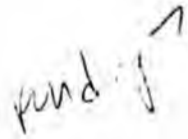
"My concerns with the Rivers Initiative can be summed up into three basic areas," Chenoweth said. "The lack of Congressional approval, the vague language and absence of definitions, and the excess federal control over private property and state water rights."

In the joint letter, the delegation stated "this initiative is a clear effort on the part of the Administration to bypass the Constitutionally directed lawmaking power of Congress and our system of checks and balances."

In addition, the initiative would conflict with Article XV, Section 1 of the Constitution of the State of Idaho, as approved by the U.S. Congress, which states: "The use of all waters...[is] subject to the regulations and control of the state..."

Additionally, Idaho Code 42-101 states: "All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose." According to the Idaho Constitution and Idaho Code, the delegation emphasized "Idaho clearly has jurisdiction, control, and sovereignty over water within her own borders and any federal attempt to usurp or interfere with that authority will be aggressively resisted."

(more)



The delegation challenged whether another layer of federal bureaucracy would benefit river management, noting "There are existing federal and state authorities that are charged with the mission of regulating water resource planning and allocation. In addition, there are nearly a hundred grass roots watershed councils across the nation that are accomplishing the same objective as the initiative, but they have local input as opposed to federal control. The initiative creates an unnecessary, additional layer of bureaucracy..."

The delegation also noted potential threats to private property rights, and the fact that "there are no safeguards written into the initiative to protect the rights of property owners."

Finally, "The process by which this initiative was proposed is flawed as well," the delegation wrote. "It is in violation of the National Environmental Policy Act (NEPA), which requires an Environmental Impact Statement (EIS) to be filed for any federal action which would significantly impact our environment. No EIS was filed."

"We request you withdraw this initiative and allow the local stakeholders and the state to use their current laws to govern their water," the delegation wrote.

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U.S. REPRESENTATIVE
HELEN CHENOWETH
First District - Idaho

NEWS RELEASE

FOR IMMEDIATE RELEASE
September 24, 1997

CONTACT: Chad Hyslop
(208) 338-5181

'Arrogance of power' the issue at Chenoweth hearing on President's Initiative

WASHINGTON, D.C.--U.S. Rep. Helen Chenoweth (R-Idaho), acting as chairman of a full House Resources Committee hearing today, told Congressmen and panelists gathered to testify on the American Heritage Rivers Initiatve "We are doing things exactly backwards here today. Instead of Congress making the proposal and the Administration commenting on it, we are actually in a position today of taking testimony not on the creation of a new program, but on how to stop it."

Chenoweth said the reversed roles of the executive and legislative branch on the issue of the American Heritage Rivers Initiative defies the Constitutional separation of powers, and demonstrates the "arrogance of power" attained by President Bill Clinton.

"This program is illegal, has not met public comment requirements, misappropriates funds Congress mandated for other purposes, usurps individual water rights, private property rights, the sovereignty of all fifty states, and defies the Constitutional separation of powers," Chenoweth said.

Chenoweth has introduced legislation, H.R. 1842, to eliminate all funding for the Initiative. The legislation has 38 current cosponsors.

In related action, Chenoweth and the three other members of Idaho's Congressional delegation today asked that "no rivers in Idaho be designated as American Heritage Rivers" in a letter to Kathleen McGinty, the chairman of the President's Council on Environmental Quality. "Idaho's rivers are some of the most majestic and beautiful rivers in the country," wrote the delegation. " Idahoans have worked together to protect their rives without additional federal control or expense."

(Note to Editors: the entire texts of Rep. Chenoweth's statement and the delegation's letter follow).

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VOICE ACTUALITY AVAILABLE AT 1-202-225-2355

U.S. REPRESENTATIVE
HELEN CHENOWETH
First District - Idaho

NEWS RELEASE

FOR IMMEDIATE RELEASE
October 22, 1997

CONTACT: Chad Hyslop
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Chenoweth leads victory for state sovereignty, property and water rights

WASHINGTON, D.C. -- A growing federal bureaucracy suffered a blow today when the House Resources Committee passed U.S. Rep. Helen Chenoweth's (R-Idaho) bill to stop the Clinton Administration's American Heritage Rivers Initiative (AHRI).

The Chenoweth bill (HR1842) was passed by a 15-8 vote. The measure would eliminate funding for the AHRI. Supporters of Chenoweth's bill believe the AHRI is unnecessary, wasteful and will allow the federal government to interfere in the management of state- and privately owned lands.

"Offering handfulls of federal dollars, President Clinton's Initiative is an attempt to lead the American people down a primrose path," Chenoweth said. "This Initiative is a publicity ploy, when in reality, funds for improving water quality and restoring riverfront communities are already available through programs created by Congress."

"This Initiative is unneeded, misappropriates funds Congress mandated for valid projects, has not met public comment requirements, usurps individual water rights, private property rights, the sovereignty of all fifty states, consolidates power in the administration, and defies the Constitutional separation of powers," Chenoweth said.

(Note: For technical reasons, the committee will vote again on the bill next week, before sending it to the House floor. But given the large majority of today's vote, there is no reason to expect a different outcome.)

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46 current cosponsors

West--California (10), Texas (8), Oregon, Colorado, Nevada, Washington (4), Wyoming, Arizona (3), Idaho, Utah, Alaska, Montanna
East--Tennessee, Arkansas (2), Minnesota, Florida, Indianna (2), North Carolina, Maryland, Missouri, Virginia, Kentucky

Pombo (R-CA)
Doolittle (R-CA)
Smith (R-OR)
Radanovich (R-CA)
Bob Schaffer (R-CO)
Gibbons (R-NV)
Herger (R-CA)
Hilleary (R-TN)
Hastings (R-WA)
Smith (R-TX)
Metcalf (R-WA)
Dickey (R-AR)
Paul (R-TX)
Gutknecht (R-MN)
Cubin (R-WY)
Stump (R-AZ)
Hayworth (R-AZ)
Crapo (R-ID)
Stearns (R-FL)
Bonilla (R-TX)
Hostettler (R-IN)
Barton (R-TX)
Myrick (R-NC)
Hutchinson (R-AR)
Bartlett (R-MD)
Royce (R-CA)
Nethercutt (R-WA)
Cannon (R-UT)
Linda Smith (R-WA)
Riggs (R-CA)
DeLay (R-TX)
McIntosh (R-IN)
Emerson (R-MO)
Bono (R-CA)
Thornberry (R-TX)
Calvert (R-CA)
Kim (R-CA)
Shadegg (R-AZ)
Young (R-AK)
Cunningham (R-CA)
Sessions (R-TX)
Lewis (R-KY)
Hill (R-MT)
Bliley (R-VA)
Brady (R-TX)

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Good Politics, Bad Policy: Clinton's American Heritage Rivers Initiative

Alex Annett
Research Assistant

"The AHRI creates, by executive fiat, the most all encompassing regulatory regime ever to be imposed on private landowners. Most other land use programs have been designed to protect Federal Land. And in the case of the Clean Water Act and the Endangered Species Act, Congress passed these regulations. Never has an executive dared to assert so much control over private property through his own declaration."

— Nancie Marzulla, president and chief counsel, Defenders of Property Rights

During the 1997 State of the Union address, President Bill Clinton announced a new federal program entitled the American Heritage Rivers Initiative (AHRI), which he intended to support communities in their efforts to restore and protect rivers across the United States. To many, this lofty goal sounds good. But, on closer inspection, the pristine image it paints becomes murky, revealing a program that violates many constitutional and statutory provisions, involves the federal government further in local and state environmental issues, is inefficient and wastes tax dollars, and threatens personal property rights.

Nevertheless, President Clinton appears ready to begin implementing his initiative, although he has neither the constitutional authority to do so nor the intention of asking Congress for such authority. He also appears unconcerned that promoting this initiative could suggest to many that, for his Administration, the "era of big government" is not over. Congress should consider taking immediate action to block Clinton's river initiative before it floods America's communities with layers of federal bureaucracy and further muddies the balance of power in Washington, D.C.

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

IMPLEMENTING A NEW FEDERAL PROGRAM BY DECREE

President Clinton unveiled new details about how he plans to implement his new American Heritage Rivers Initiative when he issued Executive Order 13061 on September 11, 1997.[1] Through executive order, Clinton has established an American Heritage Rivers Interagency Committee to oversee implementation of the initiative. Members of the committee will include the secretaries of the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, and Transportation; the attorney general; the administrator of the Environmental Protection Agency; the chairpersons of the Advisory Council on Historic Preservation, the National Endowment for the Arts, and the National Endowment for the Humanities; or designees at the assistant secretary level or their equivalent.

To nominate a river for designation as an American Heritage River, a local community must submit a river nomination packet to the President's Council on Environmental Quality. The packet must include: a description of the river or river area[2] to be considered, its notable resource qualities,[3] a clearly defined vision for protecting the area and a specific plan of action to achieve it, evidence that a range of citizens and organizations in the community support the nomination and plan of action, and evidence that individuals in the community have had an opportunity to discuss and comment on the nomination and plan of action.

The Council on Environmental Quality will select a panel of experts to review the nominations and make recommendations to the President. From these recommendations, the President would select ten rivers or river areas to designate as American Heritage Rivers. These American Heritage Rivers would receive preferential treatment for federal dollars and the support of other federal programs.

On the surface, President Clinton's program looks appealing. Rivers have played a vital role in the country's history, culture, recreation, health, environment, and economy. Finding ways to encourage states and local communities across the country to become involved in improving the water quality of their rivers and revitalizing their waterfronts is commendable. The AHRI, however, will amount to little more than a surface ripple in accomplishing these goals.

Impediments to achieving the AHRI's lofty goals have more to do with the design of the program than with the intentions of communities. The notable problems with President Clinton's initiative are that:

1. It violates a number of constitutional and statutory provisions;
2. It is wasteful and inefficient;
3. It reduces the role and authority of the states;
4. It threatens property rights; and
5. It "serve[s] political purposes."

Upon close examination, it becomes clear that the AHRI is bad policy and unconstitutional and, like many of President Clinton's other initiatives, will become another political pork-barrel program designed to send federal dollars to politically important jurisdictions across the United States.

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1. *Federal Register*, Vol. 62, September 15, 1997, p. 48445.
2. The nominated "river" may vary from a short stretch of a river to its entire length. The designated area can include land immediately adjacent to the river, such as the waterfront and streamside areas, or span the entire watershed. It may also cross jurisdictional boundaries.
3. "Resource quality" refers to how the natural, economic, agricultural, scenic, historic, cultural, or recreational resources connected with the river are distinctive or unique.

HOW THE AMERICAN HERITAGE RIVERS INITIATIVE VIOLATES THE U.S. CONSTITUTION

Above almost all else, Americans love the beauty and resources of their country. They clearly understand that the U.S. Constitution establishes a system of government to protect their individual rights, and that the federal government should be expressly limited in its ability to usurp those rights. They may disagree, at times, about how much power is given each branch of the federal government to settle disputes and to limit personal freedoms, but there is no dispute that the Founding Fathers intentionally and explicitly designed a balance of power to prevent legislative, judicial, or executive arrogance and abuse of power. Americans expect their elected leaders to abide by the separation of powers delineated in the Constitution, and they want the federal judiciary on guard to make sure they do.

Rather than honor these expectations, President Clinton's American Heritage Rivers Initiative violates both the intent and the letter of the U.S. Constitution. It gives the President as well as his executive agencies authorities that clearly and constitutionally belong to the legislative branch of government, and it confiscates the land use and zoning powers of the states.

Altering the Constitutional Separation of Power

> "The Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day."
>
> —*New York vs. United States*, 112 S.Ct. 2408 (1992)

Under the U.S. system of checks and balances, the legislative branch has the power to create laws and appropriate funding, the executive branch is authorized to implement and enforce the laws, and the judiciary is given power to interpret those laws in disputes.[4] To explain to hesitant colonists why this separation of powers was important, James Madison wrote in *Federalist* No. 47 that the "accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed or elective, may justly be pronounced the very definition of tyranny."[5]

The Supreme Court historically has recognized the importance of the separation of powers among the President, Congress, and the judiciary. In the case of *Youngstown Sheet & Tube Co.* v. *Sawyer*,[6] the Supreme Court was asked to decide whether President Harry S Truman (during the Korean War) was acting within his constitutional power when he issued an executive order directing the Secretary of Commerce to take possession of and operate most of the country's steel mills. The government's position was that the president's action was necessary to avert a national disaster that inevitably would result from the stoppage of steel production, and that in meeting this grave emergency, the President was acting within the aggregate of his constitutional powers. The Supreme Court found in *Youngstown* that, even with the threat of a national catastrophe, the President's order could not be sustained as an exercise of his authority. In this case, the Supreme Court found no statute that expressly authorized the President to take property as President Truman's executive order intended, or any act of Congress from which such authority could be inferred. The Supreme Court concluded that the power to adopt such public policies as those proclaimed by the executive order is beyond question by Congress, and that the Constitution does not subject this lawmaking power of Congress to the President.[7]

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4. U.S. Constitution, Articles I, II, and III.
5. Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* No. 47 (Madison).
6. *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952)
7. *Ibid.*

Supreme Court precedent suggests that President Clinton's Executive Order No. 13061 runs contrary to the separation of power provisions of the Constitution. To implement the AHRI, President Clinton is claiming for himself and future Presidents powers that belong to Congress: specifically, authority over interstate commerce, water rights, property rights, and the appropriation of money. Through executive order, Congress would be relegated to a role of trying to stop presidential programs from being implemented, rather than creating and approving them based on the will of the people and funding them as authorized in the Constitution.

Walking Around the Property Clause

The Property Clause in Article IV of the Constitution states that "Congress shall have power to dispose of and make all needful Rules and Regulations respecting the territory or other property belonging to the United States."[8] Executive Order No. 13061, however, gives the executive branch control and authority over the country's rivers and their associated resources located on federal lands, a power specifically assigned to Congress. In order for the executive branch to have authority to govern and control these rivers and associated resources, this power must be delegated to it by an act of Congress. Congress has not given the executive branch such authority.

Trampling the Tenth Amendment

The Tenth Amendment to the Constitution stipulates that the "powers not delegated to the United States [federal government] by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."[9] Under the Tenth Amendment, then, state and local governments retain the authority to engage in land use planning and local zoning for public health, safety, and welfare. President Clinton's program, however, sets a new precedent by giving federal regulators a greater role in land use planning, local zoning, and other aspects of a river's surroundings, including "characteristics of the natural, economic, agricultural, scenic, historic, cultural, or recreational resources of a river that render it distinctive or unique."[10] The President has no authority under the Constitution to engage in land use planning and local zoning; thus, Executive Order No. 13061 violates the Tenth Amendment.

HOW THE AHRI VIOLATES NUMEROUS STATUTES

In addition to altering the constitutional separation of powers, the AHRI implementation process outlined in Executive Order No. 13061 also conflicts directly with two significant environmental laws: the National Environmental Policy Act (NEPA) and the Federal Land Management and Policy Act (FLMPA).

The National Environmental Policy Act

The Clinton Administration has cited the National Environmental Policy Act of 1969 as the legal basis for establishing the AHRI. The NEPA is primarily a policy statute mandating that federal government agencies consider the environmental effects of major federal actions. The idea behind the NEPA is that, by requiring federal agencies to consider and gather information about the environmental consequences of proposed actions, the agencies will make wiser environmental decisions.[11] President Clinton states that the NEPA provides a grant of authority to establish the AHRI under authority of Section 101(b) of the NEPA. This section only sets out the broad goal to be achieved by the NEPA, however, it provides no authority for action. The only authorities mandated to the executive branch under the NEPA are to prepare reports; interpret and administer federal policies, regulations, and public laws in accordance with the NEPA; provide information, alternatives, and recommendations; and provide international and national coordination efforts.[12] President Clinton apparently has interpreted these duties to mean that the NEPA

8. U.S. Constitution, Article IV, Section 3, Clause 2.

9. U.S. Constitution, Amendment 10.

10. Executive Order 13061, September 11, 1997, Section 2(b)(1).

11. 42 U.S.C. § 4321.