

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE RESOURCES COMMITTEE
SUBCOMMITTEE ON PARKS, RECREATION AND PUBLIC LANDS
H.R.1629, UPPER MISSOURI RIVER BREAKS BOUNDARY CLARIFICATION ACT
SEPTEMBER 30, 2003**

Thank you for giving me the opportunity to testify on behalf of the Department of the Interior on H.R. 1629, the Upper Missouri River Breaks Boundary Clarification Act. While we believe that the Presidential proclamation establishing the monument makes it clear that the proclamation covers only Federally-owned lands within the monument boundaries, the Department supports H.R. 1629 because it would provide additional comfort to the private and state owners of lands located within the monument boundaries that the monument designation will not impact management of their lands. This will also help us to engage some of our local partners in a more constructive fashion that we believe will result in a more broadly supported management plan for the Upper Missouri River Breaks National Monument.

President Clinton created the Upper Missouri River Breaks National Monument by Proclamation 7398 on January 17, 2001 under the Antiquities Act of 1906. The Antiquities Act allows the President in certain circumstances to create a monument from land that is owned or controlled by the United States. The Proclamation stated clearly that the Monument consists of "all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled 'Upper Missouri River Breaks National Monument' attached to and forming part of this proclamation." The problem is that the map showed boundaries that enclosed private and state land as well -- not just Federally-owned or controlled lands. It was undoubtedly intentional that the map boundaries enclosed private and state land as well, because the Proclamation also said "Lands and interests in land within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States." The Proclamation makes no claim to non-Federal property within the area that it identifies as the monument. The legal uncertainty created by the Proclamation goes to the status of non-Federal land within this area that the Federal government may later acquire, not to the scope of the Federal government's current interests or even to the reach of its existing acquisition authorities. Although the uncertainty created by the Proclamation does not affect the security of title held by private and state landowners, it may affect their interests. If land that the United States acquires within the monument area automatically obtained monument status, as the Proclamation asserts, the prospects for economic activity in the region could be altered. Accordingly, private and state landowners can benefit significantly from congressional reaffirmation of the status of these non-Federal lands. The Department of the Interior supports H.R. 1629 as a means of providing that reaffirmation to residents of the Upper Missouri Breaks area.

Background

The proclamation designated 377,346 acres of Federal lands as a national monument, running along 149 miles of the Missouri River. It includes the Wild and Scenic River corridor of the Upper Missouri River as well as large blocks of land managed by the Bureau of Land Management, and a small number of acres managed by the U.S. Fish & Wildlife Service. The monument boundary also contains nearly 82,000 acres of private land and 39,000 acres of state land.

The language of the proclamation states clearly that the monument itself is established on "all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map... consist[ing] of approximately 377,346 acres. . ." On these Federal lands, the monument proclamation imposed a number of restrictions, including the withdrawal from entry, location, selection, sale or leasing under the public land laws, the mining laws and mineral leasing laws. It also prohibits off road motorized and mechanized vehicle use, except for emergency or administrative purposes. The

proclamation does provide for continued livestock grazing and management of oil and gas development on existing leases.

The formal planning for the Monument began on April 24, 2002, with the publication of a notice in the *Federal Register*. During the 120-day scoping period in the summer of 2002, the BLM's Lewistown Field Office hosted a series of 11 open houses throughout north central Montana.

In July of 2003, the Lewistown Field Office again held public meetings in 11 north central Montana communities, this time to begin formulating alternatives for the Resource Management Plan (RMP). These meetings included a short formal presentation by the BLM, one-on-one discussions between the public and resource specialists, and an open forum moderated by a member of the Central Montana Resource Advisory Council. Approximately 350 members of the public attended the 11 meetings. The Field Office also received approximately 8,500 letters and emails regarding potential alternatives. Governor Martz established a task force that made recommendations concerning the monument and its management. This input along with all other comments and recommendations are currently being reviewed and considered.

The draft RMP is scheduled for release in the summer of 2004. During the public comment period following release of the draft, the BLM will hold another 11 public meetings across north central Montana to review the document. Throughout the process, the Monument staff will continue to engage the public through regular updates on its website and through mailings as well as through local media outlets.

The Status of Non-Federal Lands Within the Monument

The Antiquities Act of June 8, 1906, authorizes the President to designate national monuments on lands owned or controlled by the Federal government at the time of the monument proclamation. The Antiquities Act states, "The President of the United States is authorized, 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, and may reserve as 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."

The proclamation of January 17, 2001 sets apart and reserves lands and interests in lands owned or controlled by the United States within the boundaries of the national monument described on the map made part of the proclamation. The proclamation also recognizes the standing of all valid, existing rights and interests within the monument boundaries. Although the proclamation makes clear that non-federal lands within the boundary of the monument are not a part of the monument, owners of private and state land within the monument remain concerned about the monument's implications for non-federal lands. On June 30, 2003, the BLM's Lewistown Field Office issued a report entitled, "The Upper Missouri Breaks National Monument – Analysis of the Management Situation." In that report, it states, "The BLM has no jurisdiction over State or private land contained within the Monument boundary." We believe H.R. 1629 adds legal finality to this statement.

H.R. 1629

The legislation offered by Representative Rehberg would help reassure those who have expressed concerns regarding the proclamation of January 17, 2001. It would reaffirm that private lands are not within the boundary of the Upper Missouri River Breaks National Monument and it would direct the Department of the Interior to provide a map for management planning purposes to reflect the actual federal lands that make up the monument itself.

H.R. 1629 would give non-Federal landowners the assurance that their cooperation is voluntary and, hopefully, will improve their participation as partners with our Federal land managers. The Department

notes that this in no way prevents willing sellers from working with the Administration to add their lands to the monument where all parties believe it is appropriate.

The Department urges the Committee to amend Section 2(a) of the act by striking “any privately owned property” and inserting in lieu thereof “any property not owned or controlled by the Federal Government at the time of issuance of that Proclamation.” The legislation currently refers only to privately owned property, which leaves out the roughly 39,000 acres of state-owned lands. We believe that the same assurances provided to private landowners should also be given to the State of Montana and any other non-Federal landowner that might possess property within the proclamation boundary.

Conclusion

This concludes my statement. I will be happy to answer any questions the Committee may have for me.