

## UPPER MISSOURI RIVER BREAKS BOUNDARY CLARIFICATION ACT

---

NOVEMBER 21, 2003.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

---

Mr. POMBO, from the Committee on Resources,  
submitted the following

### R E P O R T

together with

### DISSENTING VIEWS

[To accompany H.R. 1629]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1629) to clarify that the Upper Missouri River Breaks National Monument does not include within its boundaries any privately owned property, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE OF THE BILL

The purpose of H.R. 1629 is to clarify that the Upper Missouri River Breaks National Monument does not include within its boundaries any privately owned property, and for other purposes.

#### BACKGROUND AND NEED FOR LEGISLATION

On January 17, 2001, President Bill Clinton established by Executive Order the Upper Missouri River Breaks National Monument in north-central Montana. From Fort Benton, Montana, downstream to the Charles M. Russell National Wildlife Refuge, the monument spans 149 miles of the Upper Missouri River, the adjacent Breaks country, and portions of Arrow Creek, Antelope Creek and the Judith River. The monument is under the management of the Bureau of Land Management. It covers approximately 377,346

acres of federal land, including the Missouri Breaks country north of the Missouri River. The area remains remote and nearly as undeveloped as it was in 1805 when the famed Lewis and Clark Corps of Discovery came upon it. The monument also includes approximately 81,911 acres of private land within its external boundaries. Therein lies the problem and the need for H.R. 1629.

Section 2 of the Antiquities Act (16 U.S.C. 431 et seq.) authorizes the President to establish “historic landmarks, historic and prehistoric structures, and other objects of historic and scientific interest that are situated on upon lands owned or controlled by the Government of the United States as national monuments.” It also states that a monument shall be confined “to the smallest area compatible with the proper care and management of the objects to be protected.” The legislative history is clear on why the Act was created—to give the President the authority to protect historic and prehistoric objects on federal land from looting and illegal excavation by declaring them as national monuments. It was not created to have a President unilaterally establish a national monument for an area not under immediate threat and that includes thousands of acres of private land within its external boundaries.

Notwithstanding that the proclamation for the Monument declared that private property would not be affected, nor would permitted livestock grazing, hunting, fishing, and similar activities within the boundary, Congressman Dennis Rehberg (R-MT) and many of his constituents whose land is now within the external boundaries of the monument believe the President violated both the intent and spirit of the Act by including their private property in the monument without even a by-your-leave from the private landowners. Protection of existing uses is also at question, as the proclamation states that “the Secretary shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.” H.R. 1629 simply directs the Secretary of the Interior to redraw the boundaries of the Missouri River Breaks National Monument to exclude all private land. The revised map would be cited in the January 2001 Monument Proclamation.

#### COMMITTEE ACTION

H.R. 1629 was introduced on April 3, 2003, by Congressman Dennis Rehberg (R-MT). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on National Parks, Recreation and Public Lands. On September 30, 2003, the Subcommittee held a hearing on the bill. On October 21, 2003, the Subcommittee met to mark up the bill. No amendments were offered and the bill was forwarded to the Full Committee by voice vote. On October 29, 2003, the Full Resources Committee met to consider the bill. No amendments were ordered and the bill was ordered favorably reported to the House of Representatives by a roll call vote of 24 to 13, as follows:

108<sup>th</sup> Congress

Adjourned: \_\_\_\_\_

Meeting on: HR 1629 - On Reporting to the House, without amendment. (Passed 24 - 13)

Total: Yeas 24 Nays 13

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman	✓			Mr. Peterson, PA	✓		
Mr. Rahall, WV		✓		Mr. Tom Udall, NM		✓	
Mr. Young, AK				Mr. Gibbons, NV	✓		
Mr. Miller, CA				Mr. Mark Udall, CO		✓	
Mr. Tauzin, LA				Mr. Souder, IN	✓		
Mr. Markey, MA				Mr. Acevedo-Vilá, PR			
Mr. Saxton, NJ	✓			Mr. Walden, OR	✓		
Mr. Kildee, MI		✓		Mr. Carson, OK			
Mr. Gallegly, CA	✓			Mr. Tancredo, CO	✓		
Mr. Faleomavaega, AS	✓			Mr. Grijalva, AZ		✓	
Mr. Duncan, TN				Mr. Hayworth, AZ	✓		
Mr. Abercrombie, HI	✓			Mr. Cardoza, CA			
Mr. Gilchrest, MD	✓			Mr. Osborne, NE	✓		
Mr. Ortiz, TX				Ms. Bordallo, GU			
Mr. Calvert, CA	✓			Mr. Flake, AZ	✓		
Mr. Pallone, NJ		✓		Mr. Hinojosa, TX		✓	
Mr. McInnis, CO				Mr. Rehberg, MT	✓		
Mr. Dooley, CA				Mr. Rodriguez, TX		✓	
Mrs. Cubin, WY				Mr. Renzi, AZ	✓		
Mrs. Christensen, VI		✓		Mr. Baca, CA			
Mr. Radanovich, CA	✓			Mr. Cole, OK			
Mr. Kind, WI		✓		Ms. McCollum, MN		✓	
Mr. Jones, NC	✓			Mr. Pearce, NM	✓		
Mr. Inslee, WA		✓		Mr. Bishop, UT	✓		
Mr. Cannon, UT	✓			Mr. Nunes, CA	✓		
Mrs. Napolitano, CA		✓		Mr. Neugebauer, TX	✓		
				<b>Total</b>	24	13	

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

## CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8, and Article IV, section 3, of the Constitution of the United States grants Congress the authority to enact this bill.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 12, 2003.*

Hon. RICHARD W. POMBO,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1629, the Upper Missouri River Breaks Boundary Clarification Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

ELIZABETH M. ROBINSON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*H.R. 1629—Upper Missouri River Breaks Boundary Clarification Act*

H.R. 1629 would clarify that the Upper Missouri River Breaks National Monument should not contain any privately owned prop-

erty. CBO estimates that implementing this clarification (primarily by redrawing existing maps of the national monument) would have no significant effect on the federal budget. The monument was created in 2001 and is managed by the Bureau of Land Management. It contains about 380,000 acres of federal land (and as much as 82,000 acres of private property) in Montana.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

## DISSENTING VIEWS

We are strongly opposed to H.R. 1629. This unnecessary, unreasonable, and unworkable legislation would carve up the boundaries of the Upper Missouri Breaks National Monument, making this national monument look like Swiss cheese.

On the eve of the Lewis and Clark Expedition Bicentennial, it is a shame that the proponents of H.R. 1629 are embarking on divisive legislation to carve up an area that Lewis and Clark noted in their journals with awe and wonderment.

H.R. 1629 calls into question not only the exterior boundary of the Upper Missouri Breaks National Monument but also the basis for the boundaries of numerous national parks, national monuments and national forests around the country.

The proponents of H.R. 1629 would have the public believe that the boundary map of the Upper Missouri Breaks National Monument is somehow unique. It is not. Numerous national designations are drawn in the same fashion as the Upper Missouri Breaks. Yet, we do not rush to redraw the boundaries of these national parks, forests and monuments because it is unreasonable and unworkable, but most of all unnecessary.

Including private land within the exterior national monument boundary does not make that land part of the national monument. On that point both the national monument proclamation and the Antiquities Act are clear.

The only land that is part of the national monument is Federal land because the Antiquities Act applies only to objects of historic or scientific interest "that are situated on lands owned or controlled by the Government of the United States." (16 U.S.C. 431). As the State of Montana's largest newspaper, the *Billings Gazette*, noted in an editorial opposing identical legislation last Congress "If something isn't in, what's the point of taking it out?"

Further, neither the monument proclamation nor the Antiquities Act gives the Bureau of Land Management (BLM) any authority to subject private lands to regulation and management as part of the national monument and the BLM has consistently informed the public of such in both meetings and written materials.

The Upper Missouri Breaks boundary map contains Federal, state and private lands. This map reflects the fact that public lands are intermingled with state and private lands in many sections and that monument features bisect all these lands. This is not uncommon with national conservation designations.

Intermingled public and private lands are common throughout the country. Numerous national parks, national monuments and national forests have such intermingled public and private lands. In fact, there are whole towns located within the exterior boundaries of several national forests in Montana.

Under the provisions of both the Antiquities Act and the monument proclamation, the only way private land can become part of the national monument is by purchase from its owner. If a private landowner does not want to be part of the national monument, they needn't sell their land to the Federal Government. And if Members of Congress don't want private land bought and added to the national monument then simply don't appropriate the funds.

Proponents of H.R. 1629 have been unable to show even one legitimate threat to private property by its placement in the exterior monument boundary of the Upper Missouri Breaks.

It is telling that more than half of the private lands dealt with by H.R. 1629 have for nearly 26 years been inside a designated national conservation unit. 35,000 plus acres of private property are located inside the boundary of the Upper Missouri National Wild and Scenic River. Private property rights weren't violated by the wild and scenic river designation and they are certainly not violated by the national monument designation.

Newspapers within Montana recognize these facts and several have editorialized against the legislation. In fact, the one major newspaper (Great Falls Tribune) that supported this legislation last Congress has changed its view and now opposes the bill.

The Upper Missouri Breaks are a special place. Today the Breaks remain much the same way as seen by the Lewis and Clark Expedition. Legislation such as H.R. 1629 adds nothing to the perpetuation of the resources and the way of life that have made this area famous. Rather, it diverts energy and resources from addressing the real needs of the area.

H.R. 1629 tries to address a problem that doesn't exist. It has implications far beyond the Missouri Breaks and plays on people's fears rather than dealing with the facts. Last Congress when identical legislation was reported from the Resources Committee, the House wisely chose to ignore it. We urge the same action again this Congress, but if H.R. 1629 is indeed brought before the Full House we will oppose the legislation and encourage our colleagues to do likewise.

NICK RAHALL.  
EDWARD J. MARKEY.  
MARK UDALL.  
RAUL M. GRIJALVA.  
BETTY MCCOLLUM.  
JAY INSLEE.