107TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
107–642

UPPER MISSOURI RIVER BREAKS BOUNDARY CLARIFICATION ACT

SEPTEMBER 5, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4822]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 4822) 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. 4822 is to clarify that the Upper Missouri River Breaks National Monument does not include within it 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. 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

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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. 4822.

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 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 Antiquities Act was created—to provide the President the expeditious means to protect federal lands and resources threatened by theft or destruction. It was not created to permit a President to unilaterally include areas of private lands within the external boundary of a national monument, especially when that land was not under any kind of immediate threat.

Notwithstanding that the proclamation for the Upper Missouri River Breaks National Monument declared that private property, permitted livestock grazing, hunting, fishing, and similar activities within the boundary will not be affected, the proclamation states that "* * * the Secretary shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes." This creates a questionable situation for the private property owners whose land is within the Monument boundaries. Many whose private land is now within the external boundaries of the monument believe the President violated both the intent and spirit of the Antiquities Act by including private property in the monument.

H.R. 4822 simply directs the Secretary of the Interior to redraw the boundaries of the Monument to include the 377,346 acres of federal land cited in the proclamation and exclude all private land. The revised map would be cited in the January 2001 Monument Proclamation.

COMMITTEE ACTION

H.R. 4822 was introduced on May 22, 2002, by Congressman Dennis Rehberg (R–MT), and was referred to the Committee on Resources. Within the Committee, the bill was referred within the Subcommittee on National Parks, Recreation, and Public Lands. On June 13, 2002, the Subcommittee held a hearing on the bill. On July 10, 2002, the Full Resources Committee met to consider the bill. The Subcommittee on National Parks, Recreation, and Public Lands was discharged from further consideration of H.R. 4822 by unanimous consent. There were no amendments offered to the bill, and the bill was ordered favorably reported to the House of Representatives by voice vote.

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 grant 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, July 30, 2002.

Hon. JAMES V. HANSEN,
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. 4822, 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 Megan Carroll.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 8422—Upper Missouri River Breaks Boundary Clarification Act

In January of 2002, the Upper Missouri River Breaks National Monument was established by Presidential proclamation. The monument comprises 377,346 acres of federal lands located along the Missouri River in Montana. Although the designation applies only to those federal lands, the external boundaries of the monument include about 39,000 acres of land owned by the state of Montana and nearly 82,000 acres of privately owned land.

H.R. 4822 would clarify that the monument does not include any privately owned land and would require the Secretary of the Inte-

rior to redraw the map of the monument to exclude such lands. Based on information from the Bureau of Land Management, CBO estimates that implementing this bill would not significantly affect the agency's costs. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 4822 contains no intergovernmental or private-sector mandate 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 Megan Carroll. 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. 4822. The unnecessary, unreasonable, and unworkable legislation would cut up the boundaries of the Upper Missouri Breaks National Monument, making this national monument look like Swiss cheese.

H.R. 4822 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.

There has been a lot of focus on the Upper Missouri Breaks boundary map which 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.

Intermingled public and private lands are common throughout the country. Numerous national park, national monument and national forest boundaries have such intermingled public and private lands.

H.R. 4822 is based on the erroneous premise that including private property within the exterior boundary makes that land part of the national monument. It does not. On that point both the monument proclamation and the Antiquities Act are clear.

The only land that is part of the national monument is the 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 H.R. 4822 "If something isn't in, what's the point of taking it out?"

H.R. 4822 is also based on the erroneous premise that these private lands are subject to regulation and management as part of the national monument. Again, they are not. Neither the monument proclamation nor the Antiquities Act gives the Bureau of Land Management (BLM) any authority to subject these lands to regulation and management as part of the national monument and the BLM as consistently informed the public of such in both meetings and written materials.

The term "private property rights" has been thrown out a lot with regards to this legislation. Yet, proponents of H.R. 4822 have been unable to show even one legitimate threat to private property by its placement inside the national monument boundary.

It is telling that more than half of the private lands dealt with by H.R. 4822 have for nearly 26 years already been inside the boundaries of a designated national conservation unit. These 35,000 plus acres of private property are located not only inside the boundary of the national monument but also the boundary of the Upper Missouri National Wild and Scenic River established by

Congress in 1976. Private property rights were not violated by the wild and scenic designation and they are certainly not violated by the monument designation.

The Upper Missouri Breaks are a special place. Lewis and Clark traveling through the Breaks on their historic journey noted their beauty and grandeur. Today the Breaks remain much the same way as seen by the Lewis and Clark Expedition. Legislation such as H.R. 4822 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. 4822 is a classic example of a solution in search of a problem. It is both bad and unworkable public policy that attempts to play on people's fears rather than dealing with the facts and as such it should be rejected by the House.

NICK RAHALL.
EDWARD J. MARKEY.
HILDA L. SOLIS.

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