reimbursement policies. Mr. Hassan writes that the "current system has proven to be untenable. . . ." It is the pricing practices of companies like his that have made it untenable.

Pharmacia's behavior overcharges taxpayers—particularly patients—and endangers the public health by influencing the practice of medicine. It is for all of these reasons that I have called on the FDA to conduct a full investigation into such drug company behavior. The letter from Pharmacia follows: PHARMACIA CORPORATION, Peapack, N.J., October 16, 2000. Re: Your Letter of October 3, 2000 Hon. FORTNEY PETER STARK, Cannon House Office Building, House of Representatives, Washington, DC. DEAR REPRESENTATIVE STARK: I am the President, Chief Executive Officer, and a member of the Board of Directors of Pharmacia Corporation ("Pharmacia"). For your information, Pharmacia was created earlier this year upon the merger of the Pharmacia & Upjohn, Inc., and Monsanto Company.

In my capacity as Chief Executive Officer of Pharmacia, I write to acknowledge receipt of your letter of October 3, 2000, addressed to Pharmacia & Upjohn, Inc., and to address preliminarily the issues that you raise regarding the reporting and publishing of certain pharmacological information and the sale or prescription medications sold by Pharmacia.

Initially, I want to provide you with my personal assurance that Pharmacia takes the issues raised in your letter very seriously. For your information, Pharmacia has actively provided information regarding our pricing policies to a number of investigatory bodies. Also, the Company is committed to continuing to work with the appropriate authorities until any differences that may exist in the understanding of this matter are resolved.

As to the particulars of your letter, you should know that Pharmacia is continuing to investigate the allegations made in your letter, as well as those that have been reported recently in various news media regarding pharmacological industry's practices in the area of reimbursement.

As you know, Medicare and Medicaid reimbursement policies are considerably complex. As a result of our independence from the administrador of the Health Care Financing Authority ("HCFA"), it was publicly noted in a letter addressed to the Honorable Tom Billey, Chairman of the Commerce Committee, U.S. House of Representatives, that HCFA has been "actively working to address drug payment issues, both legislatively and through administrative actions, for many years." In fact, Ms. DeParle, the HCFA Administrator, notes that her Agency tried several alternative approaches in the early 1990's but that none were adopted. In fact, in 1997, the Administration proposed to pay physicians and suppliers their so-called "acquisitive" rebates on drugs, but the proposal was not adopted. Instead, the Balanced Budget Act of 1997 reduced Medicare payments for covered drugs from 100% to 95% of the average wholesale price or "AWP".

From my perspective, it is the designing of a system to replace the current system that to date has proven to be difficult. Indeed, the current AWP concept has proven to be untenable and we would welcome the opportunity of working with you, Congress, HCFA, and any other interested and interested agencies and stakeholders to develop reimbursement guidelines that are simple, transparent, and representative of the current market conditions.

Finally, I want you to know that—in accordance with your request—I will share your letter and this response with the members of Pharmacia's Public Issues and Social Responsibility Committee of the Board of Directors. In addition, Pharmacia will continue to participate constructively in the public dialogue with regard to whether changes will be made in this arena either legislatively or through administrative action.

Sincerely, FRED HASSAN

HONORING MRS. CLEOTILDE CASTRO GOULD

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mr. UNDERWOOD. Mr. Speaker, From a pool of very worthy candidates, the Guam Humanities Council elected to bestow the 2000 Humanities Award for Lifetime Contribution upon Mrs. Cleotilde Castro Gould, a retired educator and well-known local storyteller. This very distinguished award honors the contributions of individuals who, over the years, have worked towards the promotion and advancement of local culture and traditions. To Mrs. Gould, the conferral of this honor is both timely and well deserved.

Mrs. Gould is primarily known as an educator and as a specialist on Chamorro language and culture. In 1974, she played a key role in the formation of the Guam Department of Education's Chamorro language and culture program. She served as the program's director until her recent retirement. Her many talents include that of singing, songwriting and creative writing. She is a talented singer of Kantan Chamorrita (Chamorro Songs) and has written several songs made popular by local island performer, Johnny Sablan. In the 1980's, she obtained funding to document the Kantan Chamorrita song form. The result was a video record of the ancient call-and-response impromptu song form which is practiced today by few remaining artists. However, her claim to fame is that of being a storyteller. Her great talent in conveying ancient Chamorror legends to the younger generation has placed great demand on her skills throughout the island's many schools. Mrs. Gould has represented the island as a storyteller in a Pacific islands tour sponsored by the Consortium of Pacific Arts and Cultures and she employed the same talent in 1988 as part of the Guam delegation to the Pacific Festival of Arts in Australia. In addition, Mrs. Gould is also the writer and creator of the Juan Matimangu, a daily feature in the Pacific Daily News, Guam's daily newspaper, the strip and its characters embody the Chamorro perspective and our local tendency to use humor in order to get points across or to express criticism in a witty and non-confrontational manner. Mrs. Gould is one of my best friends and favorite colleagues in education. She represents the best in that indomitable Chamorro spirit.

Through her song lyrics, the Chamorro situations she has concocted, and the lessons brought forth by her storytelling, Mrs. Gould has touched and inspired all ages, children, young adults and students. Her exceptional ability to communicate with people form a wide range of age and educational backgrounds has enabled her to pass on the values and standards of our elders to the younger generation. Her life has been dedicated towards the preservation of our island's culture and traditions. For this she rightfully deserves commendation.

Also worthy of note are several distinguishing island residents, who in their own ways, have made contributions to our island. Dirk Ballendorf, a professor of History and Micronesian Studies, through his scholarly work and research, has provided the academic community a wide body of material on the history and culture of our island and our region. Professor Lawrence Cunningham, the author of the first Chamorro history book, has been largely instrumental in the inclusion of Guam History in the secondary school curriculum and the participation of island students in local and national Mock Trial debate competitions. Professor Marjorie Driver's translation of documents pertaining to the Spanish presence in the Mariana Islands has generated enthusiasm among the local community and brought about a desire to get reacquainted with their island's past and tradition. Dr. Thomas H. Hilt, the founder of the Evangelical Christian Academy, has fostered the development of a generation of students and donated his time and efforts providing assistance and counsel to troubled kids. Local banker, Jesus Lesada Guerrero, founded our locally chartered full service bank on Guam, the Bank of Guam, has made great contributions towards the economic, political, and social transformation of Guam. Newspapers Joseph Mur- phy has written a daily newspaper column for the last thirty years and has evoked our thoughts and encouraged us to get involved in our island's affairs and concerns. The director of the Guam Chapter of the American Red Cross, Josephine Palomo, in addition to her invaluable assistance during disaster related situations, has established a program which encourages involvement among the island's senior citizens in social and educational activities. Professor Robert F. Rogers, through his scholarly work and provision of guidance and advice to political science majors in the University of Guam, has fostered the development of policy and leadership within our region. Finally, former Senator Cynthia Torres, one of the first women to be elected to the Guam Legislature, has made great contributions towards the advancement of women and vulnerable members in our island society.

On behalf of the people of Guam, I commend and congratulate these wonderful people for their contributions. Their passion and dedication has gone on a long way towards the development of a new generation who, like them, will dedicate their lives and their work towards the humanities. To each and every one of these individuals, I offer my heartfelt gratitude. Si Y'u'os Ma'ase'.
and Forest Health held a hearing in Elko, Nevada to study the events surrounding the closure of the South Canyon Road by the Forest Service. After a thunderstorm washed out parts of the road in the Spring of 1995, the agency prohibited the community of Jarbidge from using the road so far as to initiate criminal action against the county. At this hearing, we learned that it wasn't just parts of the road that washed away in that storm but also the Federal Government's failure to use common sense. The South Canyon Road has been used by local residents since the 1800s—now to keep the citizens of Elko County from maintaining and using what is clearly theirs is a violation of the statute commonly referred to as RS 2477. This is an issue of national significance, demonstrating ongoing attempts by the Federal Government, particularly under this Administration, to usurp the legal rights of States and Counties. So for this reason, the subcommittee has done extensive research into the fundamental questions concerning the South Canyon Road, specifically: who has ownership of the road and who has jurisdiction over the road? Subcommittee Chairman CHENOWETH-HAGE has compiled her research into this, her final report on the November 13th hearing. I would now respectfully ask that it be submitted into the Record of this 106th Congress.

Chairman's Final Report—Hearing on the Jarbidge Road, Elko County, Nevada, Subcommittee on Forests and Forest Health

PREFACE

By invitation of Congressman Jim Gibbons of Nevada, the Subcommittee on Forests and Forest Health held an oversight hearing in Elko Nevada on November 13, 1999, on a dispute between the United States Forest Service (USFS). The County of Elko claimed ownership of a road known as the Jarbidge South Canyon Road by virtue of their assertion of rights under a statute commonly referred to as RS 2477. The USFS asserted they do not recognize the county's ownership rights and claimed jurisdiction over the road under the Treaty of Guadalupe Hidalgo, the proclamation creating the Humboldt National Forest, the Wilderness Act, the Federal Land Policy and Management Act (FLPMA), the Endangered Species Act, and the Clean Water Act. This issue came to a head when the USFS directed its contractors to destroy approximately a one-mile long section of the road in the Spring of 1995, the Jarbidge South Canyon Road by virtue of its use by parties claiming private rights of use which could be accessed only by the road. Also, access to the Jarbidge Wilderness Area was closed off by the action of the USFS.

Chairman Chenoweth-Hage submits this final report to members based on the testimony given and records available to the Subcommittee. Representatives of the USFS failed to present a coherent and consistent standpoint, submitting no legal analysis that justified their position. Instead, they simply "ruled" that they did not recognize the validity of the County's assertion to the road.

The investment of time in the historic perspective leading up to the County's assertion was fruitful. We are led to believe that the Constitutional and legal background cannot be ignored if we are to view the western lands issues in the framework Congress and the Congress has established.

I therefore submit my final report on the hearing on the Jarbidge Road.

Summary: The Basic Questions of Ownership and Jurisdiction

The dispute over the Jarbidge South Canyon Road (between Elko County, Nevada and the United States Forest Service (USFS) involved: 1. Who has ownership of the road? 2. Who has jurisdiction over the road? Ownership is defined as control of property rights. Jurisdiction is defined as the right to exercise civil and criminal process.

The United States is the only country that when the Humboldt National Forest was created in 1909, the road in question became part of the Humboldt National Forest. The United States established the Humboldt National Forest is public land owned by the United States and the USFS, as agent for the United States, has both ownership and jurisdiction. The United States has responded to the RS 2477 issue (Section 8, Act of July 26, 1866) by arguing that no RS 2477 road which was established in a national forest after the creation of the national forests, was valid, and all roads within the national forest fall under USFS jurisdiction after passage of the Federal Land Policy and Management Act of October 21, 1976.

Evidence was presented by Elko County in an effort to establish proof of ownership of the Jarbidge South Canyon Road. This evidence included oral testimony, showing that the road was established in the late 1800s on what had been a pre-existing Indian trail used by the native Shoshones for an unknown period of time prior to any white settlement in the area.

Elko County claims jurisdiction over the Jarbidge South Canyon Road by evidence that the road was created to serve private property interests of the settlers in the area. Elko County cites various private rights claim to water, minerals, and grazing which the road was constructed to serve.

The crucial factor in determining which federal land upon which the Road exists is "public land" subject to federal ownership and jurisdiction or whether the federal land upon which the Road exists is encumbered with private property rights over which the state of Nevada and private citizens exercise ownership and jurisdiction.

In any case, it is essential to review, not only prior history, but also the public policy of the United States as expressed in acts of Congress and relevant court decisions.

1. Breaking Down the Principles of Ownership

A. The law prior to Nevada Statehood.

1. The Mexican cession and "Kearney's Code." Nevada became a state on October 30, 1964. Prior to that time the area in question was part of the territory of Nevada. The territory of Nevada had a portion of the western portion of the territory of Utah. Utah Territory has been a portion of the Mexican cession resulting from the Mexican War of 1846-48. The United States, Mexico, and the Mexican cession was formalized two years later with the Treaty of Guadalupe Hidalgo, February 2, 1848.

Mexico recognized title of the peaceful (Pueblo or "civilized") Indians (either tribally or as individuals) to the lands actually occupied and their aban doned or extinguished by legal process (i.e. treaty agreements). The Mexican policy of inducing Indians to give up their wandering "nomadic, uncivilized" life in favor of a settled "pastoral, civilized" life, was continued by Congress after the 1846 session and was confirmed by the political economy of the gold allotment and reservation policy. Mexico and Spain retained the mineral estate under both private grants and public lands as a sovereign right obtained by language in the grant or under the provisions of the Mining Ordinance.

2. The acquisition by the U.S. When the area was ceded to the U.S., the U.S. acquired all ownership rights in the lands which had been previously held by the Mexican Government, including the mineral estate and the then unappropriated surface rights. Indian title, where it existed, remained with the respective Indian tribes. All other private property existing at the time of the cession, was also recognized and protected. Kearney's Code also recognized all specified, in force, the laws "concerning water courses, stock marks and brands, horses, enclosures, commons and arbitrations", except control or development of the land by the Constitution of the United States. The Supreme Court of the United States, has upheld the validity of Kearney's Code, stating that Congress alone could have repealed it, and this it has never done.

In 1864, the area where the Jarbidge South Canyon Road presently exists was acquired by the United States. The area was, like Mexico, retained the mineral estate, while the surface estate was open to settlement. Settlement of the surface estate continued under both U.S. and Mexican law in much the same way it had proceeded under Mexican jurisdiction. Towns, cities and communities grew up around agricultural and mining areas.

3. The characteristics of the land and custom of settlement under Mexican law.

Mexican cessionary property in the southwestern portion of the United States, consisted primarily of arid lands, interspersed with rugged mountain ranges. These mountain ranges were the primary source of water supply for the arid region. The water courses were part of the surface estate. Control or development of the land by the United States was for either agricultural uses or mining dependent on control of the water courses.

The most expansive (and most common) method of settlement under Mexican "colonization" law was for the individual settler (under local authorization) to establish a cattle and horse (ganado de mejor) or sheep and goat (ganado de menor) on a farm, known as a "cattle" or "range for pasturage." Four years of actual possession gave the occupant a property right that could be sold (even before final federal confirmation or approval of the survey map (diseno). Control of livestock ranges depended on lawful control of the various springs, seeps and other water sources for livestock pasturage and watering purposes. Arbitration of disputes over water rights rested with local authority (judges de campo) or "judges of the plains" (jueces del campo or "judges of the plains".

Mexican customs of settlement were maintained under U.S. rule.

This same settlement pattern of appropriating cleared irrigated land and ranges for pasture adjacent to water courses, continued after the area was ceded to the United States.
States in 1846. One of the first acts of the California legislature after the Mexican cession was to re-enact, as state law, the previous Mexican “jueces del campo” or “rodeo” laws. These laws addressed the acquisition and adjudication of range (or pasturage) rights on the lands within the state.

The settlers in the Mexican cession after 1846 were not trespassers on the lands of the U.S., since Kearney’s Code had continued in effect all the previous laws pertaining to livestock, livestock enclosures, water courses, reservoirs and commons (stock ranges). Under Mexican law, water rights, possessory pasture rights, and right-of-ways were easements. Local law and land law was based on a split-estate system (surface/mineral titles and easements) which the United States Courts were unfamiliar with and for which no federal law existed. Problems in sorting agricultural (rancho) titles/rights from mining titles/rights quickly became apparent when the courts began the adjudication of Spon’s cases and extended clauses. Congress (like Spain and Mexico) had previously followed a policy of retaining mineral lands and valuable mines as a national asset.

5. Congress further defines and codifies settlement customs through the Act of 1866 with respect to the establishment of mineral and surface estate rights.

There was no law passed by Congress to define the settlement process for the western miners. The creation of a road system and land acquisition was determined by a series of acts beginning in the 1800’s. Key among the split-estate mining/settlement laws was the Act of July 26, 1866. Congress established a lawful procedure whereby the mineral estate of the United States could pass into the possession of private individuals. The Act also allowed for the establishment of easements for settlers to cross these lands at will. It also allowed for the establishment of easements across the lands of another.

At this point, it is important to note the definition of “right-of-way” or “easement.”

A right-of-way is defined as the right to cross the lands of another.

An easement is defined as the right to use the lands of another.

Sections 8 and 9 of the 1866 Act are the seminal U.S. law defining the rights of ownership in the jibarbe South Canyon Road. Section 8, which was later codified as Revised Statute 2477, deals with the establishment of “highways” across the land. The term highways as used in the 1866 Act refers to any road or trail used for travel. The right-of-way portion of this act was an absolute grant for the establishment of general transportation rights on these lands at will, and by whatever means was recognized under local rules and customs.

Section 9 of the Act of July 26, 1866, “acknowledged” the right-of-way for the construction of ditches, canals, pipelines, reservoirs and other water conveyance/storage easements. Section 9 also guaranteed that the mineral estate would be “preserved” for the purpose of mining and agriculture (farming or stock grazing) would be maintained and protected.

5. The Act of 1866 After the Statehood.

1. The states adopt Mexican settlement customs, as affirmed by Kearney’s Code and 1866 Act.

Once settlers in an area had exercised the general right-of-way provisions of the 1866 Act to establish permanent roads or trails, those roads or trails then, by operation of law, became easements (which is the right to use the lands of another). The general right-of-way provision of the 1866 Act was subject to Congressional sanction and approval to the authorization of Kearney’s Code respecting water courses, livestock enclosures and common rights, especially respecting possessory rights. All of the states and territories, west of the 96th meridian ultimately adopted similar right-of-way provisions. In addition, range/property rights were “recognized” by the Act.

2. The Supreme Court upholds states’ adoption of settlement customs and attached range rights.

In Oneida v. Idaho, it was held that all Western states had adopted range law similar to Idaho’s, that those laws were a valid exercise of the state’s constitutional police power and did not infringe on the government’s underlying property interest. Graziers took possession and control of certain range areas primarily by gaining lawful control of water courses. The water courses were under the jurisdiction of State and Territorial government by authority of Congress. The general right-of-way provision of the 1866 Act became an easement for grazing, the bounds of the easement being determined by the exterior of a boundary line the owner of the grazing could effectively possess and control.

3. Only the states possess the authority to define property.

As a general proposition, the United States, as opposed to the several states, is not possessed of a residual authority enabling Congress to define property in the first instance. The United States has performed the role of owner over lands which are lawfully owned by the union of states, or of the United States. In the Southwest, established laws deriving from local custom and court decisions (common law) for determining property rights. These were the local laws, customs, and decisions of the court affirmed by Congress in the Act of July 26, 1866. The Act extended this principle to all the mine states and gave the state a role in deciding property rights in both the mineral estates and surface estate of the mineral lands of the United States.

C. Completion of Local Laws and Customs Regarding Ownership

1. Congress has passed numerous Acts recognizing surface and mineral estate rights. Therefore, the United States claim to the Lob Birdie Wilderness Area also contained a savings clause protecting Preexisting rights.

The Presidential Executive Order which created the Humboldt National Forest contained a savings clause protecting Preexisting rights and excluding all land more valuable for agriculture and mining. The Road was in existence long before there was a Humboldt National Forest. The Road was a prior existing right, having been confirmed by the Act of 1866 and related subsequent acts of Congress as well as court decisions.

The U.S. argues that the Mexican cession of 1846, ratified in the Treaty of Guadalupe Hidalgo in 1848, conveyed the Road and the land of the Road to the United States, and some lands described as “public land” were not subject to the United States’ acquisition of title under the “savings clause” protecting Preexisting rights.

4. The Act for Surveying Public Lands of June 4, 1897, also known as the Forest Reserve Act, created all lands within the Forest Reserve more valuable for agriculture and mining, and guaranteed rights and settlement rights to access, the right to construct roads and improvements, the right to acquire water rights under state law, and continued state jurisdiction over persons and property within forest reserves.

5. Congress further extends the federal right-of-way provisions of the 1866 Act.

The courts have stated repeatedly that laws relating to the same subject (such as land disposal laws) must be read in pari materia. Congress has passed local land disposal laws, FLPMA, or any other land disposal act cannot be read as if it stands alone. It must be read together with all its parts and with every other prior federal disposal act of Congress if the true intent of the act is to be known.

6. Each of these Acts contain “saving clauses” protecting existing right, including FLPMA.

All acts of Congress, relating to land disposal contain a savings clause protecting existing rights. FLPMA contains a savings clause protecting Preexisting rights. There is an obvious reason for this. Any land disposal law passed by Congress without a savings clause would amount to a declaration of “taking” of property without compensation. This could trigger litigation against the United States and monetary liability on the part of the United States.

II. Determining the Ownership of Jibarbe South Canyon Road

A. Executive order creating Humboldt National Forest, Where the Road Resides, and the relevant congressional acts contain a savings clause protecting Preexisting rights.

The Presidential Executive Order which created the Humboldt National Forest contained a savings clause protecting Preexisting rights and excluding all land more valuable for agriculture and mining. The Road was in existence long before there was a Humboldt National Forest. The Road was a prior existing right, having been confirmed by the Act of 1866 and related subsequent acts of Congress as well as court decisions.

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of public lands." FLPMA defines "public lands" to mean "any land and interest in land owned by the United States within the several states and administered by the Secretary of Agriculture through the Bureau of Land Management." The mineral estate of lands within the exterior boundaries of National Forests are administered by the Secretary of the Interior through the Bureau of Land Management.

The mineral estate in the Humboldt National Forest where no claims or rights have attached is "public land" according to FLPMA. The mineral estate in these lands is still open to disposition under the mining laws of the United States. Private agricultural improvements relating to surface estate rights in grazing allotments or subsurface rights in unpatented mining claims are not public lands within the definition set forth in FLPMA.

The Road is bounded on both sides by mining claims and lawfully adjudicated grazing allotments. This fact is clear from the testimony and the evidence presented to the Subcommittee. The record shows that mining, grazing rights and water rights as well as general access right-of-ways were established, whether for homesteads, roads, rights-of-way, within the exterior boundaries of the national forest. They cite FLPMA as authority for the following proposition: No evidence of exclusive possession was submitted to the record showing any lawful extinguishment of these rights which would effect a return of the area in question to "public lands." Nothing has arisen to a trespass against the United States.

3. The United States errantly cites FLPMA as extinguishing RS 2477 rights. The United States has also argued that no RS 2477 road could be created in a national forest after the date of creation of the national forest. They cite FLPMA as authority for this proposition. However, the courts have repeatedly held that when a lawful possession of the surface estate has been taken, these lands are no longer available to the public and are therefore no longer public lands.

Possession of the mineral estate in public lands could be lawfully taken under the mining acts. Where valid mining claims exist, that land is no longer public land. Possession of the mineral estate is the sine qua non of exercising regulatory control of right-of-ways cited by the United States. The courts have repeatedly upheld the ruling in Kansas v. Colorado that "public lands" must be used. In recent years, this term has been widely misused by the government to encompass all lands for which the federal government has a management responsibility. In reality, the lawful definition of "public lands" are "lands available to the public for purchase and/or settlement." The courts have repeatedly held that the mineral estate in public lands may have a compensable property right. Adjudication by property authority. The United States was only an ordinary possessor within the state of Colorado and subject to all the sovereign laws of the state of Colorado. The court ruled that forest reserves were not federal enclaves subject to the federal mineral law but were federal enclaves subject to the general law of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not permitted to exercise civil and criminal process. The United States made its claim to jurisdiction on the premise that the national forest was a federal enclave subject to the exclusive legislative jurisdiction of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not permitted to exercise civil and criminal process.

The United States makes its claim to jurisdiction on the premise that the national forest is subject to the exclusive legislative jurisdiction of the United States. The term "public lands" has a lawful definition. When used in a dispute over lawful rights, the lawful definition of "public lands" must be used. In recent years, this term has been widely misused by the government to encompass all lands for which the federal government has a management responsibility. In reality, the lawful definition of "public lands" are "lands available to the public for purchase and/or settlement." The courts have repeatedly held that the mineral estate in public lands may have a compensable property right. Adjudication by property authority. The United States was only an ordinary possessor within the state of Colorado and subject to all the sovereign laws of the state of Colorado. The court ruled that forest reserves were not federal enclaves subject to the federal mineral law but were federal enclaves subject to the general law of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not permitted to exercise civil and criminal process. The United States made its claim to jurisdiction on the premise that the national forest was a federal enclave subject to the exclusive legislative jurisdiction of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not permitted to exercise civil and criminal process.

D. The proper adjudication of the Humboldt National Forest belongs to the State.

1. Grazing allotments cover the entire forest. The Humboldt National Forest was adjudicated prior to 1920. The grazing allotments were identified and confirmed as a private property right. The Federal government held the entire Humboldt National Forest, including the area traversed by the Road. The Road traverses the lawfully adjudicated Jarbidge Canyon allotment.

2. The Supreme Court has confirmed state jurisdiction. On May 19, 1907, the U.S. Supreme Court held in the case of Kansas v. Colorado that the United States was only an ordinary possessor within the state of Colorado and subject to all the sovereign laws of the state of Colorado. The court ruled that forest reserves were not federal enclaves subject to the federal mineral law but were federal enclaves subject to the general law of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not permitted to exercise civil and criminal process.

III. Establishing Jurisdiction

A. Determining whether State or Federal Government has jurisdiction is key.

The USFS has threatened arrest and criminal prosecution of various individuals in the road dispute. The USFS has threatened litigation against Elko County for Elko County's attempt to defend against a "taking" of its property rights. The relationship between the States and its agency, the USFS claims to have jurisdiction over the matter involved in this dispute. Jurisdiction differs from ownership, in that ownership is the control of property rights and usually vests in individuals and corporate entities, while jurisdiction rests on federal or state courts civil and criminal process, a right which usually vests in government. The question in this dispute is: does the United States have jurisdiction? Or does the State of Nevada have jurisdiction?

The establishment of jurisdiction depends on proper use of the term "Public Lands." The United States makes its claim to jurisdiction on the premise that the national forest is subject to the exclusive legislative jurisdiction of the United States. The term "public lands" has a lawful definition. When used in a dispute over lawful rights, the lawful definition of "public lands" must be used. In recent years, this term has been widely misused by the government to encompass all lands for which the federal government has a management responsibility. In reality, the lawful definition of "public lands" are "lands available to the public for purchase and/or settlement." The courts have repeatedly held that the mineral estate in public lands may have a compensable property right. Adjudication by property authority. The United States was only an ordinary possessor within the state of Colorado and subject to all the sovereign laws of the state of Colorado. The court ruled that forest reserves were not federal enclaves subject to the federal mineral law but were federal enclaves subject to the general law of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not permitted to exercise civil and criminal process. The United States made its claim to jurisdiction on the premise that the national forest was a federal enclave subject to the exclusive legislative jurisdiction of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not permitted to exercise civil and criminal process.

B. The Supreme Court has confirmed state jurisdiction. On May 19, 1907, the U.S. Supreme Court held in the case of Kansas v. Colorado that the United States was only an ordinary possessor within the state of Colorado and subject to all the sovereign laws of the state of Colorado. The court ruled that forest reserves were not federal enclaves subject to the federal mineral law but were federal enclaves subject to the general law of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not permitted to exercise civil and criminal process.

The United States has also argued that a right-of-way may have a compensable property right. Adjudication by property authority. The United States was only an ordinary possessor within the state of Colorado and subject to all the sovereign laws of the state of Colorado. The court ruled that forest reserves were not federal enclaves subject to the federal mineral law but were federal enclaves subject to the general law of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not permitted to exercise civil and criminal process.

D. The proper adjudication of the Humboldt National Forest belongs to the State.

1. Grazing allotments cover the entire forest. The Humboldt National Forest was adjudicated prior to 1920. The grazing allotments were identified and confirmed as a private property right. The Federal government held the entire Humboldt National Forest, including the area traversed by the Road. The Road traverses the lawfully adjudicated Jarbidge Canyon allotment.

2. The Supreme Court has confirmed state jurisdiction. On May 19, 1907, the U.S. Supreme Court held in the case of Kansas v. Colorado that the United States was only an ordinary possessor within the state of Colorado and subject to all the sovereign laws of the state of Colorado. The court ruled that forest reserves were not federal enclaves subject to the federal mineral law but were federal enclaves subject to the general law of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not permitted to exercise civil and criminal process.
For the USFS to implement regulations under the Endangered Species Act, Clean Water Act or any other federal authority, which would divest citizens of their property is to trigger claims for compensation by the affected citizens. For the USFS to institute criminal action against Elko County for exercising its lawful jurisdiction over the road and the land adjacent to the Road is a usurpation of power upon which the US Supreme Court has long since conclusively ruled.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, October 24, 2000 may be found in the Daily Digest of today’s RECORD.

MEETINGS SCHEDULED

OCTOBER 25

9 a.m.
Armed Services
To resume hearings on issues related to the attack on the U.S.S. Cole; to be followed by a closed hearing (SH-219).

10 a.m.
Foreign Relations
European Affairs Subcommittee
Near Eastern and South Asian Affairs Subcommittee
To hold joint hearings to examine the Gore and Chernomyrdin diplomacy; to be followed by a closed hearing

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