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, NJ, October 16, 2000.

Re: Your Letter of October 3, 2000
Hon. FORTNEY PETE 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 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 price data for several 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 practices to a number of investigative 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 the pharmaceutical industry's practices in the area of reimbursement.

As you know, Medicare and Medicaid reimbursement policies are considerably complex. Indeed, in correspondence from the administrator of the Health Care Financing Authority (''HCFA''), it was publicly noted in a letter addressed to the Honorable Tom Bliley, Chairman, 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 ''acquisition costs'' for 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 system has proven to be untenable and we would welcome the opportunity of working with you, Congress, HCFA, and any other interested regulatory 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 Chamorro 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 Malimanga comic strip. 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 nonconfrontational 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 Comical situations she has concocted, and the lessons brought forth by her storytelling, Mrs. Gould has touched a generation of 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 distinguished 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 heritage and traditions. The Reverend 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 Leon Guerrero, founder of the first locally chartered full service bank on Guam, the Bank of Guam, has made great contributions towards the economic, political, and social transformation of Guam. Newspaperman Joe Murphy has written a daily newspaper column for the last thirty years and has provoked 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 healthful activities. Professor Robert F. Rogers, through his scholarly work and provision of guidance and advise 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 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 everyone of these individuals, I offer my heartfelt gratitude. Si Yu'os Ma'ase'.

CHAIRMAN'S FINAL REPORT CONCERNING THE NOVEMBER 13 SUBCOMMITTEE ON FORESTS AND FOREST HEALTH HEARING IN ELKO, NEVADA

HON. JIM GIBBONS

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mr. GIBBONS. Mr. Speaker, last year on November 13th, the Subcommittee on Forests

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 repairing it—going 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 late 1800s—to now 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 Elko County and 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 contractor to destroy approximately a one-fourth mile section of the Road, thus preventing 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 defend their position from a legal 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, yielding numerous clearly worded acts of Congress, backed up in a plethora of case law. I have attempted to bring that historic perspective to this report, because the Congressional and legal background cannot be ignored if we are to view the western lands issues in the framework Congress and the courts have intended.

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 (Road) between Elko County, Nevada and the United States Forest Service (USFS) involves two basic questions:

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 argues that when the Humboldt National Forest was created in 1909, the road in question became part of the Humboldt National Forest. The United States argues that 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 (FLPMA).

Evidence was presented by Elko County in an effort to establish proof of ownership of the Jarbidge South Canyon Road. This evidence includes documents and 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 Shoshone 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 virtue of evidence that the road was created to serve the private property interests of the settlers in the area. Elko County cites various private right claims to water, minerals, and grazing which the road was constructed to serve.

The crucial factor in determining which argument is correct is to determine whether the 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 dispute of this kind, 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.

I. 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, 1864. Prior to that time the area in question was part of the territory of Nevada. The territory of Nevada had been created out 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 1845–46. U.S. Brigadier General of the Army of the West, Stephen Watts Kearney, instituted an interim rule, commonly referred to as ''Kearney's Code,'' over the ceded area pending formal treaty arrangement between the U.S. and Mexico. The Mexican cession was formalized two years later with the Treaty of Guadalupe Hildago, February 2, 1848.

Mexico recognized title of the peaceful/Pueblo (or ''civilized'') Indians (either tribally or as individuals) to the lands actually occupied or possessed by them, unless abandoned 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 the very basis of the government's Indian allotment and reservation policy. Mexico and Spain retained the mineral estate under both private grants and public lands as a sovereign asset obtainable only by express 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. This included 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 existing Mexican property law and continued, in force, the laws ''concerning water courses, stock marks and brands, horses, enclosures, commons and arbitrations'', except where such laws would be repugnant to 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 1846, the area where the Jarbidge South Canyon Road presently exists was acquired by the United States. The United States, like Mexico, retained the mineral estate, while the surface estate was open to settlement. Settlement of the surface estate continued under United States jurisdiction 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.

The Mexican cession, which is today 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 settlers for either agricultural uses or mining depended on control of the water courses.

The most expansive (and most common) method of settlement under the Mexican ''colonization'' law was for the individual settler to establish a cattle and horse (ganado de mejor) or sheep and goat (ganado de menor) farm, known as a ''rancho'' or ranch. These ranches were large, eleven square leagues or ''sitos'' (approximately one-hundred square miles). The individual settler (under local authorization) would acquire a portion of irrigable crop land and an additional allotment of nearby seasonal/arid (temporal or agostadero) land and mountainous land containing water sources (canadas or abrevaderos) as a ''cattle range'' or ''range for pasturage.'' Four years of actual possession gave the ranchero a vested 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 and range boundaries (rodeo or ''round-up'' boundaries) were adjudicated by local authorities (jueces del campo or ''judges of the plains'').

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

This same settlement pattern of appropriate servitudes or rights (servidumbres) for pasturage adjacent to water courses, continued after the area was ceded to the United

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 governing the acquisition and adjudication of range (or pasturage) rights on the lands within the state.

The new settlers on lands 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 water courses, livestock, enclosures and commons (stock ranges). Under Mexican law, water rights, possessory pasturage rights, and right-of-ways were easement rights. Mexican 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 equivalent law existed. Problems in sorting agricultural (rancho) titles/rights from mining titles/rights quickly became apparent when the courts began the adjudication of Spanish and Mexican land claims. 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 the establishment of mineral and surface estate rights.

There was no law passed by Congress to define the settlement process for the western mineral lands until Congress addressed this problem by a series of acts beginning in the 1860'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 miners. Private mining operations could then turn the dormant resource wealth of these lands into active resource wealth for the benefit of a growing nation.

The 1866 Act also dealt with the surface estate of the mineral lands. The act clearly recognized local law and custom and decisions of the court, which had been operating relative to these lands and extended these existing laws and customs into the future. The 1866 Act created a general right-of-way for settlers to cross these lands at will. It also allowed for the establishment of easements.

At this point, it is important to note the definitions of these key terms:

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

An easement is defined as the rights 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 Jarbidge 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 crossing routes over these lands at any point and by whatever means was recognized under local rules and customs.

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

B. The Law After Nevada 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 provisions of the 1866 Act gave Congressional sanction and approval to the authorization of Kearney's Code respecting water courses, livestock enclosures and commons, and local arbitration respecting possessory rights. All of the states and territories, west of the 98th meridian ultimately adopted water right-of-way related range/trail property laws similar to the former Mexican laws in California, New Mexico, and Arizona. These range rights were ''property'' recognized by the Supreme Court.

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

In Omaechevarria 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. Grazers 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 Kearney's Code and the 1866 Act. 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 boundaries of the area the grazier 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 it to define property in the first instance. The United States has performed the role of agent over lands which are lawfully owned by the union of states, or the United States. Individual 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 western states and conferred a license on settlers to develop property rights in both the mineral estates and surface estate of the mineral lands of the United States.

C. Congress Affirmation of Local Laws and Customs Regarding Ownership.

1. Congress has passed numerous Acts recognizing surface and mineral estate rights.

The argument of the United States claiming ownership of the Jarbidge South Canyon Road raises a perplexing question. To arrive at the conclusion that the United States Forest Service owns the Road based on the Mexican cession to the United States in 1846, is to ignore local law, custom, court decisions, and the Congressional Act that confirmed those local laws, customs, and court decisions in 1866. The United States in its reach to claim all title to the lands in question must ignore the subsequent acts of Congress which are predicated on the Act of July 26, 1866 as well as voluminous case law which have consistently upheld the acts of Congress in the disposal of the surface estate and/or mineral estate into private hands. The acts and their relevant case law include, but are not limited to:

1. The Mining Act of 1872, confirming lawful procedure for citizens to acquire property rights in the mineral estate of federal lands;

2. The Act of August 30, 1890, which confirmed private rights and settlement then existing on the surface estate of federal lands;

3. The General Land Law Revision Act of March 3, 1891, which further confirmed existing private rights (settlement) on the land;

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

2. The courts insist that these laws must be read on pari materia (all together).

The courts have stated repeatedly that laws relating to the same subject (such as land disposal laws) must be read in pari materia (all together). In other words, 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 land disposal act of Congress if the true intent of the act is to be known.

3. Each of these Acts contain ''savings'' clauses protecting existing right, including FLPMA.

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

II. Determining the Ownership of Jarbidge South Canyon Road

A. Executive order creating Humboldt National Forest, Where the Road Resides, and 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 all existing 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 Road was never a part of the Humboldt National Forest, and could not be made a part of the Humboldt National Forest without triggering the Fifth Amendment of the Constitution of the United States dealing with ''takings'' and ''compensation.''

The Wilderness Act which created the Jarbidge Wilderness Area also contained a savings clause protecting prior existing rights.

B. The United States makes errant arguments claiming ownership of the Road.

1. The U.S. argument regarding ''public lands'' resulting from Mexican cession logically fails on its face.

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 crosses to the United States, which some 150 years later remain ''public land'' unencumbered by private rights. If this argument is valid, the myriad other roads, highways, towns, cities, ranches, farms, mines and other private property which did not exist in the southwest in 1846 but which exists today also remain the sole property of the United States. One cannot logically reach the first conclusion without accepting the later.

2. The true nature of ''public lands.''

''Public Lands'' are ''lands open to sale or other dispositions under general laws, lands to which no claim or rights of others have attached.'' The United States Supreme Court has stated: ''It is well settled that all land to which any claim or rights of others has attached does not fall within the designation

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 the Interior 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 Humbolt 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 and patented mineral lands, as well as 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 on these lands in the late 1800's and preceded the establishment of the Humboldt National Forest and the Jarbidge Wilderness Area by many years. No evidence has been submitted to the record showing any lawful extinguishment of these rights which would effect a return of the area in question to ''public land'' status, giving rise 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 argument. This does, however, ignore the fact that FLPMA applies to all federal lands. FLPMA itself confirms all prior existing roads, whose origins predate October 21, 1976.

The United States claims that FLPMA allows the USFS to permit right-of-ways, and thus gives them the right to exercise control over existing roads in the national forest. However, FLPMA was amended in 1985 to clarify that the USFS has no authority to impose regulations on prior existing roads that would diminish the scope and extent of the original grant. Any regulatory control of an existing RS 2477 road diminishes the scope and extent of an existing right. The regulatory control of right-of-ways cited by the United States only applies to right-of-ways created after October 21, 1976.

Nothing in the law allows the USFS to usurp control over right-of-ways, existing prior to October 21, 1976, or to change the definition of a road which had existed prior to 1976. Congress clarified this issue in Section 198 of the Department of Interior Appropriations Bill for 1996: ''No final rule or regulation of any agency of the federal government pertaining to the recognition, management, or validity of a right-of-way, pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an act of Congress subsequent to the date of enactment of this act.''

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 and jurisdiction. The United 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 is the right to exercise 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 Elko County as a subdivision of the state of Nevada have jurisdiction?

B. 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 forests are public lands subject to the 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 when a lawful possession of the public lands 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 surface estate could be lawfully taken under various pre-emption and homestead acts of Congress. Possession and settlement of the surface estate for grazing areas on the mineral lands of the United States derived from the general right-of-way provisions of the Act of July 26, 1866 and was confirmed by the Act of August 30, 1890. Congress revised the land laws to conform to the intent of the Act of August 30, 1890 with the passage of the General Land Law Revision Act of March 3, 1891.

1. Congress has withdrawn the lands from the public domain through various Acts.

Congress provided for the withdrawal of lands from the public domain as forest reserves in Section 24 of the Act of March 3, 1891. The intent of Congress as expressed in the 1891 and 1897 Acts was to protect timber stands (from exploitation by large, rapacious timber and mining corporations) in order to provide a continued supply of wood for settlers and by so doing improving watershed yields to provide a continuous water supply for appropriation by settlers. These Acts also contained numerous survey and administrative provisions providing for the identification and adjudication of prior existing private property rights within the exterior boundaries of the reserves. When the forest reserves were withdrawn from the public lands, the lands within the reserves were only available to the public for purchase or settlement after the date of the withdrawal if they were more valuable for agricultural (stock grazing) or mining purposes, and if they were not already occupied by prior possession.

2. The adjudicatory process.

The adjudication applied to rights established, whether for homesteads, roads, ditches, or range easements, prior to their withdrawal as forest reserves. Adjudication of the prior rights on the forest reserves resulted in lawful recognition of rights to lands within the exterior boundaries of the forest reserves (later renamed as national forests after 1907). For example, homesteads in fee simple, absolute title, and water right and right-of-way related surface estate rights in the form of grazing allotments were some of the lawful rights recognized. Homesteads, grazing allotments, and mining claims ceased being public lands upon their adjudication by property authority.

On national forest/reserves being established for a split-estate purpose of providing timber for settlers (and enhancing water yield), miners and ranchers could only cut or clear timber for fuel, fences, buildings and developments related to the mining or agricultural use of the claims or allotments.

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 to the surface state of the forest reserves. These grazing allotments cover 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 proprietor 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 doctrine of 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 law enforcement officers unless designated as such by state authority. The USFS had no general grant of law enforcement authority within a sovereign State. The court has also held that a right-of-way and related improvements (as well as vehicles on the right-of-way) within a federal reservation were private interests separate from the government's title to the underlying land and that the United States had no legislative (civil or criminal) jurisdiction without an express cession from the state.

The Court has held that when the United States disposes of any interest in federal lands that there is an automatic relinquishment of federal jurisdiction over that property. By clear and identical language, Congress has stated in the Organic Act of June 4, 1897, the Eastern Forests (Week's) Act of 1911, and the Taylor Grazing Act of 1934, that there was no intention to retain federal jurisdiction over private interests within national forests. The courts have consistently upheld the ruling in *Kansas* v. *Colorado* since 1907. Even standing timber within a national forest (once sold under a timber contract) ceases to be federal property subject to federal jurisdiction.

CONCLUSION

As laid out in this report and in the hearing record, un-rebutted evidence presented in the Road dispute clearly demonstrates that the United States and its agent, the US Forest Service, have no claim to ownership of the Road. Control of property rights to the road clearly vests in the state of Nevada and Elko County on behalf of the public who created the road under the general right-of-way provisions of the Act of 1866. Even if Elko County disclaimed any interest in the road, the individual owners whose mines, ranches and other property are accessed by the road may have a compensable property right in the road.

Futher, the state of Nevada and its subdivision (Elko County) have lawfully exercised jurisdiction over the Road. This jurisdiction would appear to include the right to maintain the road under the laws of the state of Nevada.

Federal rules and regulations cannot extinguish property which derives from state law.

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).
SH–216

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.
SD–419