

**H.R. 1521, H.R. 1658 and  
H.R. 2055**

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**LEGISLATIVE HEARING**

BEFORE THE  
SUBCOMMITTEE ON NATIONAL PARKS, RECREATION,  
AND PUBLIC LANDS

OF THE  
COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

Tuesday, June 24, 2003

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**LEGISLATIVE HEARING ON H.R. 1521, TO PROVIDE FOR ADDITIONAL LANDS TO BE INCLUDED WITHIN THE BOUNDARY OF THE JOHNSTOWN FLOOD NATIONAL MEMORIAL IN THE STATE OF PENNSYLVANIA, AND FOR OTHER PURPOSES; H.R. 1658, TO AMEND THE RAILROAD RIGHT-OF-WAY CONVEYANCE VALIDATION ACT TO VALIDATE ADDITIONAL CONVEYANCES OF CERTAIN LANDS IN THE STATE OF CALIFORNIA THAT FORM PART OF THE RIGHT-OF-WAY GRANTED BY THE UNITED STATES TO FACILITATE THE CONSTRUCTION OF THE TRANS-CONTINENTAL RAILWAY, AND FOR OTHER PURPOSES; AND H.R. 2055, TO AMEND PUBLIC LAW 89-366 TO ALLOW FOR AN ADJUSTMENT IN THE NUMBER OF FREE ROAMING HORSES PERMITTED IN CAPE LOOKOUT NATIONAL SEASHORE.**

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**Tuesday, June 24, 2003  
U.S. House of Representatives  
Subcommittee on National Parks, Recreation, and Public Lands  
Committee on Resources  
Washington, DC**

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The Subcommittee met, pursuant to notice, at 2:10 p.m. in room 1334, Longworth House Office Building, Hon. George P. Radanovich, [Chairman of the Subcommittee] presiding.

**STATEMENT OF THE HON. GEORGE P. RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. RADANOVICH. Good afternoon. The Subcommittee on National Parks, Recreation and Public Lands will come to order. This is a hearing on H.R. 1521, H.R. 1658, and H.R. 2055. This afternoon the Subcommittee will hear testimony on these three bills.

Our first bill, H.R. 1658, introduced by our Chairman, Richard Pombo, amends the Railroad Right-of-Way Conveyance Validation Act to validate additional conveyances of certain lands in the state of California that form part of the right-of-way granted by the United States to facilitate construction of the transcontinental railway.

Our second bill, H.R. 2055, introduced by our Subcommittee colleague, Mr. Jones, amends Public Law 89-366 to allow for an adjustment to the number of free-roaming horses permitted in the Cape Lookout National Seashore.

Our last bill, H.R. 1521, introduced by Congressman Murtha of Pennsylvania, provides for additional lands to be included within the boundary of the Johnstown Flood National Memorial in the state of Pennsylvania. Mr. Murtha will be here very soon, although we are going to go ahead with our opening statements and one by Mr. Jones, as well, until he gets here. Then we will go right to our witness.

I now recognize the Ranking Member, Mrs. Christensen, for any opening statement that she may have.

[The prepared statement of Mr. Radanovich follows:]

**Statement of The Honorable George Radanovich, Chairman, Subcommittee on National Parks, Recreation, and Public Lands, on H.R. 1521, H.R. 1658, and H.R. 2055**

Good afternoon. The hearing will come to order.

This afternoon, the Subcommittee on National Parks, Recreation, and Public Lands will receive testimony on three bills—H.R. 1521, H.R. 1658 and H.R. 2055.

Our first bill, H.R. 1658, introduced by our Chairman Richard Pombo, amends the Railroad Right-of-Way Conveyance Validation Act to validate additional conveyances of certain lands in the State of California that form part of the Right-of-Way granted by the United States to facilitate construction of the transcontinental railway.

Our second bill, H.R. 2055, introduced by our Subcommittee colleague Mr. Jones, amends Public Law 89-366 to allow for an adjustment in the number of free roaming horses permitted in Cape Lookout National seashore.

Our last bill, H.R. 1521, introduced by Congressman Murtha of Pennsylvania, provides for additional lands to be included within the boundary of the Johnstown Flood National Memorial in the State of Pennsylvania.

I now turn to the Ranking Member, Mrs. Christensen for any opening statement she may have.

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**STATEMENT OF THE HON. DONNA M. CHRISTENSEN, A DELEGATE IN CONGRESS FROM THE VIRGIN ISLANDS**

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. I, too, would like to welcome our colleagues and Mr. Murtha when he arrives at this hearing. We are looking forward to learning more about the three measures before us today.

Our first bill, H.R. 1521 sponsored by our colleague, Jack Murtha, would expand the boundaries of the Johnstown Flood National Memorial. The memorial commemorates one of the worst natural disasters in American history and the more than 2,200 lives that were lost in the flood waters. There are several private property owners interested in selling their land for inclusion within the memorial and this legislation is needed to facilitate these acquisitions. We look forward to hearing from our witnesses regarding the importance of these potential additions to the memorial.

Our second measure, H.R. 1658, is sponsored by Chairman Pombo. The legislation is a technical measure that would remove a cloud on the title to two parcels of private property owned by one of the Chairman's constituents. The Congress has approved many similar conveyance validations and we are unaware of any controversy regarding this measure.

Our last bill, H.R. 2055 by Mr. Jones of North Carolina, amends legislation that was passed in 1998 to change the number of free-roaming horses permitted at Cape Lookout National Seashore in North Carolina. Specifically, H.R. 2055 eliminates the 100-horse minimum and inserts a 110-horse minimum with a target goal of 120 to 130 horses, as well as making several other changes to the 1998 act. I understand the study and maintenance of the herd has involved the time and effort of many people and I would be interested in learning more about the viability of the herd and how potential problems with other park resources have been avoided or addressed.

I want to welcome our colleague Mr. Murtha and thank you for the time.

Mr. RADANOVICH. Thank you very much, Mrs. Christensen.

The Committee welcomes Congressman John Murtha from Pennsylvania. Mr. Murtha, welcome to the Subcommittee and you are here to speak on your bill, H.R. 1521, which provides for additional lands to be included within the boundaries of the Johnstown Flood National Memorial in the state of Pennsylvania. Welcome, sir.

**STATEMENT THE HON. JOHN MURTHA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. MURTHA. Thank you very much, Mr. Chairman.

In 1964 my predecessor passed legislation that made this a park and we have expanded it since then. As many of you know, in 1889 we lost over 2,000 people in a flood in Johnstown. We have had several floods since. We had one in 1977 where we lost a couple of hundred people and sustained \$300 million worth of damage. But the significance of this flood was that it was the greatest water disaster in Pennsylvania and in the country in the last couple of centuries.

What we want to do is expand—we have about 150,000 visitors a year and we want to increase this number. We would appreciate it if you could authorize the expansion. We fund the park a little bit every year. We have improved it and made some real progress. It is in an area where we memorialize an event which was tragic but had a real significance to the country at the time. At that time in 1889 they got no help at all. This is the breast of the dam where the water broke and flowed into Johnstown itself. So we appreciate the opportunity to testify for the Committee.

We do ask for a change to the bill. We needed a technical correction to reflect that one owner is not willing to sell. But we still want to expand and take in the clubhouse and some of the historic buildings that are right next to the park. We want to buy some land to expand this small park.

[The prepared statement of Mr. Murtha follows:]

**Statement of The Honorable John P. Murtha, a Representative in Congress  
from the State of Pennsylvania, on H.R. 1521**

Mr. Chairman, I would like to thank the Committee for bringing this bill up for consideration so quickly in this Congress.

This bill will authorize the expansion of the Johnstown Flood National Memorial, a National Park Service site in South Fork, Pennsylvania.

Specifically, the bill will enable the National Park Service (NPS) to acquire adjacent properties and historically significant structures that are an integral part of the story of the Johnstown Flood.

The Great Johnstown Flood, which occurred on May 31, 1889, was the largest news story in the era next to the assassination of Abraham Lincoln. It swept away an entire city, causing the loss of over 2,209 people. Though members of the South Fork Fishing and Hunting Club, which owned the earthen dam and was situated above it, worked feverishly during the storm to prevent the dam from bursting, their efforts were futile.

The Johnstown Flood Memorial was dedicated in 1964. Today the park consists of 165 acres and receives over 126,000 visitors annually. It preserves the remains of the old South Fork Dam which was breached in the flood, as well as portions of the former Conemaugh Lake bed.

This bill would authorize the purchase or acquisition by NPS, from willing sellers, an additional approximately 14 ° acres. This property holds certain related historic structures such as the "Moorhead Cottage" and the "Clubhouse." Both of these are significant to the story of the Johnstown Flood as they represent the life and role of club members both before and after the flood. The property offers a unique opportunity to use tangible resources to interpret the events that led to the Johnstown Flood, and the club members' response to the Flood.

Should the Subcommittee move this bill forward, I would request that the bill and related map be amended to exclude the .25 acre parcel owned by Richard Martyak, as he is no longer a willing seller.

I appreciate the Committee's consideration of this bill. Thank you for your time.

Mr. RADANOVICH. Very good. I assume that those changes are in the bill and we welcome that. Mr. Murtha, thank you for your testimony and I ask unanimous consent that Mr. Murtha be allowed to come on the dais for the rest of the hearing if he so chooses. There being no objection, so ordered. Again thank you very much for your testimony.

Mr. MURTHA. Thank you very much.

Mr. RADANOVICH. The Chair recognizes Mr. Jones from North Carolina to speak to his bill, which is H.R. 2055 to amend public law to allow for an adjustment in the number of free-roaming horses permitted on the Cape Lookout National Seashore. Mr. Jones, welcome.

**STATEMENT OF THE HON. WALTER B. JONES, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF  
NORTH CAROLINA**

Mr. JONES. Mr. Chairman, thank you and to the lady, thank you for this opportunity to briefly discuss H.R. 2055 and the reason for it.

Very quickly, as Mrs. Christensen made reference, we in 1997 introduced a bill, the Shackleford Banks Wild Horses Protection Act. These little horses down in my district are genetically traced back to the Spanish mustangs that swam ashore back in the 1600's. The bill itself was quite interesting. It created a relationship with the citizens of Carteret County by establishing in the bill the Shackleford Banks Foundation so the citizens would have a partnership with the Park Service. Certainly the Park Service would be the lead but they would also work with the citizens down in that

area who believe that these horses, as I believe, are part of North Carolina's heritage and a very important part at that.

As things have moved forward I do want to say that two well known genetic scientists, Dr. Dan Rubenstein from Princeton University and Dr. Gus Cothran from the University of Kentucky, have been working with the Park Service and the citizens down in eastern North Carolina for years and years. Both these gentlemen, working with the Park Service down in Carteret County, along with the citizens, they believe that there needs to be, to ensure the diversity and the future of this herd, have an optimum size and that should be somewhere around 120.

Dr. Rubenstein came to Washington and I had lunch with him about three or 4 weeks ago. He has submitted a letter of support for this bill. I have his letter, and I ask unanimous consent that I submit his letter, along with my written testimony about this bill.

Mr. RADANOVICH. There being no objection, so ordered.

[Dr. Rubenstein's letter submitted for the record follows:]

Princeton University Department of Ecology and Evolutionary Biology  
Princeton, New Jersey 08544-1003



8 July 2003

Walter B. Jones, Esquire  
Member of Congress  
422 Cannon House Office Building  
Washington, DC.

Dear Representative Jones,

It gives me great pleasure to write in support of your proposed legislation that will amend the original bill that established management practices for the free-ranging horses on Shackleford Banks, NC. While the original legislation instituted a sensible strategy of co-management by the National Parks Service (NPS) and a non-governmental organization, 'The Foundation of Shackleford Horses' (FoSH), debate often turned rancorous over disagreements on how best to manage this historical horse population. In particular, too much effort was expended on trying to interpret at what threshold management should begin and end as well as on balancing the mechanisms of selective removals and fertility control. The new piece of legislation you are proposing will finally settle the issue in a way that both parties agree is fair and sensible. Arriving at such a scientifically sound and flexible solution should be commended!

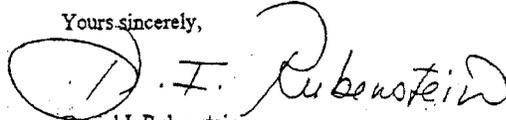
The impasse was finally broken in autumn 2002 when the new Superintendent of the Cape Lookout National Seashore and the President of The Foundation of Shackleford Horses convened a workshop involving scientists and representatives from your office to review and, if appropriate, modify the existing management plan. The first step was to side step the issue of interpreting what exactly was the meaning of the critical threshold in the existing legislation that triggered management. Rather than debating whether or not 110 horses is the number above which management should start and below which the population should be left to management itself, everyone agreed that the population should *never* fall below 110 horses for sound scientific reasons. The population projection models I have developed and used to forecast population sizes and their genetic composition under different future environmental scenarios as well as the genetical models analyzed by Dr. Gus Cothran predict that for a population consisting of fewer than 110 horses genetic diversity will be lost at too rapid a rate. As a result, important genetically determined abilities may be eliminated from the population thus limiting the population's ability to cope with unknown future stresses, especially those associated with emerging diseases. Thus by stating at the outset that the population should never fall below 110 made moot the issue of when to commence or cease

management since the population would typically be above this threshold and in a state where management would normally operate!

With this hurdle cleared it was easy for everyone to understand that a genetically diverse and sustainable population can be maintained only if the population's normal age structure and sex ratio are maintained and that numbers are kept close to 120. By supporting the goal of managing numbers to remain close to 120 yet also allowing the population to periodically bloom to 130 so that successful genes could occasionally increase in frequency and spread through the population before numbers are again reduced, all the participants championed a plan that would maintain a moderate sized herd that was as genetically diverse as possible.) Furthermore, by everyone supporting the idea that scientists should regularly monitor the structure and health of the population, an ability to make future modifications was built into the new management scheme and insured flexibility.

I applaud your efforts at capturing in your new legislation the spirit of the workshop. By doing so, you have shown an uncommon sensitivity to input from essential stakeholders. Your new legislation will improve and codify the ground rules under which a new era of constructive co-management will begin thus insuring the long-term survival of this special herd of free-ranging horses.

Yours sincerely,



Daniel I. Rubenstein  
Professor and Chair

Mr. MURTHA. That there should be—the terminology is to allow the herd to bloom to around 130 and a little bit more. So normally this is what we are trying to ask in this bill and I will say that we did work with the Interior down in Atlanta, Georgia with drafting this legislation, along with the local Cape Lookout supervisor, Bob Vogel, and we have come to this formula and this resolution that we think will ensure the future of this herd for generations to come.

With that, Mr. Chairman, I do not have any other comments.  
[The prepared statement of Mr. Jones follows:]

**Statement of The Honorable Walter B. Jones, a Representative in Congress  
from the State of North Carolina, on H.R. 2055**

Mr. Chairman, I would like to thank you for scheduling this hearing on H.R. 2055—a bill to adjust the number of free roaming horses permitted on Shackleford Banks in the Cape Lookout National Seashore. Shackleford Banks is a barrier island off the coast of North Carolina that has been home to a herd of wild horses for over three centuries. In fact, many experts believe the herd descended from Spanish stallions that were shipwrecked on the island during colonial times.

Over the years, the Shackleford horses have become an integral part of the natural and cultural fabric of Eastern North Carolina. They are treasured by the local community and adored by the many visitors who come from across the country to see them.

To protect these beautiful creatures, in 1997 I introduced the Shackleford Banks Wild Horses Protection Act which the President later signed into law. The Act directed the Department of the Interior to enter an agreement with a non-profit group—the Foundation for Shackleford Horses—to manage the herd. It also required the Department to allow a herd of 100 free-roaming horses in the Seashore, and it set out terms under which horses could be removed, including a prohibition on removal “unless the number of horses ... exceeds 110.”

As the National Park Service and the Foundation began to implement the Act, disagreement erupted over the law's requirements on the size of the herd. The Park Service interpreted the Act to mean that the herd's population should be kept between 100 and 110. However, as the author of the legislation, it is my strong belief that this interpretation was inconsistent with Congressional intent—which was to allow the herd to hover above 110.

The Park Service's interpretation also conflicted with the established scientific consensus on the size of the herd. Studies by world-renowned genetic scientists Dr. Daniel Rubenstein of Princeton University, and Dr. Gus Cothran of the University of Kentucky, confirm that in order to maintain the herd's long-term viability, its optimum size is around 120 animals. The experts also agree that the population should not dip below 110 and that it should be allowed to expand periodically to numbers at or above 130 in order to sustain the proper genetic diversity in the herd. It's important to note that these numbers are well within the island's carrying capacity.

After several years of disagreement on the herd size issue, the Park Service met last fall with the Foundation for Shackleford Horses, Dr. Rubenstein, Dr. Cothran and other stakeholders in an effort to find middle ground. After two days of meetings, the parties emerged with an agreement that largely mirrors the scientific understanding of how the horses should be managed.

H.R. 2055 seeks to codify this scientific consensus into law. It would allow a herd of "not less than 110 free roaming horses, with a target population of between 120 and 130 free roaming horses." It would also clear up confusion on when horses can be removed from the island by mandating that removal can only occur if "carried out as part of a plan to maintain the viability of the herd."

Mr. Chairman, this legislation has the support of the Superintendent of Cape Lookout National Seashore, the scientific experts, and the local community. It is a legislative fix based on sound science that addresses a purely local issue. I thank the Subcommittee for its consideration of this important bill.

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Mr. RADANOVICH. Thank you, Mr. Jones.

Ms. Bordallo, any opening statement or comments?

Ms. BORDALLO. Thank you, Mr. Chairman. I just have one question.

What is the size of the herd now, currently?

Mr. JONES. Well, there was some question. We intended in the original legislation to have the threshold or the limit to be somewhere around 120, so we put the figure in around 110 and there has been some confusion among not only the Park Service but also the citizens as to what is the optimum number that is needed to ensure the diversity and the future of the herd.

So what we are trying to do is take it from 120 and to have 130 as the max. But if it should go over by three or four little colts born during the year, that they would have a little bit of flexibility so they could determine—to go back down to the 130 they could determine the diversity by the sex of those colts and foals that were born.

Ms. BORDALLO. I was just curious. So it is right around—the herd number right now is—

Mr. JONES. 110.

Ms. BORDALLO. Within these numbers.

Mr. JONES. Yes, ma'am. And actually Dr. Rubenstein, when we introduced this bill back in 1997, testified on behalf of this bill and we felt that that number—we were hoping that the number would be at that time around 120. I guess in drafting it we did not make it clear enough.

Some with the Park Service when we had this discussion last year said that well, 110 is the limit or 110 is the floor, and we never got it clear. That is the reason we have put this back in: to get clarity on what the scientists say we need to ensure the herd.

Ms. BORDALLO. Thank you very much.

Mr. JONES. Thank you, ma'am.

Mr. RADANOVICH. With that we will call our second panel up to address these bills. Mr. Dan Smith, who is special assistant to the director of the National Park Service to speak on H.R. 1521 and H.R. 2055. Mr. Bob Anderson is the acting assistant director for Minerals, Realty and Resource Protection with the BLM on H.R. 1658. Mr. Matt Arnaiz, property owner from Lodi, California to speak on H.R. 1658.

Gentlemen, welcome to the Subcommittee. If you would observe the colored lights in front of you, red means stop, yellow means slow down and green means keep on going. So try to keep your presentation to 5 minutes if you would.

Mr. Arnaiz, welcome to the Committee. If you would like to begin, that would be fine. We will go ahead and hear testimony from everybody and then open it up for questions from members.

**STATEMENT OF MATT ARNAIZ, PROPERTY OWNER,  
LODI, CALIFORNIA**

Mr. ARNAIZ. Thank you, Mr. Chairman, for the opportunity to testify here today. My name is Matt Arnaiz, a resident of Lodi, California. I would like to thank Chairman Pombo for bringing this legislation to your attention.

The legislation before you involves the ratification by Congress of two deeds affecting real property I own. These deeds were acquired by the former property owners from Central Pacific Railway Company and Southern Pacific Railroad. The deeds only involve the railroads' former right-of-way which was obtained through congressional grant in 1862. The railroads, back in 1945 and 1955 respectively, quitclaimed a portion of the right-of-way to the underlying landowners. The property has since been developed with several buildings constructed on the former right-of-way. This bill is necessary because Congress must ratify these types of deeds in order to perfect the railroads' quitclaim deeds in clear title to the property.

The property consists of approximately 450 acres, of which approximately 6.13 acres are affected by the railroad's former right-of-way. This legislation is important as the unratified deeds create a cloud on title to the property, limiting our ability to finance and develop the property. This will cause severe hardship to my family and investors because of the significant time and investment we have in the property.

Right now the property sits as an abandoned tomato cannery, which is a blight on the community. It is intended that the property will be developed for multiple use, including single-family residences, light industrial and warehousing, and commercial and retail office space. It is therefore important that these deeds be ratified by Congress so that we may proceed with the development of the property.

This legislation is identical in nature to previous private laws passed. In 1994 Congress Doolittle introduced similar legislation. On July 5, 1994 Congress passed this legislation and it became Private Law 10-2. The law ramifies numerous deeds from the railroad to private landowners. Such legislation is not uncommon through-

out the western states, for the railroad has ceased to use a good portion of the rights-of-way previously granted by Congress.

I respectfully request your assistance in the passage of this legislation. Thank you for your consideration.

[The prepared statement of Mr. Arnaiz follows:]

**Statement of Matt Arnaiz, Property Owner, Lodi, California**

Thank you, Mr. Chairman, for the opportunity to testify here today. My name is Matt Arnaiz and I am a resident of Lodi, California.

The legislation before you involves the ratification by Congress of two deeds affecting real property owned by my family and friends. These deeds were acquired by the former property owners from Central Pacific Railway Company and Southern Pacific Railroad. The deeds only involve the Railroad's former right-of-way, which was obtained through a Congressional grant in 1862. The Railroads, back in 1945 and 1957, respectively, quitclaimed a portion of their right-of-way to the underlying landowners. The property has since been developed with several buildings constructed on the former right-of-way. This bill is necessary because Congress must ratify these types of deeds in order to perfect the Railroad's quitclaim deeds and clear title to the property.

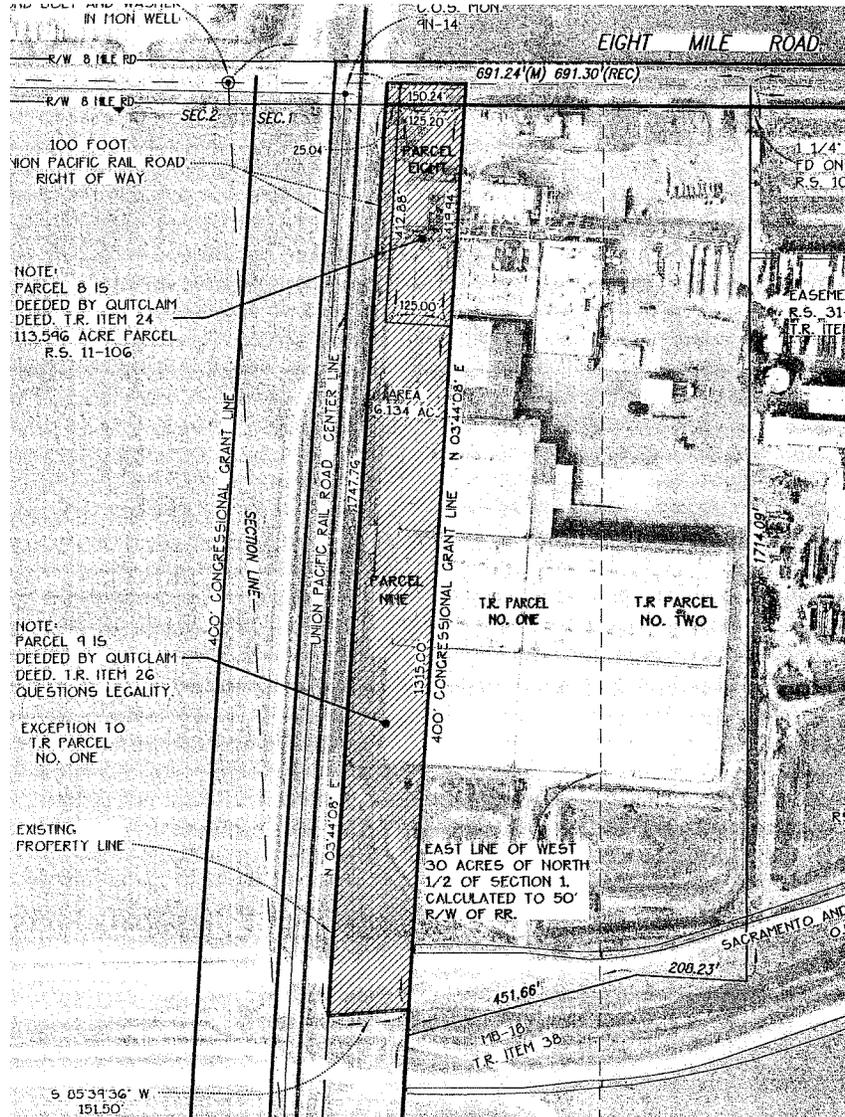
The property consists of approximately 450 acres, of which approximately 7° acres is affected by the Railroad's former right-of-way. This legislation is important, as the unratified deeds create a cloud on title to the property, limiting our ability to finance and develop the property. This will cause severe hardship to my family and investors, because of the significant time and investment we have in the property. Right now, the property sits as an abandoned tomato cannery, which is a blight on the community. It is intended that the property will be developed for multiple use, including single family residences, light industrial and warehousing, and commercial and retail office space. It is therefore important that these deeds be ratified by Congress so that we may proceed with the development of the property.

This legislation is identical in nature to previous private laws passed. In 1993, Congressman Doolittle introduced similar legislation, Bill H.R. 1183, which was ultimately passed on July 5, 1994, ratifying numerous deeds from the Railroad to private landowners. Such legislation is not uncommon throughout the western states, where the Railroad has ceased to use a good portion of the rights-of-way previously granted by Congress. I respectfully request your assistance in the passing of this legislation.

Thank you for your consideration.

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[An attachment to Mr. Arnaiz's statement follows:]



Mr. RADANOVICH. Thank you very much, Mr. Arnaiz.  
 Mr. Anderson, welcome to the Committee. You may address the bills that you are here to speak on.

**STATEMENT OF BOB ANDERSON, ACTING ASSISTANT DIRECTOR FOR MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT, WASHINGTON, D.C.**

Mr. ANDERSON. Thank you, Mr. Chairman and thank you for inviting me to testify regarding H.R. 1658, the private bill to amend

the railroad Right-of-Way Conveyance Validation Act. The Administration has no objection to H.R. 1658.

In 1994 Congress passed H.R. 1183, which was enacted as Private Law-2. The act validated the conveyances of 50 small tracts of land in Nevada County and San Joaquin County, California. The lands involved were originally part of the right-of-way grant of the United States to the Central Pacific Railroad by an 1862 act of Congress. The Southern Pacific Railroad, the successor to Central Pacific, made conveyances of small tracts of land in some of these cases and in others, adjacent landowners have made inadvertent encroachments. Because under the original act of 1862, a Federal reversionary interest existed if these rights-of-way were abandoned by the railroad, the 1994 act was necessary to remove any cloud on the title of these small landowners.

The bill before us today amends the underlying act by adding two additional small tracts in San Joaquin County, California. Based on information provided by the Committee, the parcels in question are at the other end of the city of Stockton, California. According to the master title plat maintained by BLM, these parcels have been in private ownership for nearly a century. We see no conflict in clearing title for these lands through this legislation. As with the underlying act, the mineral estate on these lands is reserved to the Federal Government and these lands are withdrawn from all forms of mineral entry, including mining, sand and gravel, other common materials, and mineral and geothermal leasing.

Thank you, Mr. Chairman, for the opportunity to testify and I would be happy to answer questions.

[The prepared statement of Mr. Anderson follows:]

**Statement of Bob Anderson, Acting Assistant Director for Minerals, Realty and Resource Protection, Bureau of Land Management, on H.R. 1658,**

Thank you for inviting me to testify regarding H.R. 1658, a private bill to amend the Railroad Right-of-Way Conveyance Validation Act. The Administration has no objection to H.R. 1658.

In 1994, the Congress passed H.R. 1183, Private Law 103-2. The Act validated the conveyances of 50 small tracts of land in Nevada County and San Joaquin County, California. The lands involved were originally part of the right-of-way grant of the United States to the Central Pacific Railroad by an 1862 Act of Congress. The Southern Pacific Railroad (the successor to Central Pacific) appears to have made conveyances of small tracts of land in some of these cases, and in others, adjacent landowners have made inadvertent encroachments. Because under the original Act of 1862, a Federal reversionary interest existed if these rights-of-way were abandoned by the railroad, the 1994 Act was necessary to remove any cloud on the title of these small landowners.

The bill before us today amends the underlying Act by adding two additional small parcels in San Joaquin County, California. Based on information provided by the Committee, the parcels in question are at the northern end of the city of Stockton, California. According to the master title plat, maintained by the BLM, these parcels have been in private ownership for nearly a century. We see no conflict in clearing title for these lands through this legislation. As with the underlying Act, the mineral estate on these lands is reserved to the Federal government and these lands are withdrawn from all forms of mineral entry, including mining, sand and gravel, other common materials, and mineral and geothermal leasing.

Thank you for the opportunity to testify. I'll be happy to answer any questions.

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Mr. RADANOVICH. Thank you very much, Mr. Anderson.

Welcome, Mr. Smith, to the Subcommittee. You can speak on the bills that you are here to speak on. Thanks.

**STATEMENT OF DAN SMITH, SPECIAL ASSISTANT TO THE  
DIRECTOR, NATIONAL PARK SERVICE, WASHINGTON, D.C.**

Mr. SMITH. Thank you, Mr. Chairman. Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on H.R. 1521, a bill to provide for additional lands to be included within the boundary of the Johnstown Flood National Memorial in the state of Pennsylvania.

The bill would add seven parcels of land to the boundary of the park to provide permanent protection for resources that are integral to the historic events that took place at this site. Six of the parcels totaling 2.33 acres are approximately three miles from the park in the village of Saint Michael where the former South Fork Fishing and Hunting Club was located. The seventh parcel, comprising approximately 12 acres, is adjacent to the current boundary. Recently a property owner of a .18-acre parcel in the town of Saint Michael has indicated that he does not wish to sell his property. We have provided a revised map to indicate that and Mr. Murtha referred to that.

Land acquisition costs for these six parcels are approximately \$805,000 and all of the parcels that are under consideration are for sale by willing sellers.

The Department supports the President's initiative to address the deferred maintenance backlog and taking care of our current responsibilities. In this instance, however, Mr. Chairman, we are faced with a unique situation concerning the boundary adjustment. The historic structures central to this acquisition have always been considered key components of the park but were to be protected, maintained and interpreted through a public/private partnership. However, the partner can no longer perform this function based on financial problems. For this reason, the Department believes it is appropriate to move forward with this bill at this time.

In 1986 the South Fork Fishing and Hunting Historic District was listed on the National Register of Historic Places at the state level of significance. In 1989 the Park Service and residents of Saint Michael undertook a joint planning effort, which produced the preservation and interpretation plan for the South Fork Fishing and Hunting Club Historic District. The 1889 South Fork Fishing and Hunting Club Historical Preservation Society was formed and as we sit here now, Mr. Chairman, they have tried to perform that partnership with the Park Service to protect these structures.

Unfortunately, the society lacks the resources to continue to continue to maintain the properties they own, let alone preserve and develop them according to approved plans.

In 2001 the National Park Service completed a congressionally mandated special resource study and environmental assessment to evaluate options for protection and interpretation of these additional parcels. Based on that report, the Park Service proposed to add these parcels of land to the boundary of the park and acquire the parcels in fee simple.

Mr. Chairman, if the Park Service acquires these buildings we would explore the option of a public/private partnership to lease these buildings to the private sector for commercial and residential use under our historic preservation leasing authorities that we have. That type of arrangement would reduce the cost of operation

and maintenance to the Park Service, which we estimate ranges between \$75,000 and \$310,000. Also, by providing historic tax credits to someone who would lease this for various types of businesses, like a bed and breakfast or a hotel, we would be able to hopefully have the private sector pick up the rehabilitation costs, which could be upwards of \$2.9 million. This would decrease the financial burden to the Park Service and there has already been interest expressed by local businesses in this type of a proposal.

Mr. Chairman, that concludes my prepared remarks on H.R. 1521. We look forward to answering questions.

Mr. RADANOVICH. You have another bill to speak on?

Mr. SMITH. Yes, I do. The second bill, Mr. Chairman, is H.R. 2055. This bill would increase the number of free-roaming horses at Cape Lookout National Seashore. The Department supports H.R. 2055. These efforts to adjust the number of free-roaming horses within the seashore, and we do offer one technical amendment to clarify the population range of the horses.

The Department is strongly committed to conserving, protecting and maintaining a representative number of horses on the Shackleford Banks portion of the seashore, as we have done in other units of the system. Without this legislation the National Park Service would manage this herd consistent with Public Law 105-229, which provides for a herd of 100 free-roaming horses.

Mr. Chairman, Congress established Cape Lookout national Seashore in 1966. The purposes of the seashore did not include the horses. However, in the GMP that was originally done for this seashore, the Park Service did state that a representative number of horses would remain on Shackleford Banks after the privately owned land on the island was purchased by the United States.

On August 13, 1998 Congress passed Public Law 105-229, an act to ensure maintenance of a herd of wild horses in Cape Lookout National Seashore. Mr. Chairman, that bill is a success story. The director and I had an opportunity to be at Cape Lookout 2 weeks ago, saw the horses while we were there to commemorate the transfer of Cape Lookout Lighthouse to the National Park Service, and the coordination between the foundation of Shackleford horses, the Park Service, and the three professors that Congressman Jones referred to is a wonderful example of how you can manage this type of a herd in a very unique environment.

The NPS continues to work with the foundation under an MOU and management decisions regarding the horses are reached jointly with the foundation and with the advice of scientists. The conclusion reached by these groups recently in October of last year is that the population of the herd should be allowed to fluctuate between 110 and 130 individuals. The range is based on sound science and provides the population changes which are necessary for maintaining the genetic viability of the herd.

Mr. Chairman, that concludes my remarks on H.R. 2055 and we look forward to answering questions.

[The prepared statements of Mr. Smith follow:]

**Statement of P. Daniel Smith, Special Assistant to the Director,  
National Park Service, U.S. Department of the Interior, on H.R. 1521**

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on H.R. 1521, a bill to provide for additional lands to be

included within the boundary of the Johnstown Flood National Memorial in the State of Pennsylvania.

The bill would add seven parcels of land to the boundary of the park to provide permanent protection for resources that are integral to the historic events that the park was established to commemorate. Six of the parcels, totaling 2.33 acres, are approximately three miles from the park in the village of Saint Michael where the former South Fork Fishing and Hunting Club was located. The seventh parcel, comprising approximately 12 acres, is adjacent to the current boundary. Recently, a property owner of a 0.18-acre parcel has indicated that he does not wish to sell his property. We ask the Committee to amend the map reference in the bill to reflect this change of only six parcels being added to the park. Land acquisition costs for these six parcels are approximately \$805,000. All parcels are for sale by willing sellers.

The Department supports the President's Initiative to address the deferred maintenance backlog and taking care of our current responsibilities. In this instance, we are faced with a unique situation concerning this boundary adjustment. The historic structures central to this acquisition have always been considered key components of the park, but were to be protected, maintained, and interpreted through a public-private partnership. However, the partner can no longer perform this function, based on financial problems. For this reason, the Department believes it is appropriate to move forward with this bill at this time.

Johnstown Flood National Memorial comprises nearly 165 acres in western Pennsylvania. The park's mission is to tell the stories of the events leading up to the Johnstown flood, of the flood itself, and of its effects on Johnstown and the nation. The addition of the South Fork Fishing and Hunting Club properties would significantly increase the park's capability to interpret the important events surrounding the Johnstown flood and the individuals associated with it.

On May 31, 1889, a poorly maintained earthen dam breached, sending 20 million tons of water down the Little Conemaugh Valley into Johnstown and other surrounding communities. A 36-foot wall of water rolled over the town at 40 miles per hour, flattening houses, trees, locomotives, and everything else in its path. By the disaster's end, 2,209 people had perished in the flood, another 40 died in the weeks after from typhoid, and property damage was estimated at \$17 million. It was the worst inland flood in the nation's history and the first test of the newly formed American Red Cross, headed up by Clara Barton.

A pivotal part of the story revolves around the South Fork Fishing and Hunting Club, located in Saint Michael, which in 1879 had purchased an abandoned reservoir, repaired the old dam, and created a private lake and recreational area for its members. Because the dam was not properly constructed or maintained, it gave way after heavy rains pounded the area, overtaxing the Lake Conemaugh dam spillway and eventually causing the dam to fail.

In 1986, the South Fork Fishing and Hunting Club Historic District was listed on the National Register of Historic Places at the state level of significance.

In 1989, the Park Service and residents of Saint Michael undertook a joint planning effort, which produced the Preservation and Interpretation Plan for the South Fork Fishing and Hunting Club Historic District. This plan outlined concepts and guidance for basic visitor services, interpretation, cultural resource preservation and maintenance. As a result of the plan, there developed a structured partnership between the village of Saint Michael and the Park Service, designed to protect, maintain and manage the South Fork Fishing and Hunting Club clubhouse and other significant cottages in the historic district. The 1889 South Fork Fishing and Hunting Club Historical Preservation Society was formed to be the principal community body working with the Park Service in the implementation of the plan. Since the original planning efforts, the Society has obtained ownership of the Clubhouse, the Annex, the Moorehead Cottage, and the Brown Cottage. These properties were not originally included within the boundary of the park because it was understood that a local entity could adequately provide for their protection and interpretation.

Unfortunately, the Society lacks the resources to continue to maintain the properties they own, let alone preserve and develop them according to approved plans. The Society is struggling to make mortgage payments, and while they are desperately seeking a solution, the properties are deteriorating and losing historic integrity. In 2000, the Society worked with a private, non-profit historic property development company to try and obtain private sector interest in purchasing the properties, but was not successful. There is an imminent threat to the protection of these resources. The private owner has already listed these historic structures and properties for sale on the open market.

In 2001, the National Park Service completed a special resource study and environmental assessment to evaluate options for protection and interpretation of the

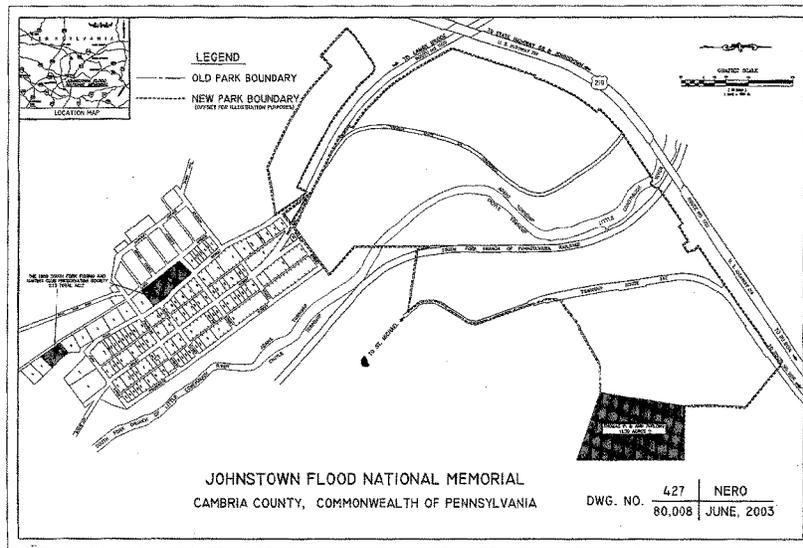
additional parcels of land. Based upon the report, the Park Service proposed to add these parcels of land to the boundary of the park and to acquire the parcels in fee simple. Within the village of Saint Michael, four historically significant properties would be acquired. These structures include the former clubhouse of the South Fork Fishing and Hunting Club, the Clubhouse Annex, and two cottages built by club members. One undeveloped parcel, the Clubhouse Side-yard that sits between the Clubhouse and the Clubhouse Annex, would also be added. The final parcel would protect the historic viewshed of the park, preserving the rural character of the Unger House property (Elias Unger was president of the South Fork Fishing and Hunting Club), owned by the National Park Service.

If the Park Service acquired the historic buildings, we would explore the option of a public-private partnership to lease the buildings to the private sector for commercial and residential use. Through our historic leasing program, the private sector could sign a long-term lease with the Park Service that would cover a portion of the operations and maintenance costs of the properties, which ranges from \$75,000 to \$310,000. In addition, the private sector could rehabilitate the buildings, estimated to cost upwards of \$2.9 million, using private funds in return for Federal historic preservation tax credits. This would decrease the financial burden placed on the Park Service by the addition of these properties to the park. There has already been interest expressed by local businesses in this proposal.

The proposal to add these properties to the boundary of the park has widespread support among the property owners, state and local governments, and the public who attended a public meeting in July 2001 in Saint Michael. Public comments received were unanimous in support of the proposal.

We look forward to working with the local communities in Saint Michael and Johnstown to acquire these historically significant properties that will help tell the entire story of the events of the 1889 Johnstown Flood, from the actions leading up to the flood through its devastating aftermath.

Thank you for the opportunity to comment. This concludes my prepared remarks. I would be glad to answer any questions that you or the members of the Committee may have.



**Statement of P. Daniel Smith, Special Assistant to the Director, National Park Service, U.S. Department of the Interior, on H.R. H.R. 2055**

Mr. Chairman, thank you for the opportunity to present the Department of the Interior's views on H.R. 2055. This bill would increase the number of free roaming horses at Cape Lookout National Seashore.

The Department supports H.R. 2055's efforts to adjust the number of free roaming horses within Cape Lookout National Seashore (Seashore) with an amendment, as stated in this testimony, that clarifies the population range of the horses. The Department is strongly committed to conserving, protecting, and maintaining a representative number of horses on the Shackleford Banks portion of the Seashore, as we have done in other units of the National Park System which contain horses, and believes that the number of horses on Shackleford Banks should be determined by the ecology of the island and by means which protect the genetic viability of the Shackleford Banks horses. Without this legislation, NPS would manage this herd consistent with P.L. 105-229 which provides for a herd of 100 free roaming horses.

H.R. 2055 amends P.L. 89-366 by changing the number of free roaming horses at Cape Lookout National Seashore from 100, to not less than 110, and establishes a target population of between 120 and 130 horses. The bill also changes one of the criteria that the Secretary of the Interior may use to remove free roaming horses from the Seashore, allowing removal as part of a plan to maintain viability of the herd.

Congress established Cape Lookout National Seashore (Seashore) on March 10, 1966. Encompassing more than 28,000 acres of land and water about 3 miles off the mainland coast, the Seashore protects one of the few remaining natural barrier island systems in the world with excellent opportunities for fishing, shellfishing, hunting, beachcombing, hiking, swimming, and camping in a wild and remote setting.

The enabling legislation for the Seashore did not address the issue of free-roaming wild horses on Shackleford Banks. Public comments on the Seashore's 1982 Draft General Management Plan demonstrated widespread concern about, and interest in, the future of the horses on Shackleford Banks. The Final General Management Plan stated that a representative number of horses would remain on Shackleford Banks after the privately owned land on the island was purchased by the United States.

In 1996, following a series of public meetings, as well as discussions with scientists and professional managers of wild horse herds, the Seashore developed an Environmental Assessment (EA) with alternatives for managing the Shackleford Banks horse herd. That plan, while acceptable to the public, was opposed by some groups who rejected the idea of any management intervention. The plan proposed to maintain a representative herd of horses by using a combination of contraceptive drugs and periodic roundups and removal of horses.

On November 11, 1996, the National Park Service (NPS), with assistance from state veterinarians from the North Carolina Department of Agriculture, initiated a roundup of the Shackleford horses. State law required testing the horses for Equine Infectious Anemia (EIA). Out of the 184 horses on the island, 76 tested positive for EIA and were removed to the mainland for temporary quarantine. On the advice of the North Carolina Department of Agriculture, these horses were euthanized.

In December 1996, the NPS established the Shackleford Banks Horse Council, representing a wide variety of interests and stakeholders, as a working committee to assist the park with plans for managing horses. In 1997, a second roundup and testing program was conducted on the Shackleford horses. Of the 103 horses on the island, five tested positive for EIA. By this time, the Foundation for Shackleford Horses, Inc. had secured a state-approved quarantine site and the five EIA positive horses were transferred to it. In the transfer document, the Foundation and the Service committed to develop a long-term Memorandum of Agreement (MOA) to cooperate in the management of the Shackleford Banks horses. On an interim basis, the Service issued a special use permit to the Foundation to allow it to assist with the management of the herd.

On August 13, 1998, Congress passed P. L. 105-229, "An Act To Ensure Maintenance of a Herd of Wild Horses in Cape Lookout National Seashore." This act directed the NPS to maintain a herd of 100 free roaming horses and to enter into an agreement with the Foundation for Shackleford Horses, Inc. or another qualified nonprofit entity, to provide for the management of free roaming horses in the Seashore. In April 1999, a Memorandum of Understanding with the Foundation for Shackleford Horses, Inc. was signed.

P.L. 105-229 requires an annual Findings Report that provides the public with information regarding the population, structure, and health of the horses on Shackleford Banks. Research, monitoring and record keeping, with the goal of informed decisions for removal and immunocontraception, is ongoing, as is consultation with internationally recognized advisors in the fields of equine behavior, genetics, virology, immunocontraception, management, humane issues, and island ecology. The NPS continues to work with the Foundation under the MOU and management decisions regarding the horses are reached jointly with the Foundation and with the advice of scientists.

On October 29 and 30, 2002, the NPS hosted a roundtable meeting with the aim of reaching a consensus on the free roaming horse population range and the strategy for achieving that range. Participants included the Seashore Superintendent and staff, staff from Representative Jones' office, and representatives from the Foundation for Shackelford Horses, Inc. Three leading scientists considered experts in their respective fields also participated: Dr. Dan Rubenstein of Princeton University, Dr. Gus Cothran of the University of Kentucky, and (by telephone) Dr. Jay Kirkpatrick of ZooMontana.

Included in the discussion was the value of occasional herd expansion to maintain genetic variability in the population. The conclusion reached was that the population should be allowed to fluctuate between 110–130 individuals. The methodology of conducting removal and contraception toward this goal was also discussed and agreed upon. The range of 110 to 130 horses is based on sound science and provides the population changes, which are necessary for maintaining the genetic viability of the herd.

Based upon the October roundtable discussion, we recommend an amendment to the bill that is attached to this testimony. We believe that this amendment will more clearly reflect the need to allow the population bloom necessary for maintaining the genetic viability of the herd.

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions you or other members of the Subcommittee may have.

**Suggested Amendment, H.R. 2055:**

On page 2, line 1, delete “with a target population of between 120 and 130” and insert, “allowing periodic population expansion of the herd to a maximum of 130 horses”.

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Mr. RADANOVICH. Thank you very much.

I recognize Mrs. Christensen for any questions you may have.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

I guess I would ask my questions of Dan Smith, the special assistant to the director. This is on the Johnstown Flood bill. Your testimony is that one reason it was fairly urgent for the National Park Service to acquire these properties for addition to the memorial is that the South Fork Fishing and Hunting Club Historical Preservation Society has run into financial difficulties and is struggling to make mortgage payments. However, you also said that a private owner had actually listed the properties for sale.

So who is the private owner and is it the bank which holds the mortgage for the society or is it the society itself?

Mr. SMITH. Mrs. Christensen, I believe the answer to that is it is the society. They actually went to a developer and tried to package it and sell it. This was in a 2000-2001 timeframe. They were not successful. Currently the society does hold the mortgage. They actually, quite truthfully, are waiting to see what happens with this legislation, if this is going to be the way that this will be resolved. It is that society trying to find a way to handle this situation where they just do not have the finances to continue it, but it has not been repossessed by the bank; the society still does hold title to these properties.

Mrs. CHRISTENSEN. And also, since they have not been successful in the public/private partnerships to lease and rehabilitate the buildings, are we also assuming that should this go through and the National Park Service were to manage it, that they would be in a better position to forge those public/private partnerships?

Mr. SMITH. We would hope so. There is no guarantee, Mrs. Christensen. However, the difference would be the Park Service would own the fee simple and these would be long-term, very

attractive leases, including to allow for the historic tax credit that is used for billions of dollars of this type of effort around the country.

This major building was used as a hotel for most of this century until it did come into the society, so locally we do understand from the superintendent that under the historic leasing program there is a possibility someone would take that on, not with the actual ownership, but with a very conducive long-term lease.

Mrs. CHRISTENSEN. On H.R. 2055, the Cape Lookout horses, how would you rate the health of the herd?

Mr. SMITH. In conversations just Saturday 2 weeks ago with both the biologist who actually is there and the superintendent, the herd is right now about 119 horses. That was the last accurate count in January of this year. They reduced it from 131.

The herd is very healthy. There is no sign of any of the equine viruses in them. This plume that has been discussed seems to be the exact thing to work. They lost a few in hurricanes in the late 1990's. They lost one just recently, a wonderful mare, because she was tangled up in fishing equipment. But with all of those types of things that do happen where you do lose horses here and there, it is a very healthy herd. And it has to be one of the most studied herds in the country, with these three wonderful doctors who Congressman Jones said just pay so much attention to them. Very healthy, 120 plus or minus herd right now.

Mrs. CHRISTENSEN. Great. Any damage to the park from wild horses and if so, has the park taken any specific measures to avert that, or not a problem?

Mr. SMITH. Actually in discussions yesterday with again this local biologist, the horses kept at this number seems to work wonderfully on that 3,000-acre coastal barrier. Part of that is because earlier in the 1980's all the other feral animals—the pigs, the cows, and whatever—were removed and now that the horses have that free range, all the ecology of the grasses and all that seems to be working absolutely wonderfully and the park has no problem with it at all.

Mrs. CHRISTENSEN. Thank you.

Thank you, Mr. Chairman.

Mr. RADANOVICH. Thank you, Mrs. Christensen.

I now recognize Mr. Pombo for any questions.

Mr. POMBO. Thank you, Mr. Chairman.

I wanted to welcome my constituent, Mr. Arnaiz, here today. I know that when this started several years ago you had no idea it was going to take an act of Congress to solve this problem. I welcome you here and hopefully we will be able to move this and remove any doubt or cloud that exists. Thank you for being here.

Mr. Anderson, I wanted to ask you a question. In reviewing your testimony you bring up the 1862 act and you state that the 1994 act was necessary to remove any cloud on the title of the small landowners. Can you explain a little bit to me how the 1862 act is referenced in this case in light of the bill that you are testifying on today?

Mr. ANDERSON. Well, in the 1862 act that was a transfer of property to the railroad companies, who in turn had the right to sell those lands to others within the railroad.

Mr. POMBO. Let me stop you right there. The 1862 act partially was the right-of-way that was given to Central Pacific, in this case Central Pacific. The odd sections were treated differently than the right-of-way itself.

Mr. ANDERSON. Well, there were different types of railroad acts and this particular one did not offer the checkerboard or every-other-section opportunity that—

Mr. POMBO. So it is just the right-of-way.

Mr. ANDERSON. Yes, that provided so many feet from the center line of the railroad a grant that was—

Mr. POMBO. 200 feet on either side of the center line of the railroad?

Mr. ANDERSON. That is right.

Mr. POMBO. And it did not allow them to sell that right-of-way.

Mr. ANDERSON. That is right. If they failed to use that right-of-way for railroad purposes—

Mr. POMBO. It was to revert back to the adjoining property owners.

Mr. ANDERSON. Right.

Mr. POMBO. Now how in the case of 1658, how does the original generic act come in in that case?

Mr. ANDERSON. Well, you had some encroachments into the right-of-way by folk and I am sure it was unbeknownst to the railroad at the time. I am not sure how that happened but there were encroachments and they were conveyed to these adjacent landowners.

Mr. POMBO. So because—and I remember the last time that we did this—because there were places where towns grew up, things got built that were closer than within that historic right-of-way, it became necessary for Congress to quitclaim or to give clear title to those property owners who happened to be within those areas.

Mr. ANDERSON. Yes, that was provided for in the 1922 act that said that Congress must ratify any of these sales that have been made by the railroad company.

Mr. POMBO. So the 1922 act is what requires us to act on every single one of them.

Mr. ANDERSON. That is exactly right.

Mr. POMBO. Thank you very much, Mr. Chairman. Thank you.

Mr. RADANOVICH. Mrs. Bordallo, did you have any questions?

Ms. BORDALLO. Thank you, Mr. Chairman. I have one for Mr. Smith on H.R. 1521.

This community of Saint Michael, what is the historical significance of this community and is it a visitor destination in the state?

Mr. SMITH. Congresswoman, it would be a visitor destination because it is immediately adjacent to where the Johnstown flood occurred. The lake that was contained by the dam is located at Saint Michael. So in the late 1800's it was a resort for the very wealthy from Pittsburgh to come up and recreate in this wonderful hill country of Pennsylvania and today it does have a mixture, as I understand it, of antique shops, bed and breakfasts, and that type of thing, so it is a destination.

And, as Congressman Murtha said, the 150,000 to 160,000 people who visit the Johnstown Memorial site each year, that is actually

the town that they are in. The flood occurred much further down the river in Johnstown.

Ms. BORDALLO. I was going to ask that question. Were there any casualties or fatalities in Saint Michael itself?

Mr. SMITH. None that I am aware of. Basically the dam breached at the lower end of the town and it just flowed out. It was amazing how fast. I think the engineer onsite there said whatever the huge volume of water was emptied out within several hours but no, there was nothing there.

The significance of this is these are the homes and the actual buildings that were associated with that club that maintained this lake, so it has that significance to the memorial.

Ms. BORDALLO. Thank you. Thank you very much.

Then I have one on H.R. 1658, on the railroad, for Mr. Anderson. How many grants from Congress to the railroads over the years have been reverted to Federal ownership?

Mr. ANDERSON. I do not know, ma'am, but we conveyed or testified in 1994 about 40 other parcels and under this particular scenario they were ratified by Congress, parcels like the ones that we are talking about today.

Ms. BORDALLO. There are more tracts that have been turned over to private hands than—

Mr. ANDERSON. Yes, there were 40ish.

Ms. BORDALLO. Forty. Are there still more to come?

Mr. ANDERSON. That is a good question. I do not know.

Ms. BORDALLO. Maybe we ought to just recognize everything that is left over and say that whatever comes in the future that it be turned over to private hands, if they so desire. I am just thinking. Is there still quite a bit of land that would have to come through Congress?

Mr. POMBO. If the gentlelady would yield, there are hundreds if not thousands of properties that could possibly fall into this same category. The original grants that the railroads had in the 1862 act, what was given to the railroad was a right-of-way. It is surface right-of-way. They do not have any subsurface rights and if they ever give up the right-of-way for railroad purposes, it is supposed to revert back to the adjoining property owners, who historically had that property or through succession ended up buying that property.

This has been an area of some controversy throughout the West because there were a number of right-of-ways that were given to railroads that have since become abandoned and there is a cloud over who actually owns those properties. The 1862 act said that once they gave it up it reverted back to the property owners. Some of the railroads have tried to maintain that right-of-way, to maintain some kind of ownership, even though they abandoned it. Some communities have tried to go in and buy those from the railroad either as a recreational trail or a transportation corridor. So there is some controversy over this.

With Mr. Arnaiz's case it is just someone who, because either the railroad moved or the property was developed into that right-of-way, it became in dispute as to who actually owned that land.

If you go back and actually look at the 1862 grants, it is not really specific where the original right-of-way was and in a lot of them,

and I have spent a great deal of time going through these, it says that the railroad has a right-of-way that is 200 feet on either side of the track, but it does not say exactly where the track was. So if they straightened out the railroad or moved the track one way or another, a property like this could end up all of a sudden being within that 200 feet center line and it may not have been originally when the railroad went through there.

Ms. BORDALLO. I see.

Mr. POMBO. So there is some controversy around it.

Ms. BORDALLO. But a precedent has been set.

Mr. POMBO. Yes, we dealt with these—

Ms. BORDALLO. That is what I am saying. Once a precedent has been put in place I feel that for the future if we have to go before Congress—so it has to be case by case? Is that what you are saying?

Mr. POMBO. Yes. Apparently because of the 1922 act, we have to deal with every one of these individually.

Ms. BORDALLO. Right. Thank you.

Thank you, Mr. Chairman.

Mr. RADANOVICH. Thank you.

Mr. JONES?

Mr. JONES. Thank you, Mr. Chairman.

Mr. Smith, I appreciate the work you did a few years ago on this bill and also the position of the Park Service. I want to read a statement that I have submitted from Dr. Dan Rubenstein, genetic scientist at Princeton, who the Committee might be interested to know that for the last 30 years he has been taking 25 or 30 students to sleep out on the Shackelford Banks and study these horses. Actually, Dr. Rubenstein was featured on the Discovery Channel about four or 5 years ago, the Peter Graves show, about all this fine work that he has been doing.

Mr. Smith, the question that I want to read, part of a statement that Dr. Rubenstein writes in this letter, which again I am submitting, he says, "By supporting the goal of managing numbers to remain close to 120 yet also allowing the population to periodically bloom to 130 so that successful genes could occasionally increase in frequency and spread through the population before numbers are again reduced." Your technical amendment would not alter what Dr. Rubenstein believes needs to be done to ensure the diversity of this herd?

Mr. SMITH. Mr. Jones, I do not believe so. Basically it would just delete the current bill "with a target population of between 120 and 130" and instead would insert "allowing periodic population expansion of the herd to a maximum of 130."

My interpretation of this, which I would get on the record, is that we are talking about 110 to 130 horses. Obviously 120 is right in the middle. It is a technical amendment and certainly if the doctor had trouble with that, it is just offered as a technical amendment. It just did not peg it—I think everybody understands 120 probably is the optimum number but you need allowances on top of that.

Mr. JONES. Well, I trust you. We had kind of a fight for this bill back in 1997, as you well remember, because you were on the staff then.

Mr. SMITH. I vaguely remember, Mr. Jones.

Mr. JONES. But this concern that Rubenstein has about allowing the bloom, so to speak, you do not see that your amendment would restrict what he thinks is necessary for the science to adequately assure the future of the herds?

Mr. SMITH. I do not, Mr. Jones. And again, as you review that and go back to the good doctor, it is offered only as a technical amendment and certainly it does not jeopardize the Department's support of the bill whichever way it ends up in the final legislation.

Mr. JONES. Thank you and the Department for your support.

Mr. SMITH. You are very welcome, Congressman.

Mr. RADANOVICH. Are there any other questions of the panel?

All right, that being the last panel, this concludes our hearing on these three bills. Gentlemen, thank you very much for your testimony and this concludes our hearing. Thank you very much.

[Whereupon, at 2:50 p.m., the Subcommittee was adjourned.]

[A letter submitted for the record on H.R. 2055 by Carolyn Mason, President and Chairman, Foundation for Shackleford Horses, Inc., follows:]

*Foundation for Shackleford Horses, Inc.*

P. O. Box 841, Beaufort, NC 28516-0841

20 June 2003



Walter B. Jones  
Member of Congress  
422 Cannon House Office Building  
Washington, DC 20515

Dear Congressman Jones:

I am honored to forward our support for your proposed legislation to amend the Shackleford Banks Wild Horses Protection Act.

Since the new management guidelines are based on sound scientific recommendations provided by two of the top equine scientists in the nation, Dr. Gus Cothran, Director, Blood Typing and DNA Laboratory, University of Kentucky and Dr. Daniel Rubenstein, Director, Department of Ecology and Evolutionary Biology, Princeton University, the Foundation for Shackleford Horses, Inc. will work diligently to help manage the Shackleford herd in accordance with these guidelines.

As you know, Dr. Cothran found a very old genetic variant, Q-ac, several years ago while blood typing the Shackleford horses. In the fall of 2002, at a meeting scheduled by the National Park Service and which included representatives of the park, the Foundation, Dr. Rubenstein and Dr. Cothran, Dr. Cothran announced that recently, while working on parentage verification using herd blood samples, he discovered a previous undocumented genetic variant in the Shackleford herd. He described the discovery as an historic moment for himself, as discoverer, and for the wild horses that carry the variant.

We commend you for your foresight in introducing the original legislation and for this amendment which will help ensure protection of this scientifically important old line of horses. We sincerely thank you for helping preserve this rare and living part of the history and cultural heritage of our state and country.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Mason". The signature is written in dark ink and is positioned above the typed name.

Carolyn Mason, President & Chairman

