

PROPERTY RIGHTS FOUNDATION OF AMERICA, INC.

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The right to own private property is a fundamental American freedom that guarantees personal liberty and promotes economic prosperity.

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Testimony
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Before the
Committee on Natural Resources
U.S. House of Representatives

In Opposition to
H.R. 4003
Hudson River Valley Special Resource Study Act

January 21, 2010

Thank you for the honor of testifying today at the hearing of the Committee on Natural Resources on H.R. 4003, the Hudson River Valley Special Resources Study Act. My name is Carol W. LaGrasse, president of the Property Rights Foundation of America, a voluntary, non-profit, educational organization. We are national in scope, while based in Stony Creek, New York. I am a retired civil and environmental engineer. Stony Creek, where I reside, is located on the Hudson River, about 25 miles north of the northerly edge of the portion of the Hudson River under study. The town is located in the watershed of the Hudson River and an important part of the town's land is located in the Hudson River Valley. The southern boundary of the Town of Stony Creek, where I reside, is the northern boundary of Saratoga County, which is entirely included in the study area. This is about six miles from my home.

Deception

The first comment that should be made is that, on its face, the bill's title is deceiving. The wording of the bill conflicts with the title, Hudson River *Valley* Special Resource Study Act. The bill's study area pertains to "any relevant sites and landscapes within the *counties* in New York that abut the area described in subparagraph (A)," which area "means the portion of the Hudson River from Rodgers Island in Fort Edward to the southern-most boundary of Westchester County, New York." (Sec. 2 – Definitions)

So the bill actually encompasses sites and landscapes within *the entire area of twelve counties*.

Abutting the east side of the Hudson, from north to south, are the following counties (with their 2008 populations):

Washington (62,804)
Rensselaer (155,261)
Columbia (62,006)

Dutchess (292,878)
Putnam (99,244)
Westchester (953,943)

Abutting the west side of the Hudson are these counties:

Saratoga (217, 191)
Albany (298,130)
Greene (48,992)
Ulster (181,670)
Orange (377,647)
Rockland (298,545)

The total population of these twelve counties is 3,050,311.

These counties are also included in the New York State Legislature-designated (1991) Hudson River Greenway which has been administrated in the State Executive Department and is now administrated by the State Department of State and also in the Congressionally designated (1996) National Park Service Hudson River National (“American”) Heritage Area. The latter designation was a project of Rep. Maurice Hinchey, the author of the National Park study bill that is the subject of this hearing. The proposed National Park study area and the National Heritage Area include the part of the Catskill Forest Preserve in Ulster and Greene Counties that was excluded from the Greenway.

The negative impact that could be ultimately precipitated by this study bill is hair-raising. If the results of the study were to be presented in language as deceptive as that in this bill, and, as a result, the goal of the study were sold to the Congress, and the study were to precipitate legislation to create a Hudson River “Valley” National Park of the boundaries so defined, enclosing these twelve counties, the expansion of the initial National Park lands within all these counties could be boundless. The initial National Park, which would likely be a conglomeration of lands that are now owned by the state, federal government, local municipalities, and non-profits, could likely expand to gradually encompass much of the land in these twelve counties. The result would be devastating.

Another key deception in the bill is in the description of the significance of the Hudson Valley to the nation in the statement in Sec. 3, paragraph (5):

“Throughout history the Hudson River Valley has played a central role in the development of our nation, starting from the vibrant Native American communities that first inhabited the land, to Henry Hudson’s voyage up the river later named for him in the vessel Half Moon in 1609 and later with the American Revolution, the debate on our Constitution, the first successful steamboat voyage by Robert Fulton in 1807, the Industrial Revolution, and the modern labor and environmental movements.”

This and other wording in the bill are enviro-speak. Any schoolchild learns that the Hudson River-Erie Canal route from Buffalo to New York City comprised a great commercial corridor that made possible the growth of New York City to become the greatest city in America, and even, many believe, the world. The bill makes no mention of that preeminent commercial significance of the Hudson River! How could that all-important value of the Hudson be omitted in the bill’s summary of key areas of importance of the Hudson River Valley?

How could the bill overlook the significance of the Hudson River Valley in respect to its momentous importance that, once the Erie Canal was completed in 1846 and the Hudson River could transport cattle and grain from the Midwest through Chicago and the Great Lakes to New York City, the City’s growth outstripped Boston and Philadelphia and it became the great commercial hub that it remains today?

I suspect that there is a method to this deception. Instead of thinking of the Hudson River as merely a trace of a by-gone war, a place of habitation of Native Americans, the location of a voyage of a very important sailing vessel in 1609 and a single important steamboat voyage in 1807, a place of some undefined role in the Industrial Revolution and the modern labor and environmental movements, if the public and the Members of Congress were to think of the mighty Hudson as the commercial spine that made New York State into the Empire State, it would be obviously peculiar to want to diminish this great river, which has served the people of New York and the nation so well, to the mere status of a reservation, a National Park, at that. To obtain passage, this bill must be presented deceptively.

I've examined enough federal and state government studies to know that it is commonplace that those who carry out the study invariably understand the agenda of the commissioning agency and **create** results that satisfy, even promote, this agenda. So I am comfortable in stating that, if enacted, the study will be designed to bolster the preconceived conclusion that National Park status would be justified for the Hudson River Valley.

The bill repetitively indicates the study's desired agenda for the park by its stream of references to aspects of the region that could be "studied" to argue for preservation and by the bill's lack of balanced references to innumerable facts of the type that would weaken arguments for preservation and which far outweigh the information sought by those who seek to commission the study. In addition, and importantly, the bill lacks a requirement of an accurate overview of the current social and economic character, the economic and cultural heritage of the region, and the potential economic and social impact of preservation on the localities. No mention is made of the requirement for a study of tax impact. These are all indications of the bias inherent in the bill that apparently states an agenda that is to be translated into bias in the ultimate study.

Potential Negative Impacts of Designation of the Hudson Valley National Park

In July 1994, when I was, along with Lee Ann Deak, the first person to testify in Congress against a National Heritage Area, I never dreamed that, a mere sixteen years later, the proposed Hudson River National Heritage Area would be under consideration for study for National Park status. It I had even hinted at such an outlandish idea, I'd have been laughed out of the hearing room.

After all, not only was the magnitude of the then-proposed National Heritage Area far larger in extent and population than any Park Service administrative unit, but the whole idea of National Heritage Areas was to create public-private "partnerships" for landscape preservation, to restore the beauty and natural attribute of these corridors without the federal government engaging in unaffordable land acquisition or having to manage large administrative units. The bill under consideration today represents a repudiation of the National Heritage Area designation, and a betrayal of the trust of local people and local government officials extended to the proponents and the National Park Service back in 1994 through 1996 when the Heritage Area was debated and Rep. Jerry Solomon was forced to drop his opposition.

But what would be the impact of converting the Hudson Valley Greenway to a National Park?

First would be the designation of certain existing state, federal, local government, and non-profit sites and lands as part of the National Park. The tax status of some of these properties would change. Where the properties are presently taxable, that revenue would be lost. In the case of properties that are currently exempt from local real estate taxes, such as some state parkland, the potential to place these lands on the tax role would be lost. The same effect would relate to lands owned by non-profit land trusts and lands owned by religious entities, as it is likely that some of the owners of these would consider converting their lands to National Park status. However, for the latter, the effect would be merely the loss of potential future local revenue, whereas for the former, the loss of exiting tax revenue would be immediate.

The bill makes no mention of the framers' intent for the Catskill Forest Preserve, which comprises a total of 281,000 acres (latest acreage available in the state's 2006 Open Space Plan), in the Hudson River counties of Greene and Ulster and, outside the proposed National Park, in Delaware and Sullivan Counties.

According to statute, the State of New York has paid real estate taxes to localities, including school taxes, since the inception of the Forest Preserve over a century ago. If these lands were to be transferred to the National Park Service, the federal government would not pay real estate taxes.

Last year, New York State Governor David Paterson proposed capping state tax payments to localities on Adirondack and Catskill Forest Preserve land at current levels. The economic impact would have been deadly, considering the high proportion of land owned by the state in many towns. The governor withdrew his proposal, to the great relief of localities.

In addition, in several of the counties, New York City owns significant lands surrounding its massive reservoir system on both sides of the Hudson, and has been acquiring lands and interests in lands along waterways that feed its reservoirs. Would these lands also be ultimately transferred to solidify the holdings of the National Park Service? The City currently pays taxes on local real estate assessments. These revenues would be lost.

It may be argued that the Congress will establish payments in lieu of taxes (PILOT's). The day would then arrive when local economic insecurity and arguments on both sides would likely center on what level of federal PILOT's should be bestowed on localities, as PILOT's become out of date or are tied to parameters that fail to generate significant revenue to localities.

It should also be kept in mind that title to waterfront properties along the Hudson is being inexorably moved into the public domain and ownership by non-profit land trusts, with the accompanying shift in taxes and increase in valuation resulting from appraisals that take into account land sales that respond to other, non-arms length purchases. In addition, certain areas, such as Putnam County, are being pressured with excessive state, city and non-profit ownership, to the degree that remaining land is scarce, taxes are high, and the elderly and moderate income people who historically lived in the area are under pressure to sell and leave. National Park status for the Hudson Valley would exacerbate this already difficult situation.

Furthermore, as land that would have been developed is transferred to the National Park Service, the tax revenues that these lands would have generated when homes, businesses, and other real property assets were developed would be foreclosed.

Ultimately, the shift in land ownership to the National Park Service would have an even broader economic and cultural impact than the loss of tax base. As land is foreclosed from development, the future would be cut off and the growth and flourishing of the vast twelve-county region would be stunted.

The Adirondack so-called park, a region including all or parts of twelve counties, and established in 1973 as a "partnership" of government and private land, and heavily regulated by a governor appointed commission, has parallels that may help to indicate the course of the future for a Hudson Valley National Park in 37 years. The state steadily acquires land, so that half of the six million acres of land are now state-owned as constitutionally protected "forever-wild" Forest Preserve, where timber cannot be harvested, just as in a National Park. In addition, the state has over very recent years, acquired 700,000 acres of conservation easements.

Over the years there has been a steady exodus of young people from the region. Park residents average just under 43 years of age, older than any state for median age. By 2020, only the west coast of Florida will exceed the Adirondacks as the oldest region in America. Houses have become unaffordable for the ordinary people. Only 7 park communities have complete cell phone coverage. Jobs are scarce. The school enrollment has declined by thirty percent, while teachers have increased by 34 percent. A study entitled, "Adirondack Regional Assessment Project," published in 2009 by the Adirondack Association of Towns and Villages, documented the economic and social trends for the Adirondack Park, which is comprised of 101 towns and villages.

If environmental preservationists who determine policy at the National Park Service obtain free range over the twelve counties defined by the proposed study, the results over ensuing decades are likely to parallel those seen for the Adirondack region.

Access to Privately Owned Land

The National Park Service has a history of interfering with established legal access to private property. Owners of lands that are legally accessed through New York City's watershed lands are already subject to challenges by the legal office of the City's Department of Environmental Protection. The treatment of these property owners would likely become more difficult for them under National Park Service ownership of City watershed lands.

Imagine the potential number of property owners whose legal access would be negatively impacted if the National Park Service acquires properties now owned by the City of New York, local municipalities, the state, and non-profits.

It took a nationwide movement to overcome the National Park Service's tactic of blocking access to the property of the Pilgrim family in the Wrangle St. Elias National Park in southeastern Alaska in 2003. The family was threatened with police action by the National Park Service because they bulldozed an old right-of-way to bring supplies to their 400-acre homestead. The campaign by grassroots activists in Alaska and the Lower Forty-eight faced down the National Park Service.

I got to know Steve Hicks because of the treatment of him by the National Park Service. Mr. Hicks, who is a historic landholder with property accessed via the road through Denali National Park in Alaska, was blocked by the National Park Service from reaching his land unless he had a permit. One day he drove on the road to his property when the National Park Service permit office was closed. The Park Service pursued him to his home in Montana and arrested him, then took him in leg irons back to Alaska for trial. The Park Service's interference with access to historic mine holdings in Alaska is well documented and has been the subject of Congressional involvement.

Heavy Handed Land Acquisition

The National Park Service says that it acquires land from "willing sellers" rather than condemning the land by using eminent domain. One man, the late Bo W. Thott of Cutler, Maine, challenged this assertion at considerable personal expense by doing a study of the willingness of people who sold to the Park Service. His study was mailed to 1,130 landowners on the list of sellers provided by Park Service in response to his freedom of information request, including no eminent domain cases, and was completed in 1993.

He tabulated the check-offs and comments of the 404 respondents. In reply to the question of whether the sale was "voluntary," 264 responded "yes," and 116 responded "no," with one response unclear. However, many who checked off "yes" that they had signed on the dotted line of their own will took the view that they wanted to keep their land. One respondent in Florida wrote, "The sale was voluntarily (sic.), this time, because I knew that the land acquisition office would push me and keep on pushing me till I sell. It happened to me before, and I learned that at the end I must sell. So this time I sold entirely voluntarily..."

Mr. Thott's long list of sellers' verbatim comments is a veritable indictment of the National Park Service's hard-fisted land acquisition technique.

He published a two-part conclusion to his study, the first part entitled "The Power of Eminent Domain."

He referred to one seller who received a certified letter (which he attached in an appendix) from Dolores A. Denning, Chief, Purchasing and Relocation Division, the National Park Service, which stated,

“Our schedule does not permit us to defer or delay negotiations indefinitely. Therefore, we are requesting an early response relative to consummating this acquisition. In the event we have no response from you within fifteen (15) days of your receipt of this letter, we will assume you have rejected our offer. It will then be necessary to initiate acquisition by eminent domain procedures and have a Federal Court determine the compensation to which you are entitled.”

This man wrote in response to the Thott study, “I did not agree to sell on the first call but talked to my lawyer—it’s hard to buck the government so I sold. I had feelings for this land beyond its material worth.”

Mr. Thott’s study covered landowners distributed all over the country. One relatively recent example of the heavy hand of the National Park Service to build a new National Park, in this case the Cuyahoga National Recreation Area, became the subject of an acclaimed *Frontline* television segment by Jessica Savitch. A number of homes that were not burned to the ground became National Park Service facilities.

Eradication of Homes for the Cuyahoga Valley National Recreation Area.

Authorized in December 1974, the Cuyahoga Valley National Recreation Area is an example of the Park Service’s egregious treatment of landowners to establish a National Park. Martin Griffith’s bitter comments on the National Park Service’s destruction of homes to make way for the park appeared in the December 2009 issue of the “Community News” of Peninsula, Ohio:

“At the inception of the Cuyahoga Valley National Recreation Area, oops, National Park, lots of promises were made including the one about 26 to 30 homes being taken. We were also promised that tourism would create an economic watershed. The local private property owner resident tax payer pays for all services, roads, rescue, fire, school, library, etc. . .

“The park service more than kept its promise. They took close to 400 homes, not 26 to 30, and our township lost 80 percent of its tax base. The visitor figure they give out is actually the population of NE Ohio. . .”

Mr. Griffith wrote in December 2008 about the true legacy of Congressman John Seiberling, who was honored in the *Bath Country Journal* with an article entitled “The Legacy of John F. Seiberling” for the enactment of the Cuyahoga Valley National Recreation Area.

“Those of us who live in the valley will not forget the anguish and suffering that came with the condemnation of their homes.

“When plans for the park were announced, Congressman Seiberling said that no more than thirty homes would be taken, primarily along the river.

“Almost 400 homes were taken out of about 650 homes and several homeowners died shortly after losing their homes. Boston Township lost eighty percent of its tax base, and is still struggling financially.

“To many of us, that is his legacy.”

Neither the Park Service nor the Congressman kept their promises. Their legacy was that the homeowners were betrayed by the crudest imposition of eminent domain.

When I visited Peninsula in Boston Township, Ohio, in 1997, I photographed the few remaining once prideful homes that became National Park Service facilities.

I asked the person welcoming tourists to the National Park Service visitor center (previously an architect-designed private home) in Peninsula, which had many exhibits about the park, whether they had exhibits showing the families whose homes were condemned by the National Park Service to create the new park. She was dumbfounded. The “Community News” often contains reports on the town’s ruminations about how to

meet its budget without cutting services further. One issue contained a plea for support for the school budget, because the local Woodridge School was in danger of disappearing.

Park Service Leveled Suburban Homes by Eminent Domain for Indiana Dunes National Lakeshore

An official National Park Service directory contains this entry for the Indiana Dunes National Lakeshore:

“Dunes rise 180 feet above Lake Michigan’s southern shore with beaches, bogs, marshes, swamps, and prairie remnants as other natural features. Historic sites include an 1822 homestead and 1990s family farm...”

A different side of the story was told by Joanna Waugh, the founder of Stop Taking Our Property, in the January 1991 “Land Rights Letter,” a nationally circulated newsletter that was published by Ann Corcoran of Sharpsburg, Maryland:

“This history of the Indiana Dunes National Lakeshore can be summed up in a word—expansion. Since its inception in 1966, the Lakeshore has absorbed 700 homes and 14,000 Porter County, Indiana, areas in three expansion bills which came regularly in 1976, 1980 and 1986.”

Writing for her organization’s local publication, “STOPaction,” in 1993, Ms. Waugh pointed to the unscrupulous callousness by the National Park Service toward local communities:

“On November 6, 1992, the National Park Service conducted an ‘open house’ to discuss revision of the IDNL management plan. Of particular interest to the NPS is development of the ‘east unit’—which happens to be the Town of Beverly Shores. Of all the Indiana dunes communities, Beverly Shores has suffered the most at the hands of IDNL creation and expansion. For some time, the entire town was slated for acquisition. As it now stands, over 700 homes have already been taken—even though property owners there were promised exemption from condemnation in the early days of park formation. The NPS now plans to increase park visitation by developing more beach access in Beverly Shores and new bike/hike trails...”

When the National Park Service builds new parks, the future of the community is effected as though war were waged against it. Unlike the wasteland of weeds that is the neighborhood where Suzette Kelo’s house once stood in New London, Connecticut, where the City infamously destroyed a neighborhood by eminent domain, the National Park Service has access to unlimited funds to expand its empire of natural areas and narrowly selected historic structures and to pretend to “restore” the land to an idealized, yet “original” and “natural,” but unreal, landscape.

The bill has a caveat that the study should “examine other park models, particularly national recreation areas, as well as other landscape protection models that...protect and respect rights of private land owners.” (Sec. 4)

This is fine irony. Legally, eminent domain “protects and respects” the rights of private property owners and is constitutional, but it is a horror to the property owner and to the community. The clause in the bill is meaningless as a protection for the property owner, for families, for communities, and for the local culture and economy. A flat prohibition against eminent domain, of course, would never allow the heavy handed, fast destruction of homes and communities necessary to accomplish the Park Services agendas.

Potential for Future Expansion of the Hudson Valley National Park

When the Hudson River Greenway and the Hudson River National Heritage Area were enacted, both were bounded on the north by the area of Saratoga National Historic Park in Stillwater. After President Clinton created the American Heritage Rivers initiative by executive order, Governor George Pataki nominated the Hudson River to become an American Heritage River in December 1997 and the President’s executive order

followed shortly. But, hidden from the local populace to the north during the time it was under consideration, the American Heritage River designation extends for the entire length of the Hudson to its origins in the Adirondacks. Although this designation has not been an active program, the expansion of the idea of the Heritage River to the full length is indicative of another potential negative impact of the proposed study for the Hudson River Valley National Park. As illustrated with the Park Service's treatment of the Cuyahoga River and the Indiana Dunes parks, boundary expansions are part of the normal course of events.

Because of the unprecedented large area of twelve counties encompassed by this bill, there will be no requirement to go back to Congress when the National Park Service intends to add new sites or land areas to the properties owned by the federal government within this vast region. If the Congress goes through with the unrestrained intentions of this bill, it will have waived its legislative authority to create National Park Service administrative units, because undoubtedly the area would enclose a number of separate sites and landscapes that could be administrative units.

(At least for many years, there would be many disconnected sites. The question should be asked, is the intention to ultimately make one grandiose National Park, leaving the cities intact, but leaving only islands of privately owned property and existing communities in the rural areas, as appears to be the direction intended at least since 1989 in the Adirondack Park?)

What's next? An entire state to become an administrative unit? An administrative unit so large that the Park Service will have been bestowed such authority over the American landscape as to include at its discretion unlimited numbers of potential normal administrative units and insulate the Park Service from historic congressional legislative action whereby administrative units re-enacted?

At what point would Congress have unconstitutionally delegated its power to enact National Parks to the National Park Service?

Overview

Even without ultimately creating a single grandiose National Park encompassing the majority of the land contained in twelve counties, the jurisdictional impact of adding the vast bounds of the Hudson Valley National Park to the National Park Service's administrative units would be monumental—the capacity to interfere in local government by affecting the tax base, to prevent access to private land, to acquire land by condemnation, and ultimately the negative impact on the economic future and culture of the region as the park takes effect.

The negative potential implications of this undefined, ill-thought, unbounded potential national park, as outlined in the bill to authorize a study argue to reject the “Hudson River Valley Special Resources Study Act.”