Be loud about our love,
Put passion in your dove;
Shoot your best shot!

Trivial sparks make profound fires,
Teenage crazes light
Big social blazes;
Tiny innovations shape
The spirit of sluggish nations;
The greatest generation
Still waits to take the stage;
Against pain and greed
Wage a new breed of rage.

Combat sneaker boots,
T-shirt uniforms—
The battlefield is everyday;
Go for the ultimate victory
Fighting the Hip-Hop way!
Be loud about your love!

Draft your hottest hormones,
Recruit ancient instincts,
Mobilize mistreated manhood,
Make rivers of sweat
But let it always be sweet.

Shoot your best shot!
Ejaculate your joy,
Pour powerful blessings
Into the womb
Of a wailing world.

Generals in heaven command:
Make culture not war!
Hitler was an artist
Painted by the past;
Graffiti hieroglyphics
Is a language that will last.

Pledge allegiance
To life abundant;
Permit simple pleasures
To be redundant.

Fly a flag of flowers;
On Babies confer new powers;
The positive pursuit
Must never pause—
Happiness is our greatest cause.

Storm beaches of despair,
Fight poison convention everywhere,
Scale cliffs rock hard
With cynical soils;
Victors bring your own spoils.

The greatest generation
Still waits to take the stage.
Refuse to just sit
On crumbling stoops and wait;
Liberating geniuses
May show up too late.

Make culture not war!
Rapping poets are warriors
Drafted by anxious angels
To conquer with their songs;
Music makes no massacres.

The battlefield is everyday;
Go for the ultimate victory
Fighting the Hip-Hop way!
Shoot your best shot!

Be loud about your love,
Put passion in your dove;
The greatest generation
Take orders only from above.
Make culture not war!

PERSONAL EXPLANATION

HON. ROBERT W. NEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 19, 2000

Mr. NEY. Mr. Speaker, I was absent for the votes on Wednesday, October 18, 2000 for a personal family situation. If I were present, I would have voted in favor of the three suspension bills that were voted on, the Social Security Number Confidentiality Act, the National Children's Memorial Day, and the resolution Honoring the Members of the Crew of the Guided Missile Destroyer U.S.S. *Cole* Who Were killed or Wounded in the Terrorist Attack on that Vessel in Aden, Yemen, on October 12, 2000.

IN HONOR OF THE STATEWIDE HISPANIC CHAMBER OF COMMERCE OF NEW JERSEY

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 19, 2000

Mr. MENENDEZ. Mr. Speaker, today I honor the Statewide Hispanic Chamber of Commerce of New Jersey (SHCC).

SHCC has had a tremendous impact on the development and growth of the Hispanic community across the state of New Jersey, and I commend SHCC's many invaluable contributions.

Because of the hard work of SHCC, as well as that of other organizations, the Hispanic market is the fastest growing sector in the United States. In New Jersey, the Hispanic market has experienced 87 percent growth over the past decade. Currently, there are over 30,000 Hispanic-owned businesses, supporting 128,000 jobs, and generating 7.5 billion dollars in sales.

At the dawn of the new millennium, the Hispanic community is experiencing economic and political empowerment. The new economy and the political landscape would not be complete without the contributions of Hispanic Americans.

I ask my colleagues to join me in honoring the Statewide Hispanic Chamber of Commerce of New Jersey for its contributions in empowering Hispanics across the State of New Jersey.

PERSONAL EXPLANATION

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 19, 2000

Mr. FILNER. Mr. Speaker, because of official business in my congressional district, I missed the legislative sessions of June 22 and June 23, 2000. Had I been present, I would have voted as follows:

Rollcall No. 311—''no''; No. 312—''no''; No. 313—''no''; No. 314—''no''; No. 315—''yes''; No. 316—''no''; No. 317—''yes''; No. 318—''yes''; No. 319—''yes''; No. 320—''yes''; and No. 321—''no''.

HONORING OLYMPIC SILVER MEDALIST

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 19, 2000

Mr. HALL of Texas. Mr. Speaker, my colleague, Mr. SAM JOHNSON of Texas, and I have the privilege today to pay tribute to Paul Foerster of Rockwall, Texas, who won the silver medal in the Men's 470 sailing event at the 2000 Olympics in Sydney, Australia.

Paul was the skipper of the United States' entry in the Men's 470 sailing event. His teammate on the two-man vessel was Bob Merrick of Rhode Island. Paul and Bob finished first in four of the eleven races, more than any competitor. Australia won the gold with a better aggregate score.

Paul previously competed in the 1988 and 1992 Olympic Games in the Flying Dutchman sailing class, winning the silver medal in Barcelona, Spain in 1992. He has sailed in more than 500 yachting competitions in the last decade. He learned to sail as a young man growing up in Corpus Christi, Texas and was a three-time All American sailer at the University of Texas, where he earned a degree in aerospace engineering.

Paul works at the Raytheon Company's Garland facility in the Third Congressional District, where his co-workers hosted a recognition ceremony for him this week. He is a new resident of Rockwall in the Fourth Congressional District. Mr. Speaker, we join his co-workers, family and friends in commending him for his dedication, determination, and commitment to excellence. Paul brings honor both to himself—and to the United States of America. As we adjourn today, let us do so in recognition of the superior achievement of Paul Foerster in the 2000 Olympics.

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

HON. JIM GIBBONS

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 19, 2000

Mr. GIBBONS. Mr. Speaker, last year on November 13th, the Subcommittee on Forests and Forest Health held a hearing in Elko, Nevada to study the events surrounding the closure of the South Canyon Road by the Forest Service. After a thunderstorm washed out parts of the road in the Spring of 1995, the agency prohibited the community of Jarbidge from repairing it—going so far as to initiate criminal action against the county. At this hearing, we learned that it wasn't just parts of the road that washed away in that storm but also the Federal Government's failure to use common sense. The South Canyon Road has been used by local residents since the late 1800s—to now keep the citizens of Elko County from maintaining and using what is clearly theirs is a violation of the statute commonly referred to as RS 2477. This is an issue of national significance, demonstrating ongoing attempts by the Federal Government, particularly under this Administration, to usurp the legal rights of States and Counties. So for this reason, the subcommittee had done extensive research into the fundamental questions concerning the South Canyon Road, specifically: who has ownership of the road and who has jurisdiction over the road? Subcommittee Chairman CHENOWETH-HAGE has compiled her research into this, her final report on the November 13th hearing. I would now respectfully

ask that it be submitted into the RECORD of this 106th Congress.

CHAIRMAN'S FINAL REPORT, HEARING ON THE JARBIDGE ROAD, ELKO COUNTY, NEVADA, SUBCOMMITTEE ON FORESTS AND FOREST HEALTH

Preface

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

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

The investment of time in the historic perspective leading up to the County's assertion was fruitful, yielding numerous clearly worded acts of Congress, backed up in a plethora of case law. I have attempted to bring that historic perspective to this report, because the Congressional and legal background cannot be ignored if we are to view the western lands issues in the framework Congress and the courts have intended.

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

Summary: The Basic Questions of Ownership and Jurisdiction

The dispute over the Jarbidge South Canyon Road (Road) between Elko County, Nevada and the United States Forest Service (USFS) involves two basic questions:

1. Who has ownership of the road?
2. Who has jurisdiction over the road?

Ownership is defined as control of property rights.

Jurisdiction is defined as the right to exercise civil and criminal process.

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

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

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

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

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

I. Breaking Down the Principles of Ownership

A. The law prior to Nevada Statehood.

1. The Mexican cession and ''Kearney's Code.''

Nevada became a state on October 30, 1864. Prior to that time the area in question was part of the territory of Nevada. The territory of Nevada had been created out of the western portion of the territory of Utah. Utah Territory had been a portion of the Mexican cession resulting from the Mexican War of 1945–46. U.S. Brigadeer General of the Army of the West, Stephen Watts Kearney, instituted an interim rule, commonly referred to as ''Kearney's Code,'' over the ceded area pending formal treaty arrangement between the U.S. and Mexico. The Mexican cession was formalized two years later with the Treaty of Guadalupe Hildago, February 2, 1848.

Mexico recognized title of the peaceful/Pueblo (or ''civilized'') Indians (either tribally or as individuals) to the lands actually occupied or possessed by them, unless abandoned or extinguished by legal process (i.e. treaty agreements). The Mexican policy of inducing Indians to give up their wandering ''nomadic, uncivilized'' life in favor of a settled ''pastoral, civilized'' life, was continued by Congress after the 1846 session and was the very basis of the government's Indian allotment and reservation policy. Mexico and Spain retained the mineral estate under both private grants and public lands as a sovereign asset obtainable only by express language in the grant or under the provisions of the Mining Ordinance.

2. The acquisition by the U.S.

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

In 1846, the areas where the Jarbidge South Canyon Road presently exists was acquired by the United States. The United States, like Mexico, retained the mineral estate, while the surface estate was open to settlement. Settlement of the surface estate continued under United States jurisdiction in much the same way it had proceeded under Mexican jurisdiction. Towns, cities and communities grew up around agricultural and mining areas.

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

The Mexican cession, which is today the southwestern portion of the United States, consisted primarily of arid lands, interspersed with rugged mountain ranges. These mountain ranges were the primary source of water supply for the arid region. The water courses were part of the surface estate. Control or development of the land by settlers for either agricultural uses or mining depended on control of the water courses.

The most expansive (and most common) method of settlement under the Mexican ''colonization'' law was for the individual settler to establish a cattle and horse (ganado de mejor) or sheep and goat (ganado de menor) farm, known as a ''rancho'' or ranch. These ranches were large, eleven square leagues or ''sitios'' (approximately one-hundred square miles). The individual settler (under local authorization) would acquire a portion of irrigable crop land and an additional allotment of nearby seasonal/arid (temporal or agostadero) land and mountainous land containing water sources (canadas or abrevaderos) as a ''cattle range'' or ''range for pasturage.'' Four years of actual possession gave the ranchero a vested property right that could be sold (even before final federal confirmation or approval of the survey map (diseno). Control of livestock ranges depended on lawful control of the various springs, seeps and other water sources for livestock pasturage and watering purposes. Arbitration of disputes over water rights and range boundaries (rodeo or ''round-up'' boundaries) were adjudicated by local authorities (jueces del campo or ''judges of the plains'').

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

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

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

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

There was no law passed by Congress to define the settlement process for the western mineral lands until Congress addressed this problem by a series of acts beginning in the 1860's. Key among the split-estate mining/settlement laws was the Act of July 26, 1866. Congress established a lawful procedure whereby the mineral estate of the United States could pass into the possession of private miners. Private mining operations could then turn the dormant resource wealth of these lands into active resource wealth for the benefit of a growing nation.

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

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

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

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

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

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

B. The Law After Nevada Statehood.

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

Once settlers in an area had exercised the general right-of-way provisions of the 1866 Act to establish permanent roads or trails, those roads or trails then, by operation of law, became easement (which is the right to use the lands of another). The general right-of-way provisions of the 1866 Act gave Congressional sanction and approval to the authorization of Kearney's Code respecting water courses, livestock enclosures and commons, and local arbitrations respecting possessory rights. All of the states and territories, west of the 98th meridian ultimately adopted water right-of-way related range/trail property laws similar to the former Mexican laws in California, New Mexico, and Arizona. These range rights were ''property'' recognized by the Supreme Court.