



Testimony of

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On S. 2543, the National Heritage Partnership Act

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Thank you Mr. Chairman and Members of the Committee for the opportunity to present testimony to the National Parks Subcommittee of the Senate Committee on Energy and Natural Resources.

My name is R.J. Smith. I am adjunct environmental scholar at the Competitive Enterprise Institute in Washington, D.C. CEI is a nonprofit, nonpartisan research and advocacy institute dedicated to the principles of private property, free enterprise, and limited government. I am also Director of the Center for Private Conservation, a nonprofit organization that documents and publicizes information on the history of private stewardship and conservation carried out by private landowners and private associations. And I am Director of Environmental Studies at former U.S. Sen. Malcolm Wallop's Frontiers of Freedom Institute. I am also representing the concerns and interests of hundreds of property rights organizations, wise-use and multiple-use organizations, and small landowners who have been opposing such legislation for over a decade.

S. 2543, the National Heritage Partnership Act, represents an unfortunate shift to an even worse bill than previous such legislation. It goes beyond the rather informal efforts to bring federal recognition to the existing Heritage Areas and Heritage Corridors created by individual policy bills, to the creation of an organic act for the establishment of a National Heritage Area Program within the Department of the Interior and specifically the National Park Service. In effect, this bill will create an entirely new federal land management program.

The National Park Service and Congress will be involved in creation of the "local coordinating entity," an organizing group which is often composed of elitists with a preservationist, environmentalist, conservationist agenda—which can be widely different from the day-to-day concerns of many, if not most, of the people who actually live on the land.

The National Park Service will provide assistance and funding the creation of the management plan for the proposed National Heritage Area. Once officially designated by the Secretary of Interior, the National Park Service will provide operating funding of up to \$1 million per year per National Heritage Area, with an upper maximum limit of \$10 million for any individual Heritage Area. Also, each local coordinating entity must obtain an equal amount of matching funds from non-federal sources.

At every stage there will be federal direction, federal assistance, and federal funding. At a time of growing concern about out of control federal spending and federal deficits, the funding provided in S.2543 has been increased by 50 percent over earlier bills from \$10 million per year to \$15 million per year—certainly a very disturbing sign.

Mr. Chairman, what is the urgent need for a new national parks land management and spending program? For decades we have known about the deplorable fact that the National Park Service was far more interested in following a path of ever more land acquisition, and that caring for the lands they had was at best an afterthought. The administration of President Ronald Reagan and Interior Secretary James Watt attempted,

mainly unsuccessfully, to stop additional land acquisition until the government could demonstrate that it could be a good steward of the lands it already owned.

Less than a year ago, President George W. Bush and Interior Secretary Gale Norton announced that at long last this administration would begin the long-overdue effort to eliminate the backlog of some \$6 billion in deferred maintenance and protection of the parks and their resources and physical infrastructure. Now, unfortunately, with the ink hardly dry on those planning documents, we see an entire new National Park Service program about to be launched.

What is especially disturbing about this bill is the combining of National Park Service direction, control and funding with the criteria for creation of a National Heritage Area.

A National Heritage Area is an area “nationally significant” to the heritage of the U.S. and possesses “unique natural, historical, cultural, educational, scenic, or recreational resources of exceptional value or quality.”

This definition (in Section 2, Paragraph 3 and 4-a) is so broad, so wide-scale, and so all-encompassing that it could include almost any area in the entire nation. Essentially, proponents of the National Park Service would be able to create new park-controlled and directed lands almost anywhere in the country. One can only wonder what possible vision of America the supporters of such a program could have and where it fits within an earlier vision of America as a free society based upon private ownership of lands.

Far more disturbing are the management plans, specifically Sections 5-a-1 and 5-a-2. The Interior Department and National Park Service-guided and approved management plan must include “comprehensive policies, goals, strategies, and recommendations ... encouraging long-term resource protection, enhancement, interpretation, funding, management, and development of the national heritage area.”

Further, the management plan must “include a description of the actions and commitments that governments, private organizations, and citizens will take to protect, enhance, interpret, fund, manage, and develop the natural, historical, cultural, educational, scenic, and recreational resources of the national heritage area.”

Those two paragraphs are nothing less than a mandate for federal government land-use control, period. This belies all suggestions, all wording elsewhere, purporting to provide protections for private property rights and private landowners.

This is the appropriate place to note that former National Park Service employee and Senior Staff Member of the House Resources Committee’s Subcommittee on National Parks, Recreation and Public Lands, Steve Hodapp, who was a long-time avid promoter of National Heritage Area legislation, suggested such “problems” in his response to efforts by property rights advocates to build in protections for private property.

A proposal suggested by many people was to provide “opt-out” language in the legislation to permit private landowners to make their intentions known that they did not want to be included with the Heritage Area and that they were opting out.

As Steve Hodapp correctly noted, no one can opt out of a National Heritage Area; it is a physical and geographical impossibility. One is either inside the boundaries of a national heritage area or outside the boundaries. And if one is within the boundaries, and there is a management plan that prescribes—indeed mandates—programs and activities to protect, enhance, and manage natural and scenic values within the national heritage area, in one way or another private landowners are not going to be allowed to convert their cornfield to a pig farm or to paint their silo purple with yellow stripes.

Mr. Chairman, if there are so many areas of scenic, historic and tourist importance, where is the justification for these areas to become part of the National Park Service? Whatever happened to the concept of private activities, voluntary association, the activities of nonprofit organizations? If it is so important to protect and obtain visitation for the ruins of historic Spanish churches along the lower Rio Grande valley, why must this be done by the government? It would be far more consistent with the spirit of the nation to have the local chamber of commerce erect a billboard on each end of the town, saying visit our quaint, scenic, historic, educational Spanish ruins while you are in town. It would be much cheaper, and it would be far less of a threat to private property rights.

Mr. Chairman, in spite of assurances and wording to the contrary, we view this as nothing more than a continued attack on the very institution of private property, which is the underpinning of our unique free and prosperous society. All of our freedom is built upon the right of private property, and without private property right no other rights or freedoms are possible—they are merely illusory. Our Founding Fathers based our nation and our freedom on the rights of life, liberty, and property. Men as different in their thinking as Thomas Jefferson and Alexander Hamilton all agreed on the need for wide devolution of the federal lands to ensure a nation of free and productive men and women.

Yet we now have a nation where at least 42 percent of all the land is owned by government at one level or another, including federal lands, state lands, county lands, local and community lands, and native trust lands. The totals for governmental land ownership are so large and complex that it is even difficult to obtain exact figures on the total amounts of land ownership by each level of government and the various agencies within those governments. One would think there would be some serious effort at inventorying what government already owns before setting out on a massive permanent program of endless additional governmental acquisitions of private lands.

It is important to stop and consider the significance of the fact that government at all levels in America already owns over 42 percent of the nation’s land. This is a staggeringly high percentage of government ownership of land and resources in a free society, supposedly based upon the beliefs of the Founding Fathers that the cornerstone of all our freedom depends upon the widest possible distribution of private ownership of property. In a most interesting observation, the liberal economist John Kenneth Galbraith

wrote: “[T]he public lands of the United States exceed the combined areas of Germany, France, Italy, Belgium, Holland, Switzerland, Denmark and Albania. Where socialized ownership of land is concerned, only the USSR and China can claim company with the United States.”

Galbraith made those observations prior to the collapse of communism, the breakup of the Soviet Union, and the termination of the collective farms across China. Thus, it would appear that, and is probably likely that, the United States of America probably has the most socialistic land ownership system in the world. One would hope that this would give the Republican-controlled Congress some second thoughts before they become engaged in an aggressive program to extend the tentacles of government land management and land ownership still further and to destroy still more of the underlying private property that ensures the freedom of our people.

It is way past time for some true vision on the part of our government and its leaders. It is time to halt the never-ending trend to more and more government land use control and land acquisition. If we are to maintain a free and prosperous society it is well past time to first say: no more land acquisition and no more land-use control. We need someone to step forward with a true legacy with a national program and mandate of: first, no net loss of private land; and then to actually undertake a government land devolution, returning the land to the private ownership and stewardship envisioned by the Founding Fathers and rediscovering the unique tradition of Tocquevillian private action and voluntary association.

Private landowners in every part of the country who have seen their land or their neighbors’ taken through government regulation have every reason to be deeply suspicious of any new federal program, particularly one based in the Department of the Interior, and even more importantly a program emanating from the National Park Service. Even if this new program will purportedly do little more than designate National Heritage Areas, and then only create a system of federal designation and funding.

Mr. Chairman, there is a considerable litany of innocuous-sounding, well-meaning, Department of Interior programs which were created by the Congress with clear directions that the National Park Service was to preserve the local communities and culture and was not to condemn or acquire private lands.

Yet these programs went drastically awry and offer no hope that this new program would turn out any better.

Briefly, in 1972 the Buffalo National River was created near the Ozarks in Arkansas. The area’s people, community, and, especially, culture were so unique that they were featured in a major story in the *National Geographic*. The people, their homes, and culture were supposed to be preserved. When the area was created in 1972 there were 1,108 landowners along the river. When NCB aired a major news program on the Buffalo National River on its fifteenth anniversary in 1987 during a debate over how the National Park Service treated landowners, there were only eight (8) landowners remaining.

Despite the clear intent and mandate of the congress, the federal bulldozer removed the people, their homes, communities and their unique culture.

When the Cuyahoga National Recreation Area was created in Ohio in 1971, the Congress again called for the preservation of the community, rejected condemnation and acquisition, and called for the use of easements. By the early 1980s hundreds of homes had been bulldozed and burned as people lost their ancestral homes and small businesses and the few remaining home in the recreation area belonged to a handful of people who were wealthy and sophisticated enough, and with sufficient connections and competent legal advice to hold out from the federal bulldozers. Among that handful were Rep. John Siberling and the editor of *The Akron Beacon-Journal*. Once again the plain people lost everything to a harmless program, created to preserve their communities, homes and cultures—and with no power to take their private lands. And yet they lost everything.

That is why the 23 lines of Subsection (h) private property protection offers little meaningful protection over the long run to any landowners who may find themselves and their homes and property within the boundaries of a federally-designated National Heritage Area or National Heritage Corridor.

Private Alternatives to the National Heritage Partnership Act

This proposed legislation completely overlooks and neglects America's long and unique heritage of private conservation and private stewardship. America has a long and successful tradition of private land trusts which have voluntarily and privately acquired land to protect a wide range of environmental, historic, and scenic values. This tradition dates back to at least 1891 with the creation of the Trustees of Reservations in Massachusetts. The creation of an entirely new system of local or county heritage parks, corridors, recreation areas, and trails fits far better into such a system of private action than into one funded by federal taxpayers. Everything from local garden clubs finding voluntary ways to preserve a wet woods with the county's last stand of rare orchids, to horseback riders and snowmobilers creating voluntary right-of-way for non-intrusive public trails across private lands, to private funding to restore historic sites, have repeatedly been accomplished easily and without conflict because they were all voluntary and did not entail the heavy hand of the federal government—and especially of the National Park Service.

If this program is truly to be the non-regulatory program that many of its proponents have asserted, then achieving its goals through private action is the way to prove it.

America has a long and exceptionally successful history of private stewardship of environmental amenities. In fact, the first private land trust in the world was the trustees of reservations (TTOR), which was created in Massachusetts in 1891 as a nonprofit, charitable corporation for conservation purposes to protect the countryside of Massachusetts and especially to preserve for the public its "beautiful and historical places and tracts of land."

This was the first independent, private, nongovernmental organization in the United States established for the purpose of land preservation. Its purpose was to preserve in perpetuity areas with unique natural importance, scenic beauty, and historic value. Charles Eliot, son of the then president of Harvard College, deserves much of the credit for developing the idea of “promoting conservation through voluntary agencies.” In February 1890 he wrote to *Garden and Forest* magazine urging the protection of the countryside throughout Massachusetts. He expressed concern that, “several bits of scenery which possess uncommon beauty and unusual refreshing power are in daily danger of destruction.”

He further urged the establishment of “an incorporated association composed of citizens of [Massachusetts] and empowered by the state to hold small and well-distributed Parcels of land free of taxes, just as the public library holds books and the art museum pictures for the use and enjoyment of the public. Its 1891 rules and regulations called for it to hold and maintain for the public “beautiful and historical place and tracts of land within this Commonwealth.”

Over the years the Trustees of Reservations have acquired and are custodians for nearly 100 properties from western Berkshire County to Cape Cod and Nantucket. These lands have been acquired in fee, through gift, bequest, and purchase with funds raised privately for their acquisition. Additional areas are protected through conservation easements and restrictions or are otherwise indirectly protected.

TTOR served as the model for the creation of similar land trusts throughout the world, beginning in 1894 with the National Trust in England.

The private land trust movement has been one of the fastest growing areas of land conservation in America. There are probably over 2000 such land trusts operating today, protecting everything from open space and prime agricultural land to the restoration, protection and conservation of old barns.

Indeed, there are so many private land trusts, working in so many different areas of private conservation and preservation, that they have a national umbrella organization, the Land Trust Alliance, which was formed in 1982.

It would seem that all of the legitimate preservation, conservation, and recreation goals of the National Heritage Partnership Act could easily and legitimately be undertaken by private land trusts. Considering that the environmental movement raises hundreds of millions of dollars every year, and some estimates place the annual total receipts of all the nation’s environmental and conservation organizations as high as \$3 billion each year, it should require little more than dedication and determination to raise the \$15 million requested for the National Heritage Partnership Act.

A series of voluntary Heritage Area trusts would be fully in keeping with the nation’s long history of voluntary association and private conservation activities, and since all relationships between the various trusts and private landowners would necessarily be

voluntary and contractual, there would be no threat to private property rights, there would be far less opposition to the program, and it would be consistent with the national efforts to reduce the size and cost of government.

National Heritage Partnership Act as a Threat to Wildlife

One of the most disturbing ironies of this Act is that it may very likely lead to serious environmental harm, pitting the recreationist wing of the environmental movement against the conservationist wing, with little public awareness of this fact.

Many if not most of the 110 or so proposed National Heritage Areas and National Heritage Corridors, as well as some of the few that are operational today, are located along or adjacent to rivers, streams, lakes, and wetlands. This is where most of the proponents of these Heritage Areas would like to have parks, recreation areas, and especially, trails and paths. Almost all of these corridors will encompass some sort of trail system: greenways, bikeways, scenic trails, national trails, snowmobile trails, jogging paths, rails-to-trails, canoe trails with put-in and take-out areas, campgrounds, picnic sites, picnic tables, etc. And that is not an exhaustive list.

Unfortunately, all of these recreational/tourist trails and corridors will be cutting a swath through, i.e. fragmenting, some of the last remaining vital riparian habitat in the United States. For years, the conservationists and proponents of ecosystem protection and biodiversity protection have warned of the accelerated loss of riparian habitat. They have identified this as some of the most important and critical habitat in the nation, as well as being one of the most rapidly disappearing ecosystems.

Part of its importance, aside from its function in protecting streams and wetlands, is as breeding habitat for a substantial number of wildlife species, especially birds, which are easily subject to disturbance and which are not well adapted to new threats. Of particular concern are those neotropical migrants, the birds breeding in the U.S. and Canada which winter in Central and South America. The U.S. Fish and wildlife service, other federal and state agencies, and most conservation groups have expressed extreme concern about the growing and dire plight of a great many of these birds. It is argued that the major reason their populations are declining so rapidly is because of the fragmentation of their breeding habitat in this country and loss of their wintering habitat south of the border.

While there is relatively little that can be done quickly on their winter grounds, there have been calls from all quarters to immediately limit and reduce fragmentation of their breeding habitat. Whenever a housing subdivision or a new sports arena out in the countryside is proposed, or when a landowner proposes to cut a road through his brush-covered hillside to allow his cattle to move from one pasture to another, or when a timber company proposes even a modest clear-cut, warnings regarding the consequences of any additional habitat fragmentation are quickly sounded.

Constructing trails and recreation corridors through the remaining narrow remnants of riparian habitat along most of the rivers and streams likely to be proposed for National

Heritage Areas will almost totally fragment these habitats, leaving little protection for nesting neotropical migrant birds. A path down the middle of a riparian forest opens up both sides to substantially increased predation by brown-headed cowbirds, which are nest parasites on these species. They lay their eggs in the nests of smaller species, which end up raising only a cowbird, and none of their own young. Cowbirds follow even the narrowest of paths deep into the woods, searching for nests to parasitize.

Additionally, jays, grackles and crows follow these trails and find access to the eggs and young of many songbirds. Also raccoons, opossums, feral dogs, feral cats, and free-roaming house cats and barnyard cats use these trails and corridors with their human scents and food scraps and waste as little more than a buffet line.

With all of the attention given to the complaints of environmentalists concerning the harm from habitat fragmentation resulting from highway construction, home building, timber harvest, or even firebreak construction, it is disturbing that little if any attention is being given to fragmentation of perhaps the most endangered type of habitat: the riparian zones being turned into recreational trails, corridors and greenways. It seems that some environmentalists oppose anything that fragments habitat except those things that benefit themselves and their constituents.

If the National Heritage Partnership Act does become law, it should at the very least be subject to all the NEPA requirements and the necessity of preparing a detailed EIS regarding the impact of each and every National Heritage Area and National Heritage Corridor on riparian habitat, wetlands habitat, and especially upon the neotropical songbirds which utilize the areas.

In conclusion, Mr. Chairman, this is not the sort of program the federal government should be undertaking at this time. The program should be undertaken voluntarily by private citizens' groups, conservation organizations, chambers of commerce, and tourism boards on a local level, by local people, spending their own money, not other people's money.