Testimony of Cinda Jones,
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On HR 1528, The New England National Scenic Trail Bill
Tuesday, May 15th, 2007

Thanks for giving me the excuse to come back to my old stomping grounds. Seven years ago I left DC to return to my hometown of North Amherst, Massachusetts, to help run my family's business. Before Sunday I hadn't yet been back to visit.

My comments to you today will convey my both my respect for Congressman Olver and what he is trying to accomplish, and my continuing concerns about the creation of a National Scenic Trail (NST) in Massachusetts, due to the affect it may have on land use and property values. My hope is that NST designation will be delayed until the feasibility of a re-route is confirmed and the re-route is in place. If this Bill does move forward, I hope you will amend the Bill so that

a) the historic section of the M&M Trail between the towns of Granby and Wendell, MA, identified to be re-routed along the Quabbin Reservoir, are expressly exempt for consideration as a National Scenic Trail *or as a connecting or side trail under National Park Service (NPS) jurisdiction of any kind*;
b) Landowner permission will be obtained before including in NST designation any connecting or side trails;
c) A re-route around my property will be in place before designation is made so that while developing a new route, when the old route will be used, I will not have thousands of National Scenic Trail hikers on my logging roads.

When I lived in DC, I was Marketing Director for the Cato Institute; Northeast Regional Director for the National Fish and Wildlife Foundation; Vice President for the National Forest Foundation; and Director of Wood Products Marketing for the American Forest and Paper Association. My Dad said I had such strong non-profit management experience that I'd be perfect to run the family lumber company. It too is *non-profit* most years. ☺

Cowls Land and Lumber Company is a 9th generation family owned and operated business that acquired its first stands of timberland in 1741. Today the company owns thousands of acres of timberland in Hampshire and Franklin counties in western Massachusetts. All of it is open to the public for nearly unrestricted recreational purposes. If you're familiar with the state of Massachusetts, our land is in towns surrounding the Connecticut River and Interstate 91, centrally between Hartford, CT and Brattleboro, VT.

The company has a sawmill that produces about two and a half million feet of lumber a year, specializing in post and beam timbers for timberframe residential construction. We also have a retail building supply store adjacent to the sawmill.

Imagine my surprise, after moving back home in 2001, when I read in the newspaper that my Congressman had enjoyed hiking on my land and wanted to have it federally administered by the National Park Service. I guess the lesson is that you can leave DC but DC doesn't leave you.

In my DC years I witnessed the depressed local economies that surround federally administered lands. I've seen the affects of the land use restrictions that follow trail corridors. I've watched connecting and side trails to National Scenic Trails fall under federal jurisdiction and lock landowners into use restrictions from NST status or resulting local zoning ordnances. And I've seen hikers on privately owned, government administered trails, act like it's their right to dictate appropriate land use to private landowners on whose land they're recreating.

I've read about Pacific Crest NST hikers holding tree sit-ins and protests to stop private landowners' logging operations along the trail. Sierra Pacific Industries was forced by NST activists to limit its cutting plans and use helicopters for logging in place of building roads to truck out material.

I've heard about racetracks and wind towers being denied within sight and sound of the Appalachian Trail. And I know that the NPS frequently changes its decisions about weather or not it can and will take abutting land by eminent domain. This most recently happened at Acadia National Park in Maine.

When I read in the newspaper about Congressman Olver's proposal that about 8 miles of logging roads through my property could become federally administered and part of a National Scenic Trails System (NST), I was very afraid.

You know, it used to be insects, disease, and fire that woodland owners feared the most. Today it's government regulations. Beyond wetlands and species concerns turning into use restrictive laws, we've been threatened with the creation of a National Forest in Northwestern Massachusetts; forest reserves by the state; and this National Park Service trail. The insects treat us better than you guys do. ☺

When I learned about the effort to federalize my private property, I found out that the Congressmen and his staff had been talking with and working with environmental organizations and the Appalachian Mountain Club well in advance of the Congressional funding request and newspaper articles that I, as a stakeholding landowner read. In my opinion it ought to be in the official government book of "best practices" that elected and appointed folks should personally inform constituents, whose property they are considering regulating and taking, before they take steps to do so.

To Congressman Olver's great credit, since learning of my upset, he has gone out of his way to personally meet with me at my office twice, and he and his staff have worked very hard to empathize with my perspective and assure my comfort with the outcome.

The trouble is that no matter how well intended the Congressman and his staff are, no matter that they say they will not allow land to be taken by eminent domain, and they will not allow land use restrictions to be imposed, they have absolutely no control over what new legislation a President Hillary Clinton or a future Congress might pass affecting all National Scenic Trails, or specifically this NST in the future; they have no

control over local zoning restrictions that will be set to protect the resource identified today; and they can't guarantee me that other logging roads of mine won't be considered to be "connecting or side trails" in the future and fall under NPS jurisdiction.

The cost of being involved in the debate about my land potentially becoming a National Scenic Trail has been great time and expense. I have felt forced to spend tens of thousands of dollars (on legal, lobbying, mailing efforts) and many hundreds of hours to preserve the asset value of my property. The cost to me and many other landowners has been incredible, regrettable, and absolutely avoidable.

The first question I had was whether other landowners knew about the trail's proposed federalization and if they approved of it. So I mailed a survey to the 400 trail landowners and abutters in Massachusetts.

I asked landowners if they were in favor of the M&M Trail becoming a National Scenic Trail and the trail consequently being administered by the National Park Service. Out of the approximately 400 surveys I mailed, 38 surveys were completed and returned, representing a strong nearly 10% response rate. Of these 38 responses, 5 were in favor of federalization, 33 were against. More than 86% were against federalizing the M&M Trail. Some landowners and abutters had no idea the trail even existed along their property.

At first the feasibility study team was not going to contact all affected landowners. After I shared the results of my survey, landowners were contacted and included in a series of public meetings, informational sessions, and information gathering. Hikers and land trusts were much better represented in these meetings that decided the fate of our private property.

It was an emotionally draining process to attend the several public meetings and have people -primarily hikers- who we'd allowed to use our property attempt to preserve their right to do so in perpetuity; limit our land use; and prevent other recreationists from enjoying the same "trails." It's ironic that the higher intensity forest land users like horseback riders, snowmobilers, jeepers, 4 wheelers and hunters never try to take the logging road access that has been offered for their recreational use over the years, and they never try to preclude others from using the trails like the hikers so often do.

Beyond being upset by the potential of federal administration of my family's private property, as someone who appreciates limited government, I was upset by the prospect of the government spending $200,000 of tax payer funds to study whether to spend exponentially more tax payer money each year to pay for something that has been provided and managed free of public expense.

Lots of newspapers reported on the public debate stirred by the NST feasibility study. *The Daily Hampshire Gazette*'s August 1, 2002 editorial was titled "What's the Problem?" and concluded that federalization was not necessary, and that the potential consequences of federal intervention were not worth the risk. The concluding sentence of the editorial was "Let's not tinker with what already works."

Other articles I'll submit for the record include *The Springfield Sunday Republican*'s August 11, 2002 article titled "Trail advocates take diverse paths;" *Massachusetts Liberty*'s "Federalizing the M&M Trail;" the Professional Farmers of America's *Landowner* article; the *Boston Globe's* "Turf battles loom if trail gets US designation;" and environmentalist Elisa Campbell's October 20, 2006 column in the *Amherst Bulletin* which reads "I wish the study had never been done."

After several years of time and profit consuming debates, it appeared we landowners had made progress. The draft Feasibility Study's preferred of three alternative plans recommended that the proposed National Scenic Trail be re-routed away from Cowls timberland parcels, and onto the state government's largest private land condemnation block – along the Quabbin Reservior, which supplies Boston with water.

Unfortunately, page 61 of the Feasibility Study says the NPS intend to keep the existing trail on my land, as a connecting trail to the NST. My lawyer advises against this and I have repeatedly asked that the trail be re-routed so that it does not direct trail hikers to my property and become a secondary loop of the NST.

Language in Congressman Olver's bill requests the creation of "The New England National Scenic Trail…as generally depicted on the maps associated with the preferred alternative."

In a letter (being submitted into the record) dated Marcy 21, 2007, in response to my request for reassurance that a National Scenic Trail could not include or direct hikers to my property, Congressman Olver assured me that "there is no intention or consideration of the historical trail in the area of concern being a fall back option because this section is exempt from designation."

It appears to me that the proposed alternative's significant re-route will affect about 25 miles of trail. In order for the trail to be re-routed to and from the Quabbin, I'd guess that hundreds of landowners will have to be asked permission to have the trail cross their property. And these landowners will all have to say "yes." This seems like a challenging proposition. Also, the state's water supply manager must approve this proposal and accept a significant increase of reservoir land trails use.

It seems to me drastically premature to be proposing the designation of a National Scenic Trail since the historical route is not an option; it is not necessarily feasible to re-route the trail at all; and because the existing trail, which will serve in the interim, remains on upset landowners' property and requests for rerouting it away have been absolutely denied.

The bill's language reads that "other potential side and connecting trails" should be considered for inclusion in the NST. (And that you should try again to get New Hampshire to sign on to NST status – even though their message to you was clearly "Live free or Die" – go away with your federalization idea). The historical route being a connecting/side trail, and the AMC refusing to re-route it from dumping hikers onto my property, opens my company up to huge land use liability.

Besides my basic point that a National Scenic Trail should not be designated along a path that has not yet been determined feasible, I have some other remaining concerns:

1. *The $200,000 designated by Congress was not used expressly as directed nor as the NST Act demands:* The NST Act reads: *"The feasibility of designating a trail shall be determined on the basis of an evaluation of whether or not it is physically possible to develop a trail along a route being studied...."* Rather than simply determining whether or not the currently routed M&M should become a National Scenic Trail (as directed by Congress), those contracted chose instead to study first how best to preserve the trail – anywhere it might go. Secondarily they decided to use the money to decide whether the resulting trail might be preserved by NST designation. Because this was not the Congressional Mandate nor following the NST Act, Congressional funds were not appropriately spent and this study is invalid unless it concludes that the trail in the route studied is not feasible as a NST.

2. I remain certain that towns and regions will create zoning restrictions around the trail and there will be significant economic loss and loss of potential use due to the existence of the trail. Precedents prove that trail corridors and regions, and sometimes viewsheds and sound impacts are controlled by local jurisdictions as a result of trail status. This local land protection is in fact an often stated goal of Congressman Olver's in creating the trail. He wants to keep the region of the trail rural and undeveloped. Though a laudable goal, the resulting economic hardship through land use takings is extreme for landowners to bear, and will have negative economic impact on the Pioneer Valley.

3. I remain concerned that the NST Act suggests that connecting and side trails will become part of the NST system at some later date. Primarily, I remain concerned that one of John Olver's stated goals is to connect the M&M to the Appalachian Trail. The *Appalachian Trail's legislation applies to connecting and side trails* and the regulatory and takings impact of this connection of NSTs are enormous! If the New England NST is a connecting and side trail to the Appalachian NST, and the Appalachian Trail's connecting and side trails can be taken by eminent domain, landowners in MA and CT are in big jeopardy!!

4. The Proposed New England National Scenic Trail's Mulitiple Use Mandate Contradicts the NST Act Provisions and Therefore Disqualifies it as a NST: The NE NST is purportedly going to allow motorized uses where landowners allow it and potentially on state owned land. This is contrary to the NST Act which reads "The use of motorized vehicles by the general public along any National Scenic Trail shall be prohibited and nothing in this chapter shall be construed as authorizing the use of motorized vehicles…"

5. Land Takings and Area Expansion by Law Can Occur: Today, trail planners say there will never be land takings for the M&M Trail, but the overriding National Scenic Trails Act clearly allows for them: "The appropriate Secretary may utilize condemnation proceedings without the consent o f the owner to acquire private lands or interests therein…" Beyond land takings along the currently defined trail, federal jurisdiction can expand at any time: In November 2002, S.1946 established the Old Spanish Trail in Colorado and other states. The feasibility study process was followed all the way through, and after public input a specific limited trail was recommended. Then, upon NPS request, this was added to

S.1946: The NPS "may designate additional routes to the trail if they were included in the feasibility study but not recommended for the designation."

6. The NPS and Olver are saying that in the new NST, government would have no "authority" or "jurisdiction" over private property and would not change zoning or use allowances. But the Park Service's management policy encourages National Park personnel to become involved in local zoning. Section 1.5, "External Threats and Opportunities" reads in part "The Service will use all available authorities to protect park resources. Superintendents will monitor land use proposals and changes to adjacent lands, and their potential impacts on park resources and values. *Superintendents will encourage compatible adjacent land uses, and seek to mitigate potential adverse effects by actively participating in planning and regulatory processes of local governments having jurisdiction over property affecting the park.*'

Preventing the federalization of my family's private property has been a long and hard ordeal. Many other private landowners are fatigued by the experience too.

I feel confidant that as a result of the National Scenic Trail Feasibility Study, in the long run, there will be an overall net loss of public access trails in western Massachusetts. This experience has taught landowners that named and public access trails can be targeted and taken by the government. Many landowners now have a "no new trails policy," and are severely restricting existing trails use and access.

Although this M&M Trail federalization effort may someday "save" the M&M Trail, it has killed many more. Elisa Campbell, environmentalist columnist in the Amherst Bulletin says: "I wish the study had never been done." Regarding the Quabbin re-route she says: "While walking on the old town roads (in the Quabbin) is allowed, bicycling, cross-country skiing, hiking, or camping at night, or walking with your dog is not – unlike most of the rest of the MMM Trail."

When landowners' permissive use turns into a fight for property rights, accumulating expenses, and in the end, regulatory takings, it makes landowners wonder how they can afford to continue to welcome hiking trails (and perhaps any public use) on private land in the future.

Thank you very much for the opportunity to comment on HR 1528, The New England National Scenic Trail Bill

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