RSC Republican Study Committee
Rep. Sue Myrick (R-NC), Chairman
Sheila Cole, Executive Director
230 Cannon House Office Building
Washington, DC 20515
http://johnshadegg.house.gov/rsc/
ph (202) 226-9717 / fax (202) 226-1633

# Legislative Bulletin……..……September 21, 2004

**Contents:**



## Summary of the Bills Under Consideration Today:

**Total Number of New Government Programs**: 0

**Total Cost of Discretionary Authorizations**: $109.1 million over five years

**Effect on Revenue**: $0

**Total Change in Mandatory Spending**: $0

**Total New State & Local Government Mandates**: 0

**Total New Private Sector Mandates**: 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 7

## H.R. 4459—Llagas Reclamation Groundwater Remediation Initiative (Pombo)

**Order of Business**: The bill is scheduled for consideration on Tuesday, September 21st, under a motion to suspend the rules and pass the bill.

**Summary**: H.R. 4459 would establish an interest-bearing account in the U.S. Treasury (the California Basins Groundwater Remediation Fund) and authorize $25 million to be deposited into the fund. The money in the account would be used by the Bureau of Reclamation at the Department of Interior to provide grants to the Santa Clara Valley Water District for groundwater remediation projects in the Llagas Watershed. The federal share of projects could not exceed 65 percent. The federal share may not be obligated until the nonfederal share of the project's cost is deposited into the remediation fund.

**Additional Background**: Perchlorate contamination has been detected in more than 500 water wells in Santa Clara County and the Llagas Groundwater Subbasin.

**Committee Action**: H.R. 4459 was introduced on May 20, 2004, and referred to the Committee on Resources. On July 8, the Subcommittee on Water and Power approved the bill by unanimous consent, and the full Resources Committee approved the bill on July 14 by unanimous consent.

**Cost to Taxpayers**: H.R. 4459 authorizes $25 million, available until expended.

**Does the Bill Expand the Size and Scope of the Federal Government?**: The bill creates a new remediation fund in the U.S. Treasury.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?**: No.

**Constitutional Authority**: The Committee on Resources, in House Report 108-650, cites Article I, Section 8, but fails to cite a specific clause.

**Staff Contact**: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630

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## H.R. 1658—Railroad Right-of-Way Conveyance Validation Act of 2003 (Pombo)

**Order of Business**: The bill is scheduled for consideration on Tuesday, September 21st, under a motion to suspend the rules and pass the bill.

**Summary**: H.R. 1658 validates the conveyance of two parcels of land in Stockton, California, to private landowners. The Senate amendment to the House-passed bill corrects a page reference.

**Committee Action**: H.R. 1658 was introduced on April 7, 2003, and referred to the Committee on Resources. The Committee did not consider the bill. H.R. 1658 passed the House on November 18, 2003, by unanimous consent. The Senate passed the bill with an amendment on September 15, 2004, by unanimous consent

**Cost to Taxpayers**: The Congressional Budget Office estimates that H.R. 1658 would have no impact on the federal budget.

**Does the Bill Expand the Size and Scope of the Federal Government?**: No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?**: No.

**Constitutional Authority**: The Committee on Resources, in House Report 108-251, cites Article I, Section 8, and Article IV, Section 3, but fails to cite specific clauses.

**Staff Contact**: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630

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## H.R. 2663—To authorize the Secretary of the Interior to study the suitability and feasibility of designating Castle Nugent Farms located on St. Croix, Virgin Islands, as a unit of the National Park System (*Delegate Christensen*)

**Order of Business**: The bill is scheduled for consideration on Tuesday, September 21st, under a motion to suspend the rules and pass the bill.

**Summary**: H.R. 2663 requires the Secretary of the Interior to conduct a study regarding the suitability and feasibility of making the Castle Nugent Farms on St. Croix, U.S. Virgin Islands, a unit of the National Park System.

**Additional Background**: Castle Nugent Farms is the largest parcel of privately owned land on St. Croix. It has been an operating cattle ranch for 50 years and has the largest and healthiest fringing coral reef anywhere in the Virgin Islands.

**Committee Action**: H.R. 2663 was introduced on July 8, 2003, and referred to the Committee on Resources. On April 22, 2004, the Subcommittee on National Parks, Recreation, and Public Lands approved the bill by unanimous consent, and the full Resources Committee approved the bill on May 5 by unanimous consent.

**Cost to Taxpayers**: The Congressional Budget Office estimates that H.R. 2663 would cost $300,000 over the next three years.

**Does the Bill Expand the Size and Scope of the Federal Government?**: No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?**: No.

**Constitutional Authority**: The Resources Committee, in House Report 108-640, cites Article I, Section 8, but fails to cite a specific clause.

**Staff Contact**: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630

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## H.R. 2966—Right-to-Ride Livestock on Federal Lands Act of 2004 (Radanovich)

**Order of Business**: The bill is scheduled for consideration on Tuesday, September 21st, under a motion to suspend the rules and pass the bill.

**Summary**: H.R. 2966 would require lands managed by the National Park Service, Bureau of Land Management, U.S. Fish and Wildlife Service, and National Forest Service to preserve and facilitate the continued use and access of pack and saddle stock animals on land where there is a historical tradition of use. A reduction in the access of pack and saddle stock animals to federal land may take place only after full review, as required under the National Environmental Policy Act of 1969. No later than 120 days after the bill is enacted, the Secretaries of Agriculture and Interior would have to issue rules defining the meaning of a historical use of pack and saddle stock animals on federal lands.

**Additional Background**: Pack and saddle stock animals include horses, burros, and mules.

**Committee Action**: H.R. 2966 was introduced on July 25, 2003, and referred to the Committee on Resources. On March 22, 2204, the Subcommittee on National Parks, Recreation and Public Lands approved the bill by voice vote, and the full Resources Committee approved the bill by voice vote on May 5.

**Cost to Taxpayers**: The Congressional Budget Office estimates that H.R. 2966 would cost less than $500,000.

**Does the Bill Expand the Size and Scope of the Federal Government?**: No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?**: No.

**Constitutional Authority**: The Committee on Resources, in House Report 108-513, cites Article I, Section 8, but fails to cite a specific clause.

**Staff Contact**: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630

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## H.R. 3334—Riverside-Corona Feeder Authorization Act (Calvert)

**Order of Business**: The bill is scheduled to be considered on Tuesday, September 21st, under a motion to suspend the rules and pass the bill.

**Summary**: H.R. 3334 would authorize the Secretary of the Interior (in cooperation with the Western Municipal Water District) to participate in the planning, designing, and constructing of the Riverside-Corona Feeder water-supply (i.e. wells and pipeline) project in San Bernardino and Riverside Counties, California. The federal cost share of the whole project could be either 35% of the project's total cost or $50,000,000—whichever is less. The federal government could pay up to 50% of the cost of the planning study. Federal funds could not be used for operating or maintaining the project.

H.R. 3334 would also authorize $20 million for the Secretary of the Interior (in cooperation with the Yucaipa Valley Water District) to participate in the design, planning, and construction of projects to treat impaired surface water, reclaim and reuse impaired groundwater, and provide brine disposal within the Santa Ana Watershed (California). The federal cost share could not exceed 25% and could not be used for operation or maintenance of the projects.

Lastly, H.R. 3334 would authorize the Secretary of the Interior (in cooperation with the City of Corona Water Utility, California) to participate in the design, planning, construction, and land acquisition for a project to reclaim and reuse wastewater, including degraded groundwaters, within and outside of the service area of the City of Corona Water Utility, California. The federal cost share could not exceed 25% and could not be used for operation or maintenance of the project.

**Committee Action**: On October 17, 2003, the bill was referred to the Resources Committee, which subsequently referred it to its Water and Power Subcommittee. On June 16, 2004, the Subcommittee marked up and forwarded the bill to the full Committee by unanimous consent. On July 14th, the Committee marked up and by unanimous consent ordered the bill reported to the full House.

**Cost to Taxpayers**: CBO reports that the legislation would authorize appropriations of $17 million in FY2005 and $83 million over the FY2005-FY2009 period.

**Does the Bill Expand the Size and Scope of the Federal Government?**: No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?**: No.

**Constitutional Authority**: The Resources Committee, in House Report 108-643, cites constitutional authority in Article I, Section 8, but fails to cite specific clause. House Rule XIII, Section d(1), requires that all committee reports contain "a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution." *[emphasis added]*

**RSC Staff Contact**: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

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## H.R. 3257—Western Reserve Heritage Areas Study Act (*Ryan of Ohio*)

**Order of Business**: The bill is scheduled to be considered on Tuesday, September 21st, under a motion to suspend the rules and pass the bill.

**Summary**: H.R. 3257 would authorize the Secretary of the Interior, in consultation with the State of Ohio, the counties of Trumbull, Mahoning, Ashtabula, Portage, Geagua, Lake, Cuyahoga, Summit, Medina, Huron, Lorain, Erie, Ottawa, and Ashland, and other appropriate organizations, to study (in accordance with the outline contained in the legislation) the "suitability and feasibility" of establishing the Western Reserve Heritage Area in these counties in Ohio. This study, among other things, would have to analyze to what extent this proposed heritage area would have "potential or actual impact on private property located within or abutting the Study Area."

The legislation also contains eight findings of Congress as to why the Western Reserve area of Ohio warrants federal involvement for historic preservation.

**Additional Background**: As the legislation points out, the Western Reserve was land (made up of the modern-day counties listed above) that was settled in the late 18th Century by people from Connecticut whose property and land had been destroyed during the American Revolution.

Congress has established 24 National Heritage Areas around the country, in which conservation, interpretation, and other activities are managed by partnerships among federal, state, and local governments and the private sector. The National Park Service provides technical assistance, as well as financial assistance, for a limited number of years following designation.

The National Park Service defines a National Heritage Area as follows:

> A "National Heritage Area" is a place designated by the United States Congress, where natural, cultural, historic and recreational resources combine to form a cohesive, nationally distinctive landscape arising from patterns of human activity shaped by geography. These patterns make National Heritage Areas representative of the national experience through the physical features that remain and the traditions that have evolved in the areas. Continued use of the National Heritage Areas by people whose traditions helped to shape the landscapes enhances their significance.
>
> National Heritage Areas are a new kind of national designation which seeks to preserve and celebrate many of America's defining landscapes.
>
> http://www.cr.nps.gov/heritageareas/FAQ/INDEX.HTM

**NOTE: no legislative criteria exist for designating a National Heritage Area.**

Most of the 24 existing National Heritage Areas are located in the eastern third of the United States. To see what and where they are, visit this webpage:
http://www.cr.nps.gov/heritageareas/VST/INDEX.HTM

Congress authorized the National Heritage Areas as follows:

- 1 in 1984
- 1 in 1986
- 2 in 1988
- 2 in 1994
- 11 in 1996
- 6 in 2000
- 1 in 2003

For more information on National Heritage Areas, visit this website:
http://www.cr.nps.gov/heritageareas/

**Conservative Concerns**: In the past, conservatives have tended to oppose National Heritage Areas because such designations usually lead to restrictive federal zoning and land-use planning. That is, residential and commercial private property owners are often prevented from doing what they want on their own property because of federal concerns that the historic "landscape" would be disrupted.

As J. Peyton Knight of the American Policy Center told the House Resources Committee's Subcommittee on National Parks, Recreation and Public Lands last year, "Nearly every Heritage Area has a management plan or statement of purpose that calls for restrictive zoning regulations, under the auspices of more environmental protection, more open space and more historic preservation. This typically results in more infringements upon the property rights of landowners located within the boundaries of Heritage Areas."

Furthermore, Mr. Knight pointed out that National Heritage Areas provide another reason for groups subsisting on federal funds to ask for even more federal funds: "If the Heritage Areas program is allowed to proliferate, experience shows that it will become not only a funding albatross, as more and more interest groups gather around the federal trough, but also a program that quashes property rights and local economies through restrictive federal zoning practices. The real beneficiaries of a National Heritage Areas program are conservation groups, preservation societies, land trusts and the National Park Service—essentially, organizations that are in constant pursuit of federal dollars, land acquisition, and restrictions to development."

Dan Clifton of Americans for Tax Reform also pointed out to the Parks Subcommittee last year that the "National Park Service…is already facing a multi-billion dollar maintenance backlog" and thus will not practically be able to take on any new maintenance requirements.

**Committee Action**: On October 7, 2003, the bill was referred to the Resources Committee, which subsequently referred it to its National Parks, Recreation, and Public Lands Subcommittee. On July 14, 2004, the full Committee marked up and by unanimous consent ordered the bill reported to the full House. The Subcommittee did not take official action on this legislation.

**Administration Position**: Although an Administration viewpoint is unavailable for this legislation, the National Park Service, in testimony before the Parks Subcommittee last year (for H.R. 280), recommended **"defer[ing] action on any individual national heritage area designation or study bill until generic national heritage area legislation is enacted."** *(emphasis added)*

To read the full statement, visit this webpage:
http://resourcescommittee.house.gov/108cong/parks/2003oct16/tiller.htm

**Cost to Taxpayers**: CBO estimates that completing the proposed study would cost $300,000 over the next few years.

**Does the Bill Expand the Size and Scope of the Federal Government?**: No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?**: No.

**Constitutional Authority**: The Resources Committee, in House Report 108-642, cites constitutional authority in Article I, Section 8 (but fails to cite a specific clause) and in Article IV, Section 3 (presumably in reference to Clause 2, which grants Congress the power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States"). House Rule XIII, Section d(1), requires that all committee reports contain "a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution." *[emphasis added]*

**Outside Organizations**: Americans for Tax Reform is opposed to H.R. 3257.

**RSC Staff Contact**: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

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## H.R. 3632—Anti-Counterfeiting Amendments of 2003 (Smith of Texas)

**Order of Business**: The bill is scheduled to be considered on Tuesday, September 21st, under a motion to suspend the rules and pass the bill.

**Background**: To deter counterfeiting, software companies increasingly use sophisticated identification features to verify product authenticity—features that are bundled with or placed on the product packaging. Bundling of authentic labeling components with counterfeit software has become part of an "intricate web of international organized crime," according to the Judiciary Committee. Questions surrounding the legal authority for federal authorities to seize components that were not affixed to or bundled with counterfeit items have arisen.

**Summary of the Bill**: H.R. 3632 would expand the criminal provisions of 18 U.S.C. 2318 to combat the trafficking of counterfeit intellectual property products—specifically the trafficking of genuine labels, licensing documents, or other authentication components affixed

to or bundled with sound recordings, computer programs, audiovisual works, other such software products, and certain literary and art works.

The legislation would create a new definition of illicit labels to include genuine labels that are being used or otherwise distributed without the authorization of the copyright owner or that are knowingly falsified to indicate a higher number of licensed users or copies than authorized by the copyright owner. H.R. 3632 would also require the forfeiture and destruction of any equipment, device, or material used to manufacture, reproduce, or assemble the counterfeit labels or illicit labels.

The bill would establish civil remedies for copyright owners harmed by such label trafficking (subject to a three-year statute of limitations).

H.R. 3632 would not cover goods distributed or sold electronically and would not apply to digital authentication features.

**Committee Action**: On November 21, 2003, the bill was referred to the Judiciary Committee, which subsequently referred it to its Subcommittee on Courts, the Internet, and Intellectual Property. On March 31, 2004, the Subcommittee marked up and forwarded the bill to the full Committee by voice vote. On June 23rd, the full Committee marked up and by voice vote ordered the bill reported to the full House.

**Cost to Taxpayers**: CBO estimates that H.R. 3632 would yield no significant cost to the federal government.

**Does the Bill Expand the Size and Scope of the Federal Government?**: No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?**: No.

**Constitutional Authority**: The Judiciary Committee, in House Report 108-600, cites constitutional authority in Article I, Section 8, Clause 8 (the congressional power "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries").

**RSC Staff Contact**: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

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## S. 1301 - Video Voyeurism Prevention Act of 2003 (Sen. DeWine)

**Order of Business**: The bill is scheduled to be considered on Tuesday, September 21, 2004, under a motion to suspend the rules and pass the bill.

**Summary**: S. 1301 amends Title 18 of the U.S. Code to make it illegal on federal property to videotape, photograph, or record individuals in certain states of undress when they have a reasonable expectation of privacy. The violator would be fined up to $100,000 and/or

imprisoned for one year if he "has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy[.]" The bill defines private area and what is meant by reasonable expectation of privacy, and notes that the law does not prohibit lawful "law enforcement, correctional, or intelligence activity."

**Additional Information:** According to the Committee, the development of small, concealed cameras and cell phone cameras, along with the instantaneous distribution capabilities of the Internet, "have combined to create a threat to the privacy of unsuspecting adults, high school students, and children. Although many states since have passed laws to target video voyeurism to protect those in a private area out of public view (including restrooms, locker rooms, and private dwellings), there are fewer protections for individuals who may be photographed in compromising positions in public places. The terms 'upskirting' and 'downblousing' refer to forms of voyeurism that are appearing with increasing frequency." The Committee says the bill "is designed using the well-accepted legal concept that individuals are entitled to a reasonable expectation of privacy."

**Committee Action**: The bill was introduced on September 30, 2003, and passed the Senate by unanimous consent on September 25. It was considered by the House Judiciary Committee on May 12, 2004, which reported it to the full House by voice vote.

**Cost to Taxpayers**: CBO estimates that implementing S. 1301 would have no significant cost to the federal government. CBO expects a relatively small number of offenders, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any fines assessed would be deposited in the Crime Victims Fund and later spent, though CBO does not expect the amount to be significant.

**Does the Bill Expand the Size and Scope of the Federal Government?**: The bill creates a new federal crime on federal property.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?**: No.

**Constitutional Authority**: The House Judiciary Committee (in Report No. 108-504) finds authority under Article 1, Section 8 (Powers of Congress) but fails to cite a specific clause.

**RSC Staff Contact**: Sheila Cole, sheila.cole@mail.house.gov, (202) 226-9719.

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## S.J.Res. 41 — Commemorating the opening of the National Museum of the American Indian (Sen. Campbell)

**Order of Business**: The resolution is scheduled to be considered on Tuesday, September 21, 2004, under a motion to suspend the rules and pass the bill.

**Summary**: The resolution has three findings and resolves that Congress:

"(1) recognizes the important and unique contribution of Native Americans to the cultural legacy of the United States, both in the past and currently;
"(2) honors the cultural achievements of all Native Americans;
"(3) celebrates the official opening of the National Museum of the American Indian; and
"(4) requests the President to issue a proclamation encouraging all Americans to take advantage of the resources of the National Museum of the American Indian to learn about the history and culture of Native Americans."

**Additional Information:** The National Museum of the American Indian Act (20 U.S.C. 808 et seq.) established within the Smithsonian Institution the National Museum of the American Indian and authorized the construction of a facility on the National Mall. According to news reports, "American tribes gave more than a third of the $100 million in private funds that Congress required to be raised. Federal money paid for the rest of the $219 million project."

The National Museum of the American Indian officially opens on September 21, 2004.

**Committee Action**: The resolution was introduced on July 7, 2004, and passed the full Senate by unanimous consent on July 22. It was referred to the Committee on House Administration, but was not considered.

**Cost to Taxpayers**: None.

**Does the Bill Expand the Size and Scope of the Federal Government?**: No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?**: No.

**RSC Staff Contact**: Sheila Cole, sheila.cole@mail.house.gov, (202) 226-9719