STATEMENT OF THE HONORABLE BRUCE BABBITT

SECRETARY OF THE INTERIOR

JOINT OVERSIGHT HEARING

BEFORE

HOUSE COMMITTEE ON RESOURCES

SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

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I appreciate the opportunity to testify here today on proposed withdrawals of federal land from location and entry under general land laws, including the mining laws. Your letter of invitation specifically directed attention to my recent actions to initiate withdrawals of 429,000 acres along the Rocky Mountain Front in the Lewis & Clark and Helena National Forests, and 605,000 acres in the Shivwits/Parashant region north of the Grand Canyon in northwestern Arizona. I welcome a public discussion of the usefulness of the withdrawals in contexts such as these, where other public values may be threatened by indiscriminate application of various public land laws, including the Mining Law. As I will discuss in more detail below, history clearly shows that withdrawals are often the best way to protect values of national interest that might be destroyed by inappropriate uses of public lands and national forests.

First, let me put my recent actions into historical and statutory context. Withdrawals have long been an important tool of public land management. They are a mechanism, exercised by the Executive and Legislative branches for nearly two centuries, to limit the application of certain broadly applicable public land laws -- especially those aimed at transferring interests in federal lands out of federal ownership.

By the early part of this century, hundreds of executive withdrawals had been made for such disparate purposes as to establish forest reserves, to conserve wildlife, to create Indian reservations, or to make federal lands available for military use. Many were made without express statutory authority from Congress, their legality was sometimes debated, but the Supreme Court settled the question in its landmark *United States v. Midwest Oil Co.* decision in 1915. It upheld executive power, noting that "when it appeared that the public interest would be served by withdrawing or reserving parts of the public domain, nothing was more natural than to retain what the Government already owned."

Starting around the same time as the *Midwest Oil* decision, Congress has several times acted to confirm broad executive power to make withdrawals. It did so in the Antiquities Act of

1906, authorizing the President to create national monuments, and it did it again in the Pickett Act of 1910. Most recently, it confirmed the power in the Federal Land Policy and Management Act (FLPMA), enacted in 1976. FLPMA broadly defines a withdrawal to include, in pertinent part:

> withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program.

FLPMA also sets out specific procedures by which FLPMA withdrawals can be made. Generally speaking, the FLPMA withdrawal process is initiated when the Secretary of the Interior publishes a notice in the Federal Register in effect proposing a withdrawal of a tract of federal lands. Upon publication the land identified is segregated from the operation of public land laws to the extent specified in the notice, for a period of up to two years. During that time, for larger proposed withdrawals (over 5000 acres), the Department gathers information, engages in consultations, and evaluates the effects of the proposed withdrawal, as specified in FLPMA section 204(c). (The process for withdrawals under 5000 acres is simpler, see section 204(d); and FLPMA also makes provision for emergency withdrawals of up to three years in length, see section 204(e).)

Section 204 (c) provides that a FLPMA withdrawal of 5000 or more acres may be terminated by Congressional action. The constitutionality of this so-called "legislative veto" provision was undermined, if not fatally impaired, by the Supreme Court's 1983 decision in *INS v. Chadha*, which struck down legislative vetoes as a violation of separation of powers.

Completing this brief statutory overview, Section 204 (i) of FLPMA also provides that, for federal lands under the control of a non-Interior agency (such as the Forest Service in the Department of Agriculture), the Secretary of the Interior shall make, modify, or revoke withdrawals only with the consent of the head of the department or agency involved, except in emergency situations. This was the process used to segregate portions of the Lewis & Clark and Helena National Forests in Montana from the Mining Law . Finally, let me emphasize that any withdrawals made are subject to valid existing rights. If the holder of a mining claim, mineral lease or other interest in the area being withdrawn can establish such a right, it is not affected by the withdrawal.

Turning now to our recent actions, the reason we acted is very simply stated: These proposed withdrawals under section 204(c) are aimed at making sure, while more permanent protections for these lands are being considered, that nothing happens on the ground that could interfere with, or make more costly, those protections of the land. We acted completely within the law, and within the long tradition of executive branch withdrawals. Indeed, considering some unhappy previous episodes, we would have been foolish <u>not</u> to have acted.

Let me explain. There have been many incidents in western history of people using the antiquated 1872 Mining Law to file mining claims on Federal lands for purposes that have little or nothing to do with actual mining development. (The same opportunity for abuse existed with many other old public land laws intended to settle the West through federal land privatization, but almost all of these other laws - unlike the Mining Law - have been repealed.) The presence of these claims can complicate sensible land management. The basic problem is that filing claims under the Mining Law is very easy. Getting rid of fraudulent or nuisance claims through contest proceedings is lengthy and difficult. This can lead the Federal Government to choose to buy out questionable or spurious claims rather than assuming the burden, expense, and delay involved in contesting them.

Let me mention one of the oldest and two of the most recent examples:

- Beginning around 1890, a man named Ralph Cameron staked numerous mining claims on what was then public domain land along the south rim of the Grand Canyon and on the trails leading from the rim to the Colorado River. Rather than looking for minerals, Cameron used his claims to mine the pockets of tourists instead, by controlling access and charging fees for use of the Bright Angel Trail. This was the most popular hiking trail for access to the Canyon, then as now. Numerous legal challenges were eventually filed to these claims, but it took nearly 20 years to remove Cameron's claims so the public could enjoy this world-class area of federal lands free from such extortion.

- In the modern era, a fast-acting person staked mining claims on public land at Yucca Mountain after Congress selected the area for the national high-level nuclear waste disposal site, but before the federal government cranked up the machinery for withdrawing the land from the Mining Law. Rather than going through expense and particularly the time to contest his claims, the Department of Energy elected to pay him a quarter of a million dollars of taxpayer money to relinquish them.

- In 1989 the Department of the Interior determined that it had to issue patents under the Mining Law for 780 acres of land within the Oregon Dunes National Recreation Area, an outstanding scenic and recreational treasure along the Pacific coast. (The mineral "discovery" on the mining claims to be patented was a so-called "uncommon" variety of sand.) Trying to avoid creating such an inholding in the National Recreation Area, the United States pursued a land exchange, intending to offer the patentee other public land of equal value in Oregon for the relinquishment of these claims. But when other public land was identified for such an exchange, and before it could be withdrawn, the holder of the claims in the Oregon Dunes filed mining claims on that other land, making it impossible to use them for the exchange.

Obviously, these situations could have been avoided -- with savings to the Nation's taxpayers -- by timely withdrawals of the affected land from the Mining Law. It was to avoid a repeat of these situations that we recently acted in the Rocky Mountain Front and north of the Grand Canyon. Let me now provide a little more detail on each.

The Lewis & Clark and Helena National Forests

Last year, the Forest Service settled a controversy of several decades by deciding through its Forest planning process not to allow new mineral leasing in the Rocky Mountain Front of Montana's Lewis & Clark National Forest because of its spectacular environmental, wildlife, recreational, cultural and scenic values. The area nevertheless remained open to location of mining claims under the Mining Law. Although it had never been the scene of any significant hardrock mining activity, the increased attention in the Forest Service plan to the management of the area for conservation could attract the location of "nuisance" mining claims such as has happened elsewhere. Indeed, a number of new mining claims were located in the area in 1996, while the Forest Service was considering the land use plan amendment affecting oil and gas leasing decisions on the Forest.

Therefore, at the request of the Forest Service, on February 4, 1999, the BLM published in the Federal Register notice of the proposal to withdraw this area from location of new mining claims, in order to protect Native American traditional and cultural uses, wildlife (including big game and fish habitats), and scenic resource values while the Forest Service evaluates long-term hard rock mineral management in the area. Publication segregates the land temporarily for up to two years. During the two-year period while a final withdrawal recommendation is developed, Interior and the Forest Service will conduct an open, public process under the BLM withdrawal regulations and the National Environmental Policy Act to evaluate the long-term future use of the area.

The Proposed Arizona National Monument

The Shivwits Plateau/Parashant Canyon area of Arizona includes many objects of historic and scientific interest, as well as magnificent cliffs, stunning vistas, and a mosaic of pinyon-juniper and ponderosa pine communities. Congress almost included much of it in Grand Canyon National Park when it enlarged the Park in 1975, but took it out in the final stages of the legislative process because of objections from hunting and livestock interests. As you know, late last fall I began to evaluate this area for possible protection under the Antiquities Act, which could be done in a way to allow grazing and hunting to continue. The area has never seen any significant mineral development, and there are only a handful of mining claims there now. Being exceedingly mindful of the unhappy experience with Ralph Cameron on the other side of the Grand Canyon, I determined that it would be foolish to invite a repeat of that experience. Therefore, on December 14, 1998, the BLM published a Federal Register notice of a proposed withdrawal of the area pursuant to section 204 (b) of

FLPMA. Publication had the effect of segregating the area temporarily. This will prevent location and entry under the general land and mining laws for up to two years, while further protective actions are contemplated.

You also asked about any future plans for similar withdrawals. For much of its 150 year history, the Department of the Interior has been steadily making, modifying, and revoking withdrawals. The complex business of managing several hundred million acres of federal land to serve the public interest demands no less. If we face situations elsewhere similar to those we faced in the Rocky Mountain Front and in the Shivwits/Parashant region -- where important conservation values were at stake and where the attractive nuisance of mining claim location could have unnecessarily complicated our consideration of protective actions -- I will not hesitate to act as I did there. I see nothing of value in allowing people to take advantage of easy entry onto public lands under antiquated relics like the Mining Law to mine the taxpayers' pockets and to thwart or hamper the protection of magnificent areas of federal lands for future generations.

Finally, you asked about what legislative remedies are available to ensure cooperation between the executive and legislative branches in fashioning public lands policy, in light of the *Chadha* decision. That decision, as I noted earlier, probably eliminated the legislative veto from FLPMA's withdrawal provisions. But its elimination does not meaningfully affect, in my judgment, the many opportunities for the executive and legislative branches to work together. In the specific examples I have discussed today, the temporary segregation of land we have put in place maintains the status quo while we are exploring administrative or legislative mechanisms for best managing these lands in the future.

Furthermore, the lack of a legislative veto leaves it open for Congress as a whole -- acting through the normal lawmaking process, involving action by both Houses and presentment to the President -- to address withdrawals put in place by the Executive. To take a well-known recent example, the Congress just a few months ago passed and the President signed a law modifying the boundaries of the Grand Staircase-Escalante National Monument, which the President two years earlier had created and withdrawn from entry, location, leasing or other disposition under the public land (including mining and mineral leasing) laws. As this shows, the ordinary give and take of the regular political process has much more influence on the management of federal lands than whether or not Congress has a formal opportunity to veto a proposed FLPMA withdrawal.

I appreciate the opportunity appear before these Subcommittees and discuss these important issues. I will be glad to answer any questions.

Note: Secretary Babbitt's statement before the House Subcommittee on National Parks and Public Lands in 1999 was originally available at the Department of Interior's website at - http://www.doi.gov/ocl/secy323.htm However, this link no longer works. The March 23, 1999 statement to Conress is listed in the Clinton Library archives at - http://www.clintonlibrary.gov/assets/DigitalLibrary/AdminHistories/Box%20001-010/Box%20010/1225030-interior-5.pdf.pdf and available for download at: http://core.tdar.org/document/374202