

NLWJC- Kagan

Counsel - Box 008 - Folder 004

Takings Legislation - Memos, Etc.

Talking meeting CEA 6-4-96

Not by date

LOTT - quoted as saying w'd bring up 605

Nat Journal reported Repub staff preparing stripped-down
Henn-type bill.

Msg amends - (Wyden-type bill; not concessive) - Pure politics amends

Prime stat is still no-amends.

This is backup strategy

- Things that would put 605 II - or amends highlighting what's
wrong in bill - vltles hor
approach - put in exceptions,
e.g., showing what's wrong
in bill.

Retire def. of prop/compet ^{directly} st to SCT law -
just say: as stated by SCT

Other things by "givings" - ^{of that} compensatory mechanism

Where specific findings will doesn't apply where Cong has mandated the neg - to protect
health, safety, welfare, ^{medical} etc. (expand nuisance exception)

Exempt certain entities - enps w/ lge assets etc. ■

perhaps: size of claim - over 1m.

No claims that ↑ deficit - MRS has to certify something in other

Relin to finding - wouldn't affect health, species, etc.
(see above)

Costs combined - No claims except out of the specifically
appropriated in this bill.

Low pays provision

Approp for additional judges

Bill not effective until CRO/ORDS reach a consensus on costs.

CPT to allow landowners to stop neighboring uses that affect
their property. Neighbor v neighbor. Highlights fact that if
you allow folks to do anything w/ prop, it has costs
Cracking under this bill.
claimant ↗

or upon certib. by key that potential
claim detoured just

Way of printing cost: you shouldn't give p. This kind of vs
to compensation.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

30-May-1996 08:36am

TO: (See Below)

FROM: Thomas C. Jensen
Council on Environmental Quality

SUBJECT: Takings small group meeting

Ladies and gentlemen of the takings team,

I would be grateful if you would join me for a brainstorming session on Tuesday, June 4th, at 10:30 a.m., at CEQ's conference room.

The purpose of the meeting is to identify and ensure preparation of amendments that those Senators who share the Administration's position on takings legislation may wish to offer -- if S.605 or any of its variants reach the floor. For example, we will review the so-called "Wyden" amendment. However, I would like to canvass the full field of ideas, particularly those that would spotlight the anti-environment, anti-community, budget-busting, litigation-generating, and other hypenated problems of S.605.

If you have collected these types of amendments, please bring the text with you.

I've invited a small number of takings team members (Sax, Dowling, Guzy, Coursen, Kagan, Dennis, Fitzpatrick, Konigsberg and Goad) simply because group exercises of this type are difficult. If there are persons who should be invited, please let me know and I'll take care of it.

Thanks for your cooperation.

Distribution:

TO: Remote Addressee
TO: Remote Addressee
TO: Remote Addressee
TO: Carol R. Dennis
TO: Elena Kagan
TO: Charles S. Konigsberg
TO: Remote Addressee
TO: Michael A. Fitzpatrick

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

16-May-1996 08:16pm

TO: (See Below)

FROM: Kathleen A. McGinty
 Council on Environmental Quality

SUBJECT: RE: Takings Speculation

see also newt's comments congressional monitor today urging dole
away from his takings bill.

Distribution:

TO: Thomas C. Jensen

CC: Dinah Bear
CC: Carol R. Dennis
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CC: FAX (97036973366,Michael Davis)

E X E C U T I V E O F F I C E O F T H E P R E S I D E

16-May-1996 10:03am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Meeting Notice, other material

The EOP/Agency takings team will meet by conference call on Monday, May 14, at 8:30 a.m. The call-in number is 260-7280 3437#

Takings team members are invited to meet with NGO representatives concerning the takings issue on Tuesday, May 21st, at 12:30 p.m. in the CEQ conference room (722 Jackson Place).

In response to the request of several participants in this morning's conference call, I am redistributing a partial transcript of the President's remarks last year on the House-passed version of the takings legislation.

THE WHITE HOUSE

Office of the Press Secretary
(Dallas, Texas)

For Immediate Release

April 7,

REMARKS BY THE PRESIDENT
TO THE AMERICAN SOCIETY OF NEWSPAPER EDITORS

Loews Anatole Hotel
Dallas, Texas

11:55 A.M. EDT

ENVIRONMENT EXCERPTS ON THE CONTRACT WITH AMERICA

. . . Regulatory reform -- another big item in the Rep

Contract: There are lots of horror stories. Every one of you probably a story that shows where a bureaucrat overreached, or there were too many regulations, or there was too little common sense. I am committed to the culture of regulation that has dominated our country for a long time. I have gone around espousing to everybody that they ought to read Mr. Hoover's book, The Death of Common Sense.

. . . And yet, surely, the answer is not to stop the government from regulating what it needs to regulate. If the Republican administration passes a bill that would let unsafe planes fly or contaminated meat be sold or contaminated water continue to find its way into city water systems, I will veto it. I will veto it. But if Congress will just sit down with me and work out a reasonable solution for more flexible regulatory reform, we can achieve an historic achievement.

I agree that Congress has a role to play. I agree that the Executive Branch sometimes hears things about the way regulations work that the Executive Branch doesn't. Congresswoman Johnson and Congressman Bricker and Congressman Geren flew down here with me today -- they're out there all the time talking to their members. They may hear things we don't. That's why I will not approve of the Senate's 45-day override legislation. But I will veto that lets a bunch of lawyers tie up regulation for years. We've got to get out of that as it is.

So I say, flexibility, yes; reform, yes; but paralysis and straightjacketing, no.

. . . The environmental protection area: A big part of the original Covenant was protecting our environment and promoting our natural resources. It's something we can all give to our children whether we die rich or poor. And it is our obligation to our future economic health, because no nation that in the long run succeeds economically unless you preserve your environment.

I just got back from Haiti, and I can tell you one of the biggest obstacles to the survival of democracy in that country is they've ripped all the trees off every hill in the country, and we need to plant millions of trees. We could put half the young people in the country to work for a year just trying to undo the environmental devastation. And if we do it, they're not going to be able to regain their economic footing.

I cannot and I will not compromise any clean water, any clean air, any protection against toxic waste. The environment cannot protect itself. And if it requires a presidential veto to protect it, then that's what I'll provide.

I will also veto the House-passed requirement that government pay property owners billions of dollars every time we act to defend our national heritage of seashores or wetlands or open spaces. If that lands on the books in every state in the country today, then local governments completely have to give up zoning or be bankrupt every time they try to pass a zoning law. . . . The people of Arizona voted against it by a 20-point margin last November.

Well, the people do not have to vote -- do not have a

this issue in Congress. But I do, and I'll use it. This is not a goo

* * * * *

END12:55 P.M. CDT

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

13-May-1996 03:39pm

TO: (See Below)

FROM: Tracey E. Thornton
 Office of Legislative Affairs

SUBJECT: RE: Conference Call Notice

I just received a set of inserts from DOJ that includes a letter from Fois (5/9/96) with comments on Brown amendment. Last week Biden's staff asked us not to circulate anything on Brown except to them. I'm assuming they changed their mind.

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Mar-1996 01:55pm

TO: (See Below)

FROM: Charles S. Konigsberg
 Office of Mgmt and Budget, LA

SUBJECT: RE: Takings legislation

I think it would be useful if we have a meeting w/ Daschle's staff some time next week to find out where the Senate Dems are (i.e. whether they'll oppose any version of Takings, or whether some of them feel they'll need the cover of a process-type alternative). Daschle's Floor staff tells me that Floor action on Takings is still possible for the end of the month. Tracey, do you want to set the meeting up, or should I? (We should also discuss timing for release of the SAP; we'll be circulating the SAP for final clearance middle of next week).

Distribution:

TO: Thomas C. Jensen

CC: Kathleen A. McGinty
 Tracey E. Thornton
 Sally Katzen
 Martha Foley
 Elena Kagan
 T J Glauthier
 Carol R. Dennis
 LAWRENCE J. HAAS
 Brian J. Johnson

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Mar-1996 01:38pm

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Takings legislation

The EOP/agency takings team met today to prepare for upcoming floor consideration of S.605.

We are assembling and updating the rebuttals/replies to the "horror stories" cited in the Judiciary Committee majority report. We are preparing a critique of the one known probable amendment, from Senator Brown, which purports to exclude from the bill's scope rules or regulations needed for health or safety.

To the group's knowledge, we have fulfilled, or will shortly fulfill, all the requests for ammunition we've gotten from Democratic staff.

The group agreed, however, that we did not have a clear picture of what Senator Daschle anticipated doing. In particular, several agencies had gotten the impression from his staff that he thought he might need a substitute bill of some kind, perhaps a pure "process" bill, providing for "takings impact analyses" or the like..

The group agreed that the Administration should, if possible, discourage Senator Daschle from moving in that direction. The group feels strongly that it is not necessary or in the Administration's interest to help do anything to aid the bill's proponents (Dole, Graham, etc.) in achieving any kind of victory on this issue. While the politics a year ago might have required embrace of a Bumpers-type bill, those politics have changed.

Our recommendation to you, Katie, Tracey, Martha, Sally, is that the WH attempt to dissuade Sen. Daschle from sending signals to his troops that he's open to takings "lite" kind of approaches. Do you think this is do-able?

Distribution:

TO: Kathleen A. McGinty

EXECUTIVE OFFICE OF THE PRESIDENT

08-Mar-1996 09:46pm

TO: (See Below)

FROM: Tracey E. Thornton
Office of Legislative Affairs

SUBJECT: RE: Takings legislation

I think for all practical purposes, the lead on this issue remains w/bumpers and baucus and, to some extent, biden b/c it came out of his committee. the daschle folks have always deferred this effort to this group and it's not a good idea to look like we're moving around them--this group has been a good friend to us. if we wait to get a read from the democratic caucus, we'll be waiting awhile--they've got too much on their plate. As i said, EPW is trying to set something up for next week w/us and I'll ask them to be sure to include the daschle folks.

As for the Senate schedule, Dole has put this bill on the calendar but if he anticipates a brusing fight like the one on reg reform then I doubt that he'll push it hard.

Having been through this fight before in the Senate I can tell you that if we want the Dems to get a comfort level on just voting no we've got to provide more ammunition. We're not going to be able to hold folks b/c POTUS said he'll veto or takings bills are being defeated at the state level. If the agencies want to try the "just say no strategy" they've got to get their authorizers energized. We need to update the letters we have from Army, VA, HHS, EPA, DOJ, DOI, USDA, Treasury, Transportation and Defense. Even with all these folks may feel like they have to have something to vote for but if we don't get ourselves into high gear to fight this bill from all corners of the administration we have no real chance in my humble opinion. The last deal on takings, you will recall, was cut on the senate floor on a voice vote--luckily for us (except judicial review) it was a proposal drafted in coordination with the administartion. I think it took all of about 5 minutes with the members having done it themselves.

One other connected point is that there may be a lot of pressure on some members to vote for this if the larger reg reform bill dies. These are members who are not really vested in the reg reform debate but are sticking w/the leadership. Taking is a very different matter and we've got to approach it as such. Midwesterners are going to be hardpressed when the issue comes up,

especially if Repubs try to soften the bill. We've got to give them as much cover as they feel they need and if we don't want to have to produce an alternative, we'd better get moving on other fronts. Transportation, for ex, was able to turn Feinstein in committee and other agencies have got to connect with members in that same vein.

Having said all that, I do not think we're going to have a problem defeating this bill by whatever means. I think we've got to lay a broader foundation to get there.

Distribution:

TO: Charles S. Konigsberg

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CC: LAWRENCE J. HAAS
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Takings Mtg 3/1/96

8605

Jud cuts - Maj rep / 2 min reps
by Tuesday.

Floor schedule - week after next - 26th.

How to deal w/ amendments?

(Will there be a Demo alter?
→ e.g. health/safety exclusions

Keeneberg - handling
SAP on this only
Don't SAP distributed

Brown Amendment - will propose on floor
Defense for health, safety, morals
Does this redefine nuisance.

Sax - mat'l in effect of Brown Amendment

Need examples
here.

- Doesn't effect stuff outside h, s, m
- "Signif ~~and~~ interferences" - libelation mess
- May be interp'd only as subset of
real nuisances (This is placement
issue - how w/in nuisance except-)

Govt -
Have to always
justify - go to
ct on everything

Army -
Never taken a position on this

Process-oriented.

Poss alters - Very narrow. Non-compens. aspects of 605

ADR proposal?

or takings impact analysis?

Do we really need?

We have this but - don't need anything else.

But find out who's nervous

how nervous they are.

Sax - we have no sense of where p. are.

Takeing Meeting #/25/96

Nothing will happen on bill till March
Dole having real problems w/ Chafee
Op of moderate Repubs

Wt leg after no help in making it a better bill

Watch - response to critics on GAS - detailed effort to make all that
Cute staff would like response [the leg reflects judicial opinions.
Tim (DOJ) to do. When?

SPR on Monday

Acceptance of cut in Winter - #166
Typical of suits of non-health & safety clauses
Can use? Check w/ SG?

Brown amendment - health/safety
Prepare response - insufficient
But don't give cut - Rey'll
only make it better

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-Feb-1996 08:46pm

TO: (See Below)

FROM: Thomas C. Jensen
Council on Environmental Quality

SUBJECT: CO: Takings bill overwhelmingly defeated in House.

COLORADO: TAKINGS BILL OVERWHELMINGLY DEFEATED IN HOUSE

The Colorado state House on 2/26 "overwhelmingly" defeated a "takings" bill that would have established a fact-finding process to hear disputes over land-use issues. The measure "would have provided property owners a way to appeal government action when development permits are rejected or when land is rezoned" and it could have required government agencies to pay landowners for damages. Environmentalists were "elated" by its defeat.

Five takings measures have been introduced in the CO legislature this year, but none has yet been sent to the governor.

In other business, the House approved a measure that would restrict cities and counties from enacting stricter enviro regs than the state requires. Critics said the bill would handcuff local governments (Frank/Lipsher, DENVER POST, 2/27).

(c) The American Political Network, Inc.

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Feb-1996 02:18pm

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: KY: House panel OKs takings bill; full passage likely.

KENTUCKY: HOUSE PANEL OKs TAKINGS BILL; FULL PASSAGE LIKELY

The Kentucky state House Gov't Cmte. on 2/6 approved a "takings" bill that "appears headed for passage in the full House unless derailed by questions about its cost." But "the Senate often blocks bills that would cut back" enviro regs.

Under the bill, which is co-sponsored by 54 of 100 House members, the state would have to prepare an assessment of "takings implications" of any new regulations or policies. "It would also have to prepare an analysis of any license or permit if a property owner or licensee requests it."

Farmers and coal operators favor the bill, saying it would prevent excessive gov't regs. But enviros, planners and gov't officials say it would have a huge fiscal impact and actually increase bureaucracy. Environmental attorney Hank Graddy: "[The bill] is an invitation to litigate rather than solve problems" (Cross/Walfoort, Louisville COURIER-JOURNAL, 2/7).

(c) The American Political Network, Inc.

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

22-Jan-1996 10:26am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Meeting Notice

The EOP/Agency takings team will meet in person on Thursday, January 25th at 10:00 a.m. in the CEQ Conference Room (722 Jackson Place).

The purpose of the meeting is to review events since the Judiciary Committee mark-up and identify tasks and assignments.

If you require additional information, please contact Tom Jensen or Lesley Turner at 395-7415.

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TO: Michael A. Fitzpatrick
TO: Elena Kagan

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

17-Dec-1995 09:39am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Judiciary Committee Mark-up

We were advised Friday afternoon that the Judiciary Committee may resume consideration of S.605 on Wednesday, December 20th.

The White House's legislative Affairs office has asked that the agencies' principal spokespeople on takings be present for the mark-up. This is to accomodate the committee's practice of quizzing agencies directly during the mark-up process.

I realize that the furlough/shutdown situation casts some doubt on the availability of some of you. Nonetheless, we need to proceed on the assumption that we all can participate, and make adjustments later if needed.

Justice: Please have one or more of the following persons in attendance - Coppelman, Simon, Osenbaugh, Dowling, Medina

Interior: Sax, Cohen, or Courson

Ag: Eric Olsen

DOD: Jim VanNess

EPA: Gar Guzy

OMB: Carol Dennis or someone else empowered to speak to the cost issues, particularly our views of the shortcomings in the CBO analysis.

Other agency representatives are welcome to attend.

Depending on the shutdown situation, the Takings Team may meet on Tuesday afternoon. Please try to hold open the period of 11:00 - 1:00.

Thanks for your cooperation.

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

14-Dec-1995 05:03pm

TO: Michael A. Fitzpatrick
TO: Thomas C. Jensen
TO: Carol R. Dennis
TO: Elena Kagan

FROM: Tracey E. Thornton
 Office of Legislative Affairs

SUBJECT: Takings markup

As you all know, the markup was put over til next thursday. In light of the fact that we have some time I think we should review the documents that have been produced to see if they need to be updated, improved, or whatever. I have not looked at all of the stuff collected from the agencies but, in light of the fact that Biden focused on the nuisance exception, I think our talking points on that need to be reworked. The document I have is a one-pager and it has Supreme Court quotes dating back to 1926. Can we "dumb some of this stuff down" (thank you Carol), so that it is clearer to our audience -- even though this is the Judiciary Committee, less wonk-speak is better. For purposes of next week then, we need to revamp the nuisance paper. Tom, can you talk to your folks about this and whatever else you feel needs reworking?

I neglected to mention that one of the practices of this committee, started by Democrats during reg reform, is they ask agencies questions and even solicit comments during markups. They simply ask if there's anyone from XYZ agency in the audience and they proceed to ask questions. In the unlikely event that this happens next thurs, we should have some rough idea who will speak from what agency and to what issues. I will mention to the legislative affairs person at the agency but you should also raise with your folks. We often find that the most knowlegable person on the issue has trouble saying it in a plain, yet compelling way so as to give Members a vivid picture of our point. In other words, again, they can't "dumb down". In making these choices, though, we have to consider who can make the most compelling presentations.

The letter was well-received by the D's and cursed by the R's--a complete success! Thanks again.

THE WHITE HOUSE
WASHINGTON

OFFICE OF LEGISLATIVE AFFAIRS
FAX COVER SHEET

NOTE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS
CONFIDENTIAL AND INTENDED FOR THE RECIPIENT ONLY.

DATE: _____

TO: Jensen 53744 Foley 62893
KATZEN 53047 KAGAN 61647
FAX #: Fidler 66530-62710

FROM: TRACEY E. THORNTON
456-6493 (T) / 456-2604 (F)

RE: THIS WENT ABOUT 7PM.
THANKS TO ALL OF YOU FOR
YOUR ASSISTANCE.
STAY TUNED

PAGE 1 OF 2

If there are any problems with this transmission, please call
(202) 456-6493.

FAX SENT: _____

THE WHITE HOUSE
WASHINGTON
December 13, 1995

Dear Mr. Chairman:

As the Senate Judiciary Committee begins consideration of S.605, the Omnibus Property Rights Act of 1995, I am writing to let you know of my intention to veto this bill or any similar compensation entitlement legislation if it is presented for my signature.

Though styled as an effort to protect private property, a goal which I strongly support, S. 605 does not protect legitimate private property rights. The bill instead creates a system of rewards for the least responsible and potentially most dangerous uses of property. It would effectively block implementation and enforcement of existing laws protecting public health, safety, and the environment.

In addition, S. 605 creates one of the most expensive new federal spending programs in recent history, costing taxpayers tens of billions of dollars. It sets up new bureaucracies and innumerable opportunities for litigation and establishes unprecedented statutory entitlements beyond those guaranteed by the Constitution. Clearly, this is not the right way to achieve our common goal of protecting private property rights.

I continue to believe that we can work together to improve those regulatory arenas where private property interests may be unfairly burdened. My Administration's reforms in our regulatory system and the recent Senate passage of the Safe Drinking Water Act by a unanimous, bipartisan vote, demonstrate that by working together we can reach common ground solutions to these difficult problems.

Sincerely,

Bill Clinton

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

EXECUTIVE OFFICE OF THE PRESIDENT

13-Dec-1995 10:25am

TO: (See Below)

FROM: Jocelyn M. Jolley
Office of Legislative Affairs

SUBJECT: POTUS Takings Letter

THIS IS THE FINAL DRAFT OF POTUS' VETO LETTER. PLEASE SEND YOUR COMMENTS TO TRACEY THORNTON BY NOON TODAY.

Dear Mr. Chairman:

As the Senate Judiciary Committee begins consideration of S.605, the Omnibus Property Rights Act of 1995, I am writing to let you know of my intention to veto this bill or any similar compensation entitlement legislation if it is presented for my signature.

Though styled as an effort to protect private property, a goal which I strongly support, S. 605 does not protect legitimate private property rights. The bill instead creates a system of rewards for the least responsible and potentially most dangerous uses of property. It would effectively block implementation and enforcement of existing laws protecting public health, safety, and the environment.

In addition, S. 605 creates one of the most expensive new federal spending programs in recent history, costing taxpayers tens of billions of dollars. It sets up new bureaucracies and innumerable opportunities for litigation and establishes unprecedented statutory entitlements beyond those guaranteed by the Constitution. Clearly, this is not the right way to achieve our common goal of protecting private property rights.

I continue to believe that we can work together to improve those regulatory arenas where private property interests may be unfairly burdened. My Administration's reforms in our regulatory system and the recent Senate passage of the Safe Drinking Water Act by a unanimous, bipartisan vote, demonstrate that by working together we can reach common ground solutions to these difficult problems.

Sincerely,

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Distribution:

TO: Sally Katzen
TO: Kathleen A. McGinty
TO: Martha Foley
TO: Thomas C. Jensen
TO: Elena Kagan
TO: Tracey E. Thornton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

11-Dec-1995 01:40pm

TO: Thomas C. Jensen

FROM: Ruth D. Saunders
 Office of Mgmt and Budget, NRD

CC: Elena Kagan
CC: Christine L. Nolin

SUBJECT: RE: FYI

Thanks for the update Tom.

I have one item while we're on the subject. Yates wrote the President on November 9th supporting the notion of legislation to fix the rescission rider and offering to be of assistance.

There will be an official reponse to Yates from the Director after something has moved on the legislation. In the meantime, Yate's staffer (in his personal office -- oops I forgot his name) is expecting a phone call on the status of the legislation. I will also mention this to TJ, but knowing his schedule he may not have time to follow-up. Is this something you could do?

Also, Katie's note mentions the revised cost estimate of \$50 million. That is correct.

EXECUTIVE OFFICE OF THE PRESIDENT

11-Dec-1995 01:16pm

TO: (See Below)
FROM: Kathleen A. McGinty
Council on Environmental Quality
SUBJECT: timber

norm dicks just called with the following report:

-- he talked to hatfield; hatfield was pretty negative but said he was willing to sit down and talk

-- at the pacific northwest delegation meeting last week, jack metcalf raised the issue complaining that he "was catching hell on the 318 sales". this apparently led gorton to say that "maybe we need to make some adjustments there...."

-- dicks recommends that we try to meet hatfield very soon on this.

-- dicks says that this has to be done in reconciliation, altho he then said that he might try some things in interior. i said i didn't think we had money in interior. he said that probably was right. by the way -- he has in mind that we have said that we need 50 m for buyout purposes. is that right?? is that all we need???

for those working interior approps bill -- some may know this already but for those who do not, dicks reported that they will be back in conference at 2 tomorrow. then to rules tomorrow nite. floor tomorrow nite or wednesday. i reported to dicks that, from what we know about where the conferees are, the bill is still unacceptable to us.

Distribution:

TO: Jennifer M. O'Connor
TO: Martha Foley
TO: T J Glauthier
TO: Shelley N. Fidler
TO: Thomas C. Jensen
TO: Dinah Bear
TO: Ron Klain

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

11-Dec-1995 11:59am

TO: Michael A. Fitzpatrick

FROM: Carol R. Dennis
 Office of Mgmt and Budget, NRD

CC: Thomas C. Jensen
CC: Elena Kagan

SUBJECT: RE: Final, final version

What is the status of the final, final POTUS letter? Has it been signed and sent? I would like a copy. Fax 5-5836. Thanks.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Dec-1995 05:24pm

TO: Thomas C. Jensen
TO: Elena Kagan
TO: Carol R. Dennis

FROM: Michael A. Fitzpatrick
 Office of Mgmt and Budget, OIRA

SUBJECT: Final, final version

Here is the final, final version. Look it over and let me know if there are any problems.

Dear Chairman Hatch,

As the Senate Judiciary Committee begins consideration of S. 605, the Omnibus Property Rights Act of 1995, I am writing to let you know of my intention to veto this bill or any similar compensation entitlement legislation if it is presented for my signature.

S. 605 is styled as a measure to protect private property rights, a laudable goal that I strongly support. Indeed, my Administration has undertaken numerous reforms to address specific problems in the administration of federal laws affecting private property. S. 605, however, does not protect legitimate property rights. Instead, the bill creates a system of rewards for the least responsible and potentially most dangerous uses of property and, more importantly, would effectively block implementation and enforcement of existing laws protecting public health, safety, and the environment.

In addition, at the very time we are working to balance the budget and streamline the size of government, S. 605 creates one of the most expensive federal spending programs in recent history. It creates new bureaucracies and innumerable opportunities for litigation, establishes unprecedented statutory entitlements beyond those guaranteed by the Constitution, and will impose tens of billions of dollars of costs on taxpayers. Clearly, S. 605 is not the right way to achieve our common goal of protecting private property rights.

I continue to believe that we can work together to improve those regulatory arenas where private property interests may be unfairly burdened. My Administration's reforms in our regulatory system, and the recent Senate passage of the Safe Drinking Water Act by a unanimous, bipartisan vote, demonstrate that we can reach common ground solutions to these difficult problems.

Sincerely,

William J. Clinton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Dec-1995 02:25pm

TO: Thomas C. Jensen
TO: Elena Kagan
TO: Carol R. Dennis

FROM: Michael A. Fitzpatrick
 Office of Mgmt and Budget, OIRA

SUBJECT: Final POTUS Letter

Sally and I have incorporated as many of everyone's comments as we could. Many were contradictory and could not be reconciled. We just finished a 'back-and-forth' with WH Leg Affairs, who had some very legitimate concerns over wording and, more importantly, tone. Attached is the compromise letter, which I think is actually quite good. It's probably going to go up to the Hill soon. Call me if there are any major problems, or if you just want to chat. Mike (5-1247).

Dear Chairman Hatch,

As the Senate Judiciary Committee begins consideration of S. 605, the Omnibus Property Rights Act of 1995, I am writing to let you know of my intention to veto this bill or any similar compensation entitlement legislation if it is presented for my signature.

S. 605 is styled as a measure to protect private property rights, a laudable goal that I strongly support. Indeed, my Administration has undertaken numerous reforms to address specific problems in the administration of federal laws affecting private property. S. 605, however, does not protect legitimate property rights. Instead, the bill creates a spoils system of rewards for the least responsible, most dangerous users and abusers of property and, more importantly, would effectively block implementation and enforcement of existing laws protecting public health, safety, and the environment.

In addition, at the very time we are working to balance the budget and streamline the size of government, S. 605 creates one of the most expensive federal spending programs in recent history. It creates new bureaucracies and innumerable opportunities for litigation, establishes unprecedented statutory entitlements beyond those guaranteed by the Constitution, and will impose tens of billions of dollars of costs on taxpayers. Clearly, S. 605 is not the right way to achieve our common goal of protecting private property rights.

I continue to believe that we can work together to improve those regulatory arenas where private property interests may be unfairly burdened. My Administration's reforms in our regulatory system, and the recent Senate passage of the Safe Drinking Water Act by a unanimous, bipartisan vote, demonstrate that we can reach common ground solutions to these difficult problems.

Sincerely,

William J. Clinton

Wet group?

Takeings Group Meeting 12/6

EPA - wetlands

1-p. admin plan on wetlands
supporting docs.

1p - why wetlands are imp.

1p - permits

ESA (Interview)

Short doc - ESA generally

HCP - 1/2 p

Colin - 1/2 p

ESA booklet

Takeings - Interview

Public Responsibility ...

Water vts (2)

nuisance

testimony - cars

Letters (2)

DOT -

Quotes from 8th case

Leg Affs - take it from here.
What's the organization?
structure?

← Ash

1-p. paper: Not prop vts / one-stop environmental disaster

E X E C U T I V E O F F I C E O F T H E P R E S I D E

08-Dec-1995 11:11am

TO: Elena Kagan
TO: Kathleen A. McGinty

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: OIRA/CEQ redraft of takings letter

Dear Chairman Hatch,

As the Senate Judiciary Committee begins consideration of S. 605, the Omnibus Property Rights Act of 1995, I am writing to let you know of my intention to veto this bill or any similar compensation entitlement legislation if it is presented for my signature.

S. 605 is styled as a measure to protect private property rights. I support this laudable goal, and believe that legitimate property interests should be adequately protected. Indeed, my Administration has undertaken numerous reforms to address specific problems in the administration of federal laws affecting private property.

S. 605, however, does not protect legitimate property rights. At best, the bill creates a spoils system of rewards for the least responsible, most dangerous users and abusers of property. At worst, it is a thinly disguised effort to block implementation and enforcement of existing laws protecting public health, safety, and the environment.

S. 605 departs from our Constitution and runs counter to more than two centuries of jurisprudence by turning the very notion of citizenship -- that our freedoms go hand-in-hand with our responsibilities to each other and to the community -- on its head. It places the property interests of most Americans at risk by threatening the laws that protect our citizens from pollution, dangerous products, and irresponsible behavior

Finally, at the very time we are working to balance the budget and streamline the size of government, S. 605 moves in the opposite direction. It creates new bureaucracies and innumerable opportunities for litigation, establishes unprecedented statutory entitlements beyond those guaranteed by the Constitution, and will impose tens of billions of dollars of costs on taxpayers.

Clearly, S. 605 is not the right way to achieve our common goal

of protecting private property rights.

I continue to believe that we can work together to improve those regulatory arenas where private property interests may be unfairly burdened. My Administration's reforms in our regulatory system, and the recent Senate passage of the Safe Drinking Water Act by a unanimous, bipartisan vote, demonstrate that we can reach common ground solutions to these difficult issues.

Sincerely,

William J. Clinton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Dec-1995 06:16am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Potus takings letter

Sally and Michael,

Your Thursday p.m. edits on the POTUS takings letter look great. It wasn't clear from Michael's message to me whether you'd forwarded it to Tracey and the rest of the clearance chain, but I encourage you to do so. As rewritten, the letter's particular strength is in its reference to "right and wrong" and societal values. These points work for the President and bolster the important, but comparatively pedestrian, cost and bureaucracy arguments.

Tom

Distribution:

TO: Sally Katzen
TO: Michael A. Fitzpatrick

CC: Kathleen A. McGinty
CC: Shelley N. Fidler
CC: Martha Foley
CC: Tracey E. Thornton
CC: Elena Kagan
CC: T J Glauthier
CC: Carol R. Dennis
CC: Michael L. Goad

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

07-Dec-1995 03:16pm

TO: Elena Kagan
FROM: Thomas C. Jensen
 Council on Environmental Quality
SUBJECT: RE: two things

Elena,

My fax is tied up at the moment, but I'll fulfill my vow to paper you.

I concur. Draft 2 is the best going. I'm trying to figure out how to be diplomatic about this. I urge you to send an e-mail to Tracey et al noting your concern.

Tom

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

07-Dec-1995 02:21pm

TO: (See Below)

FROM: Carol R. Dennis
 Office of Mgmt and Budget, NRD

SUBJECT: RE: Draft 2 of POTUS letter on S.605

Tom, thanks for the chance to review # 2. If Pat has a version then this may be gratuitous, but I still think we should not accept the premise that S 605 protects property. Therefore I would delete, "In short, S. 605 is not the right way to protect private property", at the end of the third paragraph. I don't think we want members thinking S 605 protects private property. It doesn't. According to paragraph # 4 it puts the property interests of most Americans at risk.

I'm concerned that if members think it protects property, although maybe in the wrong way, they might vote for it. If however we say it does NOT protect private property then their rationale for voting for it must rest on something else.

At the end of the fourth paragraph I would insert" In short, S. 605 does not protect private property

Distribution:

TO: Thomas C. Jensen

CC: Kathleen A. McGinty
 Martha Foley
 Sally Katzen
 Tracey E. Thornton
 Elena Kagan
 T J Glauthier
 Shelley N. Fidler
 Brian J. Johnson
 Dinah Bear
 Michael L. Goad

Dear Chairman Hatch,

I am advised that the Senate Committee on the Judiciary may begin consideration of S. 605 soon. I am writing to inform you that I will veto S. 605, or any similar compensation entitlement legislation, that may be presented for my signature.

S. 605 is styled as a measure to protect private property rights. I support this laudible goal, and believe that legitimate property interests should be adequately protected. Indeed, my Administration has undertaken numerous reforms to address specific problems in the administration of federal laws affecting private property.

S. 605, however, does not protect legitimate property rights. At best, the bill creates a spoils system of rewards for the least responsible, most dangerous users and abusers of property. At worst, it is a thinly disguised effort to block implementation and enforcement of existing laws protecting public health, safety, and the environment. In short, S. 605 is not the right way to protect private property.

S. 605 departs from our Constitution and runs counter to more than two centuries of jurisprudence by turning the very notion of citizenship -- that our freedoms go hand-in-hand with our responsibilities to each other and to the community -- on its head. It places the property interests of most Americans *at risk* by threatening the laws that protect our citizens from pollution, dangerous products, and irresponsible behavior

Finally, at the very time we are working to balance the budget and streamline the size of government, S. 605 moves in the opposite direction. It creates new bureaucracies and innumerable opportunities for litigation, and will impose billions of dollars of costs on society.

I remain committed to work with Congress to craft bipartisan legislation that improves those few regulatory arenas where private property interests may be unfairly burdened. My Administration's continuing efforts to reform our regulatory system, and the recent passage of the Safe Drinking Water Act, demonstrate that we can reach common ground solutions to these difficult issues.

Sincerely,

William J. Clinton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

07-Dec-1995 02:47pm

TO: (See Below)

FROM: Tracey E. Thornton
 Office of Legislative Affairs

SUBJECT: takings draft

Attached draft is our recommended letter to Judiciary which takes from CEQ draft and Rivlin testimony. If you would send me your comments/concerns/suggestions/edits, etc., I will try to incorporate, revise or whatever's appropriate and we can go from there.

txs

Distribution:

TO: Kathleen A. McGinty
TO: Sally Katzen
TO: Martha Foley
TO: Elena Kagan
TO: T J Glauthier
TO: Shelley N. Fidler
TO: Thomas C. Jensen
TO: Carol R. Dennis
TO: Michael L. Goad

Dear Chairman Hatch,

As the Senate Judiciary Committee begins consideration of S. 605, the Omnibus Property Rights Act of 1995, I am writing to let you know of my intention to veto this bill or any similar compensation entitlement legislation if it is presented for my signature.

Though styled as an effort to protect private property, a goal which I strongly support, takings compensation bills are, in truth, efforts to block implementation of existing laws protecting public health, safety, and the environment. Indeed, S. 605 places the property interests of most Americans at risk by threatening the laws that protect our citizens from pollution, dangerous products, and irresponsible behavior.

In addition, S. 605 would create one of the most expensive new federal spending programs in recent history, [establishing unprecedented statutory private property rights and entitlements beyond those guaranteed by the Constitution] and costing taxpayers tens of billions of dollars. The types of endless and unwarranted claims against the Treasury permitted under this bill could be so expensive, the government could no longer take needed action to protect and serve the public. Clearly, this is not the right way to achieve our common goal of protecting private property rights.

creating a
spoils system
for the
least
responsible
users of
property

I continue to believe that we can work together to improve those regulatory arenas where private property interests may be unfairly burdened. My Administration's reforms in our regulatory system, and the recent Senate passage of the Safe Drinking Water Act by a unanimous, bipartisan vote demonstrate that, by working together, we can reach common ground solutions to these difficult problems.

Sincerely,

E X E C U T I V E O F F I C E O F T H E P R E S I D E

07-Dec-1995 11:48am

TO: Elena Kagan

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: FYI - Draft POTUS letter on takings

Dear Chairman Hatch,

I am advised that the Senate Committee on the Judiciary may begin consideration of S.605 this week. I am writing to inform you that I will veto S.605, or any similar compensation entitlement legislation, that may be presented for my signature.

S. 605 is styled as a measure to protect private property. I support this laudible goal and believe that legitimate property interests should be adequately protected. Indeed, my Administration has undertaken numerous reforms to address specific problems in the administration of federal laws affecting private property.

S. 605, however, does not protect legitimate property rights. At best, the bill creates a spoils system of rewards for the least responsible, most dangerous uses and users of property. At worst, it is a poorly disguised effort to block implementation of existing laws protecting public health, safety, and the environment. In short, S. 605 is not the right way to protect private property.

To the contrary, S. 605 places the property interests of most Americans at risk by threatening the laws that protect our citizens from pollution, dangerous products, and irresponsible behavior. It departs from our Constitution and runs counter to more than two centuries of jurisprudence by turning the very notion of citizenship -- that our freedoms go hand-in-hand with our responsibilities to each other and to the community -- on its head.

Finally, at the time we are working to balance the budget and reduce the size of government, S. 605 moves in the opposite direction. It creates new bureaucracies, innumerable opportunities for litigation, and will impose billions of dollars of costs on government and society.

I remain committed to work with Congress to craft bipartisan

legislation that improves those few regulatory arenas where private property interests may be unfairly burdened. My Administration's continuing efforts to reform our regulatory system, and the recent passage of the Safe Drinking Water Act, demonstrate that we can reach common ground solutions to these difficult issues.

Sincerely,

William J. Clinton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

06-Dec-1995 06:40pm

TO: (See Below)

FROM: Tracey E. Thornton
 Office of Legislative Affairs

SUBJECT: RE: Meeting with Sen. Simon on takings

The mark-up is still on. Don't know how far they will get b/c they may go to flag bill on the floor but we should not count on that. We are going to have to get this letter out tomorrow a.m. if we want it to be effective. The committee is not happy with OMB's letter ... "Can't believe we waited 3 weeks for this..." was their response. At least two members want to talk to Pat about the President's plans--that's another reason we want the letter--and one of them is Simon.

The thing we need right now is the letter and I think we can manage the rest.

Distribution:

TO: Thomas C. Jensen

CC: Martha Foley
CC: Sally Katzen
CC: T J Glauthier
CC: Kathleen A. McGinty
CC: Shelley N. Fidler
CC: Michael L. Goad
CC: Carol R. Dennis
CC: Elena Kagan
CC: Michael A. Fitzpatrick
CC: Ronald K. Peterson

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

06-Dec-1995 05:46pm

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Meeting with Sen. Simon on takings

At his staff's request, several agency representatives and CEQ met with Sen. Simon today on S.605, the takings bill. Three key points:

According to his judiciary committee staff, the bill will NOT begin mark-up tomorrow. It has been pushed back to next Thursday or later by flag, abortion, and ninth circuit legislation.

Sen. Simon opposes the bill, and asked for strong anecdotal information on how property rights interests could use the bill, if enacted, to reap windfalls or harm the public interest.

Finally, he was pleased to learn that the President had indicated the he'd veto the House-passed bill and agreed with the WH "no amendments in committee" strategy.

Distribution:

TO: Tracey E. Thornton
TO: Martha Foley
TO: Sally Katzen
TO: T J Glauthier
TO: Kathleen A. McGinty
TO: Shelley N. Fidler
TO: Michael L. Goad
TO: Carol R. Dennis
TO: Elena Kagan
TO: Michael A. Fitzpatrick
TO: Ronald K. Peterson

EXECUTIVE OFFICE OF THE PRESIDENT

06-Dec-1995 02:26pm

TO: (See Below)
FROM: Tracey E. Thornton
Office of Legislative Affairs
SUBJECT: Takings Veto Letter

Pat and I have talked about the Judiciary Committee markup and we think we should consider sending a letter from the President to the committee saying he would veto it. We believe it would get the bill out of committee unamended with the Democrats feeling secure about the ultimate fate of it--a sense of security they don't currently have. We don't want the floor end-game to be affected by any action in this committee b/c most of these members will not even be involved in the floor strategy.

Thoughts/Comments?

Distribution:

TO: Kathleen A. McGinty
TO: Martha Foley
TO: Sally Katzen
TO: Marvin Krislov
TO: Shelley N. Fidler
TO: Thomas C. Jensen
TO: Michael A. Fitzpatrick

Telecom - Tracy Thurston 12/6/95

Just pickup tomorrow on taking bill.

Compromise last yr - Bumpers. Died.

New - no amendment policy.

They're nervous - they don't understand it - too wishy

Even a guy like Jimm. (same state)

One thing we can do - the from Pres: I will veto.

Put them at ease.

Get out of Ind. / to people who know this stuff.

Evans (Baucas) - need something to vote for
down the road.

we'll be able to reach accommodation

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Dec-1995 10:11am

TO: (See Below)

FROM: Tracey E. Thornton
 Office of Legislative Affairs

SUBJECT: RE: Follow Up to Judiciary Meetingh

Our strategy on this bill in Committee is "NO AMENDMENTS"..

Let me know if you encounter any resistance to this on our side.

Distribution:

TO: Thomas C. Jensen

CC: Dinah Bear
CC: Carol R. Dennis
CC: Martha Foley
CC: Michael L. Goad
CC: Thomas C. Jensen
CC: Sally Katzen
CC: Marvin Krislov
CC: Kathleen A. McGinty
CC: Ronald K. Peterson
CC: FAX (92085584,Ed Cohen)
CC: FAX (95140557,Jim Simon)
CC: FAX (93953744, Tom Jensen)
CC: FAX (95145499, Jill Gibson)
CC: FAX (95140557, Bess Osenbaugh)
CC: FAX (97036934507, Jim VanNess)
CC: FAX (97205437, Eric Olson)
CC: FAX (92603684, Gary Guzy)
CC: FAX (97615096, Mike Davis)
CC: FAX (56853, Mike Toman)
CC: FAX (92191220, Joe Sax)
CC: FAX (97610270, Lance Wood)
CC: FAX (92604372, Lynn Ross)
CC: Michael A. Fitzpatrick
CC: Elena Kagan

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Dec-1995 10:11am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: OMB letter on S.605 "takings" bill

TJ and Larry-

HELP!

The Judiciary Committee is planning, really is planning, to begin consideration of the takings bill on Thursday. We met with Committee Democratic staff yesterday and they asked repeatedly for the OMB response to the CBO report on S.605.

Please, if it is humanly possible, we really need to have the letter in their hands today. Will this happen? May I help?

Tom Jensen

Distribution:

TO: LAWRENCE J. HAAS
TO: T J Glauthier
TO: Martha Foley
TO: Tracey E. Thornton

CC: Shelley N. Fidler
CC: Alice E. Shuffield
CC: Elena Kagan
CC: Carol R. Dennis
CC: Michael A. Fitzpatrick

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Dec-1995 09:54am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Follow Up to Judiciary Meetingh

To follow up on the requests we received from the Judiciary Committee minority staff and members' staff, I would like to ask for the help of takings team members in generating (or, more likely, pulling from the shelf) certain documents. These assignments are listed below.

Also, please be advised that the takings team will meet in person at 10:00 a.m., Wednesday, December 6, at the CEQ conference room (722 Jackson Place).

As always, thanks for your cooperation. Particular thanks to those of you who came to the session yesterday. It was long, but quite useful.

Assignments

ALL AGENCIES: Review your letters and testimony to ensure they reflect your current analysis of the bill, including the proposed Chairman's Mark amendments. Also, if you have new issue-specific, or fact-specific examples of the problems with the bill, please write these up.

Justice:

1. One-page summary of the constitutional "taking" standard, contrasting it with the standard created by S.605
2. One-page summary of the most recent Supreme Court takings cases, highlighting the key principles.
3. One-page summary of claims court "takings" cases in past three years, showing what types of claims are brought, for what amounts. Also, if not confidential, a summary of settlements.

Interior:

1. One-page summary of ESA reforms

2. Copies of the ESA Fact and Fiction booklet, with an update page inserted reporting the outcome of the Ben Cone case and any other recently resolved "horror story."
3. One-page summary of completed and pending HCPs
4. Clean copy of Five Fatal Flaws document
5. Clean copy of nuisance exception paper
6. Clean copy of Private Property/Public responsibility paper

EPA:

1. One-page summary of wetland reforms (coordinate with Corps to create a single Admin. document).
2. One-page summary of EPA administered laws enacted because of the failure of nuisance law to provide public protection

Corps:

1. Work with EPA on the wetland reform summary. Please emphasize the quantitative information in your possession, such as numbers of permits issued, time for processing, and so on.

OMB:

1. Carol - please continue the task you've begun to distill the "horror stories" from the various Admin. letters on S.605 and Admin. testimony. Please categorize in a way that breaks enviro and natural resource problems out from SEC, Transportation, Defense, and other non-enviro concerns.

If you have other brief materials that you think will be useful, please include them. Bring the materials requested to the meeting tomorrow. We will review and compile and ensure the materials are provided to the appropriate staffers.

Thanks.

Distribution:

TO: Dinah Bear
TO: Carol R. Dennis
TO: Martha Foley
TO: Michael L. Goad
TO: Thomas C. Jensen
TO: Sally Katzen
TO: Marvin Krislov
TO: Kathleen A. McGinty

TO: Ronald K. Peterson
TO: Tracey E. Thornton
TO: FAX (92085584,Ed Cohen)
TO: FAX (95140557,Jim Simon)
TO: FAX (93953744,Tom Jensen)
TO: FAX (95145499,Jill Gibson)
TO: FAX (95140557,Bess Osenbaugh)
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TO: FAX (92191220,Joe Sax)
TO: FAX (97610270,Lance Wood)
TO: FAX (92604372,Lynn Ross)
TO: Michael A. Fitzpatrick
TO: Elena Kagan

THE WHITE HOUSE
WASHINGTON
December 13, 1995

Dear Mr. Chairman:

As the Senate Judiciary Committee begins consideration of S.605, the Omnibus Property Rights Act of 1995, I am writing to let you know of my intention to veto this bill or any similar compensation entitlement legislation if it is presented for my signature.

Though styled as an effort to protect private property, a goal which I strongly support, S. 605 does not protect legitimate private property rights. The bill instead creates a system of rewards for the least responsible and potentially most dangerous uses of property. It would effectively block implementation and enforcement of existing laws protecting public health, safety, and the environment.

In addition, S. 605 creates one of the most expensive new federal spending programs in recent history, costing taxpayers tens of billions of dollars. It sets up new bureaucracies and innumerable opportunities for litigation and establishes unprecedented statutory entitlements beyond those guaranteed by the Constitution. Clearly, this is not the right way to achieve our common goal of protecting private property rights.

I continue to believe that we can work together to improve those regulatory arenas where private property interests may be unfairly burdened. My Administration's reforms in our regulatory system and the recent Senate passage of the Safe Drinking Water Act by a unanimous, bipartisan vote, demonstrate that by working together we can reach common ground solutions to these difficult problems.

Sincerely,

Bill Clinton

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Takeings mtg - Judiciary minority staff

May 90 Thursday

Requests: section by section anal
list of Sec 6 Things most problematic

33% of affected parties - 99wp

Saks - Regs: culpens for all reg.

(?) ~~st~~ - were diminuti
of value

Sweeping

- 1) defense to govt - nuisance (under law of state)
 - law of U - highly technical - often pollution is not a nuisance

Fed cts going to create misl law? i.e. - federalize misl law

- a) misl. doesn't usually cover prospective harm
- b) user to user conduct only
- c) some statutes exempt things from misl law (nt to farm laws)
- d) state by state: non-uniformity (rush to bottom)

Bill that passed House - has health/safety exception
"primary" "identifiable" "specific tract"
very unclear - years of litigation

Bill is trying to do something which cts have found it impossible to do - make clear rule as to culpens.

Put me in?
Health + safety leaves out lots -
e.g. civil rights regulation / morals
protection of nat'l parks
Can you craft a satisfactory provision

This is exactly what cts have tried to do.

They can't craft a formula -
have to look at cases contextually

S Kaplan:
cites / quotes, where cts have commented on futility of this endeavor

Concrete Pipe - man opin. - were diminuti of value - not acceptable
See also Lucas / Boston

If probs w/ progs, solve in prog-specific way.
Carpenter bill - fund. mistake - departs from 200 yr old
const. history.

But how to have health/safety exception than not?

obj - Tracy Thornton
OMB - Carol Dennister

Demetra -

most vuln in ESA/wetlands

How are we dealing w/ these?

How are programmatic solutions any diff from this
by?

Act of Fed Claims / Fed Cir
Extremely sympathetic to prop owners
But still 3 or 4 mil \$[^]
per yr - for the prop owner.
Not lge # - adverse to US.

Most stakeholders - currently being presumed outside scope
of refs.

ESA - Presumpt exempt to all owners of tracts w/ 5 acres or less
"small tract exemption"
or any 5 acres w/in a lge tract

For threatened species

We've supported codif. for endangered species

(can't do it for end. sp. under current statute)

B) 4D rule - (section 4d of ESA) (spec refs for ES's)
permits exemp. for lge tracts - (given for as large
as 80 acres.

criteria - need plan that as a whole protects aft
extinction

C) Habitat conservation plan

Any landowner can come forward w/ HCP - giving
them permission to take species.

Dozens in progress or in effect.

Every landowner w/ a ES prob who's come forward - has been able to.

Gripes come from 2 sources

1) smaller landowners who don't have resources

→ don't have resources to put together plan
or can't mitigate

5-acre
often applies

or has had diffc connecting w/ the bureaucracy.
Benjamin anecdote.

Sax: don't know of a single case where can't work out something.

Leg takes away incentive to cooperate - respons. people who want to behave reasonably

6-acy - Wetlands area

Benefits of wetlands

Very small #'s have real probs w/ reg process

• 70% of applics (to do what) have been denied.

Exempt for sm. prop owners
(1/2 acre)

Up to 2 acres - limit of kind of sharing a person must make.

Efforts to earn mitigation efforts (mitig banking)

HCPs - often cost \$ -
limit use.

Proposals break the budget - see Tsongas testimony

Loophole city - "gaming the system" / windfalls

• even if no real expec that can use

so buy wetland prop now.

→ losses that aren't actually realized by people.

Litigation nightmare (espec Takings Impact Analysis)

Ambiguous phrases etc.

Changing Const. Framework.

Don't then want other protections that are critical to the public

Print OBO report
of value of wetlands - over 106.
92 or 93.

OBO's estimate - only Title V. (EPA wetlands)

Doesn't address (fe) compensative costs
Processing the claim < + only administrative costs
(not compensative costs)
not liability costs
not paying the claims.

OMB estimate - 286 - just wetlands/end. species.

Potential claims exposure - liability under claims exposure.
No administrative costs.

→ (incl costs of TIA)

Most of claimants are just -
not talking abt neg of land.
Mostly financial institutions

Need to know -
how was this arrived at.
What does it include
etc.

Denebra -

Need an official piece of paper -

what we're doing
how this is not a problem

e.g. 75% of homeowners not even covered.

Most of horror stories in 1980s?

Also - most people who didn't do things right - didn't, e.g.,
apply for permit - or try to work it out.

On the ground truth is way ahead of the current dialogue.

"Custom + usage" - defines prop.

but include things that don't now have dignity of
prop rights under law.

Winning Arguments in Washington

Cost

Bureaucracy

Harm to Environment

Strategy -

Biden: No amendments

Keep bad - have chance of defeating

Don't know Hatch's agenda -
really want bill?
or just political stunt?

Admin

Prefer for cute to send out horrible bill.

We're going to criticize this bill anyway.

Bad bill allows simple neg.

DOT settles cases where people are really being screwed.

Editorials

Need rhetorical ays-

e.g. on ref nebun -
going to have bad news,
dirty air, dirty water.

Rego - had hundreds
of examples.

Doomsday stuff
in environmental area
and in others

Put together
single book.

Admin stuff is
all over the place.

EXECUTIVE OFFICE OF THE PRESIDENT

01-Dec-1995 12:18pm

TO: (See Below)
FROM: Thomas C. Jensen
Council on Environmental Quality
SUBJECT: Hill Briefing on Monday - Meeting Notice

Senator Biden's Judiciary Committee staff has invited the Administration to meet with Judiciary Committee Democratic Members' staffs to discuss S.605, the takings bill, on Monday, December 4th, at 1:00 p.m. in Dirksen 234.

The meeting is aimed at helping the staff prepare for mark-up on S.605, presently planned for Thursday, December 7th.

EOP/Agency takings team members are welcome to attend and participate. However, in the name of coordination, please give me a ring to let me know if you are going to attend. My phone is 395-7415.

Thanks for your help.

Distribution:

TO: Dinah Bear
TO: Carol R. Dennis
TO: Martha Foley
TO: Michael L. Goad
TO: Thomas C. Jensen
TO: Sally Katzen
TO: Marvin Krislov
TO: Kathleen A. McGinty
TO: Ronald K. Peterson
TO: Tracey E. Thornton
TO: FAX (92085584, Ed Cohen)
TO: FAX (95140557, Jim Simon)
TO: FAX (93953744, Tom Jensen)
TO: FAX (95145499, Jill Gibson)
TO: FAX (95140557, Bess Osenbaugh)
TO: FAX (97036934507, Jim VanNess)
TO: FAX (97205437, Eric Olson)
TO: FAX (92603684, Gary Guzy)
TO: FAX (97615096, Mike Davis)
TO: FAX (56853, Mike Toman)
TO: FAX (92191220, Joe Sax)

*Respond to Tim -
yes, I'd love to generally
as to mtg?
ck time of Bo's.*

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

01-Dec-1995 02:33pm

TO: Elena Kagan

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Takings

Elena,

You're now officially on my e-mail distribution list for takings team stuff.

I just forwarded you a note I sent around earlier on a meeting we're planning for Monday on the Hill.

Marvin called a bit ago to say that he was overloaded and would be only too happy to have you do takings and, also, attend the meeting.

Now, before I call Marvin and say that we're happy to have Elena take over takings, I thought I should ask you for your view.

Yes? No? Maybe?