

**VIRDIN C. BROWN**  
**TESTIMONY BEFORE**  
**THE HOUSE SUBCOMMITTEE ON NATIONAL PARKS, RECREATION, AND**  
**PUBLIC LANDS**  
**JULY 22, 2002**

Good day Mr. Chairman, members, and staff of the House Resources Subcommittee on National Parks, Recreation, and Public Lands. My name is Virdin C. Brown and I am a resident of the Virgin Islands who reside on the Island of St. Croix. I am honored to have the opportunity to appear before your committee and present my views on the several items outlined in your letter of invitation which include Christiansted National Historic Site, Buck Island Reef National Monument, and the Salt River Bay National Historical Park and Ecological Preserve.

I am a former Senator in the Virgin Islands Legislature (having served seven terms 1971-75 & 1983-93), former Commissioner of the Department of Conservation and Cultural Affairs (1975-79), and former Assistant Commissioner of the Department of Planning and Natural Resources (1995-99). At present, I am serving as Chairman of the Caribbean Fishery Management Council, which is one of eight such councils established under the Magnuson-Stevens Fishery Conservation and Management Act of 1976. I have devoted more than three decades of service in the Government of the Virgin Islands to environmental and natural resource management issues. I was involved in the promotion of legislation and the transfer, acceptance, and administration of the submerged lands that were transferred to the Government and People of the Virgin Islands by Public Law 93-435.

Mr. Chairman and members, because of the impact and legal significance of Presidential Proclamation No. 7392 (The Boundary Enlargement and Modifications of the Buck Island Reef National Monument) and Proclamation No. 7399 (Establishment of the Virgin Islands Coral Reef National Monument), I will address the monuments issue first. First and foremost it is my considered opinion that neither of the proclamations are legal, nor do they have any validity. The subject submerged lands, which they proclaim title and jurisdiction over, are the property of the Government and People of the Virgin Islands – not the Federal Government. Public Law 93-435 transferred these same submerged lands from the Department of Interior to the Government of the Virgin Islands to be held in “trust” for the people of the Virgin Islands on October 5, 1974. Title 48 USC, Section 1705 (b)(vii) clearly states that the president would have one hundred twenty (120) days after October 5, 1974, to exempt from the transfer (by presidential proclamation) those submerged lands that he (and the Department of Interior) deemed necessary for retention by the Federal Government. Only two proclamations were issued in accordance with the aforementioned section of Title 48. They are the following:

1) Proclamation No. 4346, which added thirty (30) acres of submerged lands to the Buck Island Reef National Monument; and

2) Proclamation No. 4347, which reserved several acres of submerged, lands off the west coast of St. Croix for use by the Navy.

The “enlarged” Buck Island Reef National Monument is increased in size by 18,135 acres of submerged lands, while the proposed Virgin Islands Coral Reef National Monument is designed to incorporate 12,708 acres of submerged lands around St. John. This is a total of 30,843 acres of property that belong to the government and people of the Virgin Islands that are being taken by executive fiat. These submerged lands were transferred by an Act of Congress (PL 93-435) and there are no provisions for an executive order, proclamation, or other nonlegislated instrument to overturn the transfers made by this act after the 120-day period. This is especially noteworthy since the proclamations establishing the monuments were issued more than a quarter of a century after the executive branch of the Federal Government had already exercised its authority to withhold whatever submerged lands it so desired from transfer to the Government of the Virgin Islands not later than February 2, 1975.

It is my understanding that the Department of Interior based its authority to make its claim to the 30,843 acres of submerged lands on the exception cited in Title 48 USC, Section 1705 (b)(ii) to wit, “...All submerged lands adjacent to property owned by the United States above the line of mean high tide.” This rationale flies in the face of the PL 93-435 and Presidential Proclamation Numbers 4346 and 4347 that set aside exemptions from the original transfer. It also disregards the laws and proclamations that established the Virgin Islands National Park and the Buck Island Reef National Monument. Additionally, it fails to recognize other legal documents that define the boundaries of each.

The Virgin Islands Coastal Zone Management Plan’s Coastal Land and Water Use Plan Map (attached) clearly identifies the federally owned and controlled submerged lands around St. John, Buck Island and off the west coast of St. Croix. There were no federal objections to this map when it was published in accordance with federal consistency guidelines as late as 1978.

If one accepts the Department of Interior’s legal interpretation of Section 1705 (b)(ii), then one might assume that they will eventually lay claim to the Charlotte Amalie Harbor since they recently acquired a significant portion of Hassel Island. Is this interpretation transferable to Green Cay, Salt River, and other shoreline properties that the Department of Interior may acquire in the future? Where and when will it end? The people and the Government of the Virgin Islands have a right to their title to ALL of the submerged lands conveyed by PL93-435. We should not have to worry about what is going to be taken away next.

There is still reason for concern. I have reviewed a map and related documents prepared by the Bureau of Minerals Management Service Mapping and Boundary Branch of the Department of Interior and I’ve become even more disturbed by what I have seen. The map identifies several large and small tracts of submerged lands within the Territorial Sea of the U. S. Virgin Islands as Federal Submerged Lands Areas. These marked submerged lands belong to the Government and People of the Virgin Islands and have been administered by the Virgin Islands Government since the enactment of PL 93-435.

The concept of protecting the natural and cultural resources within the bounds of the “proposed” new and expanded monuments is noteworthy. However, as well intentioned as they may be, it does not give the Department of Interior the right to walk into the Virgin Islands and “take” our jewels and tell us that they are going to protect them for us. The constitutional process dictates otherwise. We are still a government of laws – not of men. We must all operate under the constitution and laws of the United States and of the

United States Virgin Islands. So too must the Department of Interior.

I respectfully request that Presidential Proclamations 7392 and 7399 be declared null and void because they do not address federal lands nor lands that the Federal Government has legally acquired or controlled. It is my hope that the Virgin Islands Government will be given support and resources to help it to become a better steward of these and other resources.

### SALT RIVER

The Salt River Bay Historical Park and Ecological Preserve has the potential to establish a new benchmark for cooperation between the Virgin Islands Government and the Department of Interior's National Park Service. Thus far, some acquisitions have been made and more are pending. This is good. However, little or no attention is being given to the concept of helping the Virgin Islands Government establish its Territorial Parks System's administrative, management, and enforcement apparatus in a meaningful way. This Park is not only important for its historical and ecological value. It is also important because it can become the vehicle for full cooperation between both governments and in which the personnel of the Virgin Islands Territorial Parks System can obtain its training and become full fledged partners in the management and protection of the valuable resources of the Virgin Islands. It is a greater benefit to all of us if the Virgin Islands can develop its higher potential to become a responsible steward of its other significant natural and cultural resources that exist outside the boundaries of any of the legally established national parks. The Subcommittee should take note that the Government of the Virgin Islands also owns noteworthy properties on Hassel Island where the National Park Service also owns property. The need for cooperation and support is highlighted by the fact that both governments will continue to operate in close proximity to each other and should do so on a cooperative basis.

I respectfully request that your Subcommittee take steps to appropriate funds for training and salaries of a reasonable number of individuals to be hired by the Virgin Islands and trained to become rangers and managers in the V. I. Territorial Park System. This support should be spread over a reasonable period. It will help the Virgin Islands mature in its resource management capabilities while promoting wise development and management of the Salt River Bay Historical Park and Ecological Preserve.

Finally, I recommend that the Salt River Commission be continued in its planning and in an advisory capacity to insure equity in training, management, development, and utilization of the valuable resources at Salt River Bay.

### CHRISTIANSTED NATIONAL HISTORIC SITE

I have been pleased with the commitment of resources by the National Park Service to help enhance the appearance of the Christiansted National Historic Site. This special property is an important part of the Christiansted Town and as such it should represent one of its outstanding attractions. Resources should be continuously appropriated and allocated to insure that it is well maintained as a living part of St. Croix. Private property owners are struggling to rehabilitate their properties within Christiansted to help revitalize St. Croix. Therefore it is important that The Christiansted National Historic Site maintains its vibrancy and attractive appearance.

Finally Mr. Chairman, I have appended copies of my January 10, 2001 testimony at a public meeting held by our Honorable Congresswoman Donna Christian-Christensen and a copy of my January 30, 2001 letter to

Congressman Jim Hansen, the Honorable Chairman of the House Resources Committee. It is my understanding that that letter was referred to your Subcommittee. I respectfully request that they be made a part of your record along with my statement.

Thank you again for the opportunity to address the Honorable Members of this Subcommittee.

Attachments

## ATTACHMENT A

CONGRESSWOMAN DONNA CHRISTENSEN

RE: NATIONAL MONUMENT PROCLAMATION

January 10, 2001

Good evening Congresswoman Christensen. My name is Virdin Brown. I am a former Senator in the Virgin Islands Legislature (serving seven terms), former Commissioner of the former Department of Conservation and Cultural Affairs, and former Assistant Commissioner of the Department of Planning and Natural Resources. Currently, I serve as Chairman of the Caribbean Fishery Management Council. My presence and testimony here this evening is to represent my own views and personal opinions on the proposed designation of national monument status for certain submerged lands around St. John and Buck Island out to the boundary of the Territorial Sea.

I have devoted almost three decades of service in the Government of the Virgin Islands to environmental resource management issues - especially the acceptance and administration of the submerged lands that are within the three-mile limit. In my current capacity I am involved with the development of management plans, which govern the use of marine resources from the three-mile Territorial Sea boundary out to the 200-mile limit of the U. S. Exclusive Economic Zone (EEZ) in the Caribbean.

I have had the opportunity to review only a few of the documents related to the proposed establishment or designation of additional submerged lands around St. John Buck Island as national monuments. I have seen the press releases and the maps but have not seen the official proposed proclamation as of this moment. However, the information I have at hand is sufficient for me to formulate my views on this subject.

Basically, I have no problem with the desire and intent to protect the coral and marine resources to insure that they are maintained, enjoyed, and - where appropriate- utilized by this and future generations. There is an international undertaking by governments and nongovernmental organizations to better manage and protect marine resources (especially corals) around the world.

Tonight the issue surrounding the proposed national monuments is not so much "WHY" but rather "HOW",

in my opinion. The Virgin Islands National Park on St. John and The Buck Island Reef National Monument on St. Croix have well defined limits within the sea that are easily discerned on maps and marine charts. In neither instance is either of these boundaries out to the limit of the Territorial Sea or international boundary, except for a small area between Mary's Point on St.

John and Thatch Cay in the British Virgin Islands. Nevertheless, the Secretary of Interior has recommended "TAKING" 30,843 acres of Virgin Islands Submerged Lands (12,708 acres around St. John and 18,135 acres around Buck Island on St.

Croix) without due process or just compensation to the people of the Virgin Islands.

I hasten to point out that this vast acreage of submerged lands is outside the existing boundaries of the Virgin Islands National Park on St. John and the Buck Island Reef National Monument on St. Croix. These 30,843 acres belong to the people of the Virgin Islands. They were transferred from the Department of Interior to the Government of the Virgin Islands in 1974 through a conscientious Act of Congress designated as Public Law 93-435 and codified in the U. S. Code in Title 48. In accordance with Title 48, section 1705(a) of the u. S. Code, these submerged lands were transferred "... To be administered in trust for the benefit of the people..." The Virgin Islands Government administers these submerged lands under Title 12, Chapter 21 of the Virgin Islands Code (The Coastal Zone Management Act) and refers to them as "Trustlands." To be sure and keep the record clear, I must point out that Public Law 93-435 made provisions for certain exceptions regarding conveyance of the submerged lands. Title 48, Section 1705(b) USC states in pertinent part:

"There are excepted from the transfer made by subsection (a) hereof

(i) all deposits of oil, gas, and other minerals, but the term "minerals" shall not include coral, sand, and gravel;

(vii) all submerged lands designated by the President within one hundred and twenty days after October 5,1974; (These 120 days ended on February 2, 1975);

(x) all submerged lands within the Virgin Islands National Park established by sections 398 to 398b of Title 16, including the lands described in sections 398c and 398d of Title 16; and

(xi) all submerged lands within the Buck Island Reef National Monument as described in Presidential Proclamation 3448 dated December 28, 1961."

On February 1, 1975 President Gerald Ford exercised his authority under Title 48, section 1705(b)(vii) above and reserved an additional thirty (30) acres around Buck Island to increase the size of this National Monument. That was it. That was the most noteworthy exception made in the transfer. It meant that the President automatically transferred all other submerged lands to the Government of the Virgin Islands because the 120 days expired without further proclamations or exemptions being issues. How then, can the Department of Interior claim title, or exercise unusual authority, over submerged lands it does not own or control?

In 1980, Congress further affirmed its unambiguous intent to transfer title of submerged lands, and the resources therein, to the people of the Virgin Islands

when via Public Law 96-205 it directed the Secretary of Interior to convey "...All right, title, and interest of

the United States in deposits of oil, gas, and other minerals in the submerged lands conveyed to the government ... by subsection (a) of this section." Clearly what the Congress has given in an official act, only the Congress can take away in like manner.

The documents that I have seen, recognize the President's authority to create national monuments on "federal" land - I repeat "FEDERAL" land - and I do not question that authority. However, it is my position that the submerged lands, to which the Secretary of Interior is claiming title, and is recommending to be designated as national monuments, or expansion of same, are NOT federal lands. These submerged lands belong to the Government and the people of the Virgin Islands.

They cannot be developed, occupied, sold or otherwise transferred without the approval of the Legislature of the Virgin Islands. This is codified in Title 12, Chapter 21 of the Virgin Islands Code and has existed in law since the transfer of the submerged lands to the Government and people of the Virgin Islands. The Government of the Virgin Islands has exercised its authority and control over the subject 30,843 acres and the other submerged lands since the transfer became official.

It should be noted that no executive agreements, exchange of notes, verbal commitments, nor memorandum of understanding could change the fact that the 30,843 acres of submerged land in question belong to the Government and people of the Virgin Islands. To best of my knowledge, no act of Congress, or of the Legislature of the Virgin Islands has been undertaken to transfer these lands to anyone. If it is to happen, it is the kind of issue that should be the subject of a "REAL REFERENDUM" in accordance with the provisions of the Organic Act.

Therefore I urge you to ask the President not to sign the proposed proclamation because it was conceived and developed on faulty legal claims, and because the Department of Interior has not developed this issue in the clear.

On another matter, I urge you to follow up on the inaction of both the local and federal governments in making The Salt River Historical Park and Ecological Presence a functional reality. An Act of Congress created this Park in 1991. One of the mandates was that there would be a cooperative effort to develop the Park while at the same time help the Virgin Islands Government train staff ~ manage Salt River jointly with the National Park Service. This was to be the springboard for development of the Virgin Islands Territorial Parks System, but the expectations have not yet been realized. The Virgin Islands Government owns approximately 600 acres of submerged lands within the boundary of the Salt River Park as well as terrestrial acreage. This is fertile ground for federal/local cooperation. It is imperative that the Salt River Commission gets on with its mission before it arrives at its sunset date.

Thanks very~ much for affording me an opportunity to express my views on this subject.

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ATTACHMENT B

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Viridin C. Brown  
P.O. Box 7809 S.I.  
St. Croix, Virgin Islands 00823  
January 30, 2001

Honorable Jim Hansen, Chairman  
Resources Committee  
U. S. House of Representatives  
1324 Longworth Building  
Washington, D. C. 20515

Dear Congressman Hansen :

I am writing to express my concern about an executive action that has wrought an injustice upon the government and people of the Virgin Islands, and to request your assistance in rectifying it.

On January 17, 2001, President Clinton signed Proclamation Nos. 7392 and 7399. The former is entitled "Boundary Enlargement and Modifications of the Buck Island Reef National Monument" near St. Croix and the latter, "Establishment of the Virgin Islands Coral Reef National Monument" off St. John. The natural and cultural resources to which these proclamations make reference are noteworthy and are indeed worth protecting. The issue here is whether or not the Department of Interior has right and title to the submerged lands over which they have exercised this authority under Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431). The Department of Interior was overzealous in its efforts to have these sites designated as "National Monuments" and spent very little time discussing its plans with the people of the Virgin Islands especially fishermen who will be most directly impacted by this federal action.

My concern is that by these proclamations the Clinton Administration took, or declared its intention to take, 30,843 acres of submerged lands that belong to the Government and people of the Virgin Islands. These are NOT federal submerged lands and the Department of Interior has had neither ownership nor control over them since midnight February 2, 1975.

On October 5, 1974, Public Law 93-435 took effect and transferred submerged lands in the Virgin Islands, Guam, and American Samoa to the respective territorial governments. It provided for the retention of certain lands and mineral rights by the United States Government and also clearly stated that the President, by proclamation, would have one hundred and twenty (120) days after October 5, 1974, to reserve those submerged lands that he proclaims will be exempted from transfer to the territorial governments. There were only two (2) proclamations issued under this section of PL 93-435 affecting the Virgin Islands. They are Proclamation No. 4346, which added thirty (30) acres of submerged lands to the Buck Island Reef National Monument, and Proclamation No. 4347 which reserved certain submerged lands off the west coast of St. Croix for use by the U. S. Navy. President Gerald Ford signed these proclamations on February 1, 1975, just one day prior to the expiration of the one hundred twenty day period.

Thereafter, all other submerged lands were transferred from the Department of Interior to the Government of the Virgin Islands. These 30,843 acres of submerged lands, which the Department of Interior through presidential proclamation has declared national monuments, are not federal lands but the property of the Government of the Virgin Islands. I am keenly aware of this issue because I was the chief territorial official (Commissioner of the Department of Conservation and Cultural Affairs) responsible for the administration of the submerged lands immediately after PL 93-435 took effect. Prior to that, I was a Senator in the Virgin Islands Legislature and worked with the late Congressman Phillip Burton and former Congressman Ron de Lugo to secure enactment of the transfer legislation.

Because of my experience and knowledge of the transfer and administration of the submerged lands, I cannot quietly observe the Department of Interior take submerged lands that do not belong to it. If Interior is sincerely interested in protecting these valuable natural and cultural assets, it could do so legitimately by providing the V. I. Government with the resources to execute a similar concept in its own right permitting thorough review and input from the residents of the Virgin Islands. It is interesting to note here that the Governor of the Virgin Islands, Dr. Charles Turnbull, has expressed his objections to Proclamation Nos. 7392 and 7399 apparently because he felt that he was blindsided by their issuance.

Recently, I reviewed a map prepared by the Bureau of Minerals Management Service Mapping and Boundary Branch of the Department of Interior and became more concerned by what I saw. The map has identified several other areas within the Territorial Sea of the U. S. Virgin Islands as Federal Submerged Lands. However, these are submerged lands over which Interior has NO control and which have been administered by the V. I. Government since the enactment of PL 93-435. This map is alarming because it suggests that the Department of Interior intends to extend its claim or illegal taking of additional Virgin Islands Submerged Lands by some other unconstitutional means. This must not be allowed to happen because it would be a flagrant trampling of, and infringement upon, the rights of the Government of the Virgin Islands and its people. If they have used fallacious and specious justifications for recent proclamations what is there to prevent them from doing it again?

It is obvious that a great injustice has been done to the Government and people of the Virgin Islands and it should be corrected by rescinding Proclamation Nos. 7392 and 7399. They are taking Territorial Submerged Lands without due process. Please

note that the proclamations were published in the Federal Register on January 22,2001, two days after President Bush issued an executive order to suspend publication and implementation of all such eleventh-hour executive actions by the outgoing administration.

I have enclosed a copy of my statement to Congresswoman Donna Christensen at a public hearing she held on January 10,2001, a copy of an article from the V. I. Daily News in which Governor Turnbull expressed his surprise and opposition to the proclamations, and copies of the proclamations for quick and easy reference.

I urge you to please review this issue and take steps to rescind Proclamation Nos. 7392 and 7399 in recognition of the fact that the submerged lands in question are the property of the Government of the Virgin Islands- and should remain so.

Respectfully,

Viridin C. Brown

Enclosures



ATTACHMENT C

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