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BEFORE THE HOUSE SUBCOMMITTEE ON NATIONAL PARKS OF THE COMMITTEE ON RESOURCES, CONCERNING  
H.R. 432, THE BETTY DICK RESIDENCE PROTECTION ACT.

APRIL 14, 2005

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Mr. Chairman and members of the Subcommittee thank you for the opportunity to appear before you today to present the Department of the Interior's views on H.R. 432, a bill to require the Secretary of the Interior to permit continued occupancy and use of certain lands and improvements within Rocky Mountain National Park.

The Department opposes H.R. 432 because the property that is the subject of the bill has been purchased for the benefit of the American people, and the parties involved had agreed that the private leasehold interest would end on July 16, 2005. We believe that the public should be able to enjoy the property that has been acquired on its behalf. We also are very concerned about the precedent it would set for numerous other properties throughout the National Park System that are the subject of long-standing settlement agreements or contracts to provide for use and occupancy by a private individual for a specified amount of time.

The NPS purchased 66.5 acres from Marilyn Dick, the ex-wife of George Fredrick Dick, in 1977 for \$214,000. The title company that handled the transaction overlooked the fact that Mr. Dick had retained a first right of refusal to purchase the property if his ex-wife ever decided to sell. Mr. Dick sued, and the matter went to U.S. District Court. In a legally binding Memorandum of Settlement Agreement, signed in 1980, the NPS retained ownership of the property and agreed to lease approximately 23 acres to Mr. Dick and his heirs for a period of 25 years for \$7,500, which equates to \$300 per year. The lease is due to expire on July 16, 2005. Mr. Dick died in 1992. His second wife, Betty Dick, survives him and now occupies the premises during the summer months. As the heir of Mr. Dick, Betty Dick has a legal interest in the property.

H.R. 432 would allow the continued use and occupancy of land within Rocky Mountain National Park by Betty Dick, for the remainder of her life. This provision essentially would amend the terms of the settlement agreement by extending the lease term. At the same time, the bill also states that the use and occupancy of the land would be governed by the conditions stated in the 1980 settlement agreement. Betty Dick would be required to make an annual payment of \$300 to the Secretary of the Interior and she would be prohibited from constructing any new structures on the property.

Throughout the country there are many instances where the NPS has purchased private inholdings and permitted former landowners to remain on the property for a period of time, usually 25 years, through a "Reservation of Use and Occupancy." The United States pays a reduced purchase price to account for the value of the retained use. This acquisition tool saves taxpayer dollars and allows the former owner to continue to enjoy the property for a set period of time.

In the past thirty years, in national parks located in the Intermountain Region, including Rocky Mountain National Park, there have been 22 properties where the owners willingly sold their property and retained a right of use and occupancy. Seventeen of those reservations have ended and the owners have honored the terms of the sale and vacated the premises on or before the expiration date.

As reservations of use and occupancy expire, the NPS and the Department have responded to numerous written requests to extend them. Because of the precedent that would be set, the Department has consistently denied these requests. Within the past 10 years there have been three such requests in Rocky Mountain National Park. All of them eventually accepted the agency's written denial of their request and vacated the premises at the end of their reservation of use and occupancy. Allowing Betty Dick to continue to occupy the property beyond the expiration of her lease would not be fair to owners who honored the terms of their agreements and make it difficult for the Department to deny similar requests in the future.

Because there are no provisions in the Settlement Agreement to extend the lease, the NPS must rely on other existing authorities relating to leasing park-owned facilities and lands in order to comply with Betty Dick's request to extend the lease. Leasing properties in park areas is authorized in certain circumstances by statute. Among other requirements, these regulations direct the NPS to issue leases competitively in most circumstances and to charge rent at least equal to fair market value rent. Issuing leases noncompetitively is limited to units of government or non-profit organizations. Therefore, the NPS does not have the authority to issue a lease to Betty Dick without competition and without charging fair market value rent.

Betty Dick has been a model tenant in Rocky Mountain National Park, and she is a familiar summer resident of the Grand Lake community. Her tenancy and the care she has shown for the property she leases are not at issue. The issue is that the NPS purchased the property for the benefit and enjoyment of the American people and a definite date was agreed to when the private leasehold interest in the property would end. There are numerous similar reservations of use and occupancy in National Parks throughout the country. If passed, H.R. 432 would contradict the longstanding policy of the Department to deny such requests, and could open the door for other similar appeals to the Department and Congress.

That concludes my remarks. Mr. Chairman, I would be happy to answer any questions you or other members of the Subcommittee may have.