EXHIBIT 12
DATE 2-18-05
HB HJ21

Forest Service Informational Testimony on HJ 21

Affirm state's jurisdiction over roads and right-of-ways on public lands

Mr. Chairman, Members of the Committee:

My name is Terry Chute and I represent U.S. Forest Service Northern Regional Forester Gail Kimbell. The Forest Service is not taking a position on this bill. I am here today to provide you with factual information on Revised Statute 2477 to assist the committee in making an informed decision.

Revised Statute 2477 was enacted as part of the Mining Law of 1866, during a time when the federal government was focused on encouraging the settlement and development of the West. Congress passed R.S. 2477 to encourage development by offering to grant rights-of-way over any federal land not otherwise set aside or reserved.

Congress repealed R.S. 2477 in 1976 with the Federal Land Policy and Management Act. However, it did not terminate rights-of-way in existence at that time. Congress recognized all valid existing rights-of-way as of that date.

Assertion of existing rights-of-way under R.S. 2477:

- Because Congress offered to grant public rights-of way, claims must be asserted by the appropriate public road agency with jurisdiction in the area. Assertions can not be made by companies, groups or individuals.

- Assertions must be supported by a legal determination of fact which documents the validity of the claim.

- Claims of RS 2477 rights-of-way are evaluated using three criteria: whether the public road was actually constructed on the ground; whether construction occurred on unreserved public lands – typically before the land was declared to be part of a National Forest or Forest Reserve, and whether there has been continued public use of the road.

- Rights-of-way that are determined to be valid under RS 2477 remain subject to federal environmental laws, such as, the Clean

Water Act and The Endangered Species Act and to reasonable regulation to protect the federal lands.

- Successful claims under RS 2477 transfer maintenance and liability responsibility to the public road agency with jurisdiction.

- The Forest Service will cooperate with counties and the State of Montana to evaluate roads that may be subject to RS 2477 claims, or to explore other available options for providing legal rights-of-way on roads that function as public roads.

Thank you for your time and attention. I should state that I am not an expert on RS 2477; however I am available to try to answer your questions and I can provide you with further information at your request.

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