

**Statement of
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U.S.D.A. Forest Service**

**Concerning
HB765
Removal of Rocks on Federal Lands
Before The
Montana State Legislature
Senate Highways and Transportation Committee**

March 29, 2005

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in order to provide the USDA Forest Service's views on HB 765. My name is Maureen McBrien and I represent the U.S.D.A. Forest Service.

HB 765 would authorize the Montana Department to issue permits for the removal of rocks from within a highway right-of-way located on Federal land; clarifying that rocks that have fallen or are deposited within the right-of-way of a highway maintained by the Department are the property of the Department.

The Forest Service recognizes the State's right and obligation to operate and maintain state highways in a condition that provides safe public travel. We do not take exception with the state's need to remove rock from state highways for safety reasons.

In most cases, the State of Montana is issued an easement by the U.S. Department of Transportation (USDOT) for roads that cross federal lands. States typically have fee title rights-of-way for state highways that cross private land. They own the land within the ROW and control it in every respect. In contrast, where a state road crosses federal lands under a USDOT easement, the underlying land remains in federal ownership, and the State receives only those rights that are specified in the easement, namely the right to construct, operate and maintain the highway.

If rock falls or rolls off a slope and onto the road or right-of-way, the State has responsibility to remove these rocks for public safety. Under the terms of the easement, the State has the right to use these rocks as needed to construct, operate, or maintain the highway. However, the rocks are federal property even if they are within the right-of-way. The State only has rights that are conveyed in the U.S. DOT easement, and these easements do not give the State the right to dispose of the rocks to a third party.

If the problem this bill is intended to address is the inability of Montana Department of Transportation to dispose of rocks that are safety problems, the US Forest Service is ready to work with the agency to designate sites where this material can be deposited.

If the problem is the public's access to decorative rocks, the Forest Service has an active program that provides personal use permits for up to one ton of rock, and commercial permits for quantities above 1 ton.

The Forest Service would be willing to work with the Montana Department of Transportation on identifying safe sites where the Department can deposit rocks cleared from roads and roadsides, and make those rocks available to the public under Forest Service permit in a manner that is safe for the public and does not expose the State or Forest Service to the unwarranted liability of individuals gathering rocks in or near active traffic lanes with no traffic controls.

The Forest Service feels strongly that the solution to the problems that initiated this bill lie in cooperation between federal agencies and the Montana Department of Transportation. The Forest Service stands ready to cooperate with the Montana Department of Transportation on solutions.

Thank you for your time and attention.