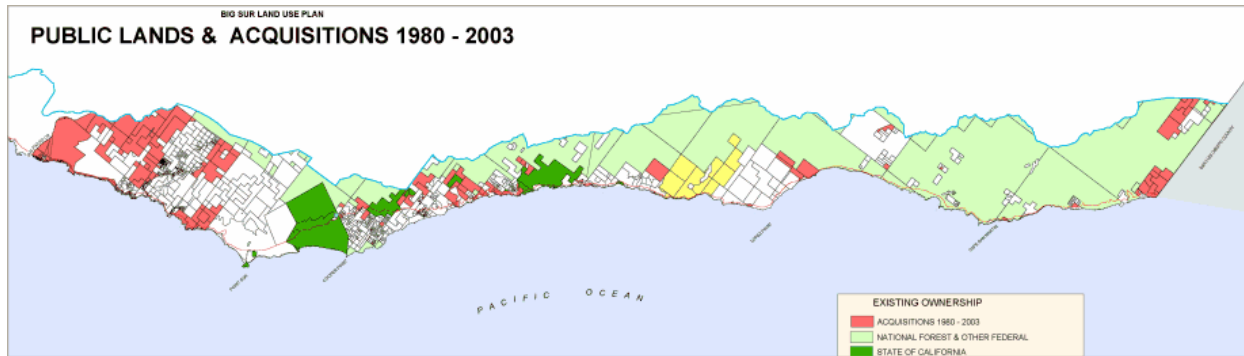


## Help protect communities near the Los Padres National Forest



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### **How the Big Sur Forest Service Management Unit Act would contribute to the buyout of Big Sur And How the act should be changed to halt the buyout**

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Go to the bottom of the page to see changes proposed to the Big Sur Forest Service Management Unit Act, or, read your way down to see reasons for the changes.

#### **1977 - Campaign for a Big Sur National Park**

In 1977, a small but well-connected group got together to organize a campaign to turn Big Sur into a national park. Among them was the Monterey County Supervisor representing the Big Sur area at the time, Sam Farr, now the area's Congressman. You can read a memo on the campaign [by clicking here](#).

#### **1980 - Attempt to remove the 3,000-acre limit on acquisitions outside the Los Padres National Forest**

In 1980 the national park campaign made its first attempt in the form of a bill introduced in Congress by then-Senator Alan Cranston. According to Senator Cranston's statements, the Land and Water Conservation Fund Act (LWCFA) places a limit of 3,000 acres on the amount of land the US Forest Service can acquire outside the boundaries of each national forest (as the boundaries existed January 1, 1965, when the LWCFA became effective). You can see the pertinent statute [by clicking here](#) (scroll down to the red text in the statute).

Cranston's bill would have removed the 3,000-acre acquisition limit from the Los Padres National Forest.

You can read Senator Cranston's letter to his fellow senators, explaining his intent to allow acquisitions of private land outside the boundaries of the Los Padres National Forest as an interim measure until national park or national seashore legislation could be introduced [by clicking here](#). You can read Senator Cranston's bill to remove the 3,000 acre limit, and his statement on the Senate floor when introducing it, [by clicking here](#) (the copy of the bill also contains a link to the statute the bill would have amended, so you can see how Senator Cranston would have changed the law).

Congress rejected Senator Cranston's bill to remove the 3,000 acre limit on acquisitions by the Forest Service outside the Los Padres National Forest.

### **1980 - Attempt to federalize all of Big Sur by Senator Alan Cranston**

The campaign's next attempt was when Senator Cranston introduced a bill to federalize the entire Big Sur area. You can see that bill [by clicking here](#).

Senator Cranston's bill provided that sellers of land would be required to offer to sell to the government before selling to a private party (federal government would have a right of first refusal); that land could be condemned; and that if a landowner wanted to stay in their home, the government could condemn it and lease it back to them for 20 years at no cost, owing them nothing at the end of that time (20-year leaseback instead of money for land). Given that it is now over 30 years since the bill was introduced, it is likely that most of the 20-year leasebacks would have terminated years ago had the bill become law.

Congress rejected Senator Cranston's Big Sur federalization bill.

### **1980 - Attempt to federalize all of Big Sur by Congressman Leon Panetta**

Next came then-Congressman Leon Panetta's bill to federalize Big Sur, also in 1980. You can see Congressman Panetta's bill [by clicking here](#). Congress rejected Congressman Panetta's bill.

### **1986 - Attempt to federalize all of Big Sur by Senator Pete Wilson**

In 1986, then-Senator Pete Wilson introduced a bill to federalize Big Sur. You can see Senator Wilson's bill [by clicking here](#).

By 1986 Congressman Panetta was helping oppose federalization of Big Sur. Local opposition was bi-partisan. Both the Democratic and Republican central committees in Monterey County passed resolutions opposing the bill. The cities of Carmel, Monterey and Pacific Grove passed resolutions opposing the bill, as did over 100 local, state and national organizations.

Chambers of Commerce were concerned about the change in visitor demographics that would likely result from a national park or similar entity. Peninsula cities were concerned about diminished quality-of-life for residents, traffic congestion, and services that would be needed for an increased number of visitors (e.g., water, sewage, trash) without sufficient additional tax base to pay for them. Many in Big Sur were concerned about the survival of their community. The fate of the Carmel Highlands was uncertain. Local environmental groups like the Ventana Chapter of the Sierra Club were divided over whether to support or oppose the legislation. Newspapers initially editorialized in favor of the bill, then reversed their position and editorialized against it. Thousands of tourists signed petitions saying they oppose federalization and want Big Sur to be left as it is.

Also in 1986, Big Sur's coastal plan, the Big Sur Coast Land Use Plan, was finished and certified by the California Coastal Commission, dramatically downzoning land in Big Sur. West of Highway 1 the smallest parcel size that can be created by subdivision was increased to 40 acres. East of Highway 1 minimum parcel sizes are based on slope, with most land having a minimum parcel size of 320 acres, and the smallest subdivision parcel size possible on essentially flat land set at 40 acres. A California Coastal Commission staff person has estimated that only about 12 new parcels could be created by subdivision in the 234-square-mile Big Sur coastal planning area.

The Big Sur Coast Land Use Plan also includes a critical viewshed policy that precludes development visible from Highway 1 over most of the 80 miles the highway passes through the Big Sur area.

The intent of these policies, which are still in place, was to ensure that at total buildout, with all subdivisions completed and the maximum development per parcel, the scenic and rural qualities of Big Sur would remain intact.

Congress rejected Senator Wilson's bill to federalize Big Sur.

### **1986 - US Forest Service starts buying up Big Sur, including land outside LPNF boundaries**

Starting in 1986, the US Forest Service and other government agencies began buying up private land in Big Sur, including land outside the boundaries of the Los Padres National Forest.

In 2003, Monterey County prepared a map showing acquisitions of land by various government agencies in Big Sur. [You can see the map by clicking here.](#) The map shows only land within the coastal zone, and has minor inaccuracies, but is adequate for the purpose. The County estimated that about one third of the private land that had existed in Big Sur in the 1980s had been acquired by 2003 (a total of about 20,000 acres acquired by all agencies).

A table prepared by the Forest Service in 2005 shows that the Forest Service had acquired over 4,600 acres outside the boundaries of the Los Padres National Forest in the Big Sur area at that time. [You can see the Forest Service's acquisition table by clicking here.](#) Note that the table does not show all acquisitions by the Forest Service in Big Sur (it only shows acquisitions made with Land and Water Conservation Fund money), nor does it show acquisitions outside the Los Padres National Forest's boundaries that are not in the Big Sur area.

More Forest Service acquisitions have occurred since the table was prepared, for example in [2007](#) (460 acres two miles outside the national forest boundary) and [2010](#). (Note: The 2007 link was to a page on the Trust for Public Land's website that had been there for years, but was removed sometime in May, 2011. However, you can read a TPL press release on the 2007 acquisition [by clicking here.](#))

As of May, 2011, the Forest Service has acquired over 11,000 acres of land in the Big Sur area since 1986, including over 5,000 acres outside the Los Padres National Forest's boundaries.

## **It appears that at least some Forest Service acquisitions outside LPNF boundaries are unlawful**

When questioned about acquisitions of more than 3,000 acres outside the boundaries of the Los Padres National Forest, the Forest Service and Congressman Farr point to language in the Land and Water Conservation Fund Act (LWCFA) that they say avoids the 3,000-acre limit. However, the language they point to was in the LWCFA when Senator Cranston made his statements that the 3,000 acre limit applies, and Senator Cranston failed to change the law to avoid the 3,000-acre limit.

Moreover, the Government Accountability Office, the federal watchdog agency established to ensure that federal funds are properly spent, writes in its [Principles of Federal Appropriations Law](#) (Third Edition, Volume 1, at page 1-2):

"A federal agency is a creature of law and can function only to the extent authorized by law. The Supreme Court has expressed what is perhaps the quintessential axiom of 'appropriations law' as follows:

'The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.'  
[Citations.]

Thus, the concept of 'legal authority' is central to the spending of federal money."

Even if it is assumed that Senator Cranston was wrong, and that the 3,000-acre limit on acquisitions outside the boundaries of the Los Padres National Forest does not apply, the Forest Service must be able to point to legal authority for its expenditures of federal funds to acquire land. A mere appropriation of money (such as in an appropriations bill) only makes money available, it does not typically provide legal authority for an agency to spend the funds. The Forest Service has pointed to various sources of legal authority as supporting its acquisitions of land in the Big Sur area.

For example, the Forest Service has pointed to the Land and Water Conservation Fund Act (LWCFA) as providing authority for acquisitions. However, the LWCFA expressly provides that an appropriation from the fund it establishes is not authority for acquisition of land, stating at [16 United States Code, section 460I-9\(b\)](#).

**"Acquisition restrictions** Appropriations from the fund pursuant to this section shall not be used for acquisition unless such acquisition is otherwise authorized by law..."

The reason that language was included in the LWCFA was to prevent the availability of Land and Water Conservation Fund money from fueling just the kind of Forest Service buyout that is happening in Big Sur.

Then-Senator Frank Church was a strong advocate for passage of the LWCFA in the 1960s. In 1965 he received the "Idaho Conservationist of the Year Award" and in 1966 he received the National Wildlife Federation's "National Conservation Legislative Award." You can read an interesting paper on Senator Church's conservation efforts [by clicking here](#).

Senator Church represented the state of Idaho and was a member of the Senate's Interior and Insular Affairs Committee. Over 63 percent of Idaho is owned by the federal government. Though an ardent conservationist, he did not want the Forest Service to go on a "land grab" in western states, where the federal government already owns vast amounts of land, and advocated for inclusion of what he called "protections" against "abusive Federal land acquisition" in the LWCFA. You can read a statement by Senator Church in the Senate on protections against acquisition abuse that were included in the LWCFA [by clicking here](#).

If you read his statement, you may have noticed that Senator Church mentions the other "proviso" in the LWCFA that Senator Cranston tried to eliminate in 1980, which was intended to limit federal acquisitions of land west of the 100th meridian (which is roughly the middle of the country) to not more than 15 percent of the total acquisitions within the nation. You can see a map that shows federal land-ownership illustrating why that provision was included in the LWCFA [by clicking here](#).

Calls to Forest Service offices indicate that the Forest Service is not keeping track of this LWCFA limitation on its acquisition of land west of the 100th meridian.

The Forest Service has also pointed to the Weeks Act of 1911 as authority to acquire land in Big Sur. If you read [Senator Church's statement](#) on the LWCFA you may have noticed he referenced the Weeks Act, saying the LWCFA was leaving the Weeks Act's limitations in place for land purchases by federal agencies.

Important is that the Weeks Act provides that the land purchases it authorizes must, "be necessary to the regulation of the flow of navigable streams or for the production of timber" and must be in the watersheds of navigable waterways. You can read the Weeks Act's pertinent provisions [by clicking here \(16 USC 515\)](#).

The Forest Service has established Purchase Units in the Big Sur area. Purchase Units were a creation of the Weeks Act of 1911, and were amended out of the Weeks Act in 1976. You can read a Forest Service notice in the Federal Register establishing and expanding two Purchase Units in Big Sur [by clicking here](#). The notices say, "These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended." The "Act of March 1, 1911" is another name for the Weeks Act of 1911.

However, the Purchase Units in Big Sur are not in the watersheds of navigable waterways, and the acquisitions were not "necessary to the regulation of the flow of navigable streams or for the production of timber," so the Purchase Units do not meet the requirements of the Weeks Act and the Forest Service's statements in the Federal Register are false. You can read the federal definition of a navigable waterway [by clicking here](#).

You can read an interesting article from 1911 that describes the purpose of the Weeks Act when it is properly applied and the role of the National Forest Reservation Commission in the context of an early land acquisition under authority of the Weeks Act [by clicking here](#).

The National Forest Reservation Commission was established by the Weeks Act to oversee the appropriateness of Forest Service acquisitions of land. The commission was disbanded in 1976, and its duties were given to the Secretary of Agriculture, who is in charge of the Forest Service. Disbanding the

commission meant less oversight over the propriety of Forest Service land acquisitions, however, the Forest Service is still responsible for acting consistent with the requirements of the Weeks Act when using that acquisition authority.

The Forest Service has also pointed to the Organic Act of 1956 as authority to acquire land in Big Sur. However, the language of the statute, the congressional hearing report on the act in 1956, and the Forest Service Manual, all indicate that the Organic Act of 1956 only authorizes acquisition of land that is necessary for work that is otherwise authorized by law. According to the Forest Service Manual, the Organic Act of 1956 "... provides that the Department of Agriculture can purchase land or interests therein, as necessary, to carry out its authorized work."

During hearings on the Organic Act of 1956, the example given was that Congress had authorized the construction of a seed bank structure, but had not authorized purchase of the land on which to build it. The intent of the Organic Act of 1956 was to authorize acquisition of land necessary to complete such authorized work.

The Forest Service's acquisitions of land in the Big Sur area have not been for the purpose of carrying out work authorized by Congress. Congress has not authorized the buyout of Big Sur and rejected invitations to do so in the 1980s as described above. As explained above, an appropriation of funds from the Land and Water Conservation Fund does not constitute authorization to buy land. You can read the pertinent language from the Organic Act of 1956 [by clicking here](#).

It appears the Forest Service has abused its land-acquisition legal authorities when buying land in Big Sur.

Were the Forest Service's interpretation of its existing land acquisition authority applied in other areas, it appears the Forest Service could buy the entire United States without further approval from Congress, if only it could find the money to do so, from any source.

Which brings us to another point on Forest Service acquisitions of land in Big Sur. According to the Government Accountability Office's [Principles of Federal Appropriations Law](#), it is improper for federal agencies to augment from other sources the amount of money appropriated by Congress when carrying out the agency's work, unless the augmentation is expressly authorized by law. Here is what the *Principles of Federal Appropriations Law* says on this topic on page 6-162 of Volume II:

"As a general proposition, an agency may not augment its appropriations from outside sources without specific statutory authority. When Congress makes an appropriation, it also is establishing an authorized program level. In other words, it is telling the agency that it cannot operate beyond the level that it can finance under its appropriation. To permit an agency to operate beyond this level with funds derived from some other source without specific congressional sanction would amount to a usurpation of the congressional prerogative. Restated, the objective of the rule against augmentation of appropriations is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity."

Unless the Forest Service has specific statutory authority to augment appropriations for acquisition of land, it appears it has violated this rule when acquiring land in Big Sur. For example, according to the Forest Service's [Big Sur land acquisition table](#), the Forest Service used \$17 million of Land and Water Conservation Fund money for acquisition of the Brazil Ranch (called Bixby on the table). However, in addition to that appropriation from Congress, the seller of the Brazil Ranch, the Trust for Public Land, was also paid \$2.5 million from an anonymous donor and \$5 million from the California Coastal Conservancy for the ranch, for a total of over \$24 million paid for the property.

### **2009 - Big Sur Forest Service Management Unit Act introduced**

In 2009, Congressman Farr introduced the first version of the Big Sur Forest Service Management Unit Act into Congress. The bill was not acted on and expired when the 111th Congress ended at the end of 2010.

### **2011 - Big Sur Forest Service Management Unit Act proposed for reintroduction**

On March 14th, 2011, Congressman Farr made the latest draft of the Big Sur Forest Service Management Unit Act available, which would redesignate the Monterey Ranger District of the Los Padres National Forest to be the Big Sur Management Unit of the Los Padres National Forest. You can read this draft of the bill [by clicking here](#).

Congressman Farr has indicated he plans to reintroduce the bill after hearing what people from communities the bill would affect think about it.

The bill references a map which shows boundary changes to the portion of the Los Padres National Forest in Monterey County. You can see the map on Congressman Farr's website [by clicking here](#) (1.4 MB).

Among other things, the map moves the boundaries of the Los Padres National Forest to include the private lands that have been acquired by the Forest Service outside existing national forest boundaries. While not clear, should Congress enact the Big Sur Forest Service Management Unit Act as currently written, with the existing map, by including acquisitions inside the national forest's new boundaries Congress could be seen as ratifying any unauthorized acquisitions of land by the Forest Service, arguably making them lawful.

The map also shows areas that would be removed from within existing Los Padres National Forest boundaries. Congressman Farr uses these areas that would be removed from the national forest as a powerful selling point for the Big Sur Forest Service Management Unit Act to those who currently own land inside the national forest.

However, if acquisitions continue outside the national forest, and if the forest's boundaries are later expanded to include the acquisitions (as with this bill) then ultimately the removal of some areas would be illusory, at least with respect to whether land in the removed areas could be acquired by the Forest Service in the future.



On a different issue related to the ongoing buyout of Big Sur, the bill provides, "...the Secretary of Agriculture shall provide a separate line in the budget of Los Padres National Forest for the Management Unit to allow the Management Unit to receive funding to conduct activities and projects **to meet its primary management emphasis.**" [Bold added.]

The bill provides that the "primary management emphasis" will be,

(1) the protection of the scenic and natural values of the Big Sur coast and the Northern Santa Lucia Mountains;

(2) fish, wildlife, and native plant conservation;

(3) public safety; and

(4) public recreation."

Notice that this expansive language does not limit the Forest Service's primary management emphasis to land owned by the Forest Service, or even to land inside the national forest boundaries. Instead, the language speaks about the Forest Service's role for the entire Big Sur coast and Northern Santa Lucia Mountains. The bill emphasizes this expansive role for the Forest Service in its introduction. For example, when it says, "President Theodore Roosevelt placed the Federal Government at the center of efforts to conserve the landscape of Big Sur..."

When the Forest Service acquires private land outside the boundaries of the Los Padres National Forest in Big Sur, it justifies the acquisitions for just such reasons as those stated in the primary management emphasis provisions of the bill. You can read the Forest Service's land acquisition criteria, excerpted from the Los Padres National Forest Land Management Plan, [by clicking here](#).

Notice that essentially all land in Big Sur (and many other places) would meet the Forest Service's land acquisition criteria, and that the primary management emphasis provisions in the bill could be pointed to as justifying acquiring any and all land in Big Sur.

**The effect of the bill would be to enable targeted funding in appropriations bills to continue funding Forest Service acquisitions of private land outside the boundaries of the Los Padres National Forest - unless the bill is changed to avoid that.**

As written, the bill does not limit acquisitions of land outside the Los Padres National Forest. Instead it provides, "The establishment of the Big Sur Management Unit in no way alters the laws and regulations governing the acquisition of land for inclusion in the National Forest System."

The Forest Service has acquired thousands of acres of land outside the Los Padres boundaries while pointing to existing laws and regulations. Though it appears that at least some of the acquisitions were unlawful, existing laws do not empower citizens to stop unlawful acquisitions.



By encouraging the Forest Service to continue buying private land outside the boundaries of the Los Padres National Forest, the Big Sur Forest Service Management Unit Act would be consistent with Senator Cranston's intent in 1980, to enable the Forest Service to continue buying up land outside the boundaries of the Los Padres National Forest until such time as national park or similar legislation is successful.

As a member of the House Appropriations Committee Congressman Farr has helped provide millions of dollars of funding for acquisitions of land in Big Sur outside the boundaries of the Los Padres National Forest. Remarkably, he denies that the Forest Service buys land outside the boundaries of the Los Padres. For example, see this article from the February 18, 2011 Carmel Pine Cone newspaper [by clicking here](#).

Again, you can see the Forest Service's land acquisition table, which includes acquisitions outside the Los Padres in Big Sur [by clicking here](#). And you can see Congressman Farr's map showing the boundaries of the Los Padres National Forest being moved outward to encompass lands acquired outside the current national forest boundaries [by clicking here](#).

Below are quotes from Congressman Farr on the Trust For Public Land website, talking about the Brazil Ranch acquisition, which is three miles outside the boundaries of the Los Padres National Forest. You could have seen the entire web page [by clicking here](#), however, the TPL web page was removed some time after March 26, 2011, so instead you can see a pdf of Google's cache of the page [by clicking here](#).

"Federal funding for the acquisition was obtained through the efforts of Senator Dianne Feinstein, Senator Barbara Boxer, and Congressman Sam Farr, (D-Carmel). 'This is a great day for the environment and a great day for the Central Coast,' said Congressman Farr. 'Working together, the Trust for Public Land and the federal government have protected this stunning coastal treasure from being chopped into little subdivisions. Now future generations can enjoy the jagged coastline and the dramatic vistas, just as we do.' Congressman Farr is a longtime advocate for the protection of the Big Sur Coast, and a key member of the House Appropriations Committee."

The "little subdivisions" that Congressman Farr referred to were nine existing lots that were created when the land was homesteaded in the mid-1800s, long before subdivision laws were enacted, averaging over 130 acres each. Acquisition by the Forest Service did not stop division of the property. That had happened about 150 years before the land was acquired. Rather, the acquisition stopped the property from being used for private residences. Building potential for the Brazil Ranch's nine parcels under the Big Sur Coast Land Use Plan was for seven additional residences on the 1,200 acre ranch (there were two existing residences).

### **How the Big Sur Forest Service Management Unit Act should be changed to halt the buyout of Big Sur**

To stop the buyout of Big Sur, please communicate your support for the following changes to the Big Sur Forest Service Management Unit Act to Congressman Farr, and email a copy of your letter of support to [farrsbill@gmail.com](mailto:farrsbill@gmail.com) so it can be submitted into the record of Congressional hearings if necessary.

- Provide in the bill that all existing authority for acquisition of land by the Forest Service/Department of Agriculture is withdrawn in all areas of Monterey County that are outside the boundaries of the Los

Padres National Forest. This would remove any opportunity for the Forest Service to continue to misapply existing law as authority to acquire private land. This would not preclude Congress from passing special authorizing legislation if there is a legitimate need to acquire land in the area.

- Provide in the bill that within three years of the effective date of the Big Sur Forest Service Management Unit Act, the [Government Accountability Office](#) (GAO) shall complete a review of all acquisitions of land by the Forest Service outside the boundaries of the Los Padres National Forest, as the boundaries existed January 1, 1965, for compliance with federal law. Provide that any land found by the GAO to have been improperly acquired by the Forest Service in the Big Sur area will be sold or donated back into private ownership, for residential, ranching or other uses supportive of long-term well being of Big Sur communities, within two years after the date the GAO report is completed, that the boundary of the Los Padres National Forest will be moved to exclude the land, and that the land will be removed from national forest status. Provide that any transfer of land out of Forest Service ownership under this provision will not be subject to the National Environmental Policy Act or other laws that may be used to delay or block the transfer (Forest Service decisions to acquire private land in Big Sur were not subjected to such processes).
- Provide in the bill that any person or entity has standing to challenge unauthorized acquisitions of land by the Forest Service in areas of Monterey County that are outside the boundaries of the Los Padres National Forest. Provide for an award of attorney's fees and a portion of the federal funds that would be or were misspent on the acquisition similar to the kind of awards in whistleblower statutes for those who act on behalf of the government to prevent fraud and misspent federal funds. For example, see the provisions of [Title 31 USC 3730\(d\)](#). Without standing to challenge unlawful acquisitions by the Forest Service in court it is impossible for citizens to stop an unlawful buyout of private land.

### Note

Congressman Farr insists he is not working on creating a national park in Big Sur. However, regardless of his intent, every acre of private land acquired means there would be less land to acquire and fewer landowners to object should some other member of Congress claim to "save Big Sur" by introducing legislation to do just that.

One argument against federalizing Big Sur in the 1980s was the cost it would entail to buy the private land. For example, you can see a Bill Bates political cartoon on Leon Panetta's 1980 bill, the "\$100 million bill," from the Big Sur Gazette newspaper, [by clicking here](#). Every acre acquired lowers the cost of federalizing Big Sur.

### Dedication

This web page is dedicated to the many wonderful people who contributed vast amounts of their time, effort and dollars helping to keep Big Sur from being federalized in the 1980s. They did not fall for the tricks, believe the lies or yield to the pressure. Would that all were with us today.