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WESTLANDS WATER DISTRICT CONTRACT

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HEARING BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

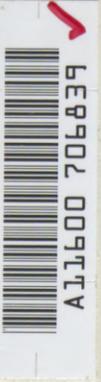
EIGHTY-EIGHTH CONGRESS
SECOND SESSION

ON

PROPOSED CONTRACT BETWEEN THE SECRETARY OF THE
INTERIOR AND WESTLANDS WATER DISTRICT FOR CON-
STRUCTION OF A WATER DISTRIBUTION AND DRAINAGE
COLLECTOR SYSTEM IN THE SAN LUIS UNIT, CENTRAL VAL-
LEY PROJECT, CALIFORNIA

JULY 8, 1964

Printed for the use of the Committee on Interior and Insular Affairs



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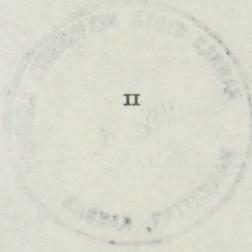
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WESTLANDS WATER DISTRICT CONTRACT

WEDNESDAY, JULY 8, 1964

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 3110, New Senate Office Building, Senator Henry M. Jackson presiding.

Present: Senators Jackson, McGovern, Nelson, Walters, and Kuchel. Also present: Jerry T. Verkler, staff director; Stewart French, chief counsel; Roy M. Whitacre, professional staff member; and Richard Andrews, minority counsel.

Senator JACKSON. The committee will come to order.

This is an open, public hearing by the Senate Committee on Interior and Insular Affairs on a proposed contract to be entered into between the Federal Government and the Westlands Water District, a unit of the San Luis irrigation and reclamation project, in California. The United States in this matter is represented by the Secretary of the Interior and his designated representatives.

The proposed contract provides for what the Department of the Interior officially described as "the largest water distribution system repayment contract in the Department's history." It calls for construction with Federal funds of water distribution and drainage facilities costing up to \$157,048,000, serving some 391,000 acres of land in California's fertile San Joaquin Valley, which is in turn a part of the larger Central Valley project. The entire \$157,040,000 cost would be repaid under the contract by the district over a period of 40 years.

As I stated, the Westlands Water District is a part of the San Luis unit, Central Valley project. The San Luis unit was authorized in the 86th Congress by Public Law 86-488, found in 74 Stat. 156. The measure that became the law was sponsored by the distinguished senior Senator from California, Senator Kuchel, a very valued member of this committee, for himself and Senator Engle. This committee held public hearings in March 1959, on the Kuchel-Engle bill, S. 44, 86th Congress, and the measure, as amended by the committee, was reported favorably to the Senate by Senator Kuchel (S. Rept. 154, 86th Cong.).

As enacted, the San Luis Project Act authorized an appropriation of up to \$290,430,000 for construction of the basic works, including joint use facilities with the State, and, in addition, \$192,650,000 for

construction of distribution facilities and drains, such as are the subject of the Westlands contract, as well as operation and maintenance of the unit. A proviso to the appropriation authorization section, section 8, sets forth:

That no funds shall be appropriated for construction of distribution systems and drains prior to 90 calendar days (which 90 days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than 3 calendar days to a day certain) after a contract has been submitted to the Congress calling for complete repayment of the distributor systems and drains within a period of 40 years from the date such works are placed in service.

Pursuant to this legislative requirement, the Secretary of the Interior on April 24, 1964, transmitted a copy of the proposed Westlands contract to the President pro tem of the Senate, and it was duly referred to this committee as the unit of the Senate with general responsibility for the subject matter.

The committee and its members have received a large number of letters and other communications on the proposed contract, many of which express opposition to it and call upon the committee to prevent its becoming effective. Principal ground of the opposition is that the contract is in derogation of the acreage limitation provisions of the reclamation law of 1902 and subsequent acts supplementary to it. Section 5 of the 1902 act, found in 32 Stat. 389, provided that no right to the use of water from a Federal irrigation project could be sold for land in private ownership for a tract exceeding 160 acres, and then only to a landowner who was an actual bona fide occupant of the land.

Currently applicable acreage limitation provisions of reclamation law are found in section 46 of the Omnibus Adjustment Act of May 25, 1926, 44 Stat. 648, found in 43 U.S.C. 423(e). It provides that lands in excess of 160 acres held by one individual shall not receive water if the owner refuses to execute a valid, recordable contract for the sale of excess lands. In practice, a 10-year period is provided for such disposal. An "antispeculation" provision sets forth that lands sold at prices in excess of those fixed by the Secretary shall not receive water.

This committee long has had an active and continuing interest in acreage limitation. On August 1, 1962, we adopted unanimously a committee resolution requesting the Secretary of the Interior to make a study and report on the laws, regulations, and policies of the Federal Government respecting limitations on the delivery of water from Federal projects to lands in excess of a specified or limited number of acres in individual or family ownership.

After nearly 2 years, the final installment of this report was received by the committee only last Monday, July 6. It is being studied and I believe I can safely predict that it will be published, either as a Senate document or a committee print.

Without objection, I will direct that the text of Secretary Udall's letter of transmittal, dated April 24, 1964, together with a copy of a memorandum dated April 23, 1964, in explanation of the contract from the Commissioner of Reclamation, Mr. Floyd Dominy, to Secretary Udall, appear at this point in the record of these hearings.

(The documents referred to follow :)

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 24, 1964.

Hon. CARL HAYDEN,
President pro tempore,
U.S. Senate, Washington, D.C.

DEAR MR. PRESIDENT: The San Luis unit of the Central Valley project was authorized by Public Law 86-488, approved June 3, 1960. Construction is proceeding on the joint Federal-State facilities.

A water service contract with the Westlands Water District was executed on June 5, 1963. It calls for the delivery of up to 1,008,000 acre-feet annually during the first 10 years of project water service with lesser quantities during the remainder of the 40-year contract period.

The Westlands Water District has requested the United States to construct distribution system and drainage facilities necessary to enable it to utilize effectively the available project water supplies. Public Law 86-488 authorizes such construction; however, section 8 of the act provides that no funds shall be appropriated for such work until 90 days, as defined in the act, after a contract has been submitted to the Congress calling for complete repayment of the cost of the distribution system and drains within a period of 40 years from the time such works are placed in service.

An appropriate contract for construction of the distribution system and drains by the United States and for repayment by the district has been negotiated with the Westlands Water District. A copy of the contract is enclosed in compliance with section 8 of the authorizing act. For your information, there is also enclosed a copy of the memorandum which explains the contract and which I have this day approved.

A similar letter is being sent to the Speaker of the House of Representatives.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, D.C., April 23, 1964.

Memorandum.

To: Secretary of the Interior.

From: Commissioner of Reclamation.

Subject: Proposed distribution system repayment contract, Westlands Water District, San Luis unit, Central Valley project, California.

Enclosed for your approval is the form of a proposed distribution system repayment contract with the Westlands Water District, Central Valley project. The contract provides for repayment of \$157,048,000, representing the cost of constructing by the United States of a water distribution and drainage collector system and certain facilities for integrating ground water with surface water. The system is required for the distribution of project water available to the Westlands Water District under long-term contract No. 14-06-200-495A executed on June 5, 1963, and for the collection and conveyance of drainage water from the district to the proposed Federal San Luis unit interceptor drain.

The Westlands Water District was organized in 1952 under the laws of the State of California. It is located on the west side of the Central Valley between the trough of the valley floor and the alinement of the San Luis Canal along the foothills of the coastal range. The district forms a broad strip of land about 60 miles in length starting near the town of Mendota, Calif., and running southeasterly to Kettleman City in Fresno County. It consists of 391,053 acres of land, of which about 352,250 are irrigable and 340,000 are productive.

The lands in the district have been classified in accordance with the usual Bureau standards. About 16 percent are class 1, 42 percent class 2, 19 percent class 3, 18 percent class 4, and about 5 percent class 6. With full development of lands within the district, the anticipation is that cotton will be grown on about 92,000 acres and that there will be about 64,000 acres in seed alfalfa, 15,000 acres in alfalfa for hay, 25,000 acres in deciduous fruits, 15,000 acres in can-

taloups, 5,000 acres in potatoes, 30,000 acres in sugarbeets, 63,000 acres in miscellaneous field crops, 19,000 acres in vegetables, 2,000 acres in rice, and 40,700 acres in grain. Double cropping is expected to take place on about 30,700 acres.

The basic supplemental supply of project water for service to the district under its water service contract amounts to 783,000 acre-feet which includes 40,000 acre-feet for land subject to inclusion within the district. This quantity may be increased to a maximum of 900,000 acre-feet depending upon findings of future studies of ground water availability. For a period of 10 years the district may obtain as much as 1,008,000 acre-feet of project water annually. The current estimate is that 312,000 acre-feet of ground water will be available annually for use within the district.

The Westlands district lies almost entirely below the alinement of the San Luis Canal, and adjoins the Westplains Water Storage District which lies mostly above the planned alinement of the San Luis Canal. The probability is that there will be an adjustment in the boundaries of the two districts so that the San Luis Canal will eventually become their common boundary. In this adjustment there will probably be about 12,500 acres added to the Westlands Water District.

Facilities to be constructed under the contract include about 713 miles of water distribution pipelines with rubber gasket joints. Spacing of laterals will be generally at 1-mile intervals along section lines. Water service from these facilities will be under pressure induced by the San Luis Canal except for service to small areas adjacent to the canal which would require vertical shaft pumps located at moss screen structures. Facilities in the system will be provided for later integration of ground water from existing wells into the system. There will be no pressure-reducing stations along the laterals.

Moss screen structures will be located at each turnout from the San Luis Canal. Turnouts will have separate inlets with Venturi meters and separate gated outlets so that each screen structure can be operated independently. Outlet pipes from the screen structures will feed into a downstream closed transition pipe with a vent large enough to accommodate a float control device to activate the outlet slide gates in the structures. Such control is necessary if the plan for off-peak pumping causes objectionable canal water surface fluctuations. The turnouts from the San Luis Canal and the water measuring devices and electrical transmission facilities are not a part of the distribution system.

Approximately 400 existing wells in the area will be integrated into the distribution system. Well water will be mixed with surface project water in the main laterals. The estimated cost of constructing the water distribution facilities and facilities for integrating well water amounts to \$106,363,000 and \$10,160,000, respectively.

The drainage collector system will be constructed of standards and extra-strength vitrified clay pipe with drainage pumping plants of the buried reservoir type sumped to permit free flow from all tributary drains at maximum discharge. The area to be covered by this system lies predominately along the east side of the district near the trough of the valley. The system will discharge into the proposed Federal interceptor drain of the San Luis unit. Estimated cost of the drainage collector facilities amounts to \$40,525,000.

The weighted average per acre payment capacity of the irrigable acreage in the district is \$79. The payment capacity attributable to project water is in direct proportion as the project water relates to the total water requirement. On the basis of 783,000 acre-feet requirement from the project, such payment capacity amounts to \$56 per acre. The average cost associated with water service from the project including the cost of water distribution and drainage collector facilities, internal drain facilities, and pumping from the underground amounts to about \$43, rounded, per acre, or about 77 percent of the associated payment capacity with 23 percent remaining for contingencies. Thus, the district has ample capacity to pay for the cost of the distribution system.

Facilities to be constructed under the contract will be separated into construction groups. Construction group 1 shall include substantially all of the water distribution facilities, drainage collector facilities, and works for the integration of ground water with surface water, all as initially required and generally as exhibited in the contract. Construction groups 2 and 3 shall include added portions of the distribution system on which subsequent construction is started no later than June 30, 1975, and June 30, 1979, respectively. Any construction started after June 30, 1979, will be considered as part of construction group 3 for purposes of repayment.

The United States will acquire for the construction of the distribution system such pipeline facilities and sublaterals constructed by the district which are usable as an integral part of the system. The amount which the United States shall pay for such facilities, including rights-of-way, shall not exceed the lesser of (a) the cost which the United States would have incurred if it had constructed such facilities or (b) the appropriate costs incurred by the district in constructing said facilities less the amount received from the United States in payment of water transportation pursuant to contract No. 14-06-200-316-A. Title to rights-of-way required for construction of the distribution system may be taken directly in the name of the United States or taken by the district and then transferred to the United States. The United States shall reimburse the district for the cost of the rights-of-way.

The construction cost of construction group 1 shall be paid by the district in 80 successive semiannual installments payable on January 1 and July 1 of each year after the completion of construction of said group is announced in writing by the contracting officer. The first 10 payments will be for one one-hundred-sixtieth of the construction costs of said group and the remaining 70 payments will be for one-seventieth of the remainder of the cost. Construction costs of subsequent groups shall be paid in 80 successive equal semiannual installments payable on January 1 and July 1 of each year. The first installment with respect to each group shall become due and payable on January 1 of the year following the year of completion of the respective group as announced by the contracting officer.

The contract provides that any portion of any group under construction by the United States may be utilized by the district for its intended purposes if it does not interfere with the construction of the remainder of the system.

Upon completion of any construction group, such completed group shall be transferred to the district for operation and maintenance. The district, without expense to the United States, shall operate and maintain such transferred works in full compliance with the terms of the contract and in such manner that said transferred works shall remain in good and efficient condition. The district also agreed upon the effective date of the transfer orders to assume all obligations of the United States under any contract or contracts relating to the crossing of the distribution system facilities in, over, along, or across land or rights-of-way of public utilities, and the State of California or agencies thereof.

At any time prior to full payment of the construction cost that the contracting officer determines the district has not cared for, operated, or maintained, or delivered water from the transferred works in a satisfactory manner, the United States may assume the control of the distribution system and operate and maintain the facilities and the district agrees to surrender possession of the facilities and pay the United States for the cost of operation and maintenance. The district, in addition, shall contribute such labor and materials toward the operation and maintenance of the distribution system or any portion thereof as may be requested by the contracting officer. There shall be included as part of the operation and maintenance costs such items for administration, supervision, inspection, replacement, and general expenses that properly are chargeable to such work in the opinion of the contracting officer. The facilities taken back by the United States for operation and maintenance may be retransferred to the district upon furnishing the district 90 days written notice of its intention to retransfer.

No liability will accrue against the United States and its officers and employees because of damage arising out of or in any manner connected with the care, operation, and maintenance by the district of the distribution system constructed by the United States.

The actual cost of the distribution system or any construction group thereof shall embrace all expenditures by the United States of whatever kind in connection with, growing out of, or resulting from work performed in connection with the distribution system including but not limited to the cost of labor, material, equipment, engineering and legal work, superintendence, administration and overhead, rights-of-way, property whether purchased from the district or others, and damage of all kinds and shall include all sums expended by the Bureau of Reclamation in surveys and investigations in connection with the distribution system both prior to and after the execution of this contract and the expense of all soil investigations and other preliminary work.

The contract provides for a reserve fund to be accumulated by the district in annual deposits of not less than \$50,000 annually to be deposited into a special

account created by the district. Such annual deposits shall continue until the amount in the reserve fund is not less than \$250,000. Whenever the reserve fund is reduced below \$250,000 by expenditures for the purpose for which it is accumulated, it shall be restored to not less than the amount set forth by accumulations of annual deposits of \$50,000 annually. Expenditures from this fund shall be for the purpose of meeting extraordinary cost of care, operation, maintenance repairs, and replacements of the distribution system, including project features operated and maintained by the district, and for care, operation, and maintenance during periods of special stress such as may be caused by drought, hurricanes, storms, or other emergencies.

In the event the United States transfers the San Luis unit of the Central Valley project or portions thereof to the State of California for care, operation, and maintenance, such transfer will not affect the rights or obligations of either party to the contract. Except as provided for in the water service contract with the district, no changes shall be made in the district either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve or otherwise, except upon the contracting officer's written consent thereto. No water shall be delivered through the distribution system to any lands or persons not eligible under the terms of articles 23, 24, and 25 of the district's water service contract to receive water made available pursuant to the contract. These articles, the so-called excess land provisions required by reclamation law, are similar in form and content to other water service contracts for the Central Valley project. Other provisions of the contract are similar to those found in contract No. 14-06-200-516A between the United States and the Corning Water District executed on July 3, 1963.

The board of directors of the Westlands Water District has approved the form of the proposed contract, which is identified as draft 4/8-1964. We believe the proposed contract is in the best interest of the United States and the district. Therefore, we recommend that you approve the form of the proposed contract. Thereafter, pursuant to existing delegations of authority and after execution by the district, it will be executed by the regional director, region 2, acting as contracting officer for the Secretary of the Interior on behalf of the United States.

Section 8 of Public Law 86-488 approved June 3, 1960, which authorized construction of the San Luis unit of the Central Valley project, provides that no funds shall be appropriated for construction of the distribution system and drains until 90 legislative days after a contract has been submitted to the Congress calling for complete repayment of the drains and distribution system facilities within a period of 40 years from the date such works are placed in service. In accordance with this legislative requirement, we recommend that you sign the enclosed letters transmitting copies of this approved memorandum and contract to the President of the Senate and the Speaker of the House of Representatives.

FLOYD E. DOMINY.

Approved:

STEWART L. UDALL,
Secretary of the Interior.

Senator JACKSON. Also, as I have stated, the committee and the members have received a large number of letters on the contract. These communications are too voluminous to print in toto in this hearing, but I will incorporate all of them into the record, by reference, so that they may be officially and formally before the committee, and direct that letters expressing representative points of view be printed in full.

In bringing these opening remarks to a close, I want to emphasize that the purpose of this hearing is to obtain the facts with respect to the proposed contracts and its effect. The circumstance that we are holding the hearings is not in any way to be construed as casting any doubt whatever upon the validity of the contract nor the good faith of those proposing to enter into it.

Upon the facts as presented and as we can obtain them, the committee will endeavor to reach a determination as to what course of action to follow.

With that simple statement of policy as a background, I now will call our first witness. But first, of course, I will ask whether any of the Senators here has any statement he wishes to make.

I regret that I shall not be able to stay on this morning. I have another meeting, but Senator Nelson of Wisconsin has kindly consented to chair the hearings.

Senator NELSON. Mr. Chairman, I have a statement for the record, and I shall simply put it in.

Senator JACKSON. Without objection, the statement of the Senator from Wisconsin will be included in the record.

Senator JACKSON. I shall ask the Senator from Wisconsin to take over and chair these hearings.

Senator NELSON (presiding). Thank you, Senator.

I shall not read this whole statement. It is available, however, here at the desk. Materials included in it are some letters and some communications Mr. Dominy wrote to the Secretary which may duplicate, I think that they will duplicate, some of the material that Senator Jackson requested be put in the record, so the staff will check that in order that there will not be duplication.

I shall not read the statement. I have examined the contract very carefully. I have the contract, have examined it as background, the 1963 contract, and came to the conclusion that in my judgment, the contract ought not to be approved. It is a very complicated subject and in such matters as this, of course, there can be a wide divergence of opinion about them. But I think that I came to the conclusion that it was not in the best interests of the Federal Government, not in the best interest of protecting and preserving the integrity of the Reclamation Act, and therefore prepared a statement in opposition to this contract on which we are conducting the hearing today.

(The statement referred to is as follows:)

STATEMENT BY SENATOR GAYLORD NELSON, A U.S. SENATOR FROM THE STATE OF WISCONSIN

SUMMARY

There has been presented to this committee through the submittal to it by the Secretary of the Interior pursuant to Public Law 86-488, 86th Congress, S. 44, June 3, 1960 a document designated "Contract Between the United States and Westlands Water District Providing for the Construction of a Water Distribution and Drainage Collector System."

Provision is made in paragraph 20 of the document that "No water shall be delivered through the distribution system to any lands or persons not eligible under the terms of articles 23, 24, and 25 of the water service contract (dated June 5, 1963) to receive water made available pursuant to that contract." As a consequence this committee is requested to approve, sight unseen, the water service contract mentioned in the last quotation. Specifically, a review of the contracts with the Westlands Water District and the circumstances surrounding them, appear to reveal:

(1) A circumvention of the excess land laws written into the Reclamation Act, as amended, by the Congress to prevent land and water monopolies.

(2) A discrimination against those landowners who comply with the excess land laws and great benefits for those large, ineligible, excess landowners who will receive Federal subsidization totaling millions of dollars.

(3) An apparent relinquishment of title to water rights belonging to the United States by agreeing in the water service contract of 1963 not to assert title to those replenishment waters.

If the conclusion I have drawn in this memorandum, based upon my examination of the 1963 water service contract and the construction contract before this committee, is valid, it would appear that—

(1) The contract submitted to the Congress by the Secretary of the Interior should be rejected by this committee and returned with specific objections both as to that contract before it and the water service contract;

(2) The committee should oppose the appropriation of any Federal funds for the construction of the distribution system and drains provided for in the contract.

Under appropriate headings this memorandum reviews the contracts and physical features relating to the above mentioned contracts.

AVOIDANCE OF THE EXCESS LAND LAWS OF THE RECLAMATION ACT, AS AMENDED

Congress by Public Law 86-488, 86th Congress, S. 44, June 3, 1960, authorized the Secretary of the Interior to construct the San Luis unit of the Central Valley project. Involved are two service areas—Federal and State. This consideration is directed solely to the former.

There are two salient features of Public Law 86-488 to which reference is now made:

1. It is specifically declared that:

"In constructing, operating and maintaining the San Luis Unit, the Secretary [of the Interior] shall be governed by the Federal reclamation laws (Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof and supplementary thereto)."

2. Provided likewise by the act in question is the following:

"SEC. 8. There is hereby authorized to be appropriated for construction of the works of the San Luis unit * * * other than distribution systems and drains the sum of \$290,430,000 * * *

*Provided, that no funds shall be appropriated for construction of distribution systems and drains prior to ninety calendar days * * * after a contract has been submitted to the Congress calling for complete repayment of the distribution systems and drains within a period of forty years from the date such works are placed in service.*" [Emphasis supplied.]

Emerging from those two quoted excerpts is the obvious conclusion that the Federal service area is to be constructed, operated, and maintained in conformity with the Reclamation Act, as amended, including but not limited to the "excess lands laws." Basically those laws preclude the delivery of water for use on land held in one ownership which exceeds 160 acres. Obvious objectives of the laws are (a) to avoid land and water monopolies; (b) to prevent land speculation predicated upon the project development.¹

To bring about compliance with the "160-acre limitation" mentioned above Congress has declared: "* * * that no such excess lands so held shall receive water from any project or division if the owner thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior * * *."² Important in regard to the precise point before this committee is the fact that the act specifically declares that "excess lands" shall not—"receive water from any project." That prohibition is crucial and unqualified for it fixes the responsibility of the Secretary in regard to project waters with great specificity; restrains that official from providing water to lands the owners of which have not agreed to dispose of lands which exceed the 160-acre limitation. Warranted in that connection is reference to the additional fact that the legislative history of these provisions set forth with great clarity the desire of Congress to protect the public interest against land and water monopolies.³

On that background reference is now made to part (2) above regarding Public Law 86-488 which refers to the requirement of the San Luis Act that there be a

¹ Sec. 5 of the original reclamation law provides "No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner * * *." For a complete review of the several acts which are involved (see 68 L.D. 375).

² 43 U.S.C. 423(e).

³ *Ivanhoe Irr. Dist. v. McCracken* (357 U.S. 275, 297 (1957)).

submittal to the Congress of a contract "calling for complete repayment of the distribution systems and drains" 90 days prior to the appropriation of funds to build those systems.

In conformity with the last mentioned section 8 of the San Luis Act the Secretary of the Interior by his letter dated May 1, 1964, transmitted to the Congress what is referred to as "An appropriate contract for construction of the distribution system and drains by the United States and for repayment by the district * * *,"⁴ adding that the contract had been negotiated with the Westlands Water District.⁵ Among other things that contract, now before the Congress, declares:

"LAND INELIGIBLE TO RECEIVE WATER UNDER THE WATER SERVICE CONTRACT NOT TO RECEIVE WATER SERVICE THROUGH THE DISTRIBUTION SYSTEM

"20. No water shall be delivered through the distribution system to any lands or persons not eligible under the terms of articles 23, 24, and 25 of the water service contract to receive water made available pursuant to that contract."

Flowing from that and related provisos in the contract submitted by the Secretary of the Interior is the unavoidable legal result:

This committee will in effect be approving not only the contract which is before it. It will be approving the above-mentioned Westlands "water service contract" of June 5, 1963, which appears to contain clear violations of the excess lands laws.

QUESTION PRESENTED

Will this committee approve a contract which has not been placed before it and which appears to circumvent the congressional will as expressed in the "excess land" provisions of the reclamation laws?

These contracts will have the result of providing unjust enrichment of a few powerful corporation landowners who will be immediately and directly benefited by the contemplated expenditure of \$157 million of Federal funds. Thus to subsidize these monopolies in clear violation of the reclamation law is destructive of the basic concepts giving rise to those laws.

WESTLANDS "WATER SERVICE CONTRACT," A CIRCUMVENTION OF THE "EXCESS LAND" LAWS

There was attached to the above-mentioned letter of May 1, 1964, from the Secretary of the Interior, transmitting the contract for the construction of the distribution and drainage systems a memorandum dated April 23, 1964, from Commissioner of Reclamation Dominy to the Secretary.⁶ Contained in that memorandum is a review of many salient facts respecting the contract before this committee—but far from all of them, as will be more fully developed in the paragraphs which succeed. Without further elaboration on the import of it, Mr. Dominy states in the first paragraph that the contract before the committee provides for a system which "* * * is required for the distribution of project water available to the Westlands Water District under long-term contract No. 14-06-200-495A executed on June 5, 1963 * * *," hereafter referred to as the "water service contract." Following that passing reference to the all-important water service contract, Mr. Dominy proceeds to describe in some detail the area to be served by the system. On the final page of the Dominy memorandum and quite out of context is this statement:

"* * * no water shall be delivered through the distribution system to any lands or persons not eligible under the terms of articles 23, 24, and 25 of the district's water service contract to receive water made available pursuant to the contract.

"These articles, the so-called excess land provisions required by reclamation law, are similar in form and content to other water service contracts for the Central Valley project."

However, it would appear from a careful examination of the water service contract and all the surrounding facts that this contract will result in a clear violation of the excess land laws of the Reclamation Act.

⁴ Title of the document: "Contract Between the United States and Westlands Water District Providing for the Construction of a Water Distribution and Drainage Collection System."

⁵ See attached letter of May 1, 1964.

⁶ See attached memorandum of Apr. 23, 1964.

In that connection, reference is made to the following :

(i) That about 70 percent of the lands within the Westlands Water District service area are ineligible to receive project water because they are owned in tracts the acreage of which far exceeds the 160-acre limitation.

(ii) All the lands within the water district—the 30 percent of eligible and 70 percent of ineligible alike to receive water—overlie a vast ground water basin which is in no sense compartmented on the basis of land eligibility.

(iii) "Ground water underlying the district is seriously depleted and in need of replenishment, and that and additional water supply to meet these present and potential needs can be made available by and through the works constructed and to be constructed by the United States * * *." (This is a quote from the water service contract mentioned above.)

(iv) That one of the specific objectives of the project is to raise and stabilize the water level at about 300 feet. The waters thus induced underground will recharge the ground water for both the lands which are eligible to "receive" ground water and those which are ineligible to "receive" ground water by reason of the "excess land laws."

This result, combined with the unavoidable clause of the contract, may very well result in an unconscionable benefit to large excess-land owners who fail to sign recordable contracts.

(v) That the recharge of the depleted ground waters under the ineligible lands results in immense benefit, vastly subsidizing those lands at the expense of the individual landowners who comply with the "excess land laws."

Of great interest in regard to the benefits accruing to the large ineligible-land owners is Mr. Dominy's additional statement in his memorandum of April 23, 1964 :

"The contract [before this committee] provides for repayment of \$157,048,000 representing the cost of constructing by the United States of a water distribution and drainage collector system and certain facilities for integrating ground water with surface water * * *.

"Approximately 400 existing wells in the area will be integrated into the distribution system. Well water will be mixed with surface project water in the main laterals." [Emphasis supplied.]

Thus the water service contract and Mr. Dominy's memorandum demonstrate conclusively that the project plans are predicated upon utilization of the vast ground water body which underlies all of the lands irrespective of their eligibility to participate in the available supply.

Essential here is further reference to Mr. Dominy's statement that the provisions of the water service contract "are similar in form and content to other water service contracts for the Central Valley project * * *." However, what Mr. Dominy neglected to say is the fact that the contract with Westlands specifically provides for a recharge of ground water which has the result of benefiting eligible and ineligible lands alike. There is thus a most drastic and far-reaching difference from other Central Valley contracts.

MEANS OF CIRCUMVENTION OF EXCESS LAND LAWS WRITTEN INTO THE WESTLANDS WATER SERVICE CONTRACT

The ineligible lands constituting 70 percent of all of the lands within the district will be greatly benefited from project water entering the underlying basin. It would seem that the spirit and intent of the reclamation laws are being circumvented by the following provision of the water service contract :

"If project water furnished to the district pursuant to this contract reaches the underground strata of excess land owned by a large landowner * * * who has not executed a recordable contract and the large landowner pumps such project water from the underground, the district will not be deemed to have furnished such water to said lands within the meaning of this contract if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of project water by the district to nonexcess land or to excess lands with respect to which a recordable contract has been executed."

The "unavoidable clause" raises a serious public policy question.

(a) Seventy percent of the lands within the service area of the Westlands District are lands which are in single ownership in excess of 160 acres and overlie the ground water basin which will be recharged with project water delivered by the United States.

(b) The contract for water specifically provides for inducing project waters into the ground water basin and those waters will be available for pumping for use on the 70 percent of the lands ineligible under the excess land laws.

(c) Project waters which are specifically induced underground and those waters from surface irrigation, greatly benefit the ineligible 70 percent of the water district's lands.

A most careful review of the Reclamation Act, as amended, and the legislative histories which preceded the enactment of those laws seems to reveal a clear circumvention of the excess land laws by the contract in question. It will be remembered in regard to this matter that the reclamation laws are unequivocal respecting the 160-acre limitation. Nowhere in the laws themselves nor their antecedents will authority for the "unavoidable clause" in the Westlands contract or other Central Valley contracts be found. Equally important, however, is the fact that the circumstances surrounding Westlands differ drastically from those relating to other Central Valley contracts.

It is essential to find the source of the unavoidable clause written into the Westlands water service contract. In that connection, reference is made to hearings before this committee in 1944. In the report on those hearings under the heading "Legal Basis for Assessment of Excess Landowners by Irrigation Districts," the then chief counsel of the Bureau of Reclamation examined the crucial question on the subject and responded to that query in this manner:

"Assuming that, where the district furnishes water intentionally and according to plan to eligible lands of the district, both by surface facilities for surface irrigation and by such facilities or otherwise for augmentation of the ground water supply, project water is introduced into underground reservoirs underlying ineligible excess lands as well as eligible lands for physical reasons beyond the control of the district, is there a furnishing of water to such ineligible excess lands by the district contrary to the prohibition included in its contract with the United States as required by the reclamation law?

"* * * it is our view that this question is to be answered in the negative, if the further assumption be indulged that the physical introduction of project water on and under project land has for its principal purpose, and its principal result is, the furnishing of irrigation water to eligible lands, with the incidental, and inevitable, result that the underground water supply of ineligible excess lands is benefited."⁷

This appears to be the genesis of the "unavoidable clause." No reference is made in the quoted ruling to any applicable law permitting this evasion of the "excess land law." Congressional will cannot be relied upon in this matter because that will through the years has been unalterably opposed to the perpetuation of land and water monopolies. In simple terms executive fiat has been indulged in to create an exception to the excess land laws where none actually exists. Insidious though that evasion may be the precedent stemming from the evasion is far worse.

The circumvention of the Reclamation Act by the "unavoidable clause" in the first Central Valley contracts gave rise to the present escape proviso contained in the Westlands Water Service Contract.

There has been reviewed above the fact that Central Valley project water will be induced into the ground water aquifers within the Westlands service area and thus recharge them for the purpose of eliminating the overdraft on ground waters which stems from local pumping. That ineligible lands will be greatly benefited through Federal subsidization of the water made available by the Central Valley project has been tacitly admitted.⁸ Mr. Dominy, in a letter dated May 26, 1964, to Senator Jackson, chairman of the committee, in regard to the ground water recharge features of the water service contract, states: "Even if enhanced ground water conditions [within the Westlands service area] should reduce pump lifts [for ineligible landowners] from the present say 450 feet or more to the objective depth of 300 feet, any corresponding reductions in pumping costs [of the ineligible owners] would be more than offset by the district's ad valorem assessments."⁹ Logical sequitur of Mr. Dominy's statement on the subject is that, for example, the Southern Pacific Land Co. to which he alludes in the letter, will not only receive (a) a supply of Central Valley project water, it will (b) have the ground water lifts reduced by approximately 150

⁷ Hearings before subcommittee * * *, 80th Cong., 1st sess., on S. 912, p. 1274.

⁸ See Westlands Water Service Contract, par. 3 b. c. and d.

⁹ See attached letter May 26, 1964, Dominy to Senator Jackson.

feet with the immense reduction in pumping costs as a result of the project—indeed, a bonanza to ineligible water users.

Continuing in regard to the 160-acre limitation, Mr. Dominy in his letter of May 26, 1964, states that some day the laws of economics will enforce that legal limitation. He states: “* * * the impact of economic pressures is expected to be such that any owners of ineligible excess lands who choose to continue pumping rather than avail themselves of project [surface] water will be under a continuing financial disadvantage.” He points out in that connection that “it is expected” costs to the ineligible landowners to pump the project water will be greater than the costs to those who comply with the 160-acre limitation. Mr. Dominy then adds this statement: “* * * all lands within the district will be assessed ad valorem taxes for a substantial part of the amounts necessary to meet the district’s annual contractual payment to the United States. Thus to whatever extent the amounts collected as water charges for direct delivery of project water are insufficient to meet annual payment obligations, the balance will be derived from ad valorem assessments levied against all district lands, irrespective of whether they take water.” The result will be that: (a) The small landowner will pay for project water; the ineligible pumper will not; (b) If the payments by the small farmers are insufficient to meet the project costs the small farmers will also pay an ad valorem tax as well as the ineligible water user; (c) The small users will pay two charges, the ineligible user will pay only one charge. This would seem to raise some serious doubt that ineligible landowners will be forced to comply with the excess land laws as Mr. Dominy believes they will.

In any event this plan would deliver water to the ground water basin with the result that ineligible landowners will immensely profit from that plan.

In any event Mr. Dominy speaks in sanguine terms of compliance with the excess land laws by the Southern Pacific Land Co., which owns a vast empire of lands ineligible for project water but which, under the “unavoidable” escape clause will “receive” large quantities of it—in Mr. Dominy’s words, reduced ground water lifts from 450 to 300 feet. Relative to that ineligible empire he states: “* * * It is, of course, impossible for us to predict at this time the extent and sequence that may characterize the rate at which the company will embrace the recordable contracting program. * * * [Nevertheless the company’s excess lands] will * * * be subject to ad valorem assessments levied by the district against all district excess and nonexcess land alike.”

This would seem at least to all tacit admission that the excess land laws will be violated; the fact that the Southern Pacific Land Co. will not pay for the water but will pay an ad valorem tax—a tax let it be emphasized, that will be reduced in direct proportion to the costs of water paid by those who comply with the excess land laws. There is thus added to the circumvention of the excess land laws great unfairness to those landowners who comply with those laws.

This apparent violation of the spirit and intent of the reclamation laws is but a part of the basic objections to the Westlands Water Service Contract. It results in a substantial gift of properties belonging to the United States and the intention to abandon claims for payment for those properties is part of that contract.

TITLE TO THE RIGHTS TO THE USE OF PROJECT WATERS, INCLUDING SEEPAGE AND RETURN FLOW, RESIDES IN THE UNITED STATES

Title to the rights to the use of water—even though once used by project beneficiaries—continues to reside in the United States. Reference in that connection is made to a leading decision of the Supreme Court of California on the subject.¹⁰ There, Los Angeles imported Owens River waters into the San Fernando Valley and sold them to farmers who used them. The municipality then claimed the right to recapture the waters which entered the ground water basin by reason of the surface irrigation. Sustaining that claimed right, California’s highest court stated:

“Plaintiff [Los Angeles] had a prior right to the use of the water brought to the San Fernando Valley. It did not abandon that right when it spread the water for the purpose of economical transportation and storage.

* * * * *

“The use by others of this water as it flowed to the subterranean basin does not cut off plaintiff’s rights.

* * * * *

¹⁰ *City of Los Angeles v. City of Glendale*, 23 Cal. 2d 68; 142 P. 2d 289, 294, 295 (1943).

"It is immaterial whether the farmers who use the imported water acquire their rights through a transfer of land that includes a water right * * * or by some other means. * * * In any event the importer brings the water to the land of the farmer, and the farmer uses it. * * * In making water available, plaintiff [Los Angeles] selected an area where it could recover as much water as possible from seepage, and it should not be deprived of the benefit of its foresight."¹¹

In adhering to those concepts the California court was simply adopting the same principles followed by the Supreme Court of the United States.¹² That last cited case arose from a claim by the United States to seepage water emanating from surface irrigation within a Federal reclamation project in Wyoming. Upholding the claim to the seepage water the Court set forth this quoted statement from a similar case arising in Idaho:¹³

"One who by the expenditure of money and labor diverts appropriable water from a stream, and thus makes it available for fruitful purposes, is entitled to its exclusive control so long as he is able and willing to apply it to beneficial uses, and such right extends to what is commonly known as wastage from surface runoff and deep percolation, necessarily incident to practical irrigation. Considerations of both public policy and natural justice strongly support such a rule. Nor is it essential to his control that the appropriator maintain continuous actual possession of such water. So long as he does not abandon it or forfeit it by failure to use, he may assert his rights. It is not necessary that he confine it upon his own land or convey it in an artificial conduit. It is requisite, of course, that he be able to identify it; but, subject to that limitation, he may conduct it through natural channels and may even commingle it or suffer it to commingle with other waters. In short, the rights of an appropriator in these respects are not affected by the fact that the water has once been used."¹⁴

These principles, uniformly accepted, are of necessity applicable to seepage and return flow waters arising from the vast development undertaken by the United States in connection with the Westlands service area.¹⁵ Yet the water service contract respecting seepage and return flow waters within the service area purportedly abandons those waters, title to which is vested in the United States. Having reserved the seepage and return flow waters outside of the district, this provision is set forth: "* * * but this shall not be construed as claiming for the United States any right, as waste, seepage, or return flow, to water being used pursuant to this contract for surface irrigation or underground storage within the district's boundaries by the district or those claiming by, through, or under the district."¹⁶ The result of this contract is (a) To "give away" property of the United States; (b) to grant a great bonanza to the ineligible owners in violation of the spirit and intent of the law.

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, D.C., May 26, 1964.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: We are pleased to advise you concerning the communication of April 26, 1964, from Mr. William Reich of Oakland, Calif., as made available to us under cover of your May 12, 1964, office transmittal.

We note Mr. Reich's expression of concern over the point in time at which excess landowners in the Westlands Water District may execute recordable contracts. The San Luis unit, in which the Westlands Water District is located, is, of course, a part of the Central Valley project. In keeping with our long-standing policy, every effort is made to utilize, insofar as is practicable, uniform terms in water service and repayment contracts throughout the project. Inasmuch as heretofore executed Central Valley project contracts in general establish no specific time prior to which large landowners must have placed their excess lands under recordable contract, no such restrictions have been included in San

¹¹ 23 Cal. 2d 68; 142 P. 2d 289, 295 (1943).

¹² *Ide v. United States*, 263 U.S. 497 (1923).

¹³ 263 U.S. 497, 506.

¹⁴ 263 U.S. 497, 506.

¹⁵ 89 A.L.R. 210.

¹⁶ Water service contract, par. 9c.

Luis unit contracts. Under this policy, recordable contracts may be executed by the excess landowners at any time prior to delivery of water. However, in the normal course the majority of such contracts are executed shortly before irrigation facilities have reached a stage of completion where water deliveries can be made. It must also be recalled that, even though construction is completed and water deliveries are physically possible, the owner of excess lands is precluded by statute from receiving project water for his excess lands unless and until he has executed a valid recordable contract agreeing to their orderly disposition.

Looking specifically to the Westlands Water District situation, it must be borne in mind that, in the future, the district's irrigation water supply will involve three possible sources. First will be pumped water derived from the continuing nondistrict natural recharge of the deep-lying aquifers. The rate of withdrawal of this source will undoubtedly be diminished as surface deliveries of project water are initiated and there is a corresponding decrease in the districtwide pumping rate. Second will be the import of project surface water made available through San Luis unit works and facilities. The third is related to the first two and will be ground water supply resulting from deep percolation losses from surface water applications, irrespective of such water's source prior to application.

Even though the present ground water situation should show comparatively rapid improvement, the impact of economic pressures is expected to be such that any owners of ineligible excess lands who choose to continue pumping rather than avail themselves of project water will be under a continuing financial disadvantage. This stems from two sets of circumstances. First, it is expected that project water will be available at an appreciably lesser cost per acre-foot than pumped water. Second, under the joint liability contracting concept embodied in the Westlands Water District water service contract, all lands within the district will be assessed ad valorem taxes for a substantial part of the amounts necessary to meet the district's annual contractual payment to the United States. Thus, to whatever extent the amounts collected as water charges for direct delivery of project water are insufficient to meet annual payment obligations, the balance will be derived from ad valorem assessments levied against all district lands, irrespective of whether they take water.

Even if enhanced ground water conditions should reduce pump lifts from the present say 450 feet or more to the objective depth of 300 feet, any corresponding reductions in pumping costs would be more than offset by the district's ad valorem assessments.

It is our informal understanding that, in order to encourage a practical and desirable balance between the use of surface water and pumped ground water, district officials are presently working out a schedule of operational costs and assessments which will confirm the generalizations herein discussed. We furthermore have reason to believe that the interaction of those circumstances will result in general acceptance of and conformance to the recordable contracting program by large landowners in the Westlands Water District in much the same manner as has been evident elsewhere on the Central Valley project.

Insofar as the Southern Pacific Land Co. is concerned, we are advised by our regional staff in Sacramento, Calif., that all that company's holdings within the boundaries of the Westlands Water District have been legally included in the district. It is, of course, impossible for us to predict at this time the extent and sequence that may characterize the rate at which the company will embrace the recordable contracting program. In any event, whether or not the company's excess lands are under recordable contract, they will, as aforementioned, be subject to ad valorem assessments levied by the district against all district excess and nonexcess lands alike.

Please be assured that, to the best of our understanding, the procedures being followed and the provisions which make up the Westlands Water District contracts have been carefully designed to reflect properly the pertinent features of the controlling Federal statutes.

Additionally, responsive to your oral request, we are enclosing 10 copies of the remarks on "Acreage Limitation Provisions of Reclamation Law" by Acting Assistant Commissioner C. G. Stamm, as prepared for a public hearing on farm labor and rural poverty, held May 19, 1964, by the National Advisory Committee on Farm Labor.

Sincerely yours,

FLOYD E. DOMINY, *Commissioner.*

Senator NELSON. I shall call as the first witness Mr. Holum, the Assistant Secretary of the Interior.

STATEMENT OF KENNETH HOLUM, ASSISTANT SECRETARY (WATER AND POWER); ACCOMPANIED BY GILBERT G. STAMM, ASSISTANT COMMISSIONER, BUREAU OF RECLAMATION; FRANK J. BARRY, SOLICITOR; EDWARD WEINBERG, DEPUTY SOLICITOR; R. G. HOWARD; AND MORRIS LANGLEY, DEPARTMENT OF THE INTERIOR

Mr. HOLUM. Thank you, Mr. Chairman and members of the committee. It is always a pleasure to appear before this distinguished committee of the Congress. We are happy to be here this morning to have an opportunity to discuss with the members of this committee the Westlands Water District distribution system contract. We recognize, as the chairman has said, that this is the largest distribution system that has ever been negotiated in the reclamation program, and it is appropriately a matter of interest to this committee, appropriately a matter of interest to many members of the general public.

We are happy to have this opportunity to appear before the committee and discuss this contract, because the contract, as the chairman has already noted, is complicated because there are many factors involved, because we are exceedingly anxious in the Department of the Interior to make all of the information necessary available to the members of this committee.

I have with me a rather distinguished group of representatives of the Department. I have on my left our Solicitor, Frank Barry, who is accompanied by his deputy, Ed Weinberg. On my right is Assistant Commissioner Stamm, with Morris Langley and R. G. Howard from the Bureau of Reclamation. Mr. Howard is here from the regional office of the Bureau of Reclamation in Sacramento so that we can supply you with information directly from the field as it applies to the local situation there.

I have prepared, Mr. Chairman, a rather lengthy statement. I felt it important, however, that it be supplied the committee at the beginning as a basis for discussion and questions which will almost certainly follow all of the information we could supply to this contract.

With your permission, I should like to read it at this time.

Senator NELSON. You may read it all the way through if you wish, or you may just submit it for the record and discuss it, whichever way you please.

I think for purposes of the hearing here, we are going to have to divide the time among those who are here to oppose the contract and those who are here to support it.

Mr. HOLUM. I well recognize that, Mr. Chairman, and I shall read fast. However, I do think the matter under discussion is complicated enough that it will be better if I do read my statement.

Senator NELSON. It is perfectly all right.

Mr. HOLUM. As has already been noted, this is the largest repayment contract ever to be negotiated in the history of the reclamation program. It provides that the United States construct the distribution system and necessary drainage collection facilities to serve nearly

400,000 acres in the Federal San Luis unit service area of the Central Valley project, California. Under the contract the district will repay these costs in 40 years. To better understand this contract and its relation to the Federal-State project now under construction, a brief review of certain congressional authorization and contractual agreements appears desirable.

By the act of June 3, 1960, the Congress authorized the Secretary of the Interior to enter into an agreement with the State of California for the construction and operation of the San Luis unit of the Central Valley project. Pursuant to this authority the Secretary entered into an agreement on December 30, 1961, for Federal-State financing of the San Luis unit. This agreement was furnished to the President of the Senate and the Speaker of the House on January 9, 1962. This Federal-State agreement is unique in that it is the first ever negotiated under which the United States would undertake the financing and construction of a reclamation project as a joint venture with a State government. The construction cost of the joint-use facilities is expected to exceed \$400 million, 55 percent of which is scheduled to be advanced by the State. The State is now advancing on a monthly basis its share of the cost of the joint venture.

Initial water storage in the San Luis Dam is scheduled during the winter of 1967 and initial limited water deliveries are expected to follow in the summer of 1968. Larger water supplies are expected to be available in 1969.

The service area of the Federal San Luis unit of the Central Valley project includes a gross area of approximately 500,000 acres on the west side of the San Joaquin Valley, and between Mendota on the north and Kettleman City on the south. The Federal share of water from the joint San Luis storage and conveyance facilities is estimated at 1,235,000 acre-feet annually for use in this highly productive but water-deficient area. About 45,000 acre-feet is considered for municipal and industrial use; the balance of 1,190,000 acre-feet is considered for agricultural purposes.

The Westlands Water District is the principal contractor for Federal service from the San Luis unit. Except for certain small areas above the canal, the district lies between the trough of the valley on the east and the alinement of the San Luis Canal along the foothills of the coastal area on the west. The district is the largest in the area and includes 391,000 acres, about 352,000 acres of which are irrigable.

The district needs water to supplement the limited pumped ground water supplies available from ever-increasing depths. To meet this need the district requested supplemental water service from the Federal San Luis unit. A proposed water service contract was approved by President Kennedy on January 28, 1963, and the contract was executed June 5, 1963.

Under this contract, 1,008,000 acre-feet of project water will be available annually during the first 10 years. It is hoped that during this 10-year period the use of large quantities of project water will temporarily abate much of the underground pumping and will allow natural recharge to stabilize ground water at about 100 feet above present levels. After 10 years the district is obligated to pay for 783,000 acre-feet annually, which, with the ground water calculated to be available, will be adequate to meet all irrigation requirements. If

the ground water supply does not respond as anticipated, the district may purchase up to 117,000 acre-feet more, making a maximum, after 10 years, of 900,000 acre-feet annually.

No project water will be delivered through the distribution system to any lands or persons not eligible under the terms of articles 23, 24, and 25 to receive water made available pursuant to the contract. These articles, the so-called excess land provisions required by reclamation law, are similar in form and content to those in other water service contracts for Central Valley project.

The Westlands district will pay the United States \$7.50 an acre-foot for water service plus 50 cents an acre-foot for drainage service. Under the full development conditions, annual project revenues from the sale of 783,000 acre-feet to the district would yield about \$6¼ million.

Under the service contract, water is delivered at canalside; therefore, before the district can effectively utilize project water, and before the United States will be in a position to receive revenues for project water service on a continuing basis, distribution and drainage collector facilities will have to be constructed. Such facilities may be financed and constructed by the district or by the United States. The Westlands Water District has asked for Federal construction.

The form of contract providing for the construction by the United States of the Westlands Water District distribution and drainage collector facilities, and for the repayment of these costs by the district in 40 years, has been approved by the directors of the Westlands Water District, by the Secretary of the Interior, and by the California Districts Securities Commission—the financial guardian of public water districts in that State.

The Secretary of the Interior approved the form of the proposed contract April 24, 1964. The same day he transmitted copies of the proposed contract to the President of the Senate and the Speaker of the House of Representatives. These transmittals were made in accordance with the requirements of section 8 of the San Luis unit authorizing act of June 3, 1960 (Public Law 86-488).

Section 8 of that act provides that funds will not be appropriated for construction of a distribution system and drains until 90 legislative days after a contract has been submitted to the Congress calling for complete repayment of the distribution system and drains within a period of 40 years from the date such works are placed in service. Copies of the distribution and drainage contract, hereafter referred to as a "distribution system repayment contract," also were recently furnished to members of this subcommittee.

Facilities to be constructed under the distribution system contract include a system of pipelines, the connection of ground water wells with those lines, and a drainage system.

The water distribution pipelines will have a total length of about 713 miles. Spacing of laterals will be at 1-mile intervals along section lines with turnouts to each 160 acres. The estimated cost of the distribution lines is \$106,363,000.

Approximately 400 existing wells in the area will be integrated into the distribution system. Well water will be mixed with surface project water in the main laterals. The estimated cost for integrating well water amounts to \$10,160,000.

The drainage collector system will be constructed of clay pipe terminating in buried reservoirs or sumps from which the water will be pumped into the State's proposed master drain for the San Joaquin Valley or into a Federal interceptor drain for the San Luis unit. The area to be covered by this system lies predominantly along the east side of the district near the trough of the valley. Estimated cost of the drainage collector facilities is \$40,525,000.

Facilities to be constructed under the contract will be separated into construction groups. Construction group 1 will include substantially all of the water distribution facilities, drainage collector facilities, and works for the integration of ground water with surface water, all as initially required and generally as exhibited in the contract. Construction groups 2 and 3 will include added portions of the distribution system on which construction is started no later than June 30, 1974, and June 30, 1979, respectively. Any construction started after June 30, 1979, will be considered as part of construction group 3 for purposes of repayment.

The United States will acquire for the distribution system any pipeline facilities and sublaterals which are constructed by the district and are usable as an integral part of the system. The amount which the United States will pay for such facilities, including rights-of-way, is not to exceed the lesser of (a) the cost which the United States would have incurred if it had constructed such facilities or (b) the appropriate costs incurred by the district in constructing said facilities less the amount received from the United States in payment of water transported to the area for subsidence control during construction. It is planned that rights-of-way required for construction of the distribution system will be acquired by the district. Title may be taken directly in the name of the United States or taken by the district and then transferred to the United States. The United States will reimburse the district for the cost of the rights-of-way.

The construction cost of construction group 1 is to be repaid by the district in 80 successive semiannual installments payable on January 1 and July 1 of each year after the completion of construction of said group is announced in writing by the contracting officer. The first 10 payments will be for one hundred-sixtieth of the construction cost of said group and the remaining of 70 payments will be for equal amounts of the remainder of the cost. Construction costs of subsequent groups will be repaid in 80 successive equal semiannual installments payable on January 1 and July 1 of each year. The first installment with respect to each group will be due and payable on January 1 of the year following the year of completion of the respective group as announced by the contracting officer.

Under the contract the district as a whole is obligated to pay charges becoming due. To meet payments, the district is to use its resources and authority, including the levying and collecting of necessary taxes and assessments. The lands which may be charged with such taxes and assessments are described as all the lands in the district.

Upon completion of each construction group, it is to be transferred to the district for operation and maintenance. The district, without expense to the United States, is to operate and maintain such transferred works in full compliance with the terms of the contract and in

such manner that said transferred works will remain in good and efficient condition.

No liability will accrue against the United States and its officers and employees because of damage arising out of or in any manner connected with the care, operation, and maintenance by the district of the distribution system.

The actual cost of the distribution system or any construction group thereof will embrace all expenditures by the United States of whatever kind in connection with the distribution system, and will include all sums expended by the Bureau of Reclamation in surveys and investigations in connection with the distribution system both prior to and after the execution of this contract and the expense of all soil investigations and other preliminary work.

The contract provides for a \$250,000 reserve fund to be accumulated by the district at the rate of \$50,000 annually. Expenditures from this fund will be for the purpose of meeting extraordinary costs of care, operation, maintenance repairs, and replacements. Whenever the reserve fund is reduced below \$250,000 it will be restored by annual deposits of \$50,000.

In the event the United States transfers the San Luis unit or portions thereof to the State of California for care, operation, and maintenance, such transfer will not affect the rights or obligations of either party to the contract.

Although the language in the contract is brief, I propose to discuss in some detail the excess land provisions. Over a year ago, on June 5, 1963, to be exact, the Westlands Water District and the United States entered into a water service contract whereunder the district is to receive a supply of Central Valley reclamation project water through the facilities of the San Luis unit of that project. Articles 23, 24, and 25 of that water service contract are similar to the acreage limitation provisions that have customarily been employed throughout the Central Valley project since the initial contracts were entered into more than 15 years ago.

The acreage limitation provisions of reclamation law have been fully applicable since June 5, 1963, to all lands which make up the Westlands Water District. Looking then to article 20 of the distribution system contract one finds that, and I quote:

No water shall be delivered through the distribution system to any lands or person ineligible under the terms of articles 23, 24, and 25 of the water service contract to receive water made available pursuant to the contract.

Even more significantly, under the distribution system contract, those provisions are expanded to include not only Central Valley project water, but additionally any other water regardless of source, to the extent that such water is conveyed through that distribution system.

Under the controlling contractual provisions, excess lands are categorically identified as—

that part of the irrigable land within the District in excess of one hundred and sixty (160) acres held in the beneficial ownership of any single person; or in excess of three hundred and twenty (320) acres held in the beneficial ownership of husband and wife jointly, as tenants in common, or by the entirety, or as community property; * * *

Landholdings falling within the 160 or 320 irrigable acre limit thus established are correspondingly defined as nonexcess land. Having thus contractually defined excess and nonexcess lands those same articles specifically prohibit the delivery of project water to any such excess lands unless and until the owner thereof shall have covered the excess lands in question by a valid recordable contract in form prescribed by the United States.

Additionally, it is contractually required under the water service contract that any large landowner, whether or not he enters into a recordable contract, designate that portion of his total irrigable landholding which is to be identified as his nonexcess lands. The remainder is thereafter identified as excess and as such is ineligible to receive project water unless and until it has been covered by a valid recordable contract.

Finally the articles establish the basic terms and conditions to which the large landowner agrees in executing the requisite recordable contract. The recordable contract first identified the irrigable lands covered thereunder which are excess in the ownership of the person or persons executing the contracts. It stipulates, however, that in any such appraisal no value will be given such lands on account of the existing or prospective possibility of securing water from the project.

Finally the large landowner who executes a recordable contract agrees to dispose of those excess lands within 10 years from the execution date of said contract, at prices not in excess of its value without project benefits, and to a person or persons who can take title to such as nonexcess lands. Should the large landowner fail to dispose of the land within that 10-year period, power of attorney then vests in the Secretary of the Interior to make the agreed-upon disposition.

It is also important that proper attention be given the provision appearing in article 23(a) of the Westlands Water District water service contract. That provision reads in part:

No sale of any excess lands shall carry the right to receive water made available pursuant to this contract unless and until the purchase price involved in such sale is approved by the contracting officer. * * *

Thus, even though excess land is not covered by a recordable contract, and is sold in eligibly sized parcels, the sale must be at approved values in compliance with the antispeculation provisions of reclamation law, if such lands are to become eligible either to receive project water or service through the distribution system.

Some concern has also been expressed with respect to the pumping of ground water. The Westlands Water District water service contract includes as article 23(b) the standard Central Valley project contractual clause which reads:

If project water furnished to the district pursuant to this contract reaches the underground strata of excess land owned by a large landowner, as defined in subdivision (a) of article 25 hereof, who has not executed a recordable contract and the large landowner pumps such project water from the underground, the district will not be deemed to have furnished such water to said lands within the meaning of this contract if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of project water by the district to nonexcess lands or to excess lands with respect to which a recordable contract has been executed.

It is recognized that unavoidable percolation increments, combined with the effects of decreased districtwide pumping occasioned by the

availability of the project surface supply will contribute in some measure to the enhancement of the general ground water situation. It must be noted, however, that the water to which the quoted contractual subarticle refers is not water deliberately introduced in quantity into the underground through percolation beds or similar means for intensified storage and recharge purposes.

No direct ground water percolation operations are planned in the Westlands area nor are facilities for such to be constructed. Thus, the water which might effectively be recovered by any landowner under the foregoing contractual clause would be only that which unavoidably percolates to the underground as the result of normal surface application of irrigation water for purposes of crop production, maintenance of salt balance, or similar bona fide irrigation practices conducted on eligible lands.

It must additionally be noted that present plans for the construction of the Westlands distribution system contemplate that approximately 400 wells existing in the area will be integrated into the distribution system. The yield from such wells will thus be mixed with project water within that distribution system. Referring again to article 20 of the distribution system contract it immediately becomes apparent that no water, whether it be project water delivered to the district distribution system from the San Luis Canal or ground water pumped into the distribution system from any of those 400 wells, may be delivered through the distribution system other than to land for which eligibility has been established pursuant to the provisions of reclamation law.

In consideration of the interrelated provisions contained in the distribution system contract and the equally pertinent and overriding water service contract, it is apparent that the lands of the Westlands Water District are in fact subject to the acreage limitation provisions of reclamation law.

To the best of our ability, all of those requirements have been properly iterated in those contracts. Correspondingly, the water district has through its execution of the water service contract and its acceptance of the distribution system contract recognized the applicability of such a provision and agreed to comply therewith.

With reference to excess lands, you know that the Department has at the specific request of your full committee just concluded a comprehensive review of the entire subject in both its administrative and legal connotations.

Our final report as transmitted to the committee on June 30 recognized both the need for certain legislative actions to bring the acreage limitation provisions of law into a more practicably applicable form and made appropriate recommendations in that regard. Additionally, our report pointed to a number of issues that have emerged under the excess land laws that we believe warrant congressional review. I want to reiterate here our desire and willingness to cooperate with the Congress in its consideration of these matters.

Thank you, Mr. Chairman.

Senator NELSON. Thank you, Mr. Holum.

What is the total acreage covered by the Westlands contract?

Mr. HOLUM. About 400,000 acres in the Westlands district and about 352,000 acres of lands that are irrigable.

Senator NELSON. From looking at the materials, I had the impression that the total geographic area involved is 456,000 acres; is that correct?

Mr. STAMM. Approximately 400,000 acres are included in the district, but the significant figure is the land that is suitable for irrigation. There are about 352,000 acres according to our classification.

Senator NELSON. Would the witness identify himself?

Mr. HOLUM. This is Mr. Stamm, Assistant Commissioner of Reclamation.

Senator NELSON. Looking at some of these figures, there are 105,000 acres in the Federal service area, as I understand it, that are not in the area covered by the Westlands contract. The Southern Pacific owns about 55,000 acres in the Federal service area; is that correct?

Mr. STAMM. Mr. Howard from our regional office, I think, can give you specific figures as to the acreage of the Southern Pacific land which is within the Westlands Water District. I think perhaps that is the figure you are asking for.

Senator NELSON. They have acreage within the district, and they have acreage, I understand, contiguous to this land within the district that also is in the Federal area, but that is outside the district.

What I am getting at is, why is not all of that contiguous land included in the Westlands area?

Mr. STAMM. I think I can answer. All of the land that the Southern Pacific owns which is geographically within the external boundary of the Westlands Water District is a part of the district. They are district lands and have had that status from the time the district was formed. They are assessed the same as any other lands within the district. I know of no Southern Pacific lands within the district that are not a part of the district; that is, there are no irrigable lands within the district that are not a part of the district.

Senator NELSON. Just to get this straight in my own mind, it had been my impression that this basin, this whole basin area, involved about 456,000 acres, of which some 350,000 or thereabouts is covered by the Westlands contract that would leave about 105,000 outside that area. Could you clarify?

Mr. STAMM. The Federal service area—that is the term that was referred to in the original authorization—includes lands other than those within the Westlands district. Now, there is an organized Westplains Water Storage District, and it lies generally west of the Westlands Water District. The Federal service area is primarily within those two irrigation districts.

The question that you asked, I believe, was why are not some of the Southern Pacific lands that are within the—

Senator NELSON. I do not care whose land it is. Why are not the lands of the Federal service area included within the Westlands contract?

Mr. STAMM. Because in the formative stages, the landowners chose to form two irrigation districts, and ultimately, we expect to have contracts with both the Westplains Water Storage District and the Westlands Water District, unless they should choose to join into one. There is quite a little discussion at the moment that the Westlands district may expand to take in the lands of the Westplains Water Storage District. Then all of the Federal service area will be essentially in one irrigation district.

Senator NELSON. Can you give us, give the committee, the pattern of ownership within the area covered in the Westlands contract—that is, how many landowners are there, how many are excess landowners, what acreages—how much of the land covered by Westlands contract is held in excess ownership?

Mr. HOLUM. Yes; we certainly can, Mr. Chairman.

Mr. STAMM. We can provide you a tabulation for the record, or we can give you some of that information orally, if you would like to have it.

Senator NELSON. I think we ought to have the tabulation for the record.

I would like to get some impression orally, without going into all the details, however.

Mr. HOLUM. Mr. Chairman, of the 352,000 acres of irrigable land in the area, a little over 100,000 acres is held by individual landowners not in excess. The balance held in excess ownerships in varying amounts.

Senator NELSON. I did not understand that. Of the 352,000, how much is held in excess ownership?

Mr. HOLUM. About 250,000 acres.

Senator NELSON. So what is that, about 70 percent of this land is in excess ownership, is that about it?

Mr. HOLUM. That is about right.

The ownership breaks down this way, Mr. Chairman. There are 1,030 owners who own less than 160 acres each. They own altogether 36,000 irrigable acres. Then there is another group coming under the community property law, where husband and wife together own 320 acres. Altogether, there are approximately 100,000 acres in nonexcess ownership. The balance is in excess ownership, and some of them are very large. We can supply that.

Senator NELSON. Can you have for the record here those who are nonexcess owners, and how much land they own?

Mr. HOLUM. We shall be happy to; yes.

(The information requested is as follows:)

Tabulation indicative of the number of owners and total acres by various size groups:

Group size	Number of owners	Total acres	Estimated ¹		
			Total irrigable	Total nonexcess	Total excess
Less than 160.....	1,030	40,057	36,151	36,151	-----
161 to 320.....	97	24,391	22,013	22,013	-----
321 to 640.....	51	26,664	24,064	10,560	13,504
641 to 1,280.....	35	31,175	28,135	7,200	20,935
1,281 to 2,560.....	23	43,097	38,895	4,800	34,095
2,561 to 5,120.....	12	41,445	37,004	2,400	34,604
5,121 and over.....	11	163,754	147,788	2,240	145,548
Leemore Airbase.....	1	19,752	17,826	17,826	-----
Total.....	1,260	390,345	352,276	103,190	248,686

¹ These figures projected to irrigable acreages from gross acreages as developed from district assessment roles. Subject to verification on receipt of 1st annual Westlands Water District report under water service contract administrative procedures.

Senator NELSON. Do I understand this contract correctly, that it provides for 117,000 acre-feet of water annually to be induced into the ground to recharge the aquifers? Am I correct about that?

Mr. HOLUM. The contract provides that in the first 10 years, up to 1,008,000 acre-feet of water will be delivered to the district. After that, the specified amount in the contract is 783,000 acre-feet.

Now, it is anticipated that the 1,008,000 acre-feet annually during the 10-year period will be adequate to recharge and stabilize the ground water aquifer.

Senator NELSON. I am talking now not about surface water brought for the purpose of irrigation, but specifically the water that is to be induced into the ground for purposes of recharging the aquifers.

Mr. HOLUM. Mr. Chairman, at the end of the 10-year period, the contract provides if the estimates and studies that have been made now by the engineers and hydrologists are not correct and the ground water level has not been stabilized, then an additional amount of water, 117,000 acre-feet, will be made available to the district if it is available, and if the Bureau of Reclamation deems it proper at this time, making, if this occurs, 900,000 acre-feet of project water available.

Mr. STAMM. Might I supplement his comments with a word or two? The implication of your question is that water initially would be deliberately injected into the ground water to replenish or improve the ground water situation. I would like to point out that the benefit to the ground water situation will come primarily from a reduction in pumping. Actually, of the water supplied in normal irrigation operations to the surface, a comparatively small percentage will become available for repumping from the ground water aquifers. But the natural recharge into the ground water aquifers will show immediate improvement in the ground water supply if pumping is reduced. In other words, if you reduce pumping, 100 percent of that reduction goes to improvement of the ground water situation because of the natural inflow. But the improvement to the ground water by means of normal irrigation on the surface will have a comparatively small effect.

I think this is a key point to bear in mind, that the improvement will come by reduction in pumping and the reduction in pumping will not come about unless surface water is applied, and the surface water in these quantities cannot be applied unless the lands become eligible to take the water. So it is a chain reaction which comes about only in case the lands become eligible in large acreages to take the water.

Senator NELSON. I was referring to that part of the contract which says:

Whereas the district, in order to utilize its ground water supply and the water supply made available under the water service contract and such future contracts as may be made between the United States and the district, desires that a water distribution and drainage collector system be constructed for the district by the United States acting by and through the Bureau of Reclamation, U.S. Department of the Interior, pursuant to the Federal reclamation laws—

that is not exactly the section I was looking for.

A specific purpose of the project is to raise the water level, is it not?

Mr. HOLUM. That is true of most of the units in the Central Valley project.

Senator NELSON. If an excess land owner decides not to sign the contract, he is a direct beneficiary of the water that seeps as a consequence of irrigation and a direct beneficiary of the water that is deliberately put into the ground to recharge the aquifers, is that not correct?

Mr. HOLUM. Mr. Chairman, first of all, we are very anxious to make this very clear in the record. No water in the San Luis unit under this contract will be deliberately put in the ground for the purpose of recharging the ground water aquifer.

Senator NELSON. I had thought that 117,000 acre-feet per year would be put in for that purpose.

Mr. HOLUM. No. All of the water that is delivered to the San Luis unit must be used on the land for agricultural purposes. The benefit to ground water levels will come about, as Mr. Stamm has said, from the reduced pumping from the ground and there will be, of course, certain unavoidable but minimum recharges that occur from surface application of the water which is used on the land for agricultural purposes, on lands that are in compliance with the excess land laws.

Senator NELSON. Did I misunderstand the testimony of a few moments ago, which I thought was to the effect that 117,000 acre-feet of water is not going to be put into the ground to recharge the aquifers?

Mr. HOLUM. No; the 117,000 acre-feet which may be made available at the end of the 10-year period will be made available to the district if the estimates that have been made now are inaccurate and the ground water level does not stabilize and these additional waters are necessary for agricultural purposes on nonexcess lands.

Senator NELSON. But will this 117,000 acre-feet that I am talking about be deliberately put into the ground to raise the water level?

Mr. HOLUM. No; it will not.

Senator NELSON. Do I understand that there is no intent to directly recharge the aquifers and raise the water level?

Mr. HOLUM. That is correct, Mr. Chairman.

Senator NELSON. And that the only water that will get into the underground is seepage as a consequence of the irrigation?

Mr. HOLUM. That is correct.

Senator NELSON. And that the other benefit to the water level would be the reduced pumping as a consequence of the available water, surface water for irrigation, is that correct?

Mr. HOLUM. That is correct. The big benefit to the ground water levels will come from the reduced pumping, as more and more people begin to use the surface water. It will be the normal recharge.

Senator NELSON. What percentage of the water that is put onto the land for irrigation ends up seeping down instead of being evaporated or used on the surface?

Mr. HOLUM. A very small percentage, Mr. Chairman. Under full application, with 1.1 million acre-feet being applied by the district, approximately 65,000 acre-feet, or 6 percent, will percolate through the deep clay, and it is expected about 17,000 acre-feet, or 1.5 percent of the total irrigation water available, will percolate into the ground water above the clay.

Senator KUCHEL. I did not hear that last figure, Mr. Secretary.

Mr. HOLUM. About 17,000.

Senator KUCHEL. This is what percent—

Mr. STAMM. May I expand on that just a little bit? I would make one point. More than 17,000 acre-feet will go into the upper levels, but a great deal of that which percolates into the upper levels through irrigation will be carried off through the drainage system. Our ground water study shows that 144,000 acre-feet of water a year that is applied to the surface will be carried off through the drainage system. But the additional amount that will remain there for recirculation through pumping is the 17,000-acre-foot amount that the Assistant Secretary refers to, and that will be comparatively minor.

Senator KUCHEL. How much minor?

Mr. STAMM. Well, about 17,000 acre-feet. These figures obviously are—

Senator KUCHEL. Are speculative?

Mr. STAMM. Yes, they are speculative. To give you a total picture, our ground water report shows a total of 70,000 acre-feet coming into this upper aquifer from natural recharge, and 226,000 acre-feet coming in by way of irrigation and from losses from the distribution facilities. The total increment by natural recharge and by surface application and loss from the system is 296,000 acre-feet annually. Of that total increment of 296,000, 144,000 goes out the drains, 65,000 percolates through the Corcoran clay, and 87,000 is pumped back to the surface.

Now, if you deduct the natural recharge from the 87,000, that leaves the 17,000-acre figure that the Secretary used.

Mr. HOLUM. Mr. Chairman, Assistant Commissioner Stamm has a chart that has been prepared. It explains how this ground water system will operate. It might be useful if this chart were distributed and he were to take a moment to explain it.

Senator NELSON. Fine.

Mr. STAMM. If you want to take a minute to review this, I would like to explain initially—I see there is a large chart on the wall. However, I believe there is a fundamental difference. The chart we have passed out to you is confined to the Westlands Water District, and the chart on the wall covers the total Federal service area, so it covers a larger area. This chart that we have would be a segment of that, so that should be recognized.

This is a graphic chart. It is intended to represent the situation that we expect to prevail when the ground water situation is stabilized—not initially, but under a stabilized condition. This contemplates a total application of water in excess of 1 million acre-feet, of which roughly three-fourths would be project water, and one-fourth would be ground water that is provided by pumping from the two aquifers.

Just simply to explain, the horizontal arrow on the upper left side shows the expected natural recharge to the upper aquifer, and the arrow at the lower left-hand corner shows the natural recharge to the aquifer below the Corcoran clay.

The verticle arrows downward show the anticipated movement of water from the surface into the upper aquifer. The left-hand verticle arrow pointing downward would be the contribution from irrigation, 173,000 acre-feet, and the contribution from distribution facilities seepage, 53,000 acre-feet.

Senator NELSON. Is this annually?

Mr. STAMM. This would be annually; yes, sir.

Of that total increment of 296,000 acre-feet, we would expect, as shown by the lower vertical arrow pointing downward, that 65,000 acre-feet would penetrate the Corcoran clay area largely through gravel pack areas around existing wells.

Then on the right-hand side, we have two vertical arrows pointing upward, the smaller one indicating the amount of water pumped from the upper aquifer, the larger one indicating the amount of water to be pumped from the lower aquifer, and then the horizontal arrow on the right-hand side indicating the amount of water that would be moved out through the drainage system each year.

Senator NELSON. Are these two aquifers completely separate and independent of each other?

Mr. STAMM. Largely so.

Senator NELSON. Does this belt of Corcoran clay underlie the whole basin unbroken, uninterrupted?

Mr. STAMM. Yes, so far as we know, it is an impervious layer there. The water moves in largely from the eastern side of the valley, and actually, water under there is under some pressure, so that when wells are drilled, the water rises in the well.

Senator NELSON. Are you through?

Mr. STAMM. Yes, except to comment again on this question that has been raised. I would like to mention again, as I did before, that while the contract makes provision for a larger amount of water during the first 10 years, the water must be applied for agricultural purposes to eligible lands. Unless a large percentage of the lands become eligible to take water, these quantities of water cannot be applied. If they are not applied, then the benefits to the ground water situation will not accrue. So in order to realize the benefits that are made possible by the contract, a large percentage of the lands of the district will need to become eligible. If there is no change, if only the 100,000 acres, roughly, that are now eligible remain eligible and the remainder remain ineligible, the ground water situation will not be improved, it will continue to deteriorate.

If would merely—if we put project water on only 100,000 acres of land, it would merely diminish the rate of reduction of the ground water level.

Senator NELSON. How many of the excess landowners have stated that they will sign the contract?

Mr. STAMM. Well, repeatedly, in public meetings and otherwise, I understand that a significant number have indicated their intention to execute contracts. I understand the district will have a representative on the witness stand here shortly. I believe he will be able to answer that more specifically.

Senator NELSON. Now, have any engineering estimates been made of how much the water level will be raised as a consequence of putting this project into effect and using irrigation water and reducing the amount of pumping?

Mr. STAMM. Under the terms of this contract, if a sufficient number of lands become eligible to take water, to take the quantities that are permitted in the first 10 years, our engineering estimates are that the

ground water table will be raised to approximately the 300-foot level. Then the project water will be diminished at that time, the surplus water available during these first years will not be available thereafter. Then we would pump and supply surface water in a balanced manner that would stabilize the ground water situation at approximately the 300-foot level.

Now, obviously, these are estimates, the best estimates we can make based on our ground water and geologic information. That is the reason for the 117,000 acre-foot option in the contract. If experience proves that we are in error, we can make some adjustment.

Senator NELSON. Well, is this that 117,000 acre-feet we were talking about a while ago?

Mr. STAMM. Yes, sir.

Senator NELSON. And you would use that to recharge the aquifers, raise the water level?

Mr. STAMM. No; if we find that our estimate of the amount required to stabilize the water level is insufficient, then we can supplement, we can dip into this 117,000 in order to provide an amount that will stabilize the water table.

Senator NELSON. But that would be used specifically for the purpose of stabilizing the water table?

Mr. STAMM. Yes, sir.

Senator NELSON. And it would then be put into the ground through—

Mr. STAMM. Well, this will not be injected for stabilizing. This would only provide additional surface water so that pumping can be reduced to the point that the situation would be stabilized.

Senator NELSON. So it is the objective and the use and the purpose to stabilize the water table?

Mr. STAMM. Right; the objective is, and the hope would be, that we can raise the water table approximately 100 feet from where it is today and stabilize it at approximately the 300-foot level.

Senator NELSON. So the purpose of this 117,000 and the objective, one of the objectives of the project, is to stabilize the water level and introduce water into the aquifers so that they will be stabilized, and if necessary, to use more water on the surface to reduce the pumping to stabilize the level. Is that correct?

Mr. STAMM. Yes, sir; we would do it by that route rather than injecting any project water into the ground specifically for that purpose.

Senator NELSON. The effect is the same, is it not? The water level is dropping, you want to stabilize it so you put more water on the surface to get seepage in order to stabilize the ground water level, is that correct?

Mr. STAMM. We want to provide enough project water so that the ground table level will be stabilized.

Senator NELSON. How is that different from injecting—

Mr. STAMM. The difference is this: that the ground water level improvement will not occur unless sufficient lands become eligible to take surface water. If sufficient lands do not become eligible to take surface water to accomplish this, then this objective will not be realized.

Senator NELSON. But do you know how much acreage must come under in order to achieve this objective?

Mr. STAMM. Well, to maintain a balance would require something over 250,000 acres to be eligible to receive project water. Now, in order to restore the ground water table, a larger acreage than that should take surface water. But about 250,000 or 260,000 acres, taking their entire supply from surface water, would maintain the balance at whatever level exists when that occurs.

Senator NELSON. Then why should not a large excess landowner simply stay out of the contract because he sees that the objective here is to maintain the water level at 300 feet. He can retain his holdings in perpetuity, he never has to sell. He can lease, he can pump water for purposes of agriculture, with the assurance that as a consequence of this big project, the water level is going to be maintained at about 300 feet?

Mr. STAMM. Well, I could give you some figures that I think would be significant in answering your question.

The district is obligated by its water service contract after 10 years, to pay for 783,000 acre-feet of water as a minimum. At \$8 an acre-foot, this is \$6.2 million a year the district is obligated to pay the United States as a minimum under that contract. The distribution system contract at roughly \$150 million payable in 40 years adds another obligation—

Senator KUCHEL. What figure did you use?

Mr. STAMM. \$150 million. The contract ceiling figure is \$157 million, but I have rounded it to \$150 for this purpose, payable in 40 years. It creates an obligation of the district to pay the United States \$3.8 million per year. Those two added together to make \$10 million per year.

Now, if that were all spread uniformly—that amounts to about \$28 an acre. But let us assume this.

Senator NELSON. What is the figure?

Mr. STAMM. \$28 per acre. But I do not think that is too significant a figure.

Senator NELSON. Are you talking about total project cost?

Mr. STAMM. No; this does not include the O. & M. cost. This is just those two repayment obligations spread over the 352,000 acres.

Senator NELSON. But they would not be spread over anybody who did not come under the contract?

Mr. STAMM. Yes, sir; they will. Let us assume that the 100,000 acres that are now eligible to receive water are the only lands that take project water and each acre takes 3 acre-feet of water annually, which is our estimate of requirement.

Then the district would sell to the presently eligible lands 300,000 acre-feet of water and they have some leeway whether they will sell it at \$8 or \$6 or \$4. They have indicated, and I think the district should supply more detail on what their specific plans are, but they have indicated that they would market that at not more than \$6 an acre-foot to the user.

So they would collect from these 100,000 acres \$1.8 million, to be applied on a \$6.2 million annual obligation to the United States. That

would leave \$4.4 million which the district would have to collect by an ad valorem assessment over all of the lands in the district.

Senator NELSON. Whether they have signed a contract or not?

Mr. STAMM. Right; or whether they take project water or not, whether they sign a recordable contract or not. That amounts to \$11 an acre.

Now, in addition, they would have the annual cost for the distribution service—that is in addition to this water service charge—and that would be spread over all of the lands of the district, and that amounts to approximately \$11 an acre. So those two together mean that if no more lands than the 100,000 that are presently eligible ever become eligible, the district would be obligated to assess the ineligible lands, the excess lands, approximately \$22 an acre a year in order to meet its obligations to the United States.

Now, in addition to that, they will have O. & M. costs which they will spread over the entire district.

Senator NELSON. What costs?

Mr. STAMM. Operation and maintenance costs.

Senator NELSON. Is that charged ad valorem against an excess holder who does not sign a contract?

Mr. STAMM. Normally, that is spread over all irrigable lands in the district. I would prefer to have the district answer specifically what its proposals may be, but I would assume that it would be spread uniformly, also.

Senator NELSON. The ad valorem tax applies on a basis equal to everybody—

Mr. STAMM. On an evaluation basis.

Senator NELSON. What do you mean, an evaluation basis?

Mr. STAMM. Well, so much per \$100 of evaluation.

Senator NELSON. Do assessors go in and assess each acre and charge on that?

Mr. STAMM. Presumably, this ad valorem tax is levied against all property in the area. Now, the irrigable lands have substantially higher value than the nonirrigable lands. Presumably, the irrigable lands would be roughly all the same valuation, and some would pay essentially the same amount per acre. But some nonirrigable lands would have a lesser charge.

Senator NELSON. Do I have this correctly in mind? If a certain number of acres is covered by contract, but not a sufficient number of acres to cover the cost of the obligation of the project, then an ad valorem tax is levied equally around the same basis against all lands in the Westlands district.

Mr. STAMM. Yes, sir.

Senator NELSON. Now, then, does not that mean that the small landowner or the large one who signs and is going to dispose of his land in 10 years, pays his cost of the water that he gets; then, to make up the deficit, he is also assessed an ad valorem tax in the same amount as the large landowner who does not sign a contract?

Mr. STAMM. I think it works the other way. The excess landholder who does not sign a recordable contract will be subsidizing the landowner who does sign a recordable contract, because he will be paying contract costs for both water and a distribution system and will not be using either one.

Mr. HOLUM. In addition, he will be paying the cost of pumping water from his own underground.

Senator NELSON. Let us take the case where 75 percent of the land comes under the recoverable contract provision and three or four or five large landholders, holding, say, 100,000 acres in toto, or 150,000 acres, do not come under. The project is a success. You maintain the water level at 300 feet and you have this tremendous subsidy to the large landholder, excess landholder, who decides not to come under the contract. The water level is maintained so that he can pump and irrigate, and he can hold onto the land in perpetuity.

I think we would all agree that land in California is going to double and redouble and redouble again in its value, and that there is a strong inducement to any large landholder just to sit on his land and have the benefits of this project accrue to him in, I would imagine, millions upon millions of dollars. What is the answer to that?

Mr. STAMM. I think the first answer to that is the cost of the distribution system will be spread by the ad valorem tax procedure in any event.

Senator NELSON. But we have enough people under now, all but 25 percent or so, and all he is going to pay in an ad valorem tax is the same tax the other people pay. But he has been subsidized in terms of water by the water level being maintained at 300 feet. Why should he ever sign?

Mr. STAMM. Because the ad valorem tax on the distribution system alone will be \$11 an acre to that man, and the benefits that he will get from reducing his pumping head on his own pumps will probably not exceed \$2 an acre-foot of water pumped.

Senator NELSON. Are you saying that this cost of the ad valorem tax to pay and maintain that water level, in effect, is so great that it is not economical for him to remain outside the contract?

Mr. STAMM. I think that is essentially true. And initially, in the example I gave you, if no additional lands become eligible, the economic burden on the excess landowner is substantial and continuing, and beyond that, they will not get any benefit from the improved ground water situation because it will not be improved unless the rate of pumping is reduced.

Senator NELSON. No, but the case I gave you is one in which 75 or 80 percent of the land does come under contract so there enough water is going on the surface to maintain a 300-foot ground water level; therefore, it is a success from that standpoint and the level is maintained. This is the case I gave you.

Mr. STAMM. Let us take that case. In this chart that you have before you, the ground water chart, it shows that, in the long run, we would anticipate that a little over 25 percent of the total irrigation water supply would come from ground water pumping. So, in theory, you could say that 25 percent of the land could remain excess and continue to pump and never participate in the project water supply. If that were the case, there is question as to how soon this ground water level might be restored, but just to take a theoretical situation, let us assume that it was restored and it did come up 100 feet. They continued to pump. What I am saying is that those lands would have an annual cost of \$11 per acre to pay their share of the distribution system from which they get no benefit. They would

have a share of the District's O. & M. cost for this system, and offsetting that, on benefits from the improved ground water situation, it would be perhaps \$2 an acre-foot.

They are pumping an acre-foot and a half, so that would be about \$3 an acre, based on the present rate of pumping. So their economic penalty would be three or four times the benefit they would derive from the improved ground water supply.

Senator NELSON. I do not understand the economics of that. For a good many years, these landholders have been irrigating land with their own pumps, no water cost, no subsidy of any kind, and it was profitable to do so. Now you tell me that the project comes in, 75 percent of the land is covered by it, and the only thing left is to pay any deficits there may be through an ad valorem tax. However, this would be uneconomical. I cannot understand how it can be economical to pay for pumping their own water supply with no subsidy, no irrigation at all, and then it becomes uneconomical when you have to pay an ad valorem tax. I do not understand the economics of it.

Mr. STAMM. The ground water reports which we have, indicate that the level of the water in the wells from which they have been pumping has dropped approximately 450 feet over the past 60 years. So while this was a comparatively low lift initially, that lift has been getting greater and greater as time went on.

Senator NELSON. Are not some of them pumping water now from way in excess of 300 feet?

Mr. STAMM. Yes, I think the average is better than 400.

Senator NELSON. And they are pumping it with no subsidy of any kind; it is their own well?

Mr. STAMM. That is right.

Senator NELSON. And they are making a profit on their farm operation?

Mr. STAMM. I assume they are making a profit or they would not continue to pump.

Senator NELSON. How come they are not going to make a profit when they have to pump from 300 feet and only pay an ad valorem tax?

Mr. STAMM. I did not say they would not be making a profit. They would be subsidizing the water users who do take water, because their cost of the obligation to the United States would be several times the dollar benefit they would receive from the improved ground water situation.

Senator NELSON. I have two questions about that. If you are correct that it is just not economical for them to do it, why do we not insist that the contracts all be signed before we launch into a \$150 million project?

Mr. STAMM. Well, the Bureau has been in existence for quite a long time, Mr. Chairman, and we attempt to follow the law precisely, and the law does not require it.

Senator NELSON. Does the law prohibit?

Mr. STAMM. It does not prohibit it.

Senator NELSON. If only 100,000 acres come under contract, this project will be a tremendously wasteful expenditure. So why should we not exercise our right to insist that at least 75 or 80 percent get covered, or whatever amount may be necessary to guarantee the success of the project?

Mr. HOLUM. Mr. Chairman, I wonder if we are not getting on legal ground here, and if it would not be a good idea to ask Solicitor Barry to comment on that?

Mr. BARRY. Mr. Chairman, members of the committee, this question of the unavoidable delivery of water—

Senator NELSON. I want to ask about the unavoidable clause later. My present question is: Why would it not be good public policy to insist that the appropriation for the distribution system of \$157 million not be made until a sufficient acreage is covered in the Westlands District to guarantee the success of the project? That is my specific question.

Mr. BARRY. This, of course, is a matter for consideration by the Congress. But as to whether saying what policy would be required by the Congress—let me just point out that I think reference has already been made to the excess lands policy letter which was sent to the full committee, in response to a request made some time ago, accompanying the last parts of a study with respect to this very question.

That is the question of recharging the underground and the benefit that might be obtained by an excess landowner who does not sign a recordable contract, but who takes advantage of the fact that the underground is recharged. If I may, I would like to quote from the letter, with a preliminary statement to identify a couple of references that we have made. The basic law applying acreage limitations is section 46 of the 1926 act. This, first of all, puts an obligation upon the Secretary of the Interior to enter into a contract with an irrigation district before water delivery by which contract it is agreed that the amounts expended on construction will be repaid to the United States.

It is further provided in section 46 that the contract with the district will provide for the delivery of water only to nonexcess lands and only to excess lands which have been covered by recordable contracts; that is to say, contracts wherein the owners have agreed to sell their excess lands on terms acceptable to the Secretary.

Now, the point is that the contract is made with the district. The district can or cannot deliver water in accordance with the terms of the contract. If it delivers water to excess lands without a recordable contract, it is in violation of its contract. The recordable contract, so-called, is between the United States and the landowner who agrees that he will sell his lands in excess of 160 or 320 acres within a specified period of time.

Now, let me read to you what the Secretary of the Interior said in his letter to the full committee:

Section 46 has been construed from the beginning to mean that one receives water when one takes a delivery of water to the surface of his lands. However, there can be no doubt that some water delivered to lands in the vicinity of those of an excess landowner will find its way to the underground, will stabilize the underground or reduce the rate at which it is then being mined, and that the excess landowner can then pump this water to the surface of his land.

The realization of this benefit has not been treated as the receipt of project water by such excess landowner and, while he is required under State law to pay for benefits received as the result of construction of the project, he has not been required to comply with Federal excess land laws, or to sign a recordable contract.

Now, we are talking about how this law has been interpreted for many years.

The Department has prescribed a form of contract which requires that the lands be sold within a period of 10 years from the date of delivery of water to such lands. While some landowners have initiated a program for disposition of their lands during the 10-year period, others have used the term as one within which they could realize the greatest benefits from the project and have made no effort whatsoever to dispose of their land within the prescribed term.

Senator NELSON. Would you back up just about three sentences? I missed something there.

Mr. BARRY. Well, let me explain what the point that is raised here is. Suppose that you have someone on the Westlands District who feels that he wants to see whether his ground water will be sufficiently improved by the project so that he can derive water from the underground rather than sign a recordable contract. Now, he has an unlimited time. This has been the practice—that is to say, a man must volunteer. I say “must volunteer” as a matter of policy, to be subject to the excess land laws.

Mind you, what happens here is that the United States builds a project and you may own a tract of land. You may elect to say, “Look, I do not want your water, do not give me your water, I do not want it; I want to keep my excess lands.”

Now, it turns out that unavoidably some of the seepage from non-excess lands in the neighborhood improves an excess landowner's ground water situation. We still do not have a recordable contract, and there is nothing that the district can do to prevent delivery of water to him.

But I want to expand on this further and continue with this quotation, if I may.

In the Central Valley of California, no limit has been placed on the time within which a landowner must request to have water to his lands. He may wait 10, 15, or more years before he calls for project water. The delay is sometimes deliberately availed of by landowners to determine by actual experience whether they will get sufficient benefits from the stabilization of the ground water table to stave off the need for ever calling for direct delivery of water and thereby subjecting their lands to reclamation law.

I want to point out to you that this letter was sent to the full committee for the purpose of alerting the committee to the fact that this is a problem and that consideration should be given to it. I think that—

Senator NELSON. In other words, you are alerting me.

Mr. BARRY. I do not want to give a legal opinion here. I would prefer to study this matter with considerable care, but I would like to say to you that I have discussed this matter at considerable length with the people on my staff, and I have studied the matter myself. I cannot say at this point whether it is illegal for the United States to supply water under these conditions, or whether we can legally require a person who gets these “unavoidable” benefits to comply with the excess land laws; that is, require him to sign a recordable contract.

Senator NELSON. Let me ask you a different question right there, though. I do not know much about this particular part of the law. Maybe you could not require him to sign a recordable contract, and you might, as a matter of policy, not want to do so. I have read very little on the law in this field, so you will have to answer this for me. Is it not correct, however, that although the beneficiary of water in the Westlands area, or any place else, may be charged the cost of that

water, title and control remains with the Federal Government; that, therefore, you could take out the unavoidable clause and then charge the excess landholder for the benefit he got unavoidably. Is that or is that not law?

Mr. BARRY. I do not know whether you can do this. This is one of the touchiest questions of law that is involved.

For example, if your neighbor buys an air purifier and the result is that the air in the immediate neighborhood is purified, I do not know that he has any legal right to assess your property. Under the law of California, certain rights of assessment exist. There are these benefits which are derived from a project and the cost of which are assessed against the landowners who are not subject to excess land laws in the decisions that have been rendered, both in the Department and in a tangential way by the Supreme Court of the United States in the *Ivanhoe* case.

This matter has been recognized for a long time in the Congress, and that brings another legal consideration to view.

Senator NELSON. As I say, I have not read very much in this field. I just notice in the literature that I have been reading recently a reference to a California Supreme Court decision which did hold that title to the water remained with the Government and that they could charge the beneficiary for the benefit of the water that came down through the underground.

Now, I just read a reference to it and I did not read the case, so whoever wrote the note on it may have misinterpreted the case.

Mr. BARRY. I would rather see it before I comment on it. It does not sound right to me, and I am sure it does not sound right to Senator Kuchel.

Senator NELSON. I have not read the case, and perhaps the literature I was reading may have read something into the case that was not there.

Senator KUCHEL. May I interrupt, Mr. Chairman, to ask just a couple of questions?

Senator NELSON. Yes.

Senator KUCHEL. Let us assume that there is a district formed with 100 parcels of property, each of which is in excess of 320 acres. The Federal Government, under an act of Congress, creates benefits in the way of available supplemental water to that district. Then 99 of the 100 people want supplemental water and are ready and willing to sign recordable contracts, which they do. And the Federal Government, through the Bureau of Reclamation, enters into a contract with the district. Is it not true that since 1926 the policy of the Bureau of Reclamation has been to enter into that contract with the district irrespective of the fact that there has been a holdout?

Mr. BARRY. That is correct.

Senator KUCHEL. And you have suggested, Mr. Solicitor, through the letter of the Secretary, that that might well be a problem for Congress to consider?

Mr. BARRY. In another aspect. Let me expand on that.

This project was approved, was authorized by Congress in 1960. The project declared, or the act provided that it was to be constructed in accordance with the reclamation laws. Now, for 20 years, 30 years, prior to that time, Congress had an understanding of what those laws were.

One of the things that was clearly known to the Congress was the provision or the policy of the Department which has existed for this period of time whereby these unavoidable deliveries or these incremental benefits to the ground water table did not subject the land to the excess land laws. Was this—I am putting it in the form of a question, because I do not want to be quoted as having already rendered a decision if this comes up—was this not in 1960 a declaration that this is what Congress meant when it authorized the San Luis project, and would it be proper under the circumstances, when this very issue has been the subject of extensive hearings and debates in the Senate and the House, in the Congress of the United States, for the Secretary to change that policy and nullify the authorizations that Congress has made?

I am just leaving that question, because I think it is fair to conclude that there could be a division of opinion as to whether the Secretary has a right to say to people who are willing to sign contracts, "We are sorry, you cannot have your water because I have decided that the way I view the reclamation laws is what is important, not just the way Congress views the reclamation laws, and I think those laws, which are not clear, require that I cannot build a project until I have everybody signed up."

If Congress wants to prescribe that, I think that I probably would cheer, personally. But if I were to advise the Secretary of the Interior, I would tell the Secretary of the Interior that this is not a legally valid ground to object to this contract, notwithstanding the fact that there are people who hold another view.

Senator NELSON. I understand the complication and the problem that the Secretary would face in making a decision like that. My first question is, Does the Secretary have the discretion, under the law, to make a requirement that this Westlands contract will not go into effect until a sufficient number of landowners have signed up under it to guarantee the success of the project? Does the Secretary have that authority?

Mr. BARRY. Well, let me say this, Senator. The Secretary is merely authorized in the San Luis Act to construct the project. Congress appropriates the money, but there is no law that says he has got to build the project. He can refuse to build it. He can decline to build it. But it is obviously the intention of Congress that it should be built, and they give him this authority because they want him to have the discretion in his negotiations to prepare contracts which carry out, as nearly as he can construe it, the policy of Congress.

Now, in this particular instance I have pointed out, I do not think you could compel the Secretary to build the project if he said, "No, I will not build it," because no court is going to say that the Secretary must make all of the determinations necessary.

Let me give an example. Suppose it is determined that a project is necessary to provide power to a large city because they are running out of power and the project has a lot of other benefits, but all of the other benefits would be insufficient to justify the construction of the project. Suppose during the time it takes to get the project authorized and the money appropriated and the contracts let, there is some breakthrough in atomic power technology so need for power is no longer a reason for building the project. The Secretary might say, "Well, I am authorized, but I am not going to build it."

Now, he has pretty wide discretion to say "No" to any project at all, and presumably he can condition his approval in any way he thinks is reasonable in the public interest. But I do not believe it would be fair, I really do not believe it would be fair for the Secretary of the Interior, considering the attention that this matter has received from the Congress, to make the decision—because the Congress has been interested in this matter for many years—to make the final decision that we are not going to have any more projects until we sign up everybody in advance.

I would like to call one thing to your attention, because this question has come to the attention of the Supreme Court in the *Ivanhoe* case, and I would like to point out the language that was used there. I am going to read a couple of paragraphs here:

In any event, the provisions under attack are entirely reasonable and do not deprive the appellees of any rights to property or water. It is beyond dispute that excess land will be benefited by delivery of water to neighboring and nearby nonexcess land. The fact was recognized by the California Supreme Court in the *Santa Barbara* case, 47 Cal. 2d 699, 306 Pac. 2d 875. Furthermore, the chief engineer of the Madera District so testified before the Senate Committee on Public Lands in 1944. The contracts themselves indirectly refer to the benefits that may accrue through underground water improvement to excess owners by provisions which declare that such water shall not be considered as furnished by the project.

This refers to precisely the language we have here.

In other words, any benefit to the underground water level under excess acreage will not be charged to the owner of such acreage, but still will be available to his excess lands. We therefore find no substance in the contention that possible severance of the excess acreage will result in damage constituting a taking of property without just compensation. We deem it unnecessary to discuss other claims in this area.

The point is that the Supreme Court is giving attention to precisely this question and points out that this has been the practice, and it said that this id dictum in the case. Yet this was the basis for the Court avoiding the constitutional argument, or the constitutional issues as to whether or not this constituted a taking of property without due process, where somebody is required to sell his excess lands.

Senator NELSON. Who was the complainant?

Mr. BARRY. This case is known as the *Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275.

Senator NELSON. Was an individual citizen the plaintiff?

Mr. BARRY. I shall have to tell you the curious way this case came about. The United States was not a party to this action. This case came up in this manner:

A contract with an irrigation district provided for in section 46 must be approved by law, by judicial proceedings in the State courts. This was put in, no doubt, because Congress did not want somebody nullifying a contract that the United States entered into where it had expended large sums of money, all on the faith of the contract. Consequently, before any money is spent, the contract is subjected to a judicial, a validation proceeding, in court. Usually, the case is denominated, *Ivanhoe Irrigation District*, or whatever the irrigation district is, against all persons.

Now, Courtney McCracken was a man who owned 203 acres of land, and he was a bachelor. And he claimed that he was denied the equal protection of the law of the State of California by this contract, the

Ivanhoe Irrigation District being a public agency, because he could not get water for all his lands and others could for all their lands. The supreme court of the State upheld him, and this is how the case came to the Supreme Court of the United States.

The Ivanhoe Irrigation District and the State of California appealed the decision, and McCracken was the appellee.

Senator NELSON. That really does not run right to the heart of the question of whether or not the Federal Government has the authority to charge a beneficiary who is on excess lands, does it?

Mr. BARRY. The Secretary could simply say: "I am not going to build a project until I am satisfied."

Senator NELSON. As you suggested, when you give an official authority necessarily, he has discretion to exercise it. The reason you give him authority and discretion is so he may use his best judgment in seeing that the will of Congress is complied with.

Now, the reason this Westlands contract disturbs me is that we are not dealing with a group of little landowners that we have been trying to help under the reclamation law historically back as far as 1902. In the Westlands project, we have a brand new situation. If it should turn out that some of the large landholders, representing a third of the whole Westlands district, find it profitable not to participate in this project, is it not true that they would be the recipients of tremendous subsidy although these individuals are independently wealthy? Is this not contrary to the intent of the 160-acre limitation of the reclamation law?

This is what disturbs me. In the first place we do not have these people signed up. Well, you say, in the past it has not been the policy to do so. But here is a case where somebody might receive an unconscionable subsidy—might.

I am just saying that under the circumstance, the Secretary, looking after the \$150 million which he is responsible for in his decision, should not the Secretary say: "Well, because of the landholdings here and the kind of aquifers there are here, in which the water just runs all over and benefits everybody, I think, to protect the taxpayers' interest in this investment of \$150 million in this distribution system, we ought to sign up enough people to make the project a success before we start spending the money to build it?"

Secondly, if the Secretary does not have the authority to do this should Congress not then take note of the fact that these excess holders may become tremendous beneficiaries of water made available at Federal expense, and therefore require advance written agreement to the excess land provision of the reclamation law.

Mr. BARRY. Let me say, Senator, that these questions were the very questions that I asked, that Mr. Holum asked, and that the others of us who were responsible for approving this contract asked: Is this such a unique case? We wanted to know whether this was such an unusual case. In our discussions with the gentlemen down here on my right, they provided us with the facts and advised us that on the basis of their technical studies, the Westlands district, except for its size, is no different from other areas—well, they are all different, but at least there is no substantial difference here that would justify a change in policy. Substantially all of the excess lands in the Westlands district must become eligible to receive water or they are not going to get this benefit.

Senator NELSON. Well, maybe I misunderstood the testimony. I do not know whether this purpose is unique in these contracts or not. But one of the specific purposes, according to the testimony on this project, is specifically to recharge the underground water, get it to a level of 300 feet and hold it there. Now, how many projects around the country have we had in which that was the specific objective?

Mr. BARRY. This is common in the Central Valley area. This has been the policy in the Central Valley, to stabilize the water table. This is one of the reasons we need reclamation projects all over, everywhere, because practically everywhere, people are using up ground water; they are mining it.

Now, this is different because there is not anybody who is going to get water in excess of normal requirements for agricultural use. We are not going to deliver water to anybody to directly inject it into the subsurface.

Senator NELSON. Do you not really agree with me that that is a quibble?

Mr. BARRY. No.

Senator NELSON. A major objective of the project is to get enough on the surface so that the seepage is great enough to get the ground water level to 300 feet.

Mr. BARRY. No, they are going to put enough on the surface to irrigate the crops in a normal and reasonable way. Necessarily, some of that will seep into the underground. That is what we intend to do, and that is what the intention of the contract is. We are not going to give this 100,000 acres of presently eligible land 1,008,000 acre-feet, which is called for in the first year of the contract. We are going to give them what water they require to irrigate that 100,000 acres of land, and that is what is called for in the contract.

This figure of 1,008,000 for the first 10 years of the contract is a maximum figure. They are going to be able to call for it—

Senator NELSON. All I am saying is that it is one of the purposes of that contract to get that water level to 300 feet. Because of the pattern of the land holdings here, it is entirely possible that some very large land holders are going to end up with a tremendous subsidy.

It is not only the question of agriculture here.

Supposing a large landholder, with the growth in population, starts dividing land and then a municipality develops. He has no interest or concern about farming at all. He is the beneficiary of water from this project. The project itself improved the value of all the land all over, it is an economic asset. He stays out of the contract for the purpose of land speculation, and he gets all of this water to use for whatever purpose is necessary, whether it is farmlands or—

Mr. BARRY. Let me say this is entirely possible. You used the term "entirely possible," and I assume if anything is possible at all, it is possible entirely. But "possible" is a very thin basis upon which—

Senator NELSON. I am willing to change my question. The situation to which I allude is very likely in the fastest growing State in the Nation.

Mr. BARRY. No, I do not believe that it is very likely, on the basis of our educated guesses that we have in the Department from the experts who have studied this matter. They have concluded and

have advised us, and they know more about this field than I can understand, they have advised us on the basis of the figures that they have—I did not take it blindly. I do not mean to say I do not understand. I have questioned, cross-examined, everything else. I am satisfied that they know what they are talking about when they say that the reasonable probability is that substantially all of that land will have to be made eligible and receive water in order for the excess lands to get the benefits in order for the table to rise—

Senator NELSON. How much?

Mr. BARRY. A substantial amount. I have heard the figure 90 percent. I think I heard it from someone here at the table.

Mr. STAMM. If I may add two points to what he is saying, in the first place, it would take, on the basis of the long-time stabilization of the basin and the ground water supply, three-fourths of the land, a minimum of three-fourths of the land would have to be eligible to take project water merely to stabilize this ground water level.

To restore it, a larger acreage would have to be eligible to take water.

Now, that is the point we have made time and again here. I believe that while the objective is to do this and the contract would permit it, the objective cannot be realized unless a very substantial acreage of the excess land is covered by recordable contract.

Now, there is one other comment I would like to make here. You are suggesting that the landholders that stay out, that do not sign recordable contracts, could sell their lands in the future at speculative values. I would like to point out that under the law, even though the excess lands do not come under recordable contract, they nevertheless are bound by the appraised value as provided by law. They must be sold at a value without regard to the increment due to the project if they are ever to become eligible to receive project water.

Senator NELSON. I do not quite understand the end of your comment. Say I am a holder of excess lands and I have been holding for a number of years; the value of the land continues to rise; I have received no project water by terms of the contract; as a result of the unavoidable clause I have no obligation; then someone wants to buy my land. Is there some limit on the price I can charge for it?

Mr. STAMM. You can sell it, of course, for anything you want. But if the buyer wants to get project water, he is ineligible for project water if he has paid a price in excess of the value which the Secretary would approve.

Now, this holds, I believe, until 50 percent of the construction costs are paid off.

Senator NELSON. Yes, so what we are talking about here, and remembering who the large landholders are and that they are under no pressing need to sell, such a period roughly means 20 years. At the end of 20 years, am I correct when I say that excess owners can sell without limitation and the buyer can get project water?

Mr. STAMM. I would prefer to have the solicitor's office respond to your question.

Mr. WEINBERG. I shall be glad to answer that question.

Senator NELSON. Would you identify yourself?

Mr. WEINBERG. I am Edward Weinberg, Deputy Solicitor of the Department.

This water will be delivered under a water delivery contract. Under the contract, there is no limitation of years as to the anti-speculation provision. Any time that land wants to receive project water, if it has changed hands in excess of the secretarially approved appraised price, it is ineligible for water from the project.

Senator NELSON. How would the appraisal be made as to value 20 years from now?

Mr. WEINBERG. It would be based upon value without reference to the existence of the project water supply.

Senator NELSON. So then, if land is sold in excess of the Secretary's appraisal to a buyer who wanted water, he would not be eligible?

Mr. WEINBERG. That is correct.

Senator NELSON. This would be true in perpetuity?

Mr. WEINBERG. Under this contract, yes.

Senator NELSON. If there were a population growth and it was sold for platting and became part of a municipality, what is the limitation timewise or appraised price?

Mr. WEINBERG. If they do not get a project water supply, the land would be eligible for water from the municipality, but not for agriculture through this project.

Senator NELSON. It would not need water through the project if it became part of an incorporated municipality and land was sold at a great profit. It does not need project water.

Mr. WEINBERG. If the land became urban land, went out of agriculture, was sold, and a municipality furnished water, it would not be getting water through this contract and from this project, that is correct.

Senator NELSON. So the antispeculation provision cannot cover that kind of circumstance?

Mr. WEINBERG. No, it does not cover that.

Senator KUCHEL. Well, let us just add a couple of hypotheses to what the Senator is talking about.

Where would the municipality get the water?

Mr. WEINBERG. They would have to sink their own wells.

Senator KUCHEL. Well, sure.

I do not understand, Senator, what you are getting at. These people have all testified that the policy that has been adopted in this contract has been followed, and I want them to correct me if I make a misstatement, since 1926. This same policy has been adopted in every reclamation project all over the Western United States.

Now, I am here; I want to go into this. There are people in this room who want to object to this contract and want this committee to repudiate it. I think the solicitor has been excellent. I think you have raised some questions, and in the letter that was given to this committee, you said:

Should the policy of the United States be that we do not give anybody any benefits until every landowner in the given service area agrees to sign our contract with respect to disposition of the area subsequently?

That is a good policy question, if we want to bring it up. But the point of it is, I have yet to hear one suggestion from you, Senator, as to why in this instance, a policy that has been followed since 1926 should not be followed in this case.

Senator NELSON. Well, you see, I would have raised this question in 1926 if I had been here, but I just got here.

Senator KUCHEL. You would like to change the law, and I think I would be willing to listen to the pros and cons of changing the law, but you have a law. You have a law and it was adopted by the Congress in 1926. It has not been amended, and every time you have this problem, the Congress has authorized a new reclamation project, the same policy has been adopted.

Now, in order for this committee, whose members in the main represent reclamation States, even to consider repudiating this contract, we ought to have some reason why now, at long last, without amending the law, this particular contract should be held up to scorn and obloquy.

Senator NELSON. I did not realize I was holding it up to scorn. This is the first contract I ever looked at of this kind, and it amazed me. Maybe it does not amaze people in the West. And I have not said it is a bad contract. I have put testimony in the record in which I said if my conclusions from looking at this contract and this material are correct, then the contract ought not to be approved.

Now, as I have said repeatedly here, I am no authority on reclamation projects, as the western Senators are. But there are grave policy questions here and I am raising them for consideration. As I understand it, the law was passed requiring this contract to lie 90 days before Congress in order for the Congress to take a look at it. My objective here is to take a look at it and get the testimony in the record so that I can better make up my mind, and other Members of Congress can, as to whether or not the policy ought to be changed.

I think from what I have heard from the proponents, it certainly ought to be changed. I am not sure just how.

Mr. HOLUM. May I make a comment? We have covered a wide range here, including broad policy matters in addition to this contract.

What I have to say now I have to preface by reminding the members of the subcommittee that I am a small farmer from South Dakota, that all of my prejudices, if I have them, relate to the small farmer and the necessity of keeping individual farmownership on our land in this great country of ours. I am very proud at the present time to have the opportunity to work with the Department of the Interior and particularly with the Bureau of Reclamation, which has one of the positive programs—some say the only positive program, but at least one of the positive programs—in the Federal establishment for maintaining small farm ownership.

I think it is an important program. And I am sure that the fact that it is one of the few programs that we have dedicated to maintaining farmownership on the land for small farmers has made it the center of a great deal of attention, and properly so. I am happy that the program gets this attention. There are other people who have this concern with respect to landownership and maintaining family farms on the land.

With respect to this contract, the questions we have had, the questions that were raised and the Secretary's response to the committee's request for a review by the Bureau of Reclamation on excess land policies, I think some good points have been raised. I think we have had a good discussion this morning.

I think that our thinking up to this time, first of all, of course, this project was authorized by the Congress with full knowledge of the reclamation law and the reclamation policy and how the Department of the Interior would normally administer it. But our program is based on providing economic incentives for achieving small landownerships. I think we have those economic incentives in this contract that the committee is considering this morning.

I think, as we talk about the general policy matter, particularly in the context of saying this contract should not go forward or this distribution system should not be built because this excess landowner has not signed up, I think we also want to take a look at the other side of the coin, what we are doing to the many small landowners in this project if we say we are not going to build this project because this one landowner has not complied with the excess land laws.

The other side of the coin is that we shall be denying the small landowner who urgently needs this assistance. We shall be denying to him and his family and to the country the benefit of this project because we are unhappy with one landowner.

I think we want to be very careful that we look at both sides of the coin as a part of our great concern for these landowners, the small landowners, and I certainly share this deep conviction that we have their interest at heart. I would not have recommended this contract for Secretary Udall's approval if I had not been sure that the economic incentives which are here in accordance with reclamation law are required to achieve the goals that Congress and we in the Department of the Interior have for this program.

We believe in excess land laws, and we intend to administer them faithfully, and I think we have in this contract. I think the economic incentives are here and the end product will be the type of farmownership that we want in this area of California.

Senator NELSON. I just want to say—and I regret that I have used up so much of the time this morning—that I think Senator Kuchel and Senator McGovern both come from States that are directly affected economically by reclamation projects. I do not come from such a State. However, as I am sure Senator Kuchel and Senator McGovern know, the questions coming from me are questions coming from one who has a strong bias in favor of reclamation projects.

There has not been, in the 2 years I have been here, a single reclamation project that I have not supported. And I believe in the theory of this program. I think it has been of great value to the country. It has a great value nationally, and it has a great value to each particular State, and it has a great value especially to a State such as Senator Kuchel's State. I raise these questions to find out in my own mind whether some policies need to be changed.

Mr. HOLUM. I understand, and I want you to know that we share in your concern for the excess land laws.

Senator KUCHEL. I want to say also that I respect the active interest of my friend from Wisconsin. It is true, he has been a friend of reclamation projects, and I think everyone in this committee is desirous as a matter of policy to see unjust enrichment avoided to the maximum extent. There is no such thing as perfection in this life or in this Congress or in the verbiage the Congress uses to enact legislation. I

am thankful that, over the years, the Congress has enacted legislation to remedy liabilities in that part of the country from which I come and perhaps avoid economic stagnation.

I think actually, the people around this table all ought to contribute a little tuition fee this morning to you, Mr. Secretary, and your assistants for a good legal education in portions of Western water law and reclamation, because it has been good for all of us to get into some of the unique questions which arise in operations such as this.

I have enjoyed sitting here listening to you, Senator, and listening to the answers to your questions.

Mr. HOLUM. Well, the Department is as interested as the members of this committee, and we are looking forward to the opportunity on the basis of the Secretary's letter of last week to continuing discussion with this committee on these problems. I think we have a mutual concern that we share with the members of this committee and the Congress.

Senator MCGOVERN. Could I just raise one question here?

First of all, I want to commend my fellow South Dakotan on what he just said about the importance of encouraging and preserving the small farm. Then I would like to ask him this question: What rough proportion of the 70 percent of excess land do you think may come into compliance with the 160-acre limit?

In other words, what I am getting at is will this contract result in a significant swing toward the 160-acre pattern that has long been a desirable objective of Federal policy?

Mr. HOLUM. Senator McGovern, it has to, or none of the people of the area will benefit from this project. I do not think I would care to speculate as to what the immediate compliance will be, but I want to point out and welcome the opportunity to do so, that nobody will benefit other than the nonexcess landowners unless there is a major compliance so that the land can receive water from the project and none of it will, other than the land that is in compliance with the excess land laws. So if the people out there are thinking that the United States will build this project and the landowners can refuse to take the water and refuse to comply with the Federal excess land laws and get the benefits of the project, they are mistaken. The land has to be in compliance with excess land laws so we can deliver the water for the benefit of all who do comply.

Senator MCGOVERN. Thank you, Mr. Chairman.

Senator NELSON. I want to thank you very much, all of you. You have made a very able presentation, and I hope we did not impose too much upon your time.

Will the Solicitor be able to remain, and the Assistant Commissioner?

Mr. HOLUM. Certainly.

Senator NELSON. I am going to call someone out of order on our list, because he has a plane to catch. I shall ask Mr. George Ballis of the Valley Labor News if he would like to make a presentation at this time?

**STATEMENT OF GEORGE BALLIS, SECRETARY, WESTERN WATER
& POWER USERS COUNCIL**

Mr. BALLIS. Yes, Mr. Chairman.

Senator NELSON. We shall continue until 12:30 and come back at 2. We have to complete this hearing today. We intend to give each individual roughly an equal amount of time. It would be helpful in terms of time, if the witnesses are able to do so, for the witnesses to present their material extemporaneously. Your statements will be printed in the record, and the committee members will all have the opportunity to read the record. That might expedite matters, if the witnesses are prepared to deal with their material extemporaneously.

However, if you feel you can present it more quickly and effectively by reading it, the chairman will not object.

Mr. BALLIS. Thank you, Mr. Chairman. My name is George Ballis. I am secretary of the Western Water & Power Users Council, an organization of California citizens, mostly farmers in the San Joaquin Valley interested in sound, democratic development of water and power projects. I am president of the Fresno Democratic Association, the largest citizens political organization in northern California.

The viewpoints I will express here are also shared by the California Labor Federation, AFL-CIO, which has over 1 million members in the State; the Mexican-American Political Association of which I am the publicity chairman for the 32d assembly district chapter, and the California Democratic Council with 70,000 members and in which I serve as editor of the organization's statewide publication and administrative vice chairman of the direct action committee on human rights.

We are asking that the proposed irrigation distribution construction contract and the water service contract with the Westlands Water District now before this subcommittee be rejected. The contracts are two coordinate steps of the greatest water-rustling operation the West has ever seen. The water service contract gets the horses out of the barn, but they still are on our property. With the distribution construction contract, the rustlers are asking Congress to buy the truck and the gas they will use to haul the horses away. We urge that the contracts be returned to the Secretary of the Interior with the request that they be amended to:

(1) Require that all large landowners in the entire Federal service area of the San Luis unit of the project sign recordable contracts in which they will agree to break up their lands under terms of Federal reclamation law before construction on the distribution systems begins.

(2) That certain overt violations of the 160-acre limitation in Federal reclamation law contained in these contracts be removed, both those which I will mention later and others.

(3) That the contracts in appropriate sections declare that all waters used under project be subject to the 160-acre limitation in accordance with Federal reclamation law.

At this point in my testimony, I would like permission to insert into the record resolutions favoring this position from the recent State

convention of the Mexican-American Political Association and the recent board of directors meeting of the California Democratic Council. Also a letter adopting the same position sent by Secretary-Treasurer Tom Pitts, of California Labor Federation to all members of the California congressional delegation.

Senator NELSON. They will be included in the record.

(The documents referred follow:)

RESOLUTION OF MEXICAN-AMERICAN POLITICAL ASSOCIATION, JUNE 14, 1964

Whereas the present violation of the Federal reclamation law allowing resident landowners the right to use irrigation water for 160 acres per owner was created to afford land to many small landowners; and

Whereas 80 percent of the farmland in the San Joaquin-Imperial Valleys and Kern County is owned by only 20 percent of the landowners at the expense of the agricultural worker and in violation of Federal law; and

Whereas the agricultural workers of these areas and their families are forced to live under substandard conditions as a result of these Federal law violations; and

Whereas these resident agricultural workers are denied the right to own land of their own because of the large holdings of a few; then be it

Resolved, That the Secretary of the Interior request an opinion of the U.S. Attorney General if the 160 acres Federal reclamation laws are presently being violated in these valleys causing the serflike substandard living conditions of the agricultural worker and his family to exist.

That whereas the Mexican-American Political Association is actively concerned with the welfare and future of farmworkers, 80 percent of whom are of Mexican-American descent in California.

That the Secretary of the Interior take measures to allow resident agricultural workers in these areas to own their own lands under the Federal land reclamation program and thus enjoy a first-class citizens status and correspondent standard of living for himself and his family.

Be it resolved, That the Mexican-American Political Association petition Congress to amend the contract now before it to require written agreements on the 160-acre limitation in the San Luis area before construction of the proposed irrigation distribution system. Copies of this resolution should be sent to all California Congressmen, U.S. Senators, President Johnson, and Secretary of the Interior Stewart Udall.

PROPOSED RESOLUTION—4. WESTLANDS WATER DISTRICT CONTRACT

Whereas the California Democratic Council has consistently supported the application of acreage limitation to Federal projects as provided in reclamation law; and

Whereas in a proposed contract between the United States and the Westlands Water District of the Federal San Luis project to build a water distribution system, evasion of this law would be invited by—

1. Permitting distribution facilities to be built before recordable contracts are signed that insure the limitation will apply; and

2. Providing an underground water supply that may be pumped by excess landowners not covered by the contract; and

Whereas the Westlands contract is subject to evaluation by the Senate Interior Committee: Therefore be it

Resolved, That the Board of Directors of the California Democratic Council urges the Senate Interior Committee to reject the Westlands contract and to insure that recordable contracts to apply acreage limitation are signed for all lands served by the Federal San Luis project before construction begins on the distribution system.

FRESNO, June 20, 1964.

STATEMENT OF CALIFORNIA LABOR FEDERATION, AFL-CIO, BY THOMAS L. PITTS,
SECRETARY-TREASURER, MAY 7, 1964

Organized labor's historic opposition to land and water monopoly, dating back to the 1870's in California, compels us at this time to call upon our Representatives in Congress to again protect the public interest. The dominant monopoly landholders in the Federal service area of the San Luis project, with the apparent cooperation and blessings of the U.S. Secretary of the Interior, are dangerously close to flouting the will of Congress in regard to the enforcement of the anti-monopoly provisions of Federal reclamation law.

Specifically, the matter at hand concerns a \$157 million contract between the Bureau of Reclamation and the Westlands Water District for Federal construction of the district's distribution system within the Federal San Luis service area. The contract has been approved by Secretary of the Interior Stewart L. Udall and has been submitted to Congress under the provisions of the San Luis Project Act (Public Law 86-488), which provides for a legislative "oversight" or review period not to exceed 90 days.

You may recall that during the historic San Luis debate, although there was considerable controversy regarding the so-called State service area, there never was any question about full application of the excess lands provisions of reclamation law to the Federal service area, which is now in question. The Westlands contract would hoodwink Congress into accepting "paper" enforcement of the antimonopoly protections while laying the groundwork for effective and inevitable evasion of the law. The contemplated method of evasion is so obvious that we find it difficult to understand the indifference displayed by the Department toward Congress and the law of the land in submitting the contract for review.

As the San Luis debate brought out, the Federal service area includes almost a half million acres of irrigable land, the great bulk of which is in excess lands and, therefore, not eligible to receive water without the signing of a recordable contract enforcing reclamation law. The Southern Pacific alone owns about 120,000 acres in the Federal service area and approximately 65,000 of these acres are within the Westlands Water District, which itself embraces some 340,000 irrigable acres or more than two-thirds of the Federal service area. As much as 360,000 acres in the entire Federal area is in excess land holdings.

Under these circumstances, effective enforcement of reclamation law requires that the recordable contracts be obtained prior to the construction of the distribution system. The fatal flaw in the Westlands Water District contract, as submitted by the Secretary of the Interior, is that it provides for the distribution system first without any known or reported efforts on the part of the Department to obtain the recordable contracts from the excess landholders. In fact, once the distribution system is constructed, the water would percolate freely into the deep wells of the excess landholders, so that enforcement would be virtually impossible. This classic method of circumventing the excess lands law was threatened by former Senator Sheridan Downey as long as 20 years ago. It should not be adopted by the Secretary of the Interior now. Nor should it be condoned by the Congress.

Only a few months ago the Department of the Interior issued a report on the tremendous potential for the underground storage of water in the San Joaquin Valley, including the service area of the San Luis project. Now the Department advances a contract that would allow the dominant excess landholders of the San Luis service area to use this underground storage capacity to make a mockery of the policy decision of the Congress to apply the full scope of reclamation law to the San Luis project.

The amount of subsidies that would accrue to the excess-land holders is easily calculated. By enacting Public Law 86-488 in 1960, Congress authorized spending up to \$290 million for construction of the so-called Federal portion of the San Luis unit, and an additional \$192 million for water distribution and drainage system for the area. Considering the acreage involved in the service area, this amounts to a capital investment of approximately \$1,000 in interest-free funds per irrigable acre. Since the interest saved by landholders over the payout

period roughly equals the investment, the public subsidy to each landowner is \$1,000 per acre. If Congress permits the Secretary to administer the project along the lines proposed in the Westlands Water District contract, the owners of excess lands in the Federal service area will, in effect, receive a subsidy of about \$360 million to which they are not entitled under the law. The Southern Pacific stands to benefit by a potential subsidy of \$120 million.

Is this what President Johnson had in mind when he declared an all-out war on poverty? We think not. His poverty program actually envisages making land available for family farms to help alleviate rural poverty. This is also one of the basic purposes of reclamation law. If the President's poverty program is to have any meaning in rural areas, it is vital that the President's Secretary of the Interior be required to enforce the excess lands provision.

It is to be noted that the Southern Pacific Co. has stated that its "lands are not being offered for sale." The railroad company has informed Congress that although prepared to "cooperate in any equitable and reasonable water program," it found "serious inequities in reclamation law," with the acreage limitation provisions obviously in mind. Organized labor does not regard acreage limitation as "inequitable." Neither does the U.S. Supreme Court, which pointed out in the *Ivanhoe* case in 1958:

"* * * the claim of discrimination in the 160-acre limitation, we believe * * * overlooks the purpose for which the project was designed. The project was designed to benefit people, not land. It is a reasonable classification to limit the amount of project water available to each individual in order that benefits may be distributed in accordance with the greatest good to the greatest number of individuals. The limitation insures that this enormous expenditure will not go in disproportionate share to a few individuals with large landholdings. Moreover, it prevents the use of the Federal reclamation service for speculative purposes."

But irrespective of equitability or inequity, acreage limitation is the law, and it is the responsibility of the Secretary of the Interior to enforce the law, not to erode it. As the final report of the Kennedy-Johnson Natural Resources Advisory Committee pointed out in 1961:

"The reclamation of land should be restored as an essential part of our natural resources program under historic policies initiated by Theodore Roosevelt to control speculation and monopoly as a means of assuring the greatest good to the greatest number of people."

Further, the provisions of the San Luis Act authorizing funds for distribution facilities specify that the Secretary is to submit "a contract" not a succession of contracts at various times, covering distribution facilities for various portions of the Federal service area. The Westlands Water District contract, with all its shortcomings, fails to meet this requirement also.

The only way Congress can exercise intelligent legislative review is to have before it for simultaneous consideration the proposals both for water allocations and for construction of the water distribution system, together with all relevant facts, including the extent and location of all lands that are eligible and ineligible to receive project water, whether by surface delivery or by percolation.

The issue at this point is whether excess landholders or the Congress is going to determine the policies governing Federal appropriations for private benefit. When the landholders wanted Congress to authorize funds, Congress was given repeated and fullsome assurances that the acreage limitation would be enforced.

We therefore urge (1) that the Westlands contract be returned to the Secretary of the Interior without approval; (2) that weakening clauses such as the one which refers to delivery of percolating water as "unavoidable," be eliminated in any future contract; (3) that the Secretary of the Interior be required to submit the Westlands file to Congress prior to decision; and (4) that no contract be accepted that does not cover the entire Federal service area and that does not clearly indicate the lands to be served, together with the status of recordable contracts necessary to qualify excess lands to receive water.

Your careful consideration of this matter would be greatly appreciated.

Mr. BALLIS. I will demonstrate by citations from Government documents and from the two contracts themselves that under the terms proposed—

(1) Subsidized irrigation water will be delivered to excess lands in the Federal service area of the San Luis unit contrary to the will of Congress and in violation of Federal law;

(2) The distribution system will be utilized to deliver illegally to excess landowners in the San Luis area, water, both project and nonproject; and

(3) Complete emasculation of the 160-acre limitation will occur in the Federal service area of the San Luis unit.

It is our contention that the violations contained in the contracts now before you are not mere happenstance or coincidence, that the violations were consciously written into the contracts with the intent of subverting and evading and granting by administrative fiat special and illegal favors to large landowners which the Congress repeatedly has refused to condone.

Senator KUCHEL. Let me interrupt you a moment. Do you intend to tell the committee the basis for your charge that the distribution system will be utilized to deliver project water illegally to excess landowners?

Mr. BALLIS. I prefaced that charge by saying that I shall demonstrate these facts by citations from Government documents.

What we have at stake here, gentlemen, are not mere pennies or dollars or hundreds of dollars, or even thousands of dollars. What we have at stake are hundreds of millions of dollars, and the economic and political control of the richest agricultural valley in the history of the world. Also, the integrity of the Federal legislative process.

The terms of these contracts permit the biggest giveaway of natural resources this country has ever seen. They put the infamous Teapot Dome scandal to shame. They make Dixon-Yates look like child's play. The giveaway which these contracts propose you sanction has been over 20 years in the making. It was planned during the depression years when the Bureau of Reclamation with Federal funds moved into California with the Central Valley project (CVP) to save a floundering State water project and a shaky agricultural economy. Whenever the giveaway showed up openly in Congress, it was rejected in 1944, 1947, 1959, and 1960. Despite this mandate from the Congress, the large landowners today are on the verge of success. Only this committee now stands between the land barons of the San Joaquin Valley and a perpetual supply of irrigation water subsidized and delivered by Federal taxpayers throughout the land. The subsidy will amount to at least, I would say, \$1,000 per acre computed this way: Federal investment of approximately \$1,000 an acre would be repaid over 40 years or more, interest free.

Over this period the interest subsidy would roughly equal the investment. To the interest subsidy must be added the contributions from municipal and power revenues. These I have not figured out, but they are substantial.

The windfall to the large landowners under terms of these contracts are enormous. Southern Pacific Railroad, which owns 120,000 acres in the Federal service area, would stand to pocket \$120 million. Added to this subsidy would be the capital gains which would accrue to the company through the greatly enhanced value of the lands.

The contracts before you contain open and substantial violations of the 160-acre limitation.

The contracts before you set up situations in which additional wholesale violations will occur.

The contracts before you, while pretending to enforce the excess land law, would effectively provide for no enforcement in the Federal service area.

First let us look at the open violations.

The reclamation laws, as repeatedly reaffirmed by the Congress, declare that no water from a Federal project shall be delivered to excess land, the owners of which have not executed recordable contracts in which they agree to the 160-acre limitation. The contracts before you violate this provision of the laws. They permit what are called "unavoidable" deliveries of project water which percolates to the underground reservoirs and is pumped up therefrom. The "unavoidable" clause appears on page 28, line 14, of the water service contract and its implementation is sanctioned on page 24, line 21, of the distribution system construction contract.

I will demonstrate by citations from reports of the Bureau of Reclamation that these deliveries of subsidized underground waters are not simply "unavoidable" or merely coincidental as implied by the contracts. These underground deliveries were planned from the beginning as one of the major purposes of the project. These underground deliveries are substantial, just as they are illegal.

Let us turn to the San Luis unit feasibility report from the Bureau of Reclamation. This report, transmitted to the President on August 1, 1956, was the basic document justifying the authorization of this project.

Page 1 of the introductory report by the regional director of the Bureau of Reclamation states:

Water supply facilities proposed in the report would serve to supplement and improve an existing supply obtained from ground water sources that are being extensively overdrawn.

Page 5 of this introduction says:

Unless the ground water overdraft is stopped there is a finite limit on the time that even the large operators may be able to continue farming operations dependent upon ground water pumping.

Senator Kuchel, one of the principal sponsors of the authorization legislation, recognized the nature of this San Luis unit, when on May 5, 1959, he told the Senate:

In other words, in order to sustain a highly developed and highly productive agricultural economy this ground water is being mined to the point of exhaustion and we are, in effect, consuming a capital resource. That is why I call the San Luis project a rescue project. It is a project to save good cropland from returning to sagebrush and sand.

On page 11 of the regional director's introduction to the feasibility report:

To carry out the plan of development the landowners will need certain works of their own. Among these will be some 500 wells to tap the present ground water supply and the increased ground water supply which will naturally result from deep percolation of the imported water.

Now let us turn to page 17 of the main report, whereon are listed the five principal benefits of the project. No. 3 is:

Stabilize ground water levels and cost of pumping.

I would like now to refer to plate 5 in this report which is found between pages 44 and 45. This plate graphically depicts San Luis unit waterflow in a typical year under project conditions. Down at

the bottom the ground water recharge is indicated. Total ground water recharge under project conditions is estimated at 667,000 acre-feet. The sources of this water as determined by the Bureau of Reclamation are as follows, according to this plate: 454,000 acre-feet from project losses. This is the amount of water which will seep into the underground reservoirs from the San Luis canals, from the irrigation processes and from the municipal and farmstead uses of the subsidized water. Other sources of the ground water recharge are, according to plate 5: from east side of San Joaquin Valley underflow, 181,000 acre-feet; from west side streams, 32,000 acre-feet. It should be noted here that the underground water from the east side is enriched and stabilized by the east side units of the federally subsidized Central Valley project. The only ground water recharge in the San Luis area not enhanced by a federally subsidized investment is a mere 32,000 acre-feet out of a total of 667,000 acre-feet.

Our position that the recharge of the San Luis ground water is one of the main purposes of this project is further substantiated by the language in the water service contract between the Bureau of Reclamation and the main water district—Westlands Water District. Page 2, line 8, of the contract lists as one of the main reasons for the San Luis unit:

Ground water underlying the district is seriously depleted and in need of replenishment.

Page 3, line 5, lists as the purpose of the project to furnish a—

Water supply for surface diversion and direct application for irrigation and directly or indirectly to replenish depleted ground waters underlying the district.

Page 17, line 16, of the contract mentions that the water will be used:

* * * for surface irrigation or underground storage * * *

These citations seem to demonstrate, Mr. Chairman and members of the committee, beyond any reasonable doubt that one of the main purposes of the San Luis unit is to supply subsidized water to the natural underground reservoirs and further that almost all of the ground water recharge will be federally subsidized.

Senator KUCHEL. Let me just ask you a question at that point, Mr. Ballis. You have heard the testimony of the people from the Department of the Interior earlier this morning. Apparently there are some techniques that can be used to carry out a specific intention to induce supplemental water into the underground. I think it was either the Secretary or one of the people with him who said that there is no provision in the contemplated construction of the distribution system to accomplish any such purpose. He used the term "unavoidable," I think, and then sought to demonstrate, I thought quite clearly, to the committee that in every instance in our State where you have had a similar situation, there has been an "unavoidable" percolation to some extent. Do you quarrel with his statement this morning?

Mr. BALLIS. Yes; their documents discount his statement. The documents say that this is one of the main purposes of the project, to replenish the underground water supply.

Senator KUCHEL. One of the main purposes? Where do you get that?

Mr. BALLIS. As I read here on page 6 of my testimony, I quoted from the water service contract, page 3, line 5, that it lists as the purpose of the project to furnish a "water supply for surface diversion and direct application for irrigation and directly or indirectly to replenish depleted ground waters underlying the district."

Then, I read from page 17, line 16, of the same contract, that the water will be used "*** for surface irrigation or underground storage ***."

Senator KUCHEL. What you are saying to the committee now is that, in your judgment, what you have just read is diametrically opposed to the testimony that was given this morning by the Assistant Secretary of the Interior and his people?

Mr. BALLIS. And diametrically opposed to the use of the "unavoidable" clause to leave the implication that this is just a side benefit and that they really did not plan on this in the first place.

Senator KUCHEL. I do not think this is a fair interpretation of what he said this morning.

Mr. BALLIS. This is the implication of using the term "unavoidable," in my mind.

Senator KUCHEL. You are entitled to your opinion.

Mr. BALLIS. To go on, it is, in this light, a heavyhanded subterfuge to propose, as these contracts before you do, sanctions for allegedly "unavoidable" underground deliveries of project water, with the implication also that such deliveries are minor. Deliveries through the underground of federally subsidized water in the San Luis area will be substantial. Such deliveries are included among the main purposes of the project, and always have been included, from the beginning.

The Federal statute declares that delivery of project water to excess lands whose owners have not executed recordable contracts is illegal. The law, to my knowledge, does not specify some methods of delivery which are legal and some which are not. This is reasonable, just as the law against kidnaping merely outlaws the act and does not concern itself with whether the vehicle of violation is a Chevrolet or a Cadillac. The vehicle of violation is irrelevant whether the crime be kidnaping or subversion of the 160-acre limitation.

We are told by supporters of this contract that other Central Valley project contracts have contained the "unavoidable" clause; therefore, they say, the clause is legal. Such is not necessarily the case. Administrators don't make the law. Congress does. Congress has never amended reclamation law to say that deliveries of subsidized irrigation water to large landowners is legal if delivered underground, and illegal only if delivered by canal. Congress has never done this, it seems to us, because such an action would be a patent contradiction of the intent and purpose of reclamation law.

Senator KUCHEL. Let me interrupt you again. The Secretary testified this morning that for many years a consistent policy has been followed by the Department in utilizing the "unavoidable" clause in all CVP contracts, presumably known to the Congress, and that that same policy is applicable to this contract. Do you disagree with that statement?

Mr. BALLIS. It is a matter of record that the "unavoidable" clause has been included in other contracts.

Senator KUCHEL. So that your objection is to a continuing policy that has been followed by the Department of the Interior for many years?

Mr. BALLIS. Which in my estimation is an illegal policy.

Senator KUCHEL. And you have a right to your opinion. But what I mean is that the testimony Mr. Holum gave this morning on that point you do not quarrel with?

Mr. BALLIS. No, I do not quarrel with the fact that this clause has been included.

Violations of any law permitted by administrators do not somehow legalize the violations or forestall later enforcement of the law. Such a logic carried to other spheres of law enforcement would, for example, prevent the police from arresting streetwalkers on the corner of H and New York this Saturday if they had not arrested the girls who were working the area last Saturday or the Saturdays before that. It seems to me respect for the law may be weakened, its effectiveness may be undermined by unenthusiastic enforcement; but it may not be so repealed. Its sloppy enforcement one day does not prevent firm enforcement in the future.

The Federal reclamation law prohibits the delivery of project water to any excess landowners who have not executed recordable contracts in which they agree to abide by the 160-acre limitation. These contracts propose such deliveries; therefore, they are illegal and should be rejected by this committee.

Now I would like to draw the committee's attention to our contention that all of the water delivered in the Federal service area of the San Luis unit is subject to acreage limitation.

As I demonstrated previously, with citations from the Bureau of Reclamation reports, virtually the total supply of water—both surface and underground—of the San Luis unit under project conditions can be traced to federally subsidized sources. Plate 5 showed that only 32,000 acre-feet of the 667,000 which are to be withdrawn from the underground reservoir will come from water sources not regulated by Federal projects. Therefore, under terms of reclamation law, as I read them, all but 32,000 acre-feet are subject to the 160-acre limitation.

But, for the sake of demonstrating another point, let me for a moment pretend acceptance of the allegedly "unavoidable" delivery of underground water. Let us assume that the reclamation law applies only to surface deliveries and not to underground deliveries. Even if this were the case, other features of the San Luis operation require that the excess land law apply to all waters delivered in the Federal service area including the above-mentioned 32,000 acre-feet—and excluding only that small amount delivered from the sky via rainfall.

These features are the federally constructed, federally financed, and federally subsidized distribution systems, the construction contract for which is now before this committee. Under the terms of this contract and in accordance with the original plans for San Luis project, all waters to be used in the service area—surface and underground, project and natural recharge—will be commingled and delivered through the same system of canals, pipelines, and turnouts. This system is to be financed, constructed, and subsidized by Federal taxpayers throughout the land.

Page 74 of the feasibility report, this one here, which I have cited previously, discusses the operation of the wells under project conditions. It mentions that more wells and replacement wells will be needed. It says:

The new wells would be located adjacent to the distribution system laterals and pumped water would be discharged directly into these lines. To keep annual costs to a minimum, pumped ground water would be applied at the start of the irrigation season, import water from the canals would be gradually mixed in during the middle of the season, and ground water alone would be used again at the end of the season.

The plans are that the ground water and surface water are to be used together in an integrated system to attain maximum efficiency at the lowest possible cost. This is good business. This is as it should be.

Let us now turn again to the water service contract, page 34, line 14:

Water furnished pursuant to the terms of this contract may be transported by means of the same distribution facilities as water now available or which may become available to the district or landowners within the district other than pursuant to the terms of this contract if the contracting officer determines that such mingling is necessary to avoid duplication of facilities.

Now let's look at the distribution construction contract, page 2, line 1:

* * * the district, in order to utilize its ground water supply and the water supply made available under the water service contract * * * desires that a water distribution and drainage collector system be constructed for the district by the United States * * *.

* * * it is desirable and in the interest of the United States and the district that the facilities constructed by the district for water distribution be acquired by the United States for integration with the distribution system.

And page 3, line 7:

* * * "distribution system" shall mean a water distribution and lateral system, primarily of closed pipe, including facilities for the integration of ground with surface water supplies * * *.

So the waters will be mixed in the same distribution system. The waters from the surface. The waters from the underground. The waters subsidized by the Federal taxpayers and the water, that tiny percentage of the total supply, which is not subsidized by the Federal taxpayers. But as I said earlier, it really makes no difference whether any of this water comes from a Federal project or not. The fact that this water is to be carried in the distribution system proposed in one of these contracts before you, this fact requires that the delivery be subject to the provisions of the 160-acre limitation.

The Warren Act permits the Secretary of Interior through the Bureau of Reclamation—

* * * to cooperate with irrigation districts, water users' associations, corporations, entrymen, or water users for the construction or use of such reservoirs, canals, or ditches as may be advantageously used * * * for impounding, delivering, and carrying water for irrigation purposes * * * provided further that water shall not be furnished from any such reservoir or delivered through any such canal or ditch to any one landowner in excess of an amount sufficient to irrigate 160 acres.

This is the law. It requires that any waters from whatever source, under whatever ownership be subjected to the 160-acre law if that water is delivered by a Federal facility.

Such will be the case in the San Luis unit. All the water—surface, underground, project, and natural recharge—will be transported and delivered by the distribution systems proposed in one of the contracts before you. Therefore all these waters, the entire supply of the Federal service area, are subject to the acreage limitation.

Congressman B. F. Sisk, one of the principal sponsors of the San Luis legislation, wrote Secretary Tom Pitts of the California Labor Federation on June 2, 1964:

* * * water now being pumped in the district (Westlands) would be intermingled with project water and would be subject to the acreage limitations of reclamation law.

There is no such thing, then, as supporters of these contracts claim, that a landowner will exercise some free choice whether he will participate in the project or not. There is no such thing as waiting to a later date at which time the excess landowners will be asked to exercise this free choice of whether to sign 160-acre contracts or not, and that if they chose to withhold their signatures they will be denied project benefits. This hypothesis advanced by supporters of these contracts does not square with the facts. It is a fairy tale. Every landowner in San Luis unit will benefit, directly, from the Federal subsidy. And as long as every one of them benefits, every one of them should be required to abide by the law. All exemptions and slippery irrelevant unavoidable type clauses should be removed from the contracts.

Senator Kuchel has declared, as I pointed out earlier, this is a rescue project. The feasibility report of the Bureau of Reclamation, also quoted, makes the same declaration. There would be virtually nothing but dryland farming in the future if the San Luis unit is not built. The question is not if the large operators will choose to accept the benefits of the project. Are they going to ride shotgun on their vast domains to prevent the Federal Government from enriching them and their land? That's nonsense. They pleaded for this project. They will get the benefits. The "unavoidable" clause and other similar language insures that result. These benefits cannot and will not be denied once the project is built. The issue at hand is whether by virtue of the contracts before you, the big operators will get these benefits unobligated by the excess land law as it proposed, or whether they will be required to abide by this law.

Now, it is claimed by the supporters of these contracts that we don't have to worry about enforcement of the 160-acre law because it will take care of itself at some future date, not specified. We are told the burden of local land taxes will force the large operators to sign. Such assurances are amusing in light of the facts and the history of this area. Let us examine this claim. For this purpose, I would like permission to have inserted in the record at this point the June 11, 1964,

letter from Ralph Brody, former Bureau of Reclamation official and now manager-chief counsel of the Westlands Water District, to Senator Frank Moss.

Senator NELSON. It may be received.
(The document referred to follows:)

WESTLANDS WATER DISTRICT,
Fresno, Calif., June 11, 1964.

HON. FRANK E. MOSS,
Chairman, Subcommittee on Irrigation and Reclamation, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We have just received a copy of the letter of Mr. Thomas L. Pitts, secretary-treasurer of the California Labor Federation, relating to the proposed distribution and drainage system repayment contract between Westlands Water District and the United States. We also have a copy of the material prepared by Mr. William Reich which we assume has also been made available to you. After reading Mr. Pitts' letter and Mr. Reich's comments and finding such lack of knowledge of the contract and the physical facts, I feel that I cannot in good conscience let the remarks go unchallenged.

It is worthy to note that some time ago I learned of the imminence of Mr. Pitts' letter and contacted his assistant, Mr. Don Vial, who, as I understand it, handles this type of matter. I asked if I might meet with him and Mr. Pitts to present the facts regarding this situation to them. A meeting in San Francisco was arranged. Subsequently, the meeting was canceled by Mr. Vial with a promise that another date would be set up and I would be notified. I have not yet heard from either Mr. Pitts or Mr. Vial, although a considerable period of time has elapsed.

During the course of my conversations regarding a possible meeting, I learned that at the time Mr. Pitts' letter was written, neither he nor Mr. Vial had seen, and I believe have not yet seen, a copy of the contract itself. I know that the matter has not been discussed with any representative of this district and am reasonably confident that it has not been discussed with any representative of the Bureau of Reclamation.

I have known Mr. Pitts for some time and have always respected and admired him as a responsible official of a worthy organization. It was for this reason in particular that I was surprised at his taking a hostile position to a public program which means so much to the community and his own members without some effort being made by him to discuss it with ourselves or the Bureau of Reclamation to make certain of his facts. I particularly felt this way since the subject with which he is dealing is patently so unfamiliar to him and his people in its technical aspects.

Mr. Reich's statement also is based upon gross misstatements of fact. For example, Mr. Reich states with reference to Southern Pacific Co.: "The company has refused to join the district or sign recordable contracts."

The fact of the matter is that all lands owned by that company lying below the San Luis Canal (the western boundary of Westlands Water District) and within the Federal service area and comprising some 60,000 acres are now and always have been within the district since its formation in 1952. It joined the district at that date. The company lands are subject to assessment and have been assessed every year, along with the other lands in the district. It has supported the programs of the district, including the approval of the contracts containing the excess land provisions. It has supported the distribution system program for which it will have to pay a proportionately major part, even though the company will not be entitled to use the system if it does not sign a recordable contract. Furthermore, neither that company nor any other landowner in the district has refused to execute a recordable contract. As a matter of fact, no one has been asked to sign such a contract since the occasion for signing has not yet arisen, insofar as this contract or the water supply contract are concerned.

While it is true, as Mr. Pitts has pointed out in his letter, the Southern Pacific Co. has stated that its "lands are not being offered for sale," it does not necessarily follow that they will not be. I suggest that at any given point of time, the AFL-CIO would also state that its own real property investments are not being offered for sale. This does not mean that under appropriate circumstances they would not be. Nor would the fact that any owner of excess land states that his lands are not being offered for sale or that he does not intend to execute a recordable

contract mean that there is a failure to comply with the law. If an owner of excess land exercises the choice left to him by the law not to sign, the law is being complied with as much as if he had signed it so long as that owner is not provided with the benefits of the project facilities. This would be the case under the contract now before the Congress.

The same statement from which Mr. Pitts has selected the phrase quoted above also contains the following:

"We are progressive and we are anxious to see steps taken to preserve and increase the economic welfare. We will expect to cooperate in any equitable and reasonable water program.

* * * * *

"If it is determined that the Federal Government, rather than the State or a partnership or both, shall undertake this project, we will wish to cooperate.

* * * * *

"If a Federal program is decided upon at San Luis, we will wish to cooperate and trust that the terms provided for will be equitable."

The company has consistently given such cooperation to the same extent that it has been given by every other landowner in the district, large or small.

The statement of Mr. Reich quoted above is immediately followed by another which states: "Thus it will receive a free ride at the expense of the taxpayers—all the benefits of an improved water supply and advancing land values."

The fact is that Southern Pacific Co. is one of the taxpayers in the district, and a very substantial one. Had Mr. Reich investigated, he would have learned, as will be pointed out hereinafter, that if the Southern Pacific Co. fails to sign a recordable contract, the cost to it in assessments will be much more than the value of any improvement in its water supply that might accrue.

As for Mr. Reich's statement that the Southern Pacific Co. would receive a "free ride at the expense of the taxpayers * * * [from] advancing land values," a similar statement was made to the writer by Mr. Vial of Mr. Pitts' office at the time the discussions of a meeting were being held. At that time it was pointed out to Mr. Vial that, under the contract in question and under the water service contract executed by Westlands Water District and the United States on June 5, 1963, the antispeculation provisions of reclamation law are made applicable to the sale of excess land without regard to the execution of recordable contracts. In other words, under those contracts, all sales of excess land are controlled by the antispeculation provisions of the law even though a recordable contract has not been executed. When this was pointed out to Mr. Vial he expressed great, but pleasant, surprise at the existence of the requirement. Had the contract been examined, this fact would have been readily apparent. As a matter of fact, the same provision has been included in all Central Valley project contracts, with which I would assume Mr. Reich, Mr. Pitts, and Mr. Vial at least would have had some familiarity, since the first was executed in the mid-1940's.

The burden of Mr. Pitts' letter is that, if recordable contracts are not signed prior to the undertaking of construction of the distribution system, "water would percolate freely into the deep wells of the excess landowner so that enforcement of the excess land provisions would be virtually impossible" and "the Southern Pacific stands to benefit by a potential subsidy of \$120 million."

Even if the rest of Mr. Pitts' analysis were accurate, the basic fact on which he bases it is grossly in error. As a matter of fact, of the total surface application of the 783,000 acre-feet of project water the district will purchase from the United States plus the approximately 250,000 acre-feet of additional water to be pumped from natural groundwater supplies, only about 103,000 acre-feet will find its way to the underground.

Underlying the lands of the district is a thick layer of impervious material known as Corcoran clay. Only an amount representing about 3 percent, or less than 25,000 acre-feet, of the project water applied to the surface will reach the deep areas below the Corcoran clay. Because of quality deterioration, some 144,000 acre-feet of the water reaching the underground and which remains above the Corcoran clay will have to be drained from the district.

It is true that, to the extent that there is a reduction of pumping in the district, there will be a decrease in the overdraft from the deep groundwater. Conversely, however, to the extent that excess landowners do not sign recordable contracts and continue to pump their supplies, the drawdown of deep water will continue. In addition, even if all of the lands in the district, including those of the South-

ern Pacific Co., became eligible to and did receive a project water supply, and with the application of the entire 783,000 acre-foot project supply, the average pump depth in Westlands Water District would only become stabilized at 300 feet.

The present average pumping depth is 375 feet in Westlands Water District (450 feet in the entire Federal service area). Under the program which the district of necessity must follow in raising its funds, the cost to the excess landowners of the same supply that they are using today pumped from the underground, conservatively estimated, will be from approximately 48 to 78 percent greater than it would have been had there been no project. Even under these circumstances and under those increased costs, they will still be able to obtain only 1½ acre-feet per acre from their pumps instead of the average of 3 acre-feet per acre, which is the crop requirement for full production. Were the excess landowner to attempt to pump a full supply from the underground, his costs would be more than double that of the project supply. Each of the additional wells and pumps alone necessary to accomplish this would cost from \$35,000 to \$70,000 in addition to substantially greater power costs.

The maximum benefit, if it can be termed that, which the Southern Pacific could obtain from raising groundwater levels, even if it and all other excess landowners signed a recordable contract, would be about \$2 per acre-foot, and even then it would be available only after a considerable period of years. At the same time, if it does not sign a recordable contract and continues to pump its water, the resultant added cost of that water will be several times the maximum possible benefit of \$2. This increased cost arises from the fact that it will be necessary for the district to collect a large portion of its necessary funds to pay for the water and the distribution system through assessments so as to keep the water tolls sufficiently low as to encourage the eligible landowners to utilize the project water supply. To accomplish this, the tolls must be substantially less than the cost of pumping. The lower the tolls, the greater the amount that must be collected through assessments from all landowners in the district, irrespective of whether they are eligible to receive project water. In addition, in view of the commitment upon the part of the district to pay for a fixed amount of water, the more excess land that does not become eligible to take water, the greater the assessments must be on the land.

Mr. Pitts' figure as to an alleged subsidy of \$120 million, or any other figure for that matter, is interesting but unfounded in fact. Instead of being subsidized, the Southern Pacific and other excess landowners will be subsidizing the other water users in the project, if it does not make its land eligible to receive project water by executing a recordable contract. Part of the subsidy which Mr. Pitts alleges will exist, that related to the distribution system covered by the contract, is precluded by the terms of that contract and could not exist. This again would have been apparent to him had he or his writers taken the time to read the contract and ascertain that the owners of excess land are not permitted to utilize the distribution system, if they do not sign a recordable contract. If they cannot use the system, any so-called subsidy available from it will not be accruing to them.

In order to acquire the balance of the Pitts' subsidy, it would be necessary for the company to improve its existing situation. This could not come about for the reasons already stated. In addition, if an owner of excess land does not execute a recordable contract, it will be paying for the project benefits others will receive and in an amount substantially in excess of the value of any benefit it could receive under such circumstances.

All excess-land owners not signing a recordable contract will be helping to pay for a water distribution system they cannot use and for water someone else is using. Their water costs for a half-adequate supply will in most, if not all, instances be almost twice as much as before the project was constructed.

Messrs. Pitts and Reich have suggested that, if the recordable contracts are not signed, the repayment contract should be rejected by the Congress with the result that the project would not be built. The fact of the matter is that, if any owner of excess land did not intend to execute a recordable contract, the course of action recommended by Messrs. Pitts and Reich, if followed, would be more to his advantage than would be the case if the contract before the Congress were to be executed and the distribution system constructed. If the project is constructed and he fails to sign a recordable contract, he cannot avoid the great additional cost which by far exceeds the minimal benefit, if any, he might receive from ground water under project conditions. If the works are not built, he is not faced with the substantial assessments necessary to pay for them and the project water.

The only result of the Pitts-Reich "solution" would be injury to the small landowners and those owners of excess land in the district who were then willing to sign recordable contracts.

The procedure being followed is precisely what the Congress very obviously had in mind in requiring repayment contracts with organizations having the taxing power and in not requiring the execution of recordable contracts as a condition precedent to the commencement of construction. The law contemplates a choice upon the part of the excess landowner. He may execute a recordable contract and avail himself of the project benefits until the excess land is sold by or for him or he can refuse to execute a recordable contract and not receive those benefits. The Congress wisely concluded that, through the taxing power of such organizations, the owner of excess land who chooses not to sign will be deprived of project benefits and undoubtedly will be forced through economic circumstances to execute a recordable contract. But whether he does so or not, there is no question that the failure to sign plus the inevitable tax consequences will effectively deprive the excess landowner of the project benefits.

The San Luis project was started several years ago and is now well under construction. On June 5, 1963, a water service contract, which governs the furnishing of water to the district and in which the excess land provisions were included in detail, was executed between the United States and the district. It would seem that, even if there were any validity in the points being raised by Messrs. Pitts and Reich, they should have been raised at least prior to the execution of that contract. The contract now before the Congress does not have to do with the furnishing of a water supply. This was covered by the 1963 contract. The contract now being considered only provides for the construction and operation of a distribution system through which the water will be delivered. This contract can only, and does only, pertain to the use of the system insofar as the excess land provisions are concerned. In this respect, the contract very clearly and adequately precludes the transportation of water to or for any excess land the owner of which refuses to execute a recordable contract.

An examination of the legislative history of the San Luis Authorization Act will reveal that Mr. Pitts' organization strongly supported the project authorization subject to inclusion in the act of the acreage limitation provisions of the Federal law without change. The Congress did authorize the project subject to those provisions. At no point was the suggestion made that the law be modified, even though that would have been the appropriate time to do so, if it were to be done.

The effect of the recommendation of Messrs. Pitts and Reich, at this point of time, would simply be to deprive the United States of revenue from the project and postpone or render useless the main project works now underway in which the United States has invested millions of dollars. At the same time, as pointed out herein, the owner who intends never to execute a recordable contract would find himself in a more favorable position as a result of the course of action suggested by these two men.

Every assurance that can be given at this time that the excess land provisions of the law will be enforced has been given. Under the law, the Secretary of the Interior is required to place such provisions in the contract between the district and the United States. He has done this and has complied with the legislative requirements. The district, under the law, must agree to those provisions and it has so agreed. It has complied to the fullest extent that it can at this point. It will give further compliance by signing the contract and enforcing the contractual provisions. If it does not enforce those provisions, it will have breached its contract and the United States can further enforce the law through legal proceedings or otherwise. The law is, therefore, in any event being implemented and enforced to the letter.

It should be pointed out that the frequent allusions to the Southern Pacific Co. has been necessitated by the emphasis and references made in the comments of Mr. Pitts and Mr. Reich. What we have stated, however, is applicable to all excess land ownerships in the district.

We regret exceedingly and apologize for the necessity for such a lengthy presentation and the resultant imposition on your time. Nevertheless, we felt it necessary in order to present the facts as they are. We recognize that no particular action is required by you, and we suggest none. Our sole purpose is to supply you with accurate information on the subject. We are convinced that this factual information will demonstrate that there is complete and effective compliance with the requirements enacted by the Congress to insure the fulfillment of its objectives. Fairly viewed, as we are certain it will be by you, it will

be seen that the statements and suggestions made by Mr. Reich and Mr. Pitts are without basis, merit, or responsibility.

Respectfully submitted,

RALPH M. BRODY, *Manager-Chief Counsel.*

Mr. BALLIS. Mr. Brody says the district will assess all lands to pay for San Luis surface water. Therefore, those landowners who do not sign recordable contracts, Mr. Brody says, will not receive project water but will help pay the costs. The pressure of these assessments, according to Mr. Brody, will force the signing of these 160-acre contracts at some later date. Mr. Brody specifies no date.

As I have demonstrated earlier, it is impossible, undesirable, impractical and not planned to deny project benefits to any lands in the Westlands Water District. But let me deal briefly with Mr. Brody's "Alice in Wonderland" situation.

Senator KUCHEL. May I interrupt you again? Where you quote from Mr. Brody as saying that the district will assess all lands to pay for San Luis surface water, do you disagree with that?

Mr. BALLIS. No; I think that is a statement of fact.

Westlands Water District is a public body. Voting in the district is not one man, one vote. Voting is by assessed valuation. One dollar, one vote. The district directors elected by this democratic process are:

J. P. van Loben Sels, a representative of the Southern Pacific Railroad which owns 120,000 acres in the Federal service area, about 65,000 acres of which is in the Westlands district. Southern Pacific does not farm any of its land. It is leased to other large landowners including most if not all of the other members of the Westlands board.

Russell Giffen is the chairman of the board. According to the figures compiled from this map—I am referring to the large map over there showing the large landowners in the valley. According to the figures compiled from this map he owns over 23,000 acres of land in the San Luis unit service area under three different titles.

Frank Diener, who owns at least 6,000 acres in San Luis.

Harry Baker, president of Producers Cotton Oil Co., which controls companies owning upward of 100,000 acres of the San Joaquin Valley. At least 12,000 acres in San Luis.

John Benson, whose excess holding we have not charted.

Louis Robinson, associated with the Boswell interests which control some 125,000 acres of valley land, about 30,000 acres of which is in the Federal service area.

Sherman Thomas, an excess-land owner whose holdings we have not charted.

All seven of these men are big operators. Can we assume, can the Bureau of Reclamation believe in its wildest dreams, does Mr. Brody expect us to accept the fiction that these seven men, who control vast acreages, who govern the Westlands Water District, will apply with all diligence any economic, tax, or other kind of pressure to force themselves to break up their holdings in accordance with the 160-acre law?

Senator KUCHEL. Do you mean by that that these people will not sign a recordable contract but will still get supplemental water?

Mr. BALLIS. Let me read on, and if you still want to ask that question, I think I can answer it. Maybe I do not answer it. Southern Pacific has already served notice on Congress that it does not expect

to comply, that it is seeking some special considerations. Mr. Giffen as long ago as 1944 was testifying before Congress against the acreage limitation.

SP's 120,000 acres comprise 25 percent of the approximately 480,000 acres in the San Luis unit service area. These lands are checker-boarded throughout as shown on this map.

The red blocks over there on that map indicate SP holdings. Each block is 1 mile square, 640 acres.

Senator KUCHEL. I hate to keep interrupting you. Let me do this, however. The staff informs me, Mr. Ballis, that we have no notice from the Southern Pacific relative to its desire to comply or not. Are you acquainted with anything?

Mr. BALLIS. I cannot give you the exact citation, but I could dig it up and send it to the committee. Their representative testified before this committee and I think before the House committee that they wanted the project, that they did not like the 160-acre limitation, and that they wanted some special consideration in the project to avoid abiding by the 160-acre limitation.

Senator KUCHEL. Will you give the committee the citation to that testimony.

Mr. BALLIS. Yes.

It is impossible to build an irrigation distribution system in this area excluding SP lands. It is physically impossible and financially impractical. The systems as proposed by the contracts before you would consist of closed-pipe conduits 1 mile apart touching every section of land owned by SP in the service area.

To protect the Federal investment, to insure that Federal policies are enforced, SP must be asked to sign recordable contracts before construction is started on the distribution systems.

Furthermore, SP and many of the other big operators in the San Luis unit also hold vast excess lands in the Tulare Lake region here on the map. Tulare Lake is part of the Pine Flat service area. San Luis area is right above the Pine Flat service area. These same owners, these same people who Mr. Brody would have us believe are prepared to pressure each other to break up their holdings in San Luis have, with every resource at hand, fought application of the 160-acre law on water regulated by the Pine Flat project.

They have been successful in obtaining water from Pine Flat for 10 years without signing recordable contracts. The Bureau has been allowing them to sign interim agreements. They pay for the water service but don't abide by the law. The situation now is that, as I understand it, some permanent agreements have been signed. Irrigation districts above Tulare Lake, over toward the east side of the valley have signed regular 160-acre contracts on Pine Flat water. Tulare Lake operators have worked out a special deal whereby the Bureau and they will engage in a friendly court suit to kill the acreage limitation. These are many of the same large landowners who, we are told, will sign 160-acre limitation contracts at some future date. They will never sign unless the Federal Government has some strong muscle to make them sign. It has that muscle before the distribution system is built. It will lose that muscle as soon as construction starts.

Let me go back, now, to Mr. Brody's letter of June 11 in which it is also claimed that pumping charges will be so high and surface water so cheap that the economics of this situation will somehow contribute to the alleged pressure which will make the big operators sign 160-acre contracts. Again Mr. Brody specifies no date.

According to the Bureau of Reclamation feasibility report on San Luis, Mr. Brody does not speak the whole truth. I refer you to page 37:

Control by pumps will be aided by the fact that as pump lifts decrease, wells will become relatively more economical and better wells on the lower portions of the alluvial fans will probably provide water more cheaply than the works of the San Luis unit.

So, the Bureau report says that in some cases pumping of subsidized water will be cheaper than canal delivery of subsidized water. Where's the economic pressure in these cases?

In his June 11 letter, page 4, Mr. Brody discounts any enrichment of the underground water supply by the San Luis unit. He writes to Senator Moss:

Underlying the lands of the district is a thick layer of impervious material known as Corcoran clay. Only an amount representing about 3 percent or less than 25,000 acre-feet of the project water applied to the surface will reach the deep areas below the Corcoran clay. Because of the quality deterioration, some 144,000 acre-feet of water reaching the underground and which remains above the Corcoran clay will have to be drained from the district.

Again Mr. Brody displays an uncanny ability for a selective and misleading telling of the truth.

Senator KUCHEL. Let me interrupt you again because that is a rather serious charge you make. Is that not about what the people from the Department of the Interior testified to this morning?

Mr. BALLIS. If I may go on, I shall answer that question.

Senator KUCHEL. Well, answer that question for me now. Is that not the same testimony?

Mr. BALLIS. I shall be quite frank with you, Senator. I picked up that graph and I was not able to analyze it in the few minutes I had.

Senator KUCHEL. But you heard what they testified?

Mr. BALLIS. I heard what they testified, and now I shall cite what their feasibility report says.

Senator KUCHEL. All I want to ask you is: Is not this statement which you read from Mr. Brody precisely what the people from the Department of the Interior testified to?

Mr. BALLIS. I do not think the figures are the same. I think the figures submitted by the Bureau are somewhat higher than the figures quoted by Mr. Brody. The figures that I shall quote from the feasibility report are substantially higher than the figures and the situation is entirely different in the sections I shall quote from the feasibility report and the situation which Mr. Brody claims in his letter, which I quoted.

Senator KUCHEL. Go ahead. However, we have a time problem.

Mr. BALLIS. Let me refer to page 33 of the Bureau of Reclamation's feasibility report on the San Luis unit.

A relatively impervious layer—

Relatively impervious, not impervious, as Mr. Brody has written—

A relatively impervious layer called the Corcoran clay occurs at depths of 200 to 800 feet below the surface. This lakebed deposit effectually divides the ground water reservoir into two distinct parts, a deep basin and a shallow basin.

The wells that tap the ground water basin are drilled almost exclusively by rotary methods to depths of 1,500 and 2,000 feet. They are completely cased and gravel packed. Castings generally are perforated from 100 to 200 feet above the Corcoran clay to the well's bottom. In this manner both the shallow and deep ground water zones are tapped.

In other words, Mr. Brody's claim about the impervious clay is a smokescreen designed to divert congressional attention from the fact that subsidized water is to be delivered to excess-land owners contrary to the law and the mandate of the Congress.

Mr. Brody's claim about the amount of project water reaching below the Corcoran clay is irrelevant.

The relevant issue is how much water reaches any part of the underground reservoir and is in turn pumped up for beneficial use. I previously cited Bureau of Reclamation figures on the amount of recharge. Let's return to the feasibility report, plate 5 between pages 44 and 45.

Under project conditions, the Bureau declares that the total ground water recharge will be 667,000 acre-feet. Some 454,000 acre-feet are to come directly from San Luis unit surface water—and Mr. Brody implies something around 25,000 acre-feet; 181,000 acre-feet are to come from the underflow from the east side of the San Joaquin Valley, where the underground is enriched by other subsidized units of the Central Valley project, and only 32,000 acre-feet of the 667,000 total will come from the now unsubsidized sources of west side intermittent streams.

According to plate 5, some 127,000 acre-feet of the 667,000 total ground water recharge will be of such poor quality that it will have to be removed by drains. This leaves a total of 540,000 acre-feet which will be pumped from the underground for beneficial use. These are the figures of the Bureau of Reclamation.

Again let me say, there is nothing in reclamation law which specifies that the Secretary of the Interior use pressure of local tax assessments or other economic pressure to enforce the law. The law just states that deliveries of project water shall not be made to excess land-owners without recordable contracts. The simple, the obvious, the direct, the businesslike, the only sure way to accomplish enforcement is by requiring contracts on all excess holdings now, before construction of the distribution systems.

To assure a full discussion of all the ramifications of the issues involved at San Luis, I would like to note very briefly the relation of San Luis to the rest of the Central Valley project and the relation of enforcement of the 160-acre limitation to President Johnson's war on poverty.

San Luis is an integral part of the Central Valley project. It is not a separate project. It could not be built without the hundreds of millions the Federal Government has invested in other units of the Central Valley project. San Luis water will be subsidized not only by the Federal taxpayers through the interest-free money which will be used on the project. It will be subsidized additionally by the electric power users and the municipal water users in the Central Valley project area.

These facts are brought out in detail by the Bureau of Reclamation in the feasibility report.

Page 8 of the regional director's introduction declares:

Through the use of Central Valley project facilities the cost of pumping on the San Luis unit is reduced. The irrigators are provided with needed repay-

ment assistance in the form of commercial power revenue from the Central Valley project.

San Luis Unit is planned as an addition to the Central Valley project to be coordinated fully, both physically and financially, with the existing and authorized features of the parent project * * *.

By utilizing Central Valley project storage and conveyance facilities in lieu of new structures, physical integration would minimize the capital expenditure required to bring supplemental water to the San Luis unit service area.

By financial integration a portion of Central Valley project power revenues would be available to assist San Luis unit repayment.

On page 125 of the feasibility report :

Feasibility, or probable repayment, has been tested by a cost allocation and repayment analysis of the enlarged Central Valley project including the San Luis unit.

Additional financial aid necessary to complete amortization of the irrigation investment is drawn—

(1) From the municipal and industrial net revenues after repayment of the municipal and industrial investment.

(2) From commercial power net revenues after repayment of the commercial power investment.

These subsidies supplied by the Federal taxpayers and all the power and municipal water users in the Central Valley project will be applied in one way or another to all waters in the Federal service area of the San Luis Unit. The subsidies will be applied to all the surface water furnished by the main canal, to all the water pumped from underground, to all the water to be conveyed by the distribution system.

The subsidies will be applied to every drop of water which can be and will be used beneficially in the Federal service area except that water, as I mentioned earlier, delivered from the sky by the rainfall.

Finally the issue of the excess land law in San Luis and elsewhere throughout the West has a direct and crucial relationship to President Johnson's war on poverty.

I refer the committee to the Economic Opportunity Act of 1964, H.R. 10440, title III; Special Programs To Combat Poverty in Rural Areas; section 303: Family Farm Development Corporations.

Senator NELSON. Could I interrupt you for just a moment?

Mr. Barry and Mr. Weinberg are required to be at the Department of Justice this afternoon. I just want to say, before anybody leaves, that the proponents of this contract and the opponents may submit to the committee additional views or rebuttal testimony if they so desire so that we are sure that all questions are answered.

Go ahead, Mr. Ballis.

Mr. BALLIS (reading) :

(a) The Director is authorized to cooperate with, furnish technical assistance to, and otherwise assist in the organization of public or private nonprofit corporations having as their objective the improvement of the productivity and income of low-income farmers. Such corporations shall be eligible for assistance under this section if they are organized for the purpose of and have the power to acquire real property or any interest therein in rural areas, to develop or reconstitute such real property into units not larger than family farms, including necessary * * * water development * * * and to sell the farms so developed * * * to low-income farm families * * *.

What better place to put this program into operation, what better justification for such a program as proposed in this war on poverty than the heavily subsidized irrigation projects in California? The

San Luis area is ideal. The land is most productive. Under project water conditions, agriculture cannot fail. Federal reclamation laws require that the holdings be broken up.

But under the contracts now before you as submitted by the Bureau of Reclamation, this required breakup of the huge holdings is foregone. Unless the contracts are renegotiated, we will have foreclosed on the future. And foreclosed on the hope of the Mexican-American farmworkers—the bulk of the farmworkers in California. Their hope of owning land, as expressed in the resolution from their political convention, will have been turned into a hollow campaign slogan lacking in substance.

Finally, gentlemen, let me say that I have come to Washington not merely to argue the fine points of reclamation law. Not merely to tear down the facade of these two contracts, the facade behind which the large landowners would perpetuate their rule of our valley at the expense of the whole country. I come not to be contentious. But I come out of deep conviction, out of a confirmed and tested commitment to freedom and individual liberty. And a confirmed and tested opposition to oppression. I have lived in the San Joaquin Valley. I have participated in its civic activities. I have been involved in its political fights. I have lived and worked and studied and reported in the east side of the valley where the small farms are dominant. I have lived and worked and studied and reported in the west side of the valley where the large farms are dominant. I know, gentlemen, that large landholdings are bad for people, bad for communities, bad for economy, bad for all of the ideals of individual liberty which we as Americans hold so dear.

I wish we were in Fresno today. I would like to show you what I mean. We could take the afternoon to tour both sides of the valley. To view the small towns on the east side: Sanger, Dinuba, Reedley. And compare them to the west side towns of Mendota, Firebaugh. The differences are visible to the naked eye at a glance, at one swing through each town. This is not to say that the east side towns are living high off the hog, but they are visibly more desirable places to live than the west side settlements. The differences show up in wages of farmworkers, too. In 1959, a team of Fresno State College professors found—

best available information puts hourly wage scales at 75 to 95 cents for more skilled jobs, as the prevailing wage on west side farms. On east side fruit ranches prevailing wage is \$1-plus an hour.

It is within the power and intent of reclamation law to reform the pattern of oppressive landholdings in our valley. It is within the jurisdiction of this committee to keep this law alive, or to solidify and perpetuate a system of landholdings which has proven to be the antithesis of democracy and freedom the world over.

It is comic tragedy that with these two contracts you are being asked to enrich and enthrone with Federal subsidies, already rich and powerful interests who obtained their present advantageous positions through other Federal subsidies of one sort or another dating back 100 years.

On its face this proposition is outrageous.

The fact that the vehicles for its accomplishment—the two contracts before you—are illegal, violative of the Federal statutes enacted and reaffirmed by the Congress, requires, we believe, that the contracts be rejected and that they be returned to the Secretary of the Interior for renegotiation.

Thank you.

Senator NELSON. Thank you very much, Mr. Ballis.

Did you have some questions you would like to ask, Senator?

Senator KUCHEL. Well, very few.

First of all, Mr. Ballis, where you said on pages 13 and 14, for example, that the Tulare Lake operators have worked out a special deal whereby they and the Bureau will engage in a friendly court suit to kill the acreage limitation, that is a charge that I think by implication includes the possibility or the allegation of fraud.

I do not know whether it does or not. I do not know what relevance it has here. It is rather shocking to me that you would make that kind of a statement in this committee, because you have offered no proof.

But even if you did offer proof, it would be irrelevant to the question before this committee. This committee is concerned with this contract. I have listened here, as you have this morning, to the testimony of the people from the Department of the Interior. Is it not true that this contract with the irrigation district involved here is exactly the same contract as the Bureau of Reclamation has engaged in in similar situations for many years? Is that not true?

Mr. BALLIS. I accept that fact; yes, sir.

Senator KUCHEL. Well, I though the Solicitor was very frank this morning in discussing this problem. In his view as a lawyer, since 1926, when the Secretary laid down this policy, Congress presumably has been acquainted with the manner in which the Secretary interpreted the law and applied it, and his view is that no Congress has thus far raised any question with respect to the interpretation of the intent of the Congress by the Secretary.

So we have this situation: We have a series of contracts which have been entered into in which, I take it, the district has agreed to pay for the distribution system through local tax laws which are available to it, that the water shall be distributed only to the landowners, if in excess of the acreage limitation, who sign recordable contracts, but that the Bureau has never required 100 percent of the landowners in the particular district to sign recordable contracts as a condition precedent to bringing the benefits of supplemental waters to nonexcess lands in the district and to excess lands which are subject to a recordable contract.

That is why I think the Secretary of the Interior has recommended that some of these questions that have arisen be studied by this committee. But you have not given me, I do not believe you have given this committee, any reason why, in 1964, this committee should deem repugnant the policy which the Secretary has followed since the law was first enacted.

How could this committee justify today taking in this contract, saying, you are not going to follow the policy that Congress has acquiesced in since 1926?

Mr. BALLIS. First of all, let me say that I agree that there has been some flexibility in law, there has to be some administrative discretion. There really is no normal situation.

For instance, if there is a rash of burglaries in a certain area of town, the police are going to redouble their efforts on that area, they are not going to send one man out on the beat at midnight. The same thing applies here. You have landowners in this area who have participated in violations of the law in the Pine Flat area. You have landowners who have publicly announced—and I have been handed this statement by the Southern Pacific, which I shall read—have publicly announced they do not want to comply with the law.

It is true, as you say, that the “unavoidable” clause has been included in the other CVP contracts. I do not know if it is in all of them. If we compare the east side of the valley with the west side, we do not have equal situations. On the east side of the valley, the excess landholdings were somewhere between 15 and 20 percent at the time the project was constructed. Just the opposite is true in this area. They are not comparable situations.

I think the Secretary, to enforce the law in the Federal service area of the San Luis project, is going to have to take different measures to enforce that law than he has taken in other CVP contracts.

Senator KUCHEL. You have a right to that opinion, but you heard the Solicitor of the Department state legally that there has been a policy, that policy has been followed, and if the policy should be changed, it should be changed by the Congress.

Mr. BALLIS. Why? There is nothing in the law that says their contracts have to have an “unavoidable” clause. I think in view of this situation, this committee will find that this is not the same, this is not on “all fours” with the situation on the east side of the valley, that these gentlemen have announced that they are going to seek ways to violate the law, that this contract specifically provides for violation of the letter and the intent of the law.

Senator KUCHEL. This contract specifically provides for the violation?

Mr. BALLIS. With the “unavoidable” clause. It also specifically provides that water from the pumps will be delivered by the distribution system to excess landowners who have not signed a contract, contrary, it seems to me, to what the people from the Department said.

May I follow this out? On page 28 of the water service contract, section (b), it is line 14, it says:

If project water furnished to the district pursuant to this contract reaches the underground strata of excess land owned by a large operator * * * who has not executed a large contract, the landowner pumped such water from the underground, the district will not be deemed to have furnished such water to such lands within the terms of this contract.

Senator KUCHEL. That is not a new provision, is it?

Mr. BALLIS. No; this is included in the water service contract.

In the construction contract, it says on page 24:

No water shall be delivered to the distribution system to any lands or persons not eligible under the terms of articles 23, 24, and 25—

and so on, so this excess landowner who pumps water from the underground is not eligible under 23, 24, and 25. Therefore, the reference

in the distribution system construction contract can, through the underground, be delivered to him in violation of the law, in violation of the Warren Act, which I have cited in my testimony.

Senator KUCHEL. Well, that is your opinion and it is an opinion which is not shared by the people in the Department who testified this morning.

Mr. BALLIS. They were not responsive to that particular point, because that particular point was not discussed.

Senator KUCHEL. Yes; I think it was discussed.

Did we not give some time—I think in Secretary Holum's examination by Senator Nelson—with respect to the problem of waters percolating apparently then being made available to excess landowners who had not signed the contract, that was the reason that he gave to Senator Nelson, in answer to a long series of questions, their engineering belief as to the amount of water which would so percolate, and came up with the conclusion, I thought, that that was unavoidable and, therefore, represented the same kind of problem that they met in exactly the same fashion in prior years. I thought that was the reason why the Assistant Commissioner of Reclamation testified on the basis of that chart.

Mr. BALLIS. Well, the Warren Act provides that any facility provided by the Federal Government, regardless of the source of water—for instance, a canal or ditch—if the water is delivered to this facility, the acreage limitation must apply. These two contracts taken together provide for an exemption from that, the way I read it.

Senator KUCHEL. Well, you have the text of the contract in front of you. However, for the record, reading from page 24 of the Bureau's proposed distribution system contract with the water district, I read from lines 20 to 24, the paragraph numbered 20:

No water—

And I repeat that—

No water shall be delivered through the distribution system to any lands or persons not eligible under the terms of articles 23, 24, and 25 of the water service contract to receive water made available pursuant to that contract.

None at all.

Mr. BALLIS. That is the section I just read. But under this article cited, articles 23, 24, and 25, the "unavoidable" clause is included and these people are eligible to receive water.

Senator KUCHEL. Are eligible for what?

Mr. BALLIS. To receive water. To receive water from the distribution service, because they are not even eligible under sections 23, 24, and 25.

Senator KUCHEL. Again, Mr. Ballis, that was not the testimony that was given this morning by the Department.

However, I have no further questions now.

Mr. BALLIS. Would you like me to read this testimony of the Southern Pacific, this one paragraph here?

Senator KUCHEL. Yes; what is the citation of that?

Mr. BALLIS. This is page 196 of the Senate Irrigation and Reclamation Subcommittee hearing on S. 1887 in 1958. Apparently, this was just a written statement submitted to the committee. There is no one's name on it. It says:

Statement of the Southern Pacific Co., and the Southern Pacific Land Co., with respect to its holdings in the San Luis unit of the Central Valley project.

I quote from the third paragraph:

These lands are not being offered for sale, but are being held for long-range management purposes. Nearly all of the land is under agricultural development leases varying in size from less than 1 section to about 30,000 acres.

The area in which our above-mentioned 120,000 acres are situated has been in agricultural production from irrigation wells for a considerable period of time. We are under the opinion that the acreage and other restrictions of the Federal reclamation laws should not, and probably were not intended by Congress to apply to areas of going agricultural economy which needs supplemental irrigation water.

Then they enlarge on the position.

Senator KUCHEL. Do you use that statement as a basis for what you said in your testimony?

Mr. BALLIS. Yes, sir; that they have publicly announced that they do not want to comply with the 160 acres.

Senator KUCHEL. Is that what they say in that statement?

Mr. BALLIS. Yes.

Senator KUCHEL. They do? Read that part of it again.

Mr. BALLIS. The "area in which our above-mentioned 120,000 acres are situated"—well, you probably want this:

We are of the opinion that the acreage and other restrictions of the Federal reclamation laws should not, and probably were not, intended by Congress to apply to areas of going agricultural economy which need supplementary irrigation water.

Senator KUCHEL. And that means they are not going to sign these contracts, and that means that they have given notice to this committee that they are not. Is that your statement?

Mr. BALLIS. What did I say? I said that they have publicly announced that they do not want to comply with the 160-acre limitation. And in view of what has happened in the Pine Flat area, I think they would use any means at hand to avoid the acreage limitation.

Are you still looking for that?

Senator KUCHEL. Yes.

Mr. BALLIS. It is page 13, the second paragraph:

Southern Pacific has already served notice on Congress that it does not expect to comply, that it is seeking some special considerations.

Senator KUCHEL. I have no further questions.

Senator NELSON. I have none, either.

Thank you very much, Mr. Ballis.

Mr. BALLIS. Thank you, sir.

Senator NELSON. Off the record.

(Discussion off the record.)

Senator NELSON. Mr. Quinn, please.

STATEMENT OF J. BLAINE QUINN, MASTER, CALIFORNIA STATE GRANGE

Mr. QUINN. Mr. Chairman, I am J. Blaine Quinn, master of the California State Grange, with headquarters in Sacramento, Calif. We represent 349 local and 47 county affiliates within the State.

I have a prepared statement, and I would like to comply with your request that we remove all unnecessary discussion. So many of the points that are here have already been discussed that I should like merely to submit this statement.

Senator NELSON. Your complete statement will be included in the record.

(The prepared statement of Mr. Quinn follows:)

STATEMENT OF J. BLAINE QUINN, MASTER, CALIFORNIA STATE GRANGE

The California State Grange has headquarters in Sacramento, Calif., and represents 349 local and 47 county affiliates within the State.

The Grange objects to the present contract between the Secretary of the Interior and the Westlands Water District in the Central Valley of California as being in direct violation of the Federal Reclamation Act and its manifest purpose of allowing these landholders, representing around 400,000 acres in holdings of 50,000, 20,000, and 10,000 acres—and similar-sized holdings—to reap the benefits of Federal installations without adequate safeguards for the public interest.

These large landholders in the Westlands group will use water impounded in the Federal portion of the San Luis Reservoir in California, now being constructed jointly by the Federal Government and the State of California. The bulk of the Federal water to be stored in the Federal portion of the San Luis Dam will originate in the Trinity Dam on the Trinity River in Trinity County, Calif., another Federal project.

Section 8 of the San Luis Act of June 3, 1960 (Public Law 86-488) shows a total allotment of \$192,650,000 for the total service area, and out of this \$157,048,000 is allocated to the Westlands area, leaving but \$35,602,000 for the entire remaining area.

This contract with the Westlands group, while being worded so as to imply that the acreage limitations are in the picture, is punctured with loopholes. Had the man who was instrumental in negotiating this deal with the Department of the Interior been as diligent in protecting the interests of all the people of California as he was in serving his employers, good government would have been better served.

The present contract submitted to this committee by Secretary of the Interior Udall allows construction of these water-distribution facilities to a total of \$157,048,000, before any effort on the part of the Bureau is made to secure recordable contracts with excess landholders. Because of the size of these landholdings and the size of the Federal investment, this should have been done in advance.

In plain words, this present attempt to subvert the provisions of the Reclamation Law relative to excess acreage is the object of this deal, and the paragraphs so drawn should be rewritten or rejected entirely. It is an example of one-sided justice, in that it reverses the procedure of several years ago in the service area of the Friant-Kern Canal of requiring water users to sign recordable contracts to dispose of excess landholdings in clear-cut language, and now in this deal with the financially powerful landholders in the Westlands group, they are allowed to evade what should be equally mandatory provisions. In other words, an area around 100 miles distant, now using Federal water, is strictly complying with the reclamation law, and these people in the Westlands group, with the aid of influential arrangers, are able to flout the same provisions. I have enumerated here some of the highlights of this one-sided document:

1. Acting Assistant Commissioner Stamm, on May 19, 1964, told the Advisory Committee on Farm Labor that it was significant that of more than 8 million acres of land making up the Bureau of Reclamation irrigation service program, only about 3.5 percent of these lands are held in excess.

2. If just 3.5 percent of the Westlands Water District group holdings were not held in excess of the statutory limitations, there would be no pressing need for the present hearings scheduled by Senator Moss' subcommittee.

3. In the Westlands district, approximately 2 out of every 3 acres are held in excess.

4. Ground-water enhancement is intended, and provided for, in the presently worded Westlands water service deal.

5. No adequate safeguards are provided against use of this enhanced underground reservoir by excess landholders.

6. Under the terms of the distribution and drains contract, the Westlands group can control—in fact, it can veto—plans for constructing the distribution, laterals, and internal drains.

7. Even if the present wells are acquired and integrated, only 400 of the approximately 800 existing wells are needed.

8. Four hundred wells thereby are left out of the present system and ostensibly are available for use by the excess landholders.

9. It is possible that ground-water levels can be, and will be, raised by heavy application of the Central Valley project water in a selected pattern of operation. These wells can be used to irrigate excess acreages not committed to recordable contracts.

10. There is nothing to prevent the Westlands Water District from levying an assessment to pay for the cost of pumping this water for excess lands, nor is there any assurance that districtwide assessments will not be levied to pay for such costs.

11. If a national policy is to be maintained, the Westlands plan is not the way to do it.

12. We strongly object to the apparent plans for administrative repeal of the provisions of the reclamation law.

It is significant to note that the U.S. Government, in its commitments to our neighboring republics in Central and South America, makes it mandatory that before funds are advanced for water storage projects, definite standards of land reform must be inaugurated—literally forcing large landholdings in these nations to be broken up into smaller sized tracts. The Department of the Interior should be just as zealous in the protection of the interests of the majority of the people of California and demand that before any benefits are extended to the owners of approximately 400,000 acres of land in the Westlands area, most of it in holdings of thousands of acres, should comply with the simple regulations of the acreage limitation provisions of the Reclamation Act, and sign recordable contracts to dispose of their excess landholdings for all acreage receiving Federal water, before one dollar is spent out of the \$157 million allocated for this area.

The Grange was founded on the principles of law and order, and we hope the Federal Government will not openly encourage the permanent concentration of immense landholdings with the aid of Federal funds, which could freeze the great Central Valley of California into a pattern of huge landholdings, reminiscent of feudal Europe of 150 years ago, or the present system of landholdings in Central and South America.

To keep faith with the people of the United States, the present contract, as it is constituted, should be rejected and replaced by a clearly worded document that will spell out in precise language and conditions, the provisions of the acreage limitations as legally prescribed. Anything short of this is a travesty on justice and opens the door to wholesale repudiation of basic law.

Mr. QUINN. In spite of all we have heard this morning, Senator, I go along with you. I think that out of all the 8 million acres under reclamation law in the United States, we have just, I think, 3.5 percent that are in excess acreage.

Now, in this area—

Senator NELSON. What percentage did you say?

Mr. QUINN. 3.5 percent. Here it is on page 2:

Acting Assistant Commissioner Stamm, on May 19, 1964, told the Advisory Committee on Farm Labor that it was significant that of more than 8 million acres of land making up the Bureau of Reclamation irrigation service program, only about 3.5 percent of these lands are held in excess.

Now, I understand that 65 to 70 percent of the lands that will receive water in the Westlands district are held in excess. I understand there is one parcel of land at 50,000 acres. Now, I think that does call for special action, and I do think, and it is my opinion, that before this \$150 million is spent there should have been some effort on the part of the Bureau to get recordable contracts signed.

Now, our interest in this whole matter is in the protection of the individual homeowning farmer. We have found out that California, and I wish it were possible that you and every Member of the House and Senate could take a 2-day trip to California and go down the west side of the valley where this project is located, and the east side,

and see the difference between the large corporate holdings and individual farms. I think it would convince anybody of the wisdom of the Bureau of Reclamation act on acreage limitation.

Now, I shall close with this:

It is significant to note that the U.S. Government, in its commitments to our neighboring republics in Central and South America, makes it mandatory that before funds are advanced for water storage projects, definite standards of land reform must be inaugurated—literally forcing large landholdings in these nations to be broken up into smaller sized tracts. The Department of the Interior should be just as zealous in the protection of the interests of the majority of the people of California and demand that before any benefits are extended to the owners of approximately 400,000 acres of land in the Westlands area, most of it in holdings of thousands of acres, should comply with the simple regulations of the average limitation provisions of the Reclamation Act, and sign recordable contracts to dispose of their excess landholdings for all acreage receiving Federal water, before \$1 is spent out of the \$157 million allocated for this area.

I shall close with that.

Senator NELSON. Thank you very much, and your entire statement will be printed in the record.

Mr. QUINN. I thank you for that.

Senator NELSON. Mr. McDonald of the Farmers Union, did you wish to make an appearance?

STATEMENT OF ANGUS McDONALD, ASSOCIATE DIRECTOR, LEGISLATIVE SERVICES DIVISION, NATIONAL FARMERS UNION

Mr. McDONALD. Are you calling me at this time?

Senator NELSON. Yes, sir. Would you come forward, please?

Mr. McDONALD. Thank you, Mr. Chairman.

My name is Angus McDonald. I am associate director of the legislative services division of the National Farmers Union.

It is my understanding, Mr. Chairman, that you prefer that we not read long statements, that we summarize our remarks, and that the statement will be printed in the record.

Senator NELSON. The statement will be printed in full, and I would appreciate your letting us do that. If it is material that has already been covered, it would be just as well to dispense with reading it, because it will be printed in full anyway. This is the only way it will be possible to give everybody a full opportunity to make an appearance.

Mr. McDONALD. Yes, sir, Mr. Chairman.

(The complete statement referred to follows:)

STATEMENT OF ANGUS McDONALD, ASSOCIATE DIRECTOR, LEGISLATIVE SERVICES DIVISION, NATIONAL FARMERS UNION

Mr. Chairman and members of the committee, the historic position of the National Farmers Union in support of any legislation whatsoever which encourages, fosters, and preserves the family farm is well known. It has been the cornerstone of our policy since the founding of the organization in 1902. The preservation of the family farm is repeatedly emphasized in our resolutions, adopted in county, State, and national conventions.

We consider the so-called 160-acre limitation a part of the Reclamation Act of 1902, the economic Magna Carta of family farmers who are directly or indirectly

dependent on irrigation water impounded behind dams financed with Federal funds. We therefore have supported, year in and year out, all of the reclamation projects authorized by the Congress believing that those administering reclamation laws would adhere to, not only the letter, but the spirit of the 160-acre limitation.

From time to time, however, we have noted with disappointment and chagrin that some administrators apparently administer reclamation laws in such a way as to deprive family farmers of their preference right under the statute. Some administrators have given merely lipservice to the law and apparently have been receptive to various proposals which would delay and destroy benefits which Congress had in mind when it set forth reclamation policies in the statute.

Many attempts have been made to get around or destroy the 160-acre limitation. Groups in California many years ago planned to build the great Central Valley project thus avoiding compliance with the Federal law which required the equitable distribution of the water. This attempt and the attempt to invalidate the 160-acre limitation by court action was not successful. The Supreme Court on January 23, 1958, in the *Ivanhoe* case declared that the 160-acre limitation was consistent with and not in violation of the Constitution of the United States.

Our most recent contact with attempts to amend or weaken the reclamation law was in 1959 when the San Luis bill, S. 44, was introduced in the Senate and a companion bill was introduced in the House. The San Luis bill as originally introduced provided for the irrigation of about one-half million acres located in the so-called Federal service area in the San Joaquin Valley in southern California. Another area which was not defined also was provided for in the legislation. This was called the State service area. The bill specifically provided that the State service area was not to be subject to the 160-acre limitation even though water collected for that area was to be mixed with the Federal service area water. All of the water for both areas was to be impounded behind the San Luis Dam.

Senators here will remember the historic debate engaged in on the Senate floor in May of 1959. Senators Morse, Douglas, and Neuberger sponsored an amendment which deleted from the bill the provision which exempted the State service area. Senators Douglas and Morse were of the opinion that the exemption in the bill was a deliberate attempt to avoid the limitation. Senator Morse said that it represented a great water steal. I quote from the Congressional Record of May 7, 1959, page 6886:

"Mr. MORSE. As one pauses in this debate to refresh his memory in regard to some of the great scandals in the field of natural resources in our history, and when one thinks of the oil scandals and the oil 'steals,' the Teapot Dome, the great land frauds, the various types of 'steals' of which the powerful economic vested interests of the country have been guilty throughout our history, I should like to ask the Senator from Illinois if he thinks I am too far wrong when I suggest that today we raise the question of whether this is going to represent a great water 'steal'?"

"Mr. DOUGLAS. Mr. President, I try to be very guarded in the language I use. I will say that if the bill passes in its present form (without acreage limitation), it will be a public catastrophe.

"Mr. MORSE. Mine is mild compared with that language I wish to say. But let the record show that I think that if our amendment is not adopted, the bill will be a water 'steal' by the various large landowners the Senator from Illinois has just now listed in the Record."

Following a spirited 4-day debate the Senate eliminated the provision which exempted the State service area. The following year somewhat the same action occurred in the House. The House of Representatives also refused to accept that part of the San Luis bill which exempted the State service area from the limitation. We therefore concluded that the State service area should be subject to the limitation.

However, Secretary Stewart Udall decided to sign the San Luis contract which exempted the State service area. Secretary Udall did, however, ask for an opinion from the Attorney General. The Attorney General in a letter to the Secretary of Interior expressed grave doubts as to the legality of the San Luis contract. He said, and I quote:

"As you know, the policy of the Federal Government requiring acreage restrictions in federally financed reclamation projects is one of long standing and one not lightly abandoned. The Congress insisted upon the application of this policy in the Federal service area. Whether or not they intended the policy

to apply to the State service area is not free from doubt. Strong arguments can be made to the effect that they did not intend to abandon the policy even within the area to be serviced by the State."

The Attorney General ended his letter by urging the Secretary of Interior "to seek a congressional reexamination of this question. I think that the Congress itself should make a clear determination whether or not the acreage limitations should apply in the State service area. Fortunately, under the provisions of the San Luis Act they will have the opportunity to do so, and I sincerely hope that they will take positive action in this respect." (A full text of the letter is attached.) Subsequently, as required by law, the San Luis contract was presented to both House and Senate Interior Committees for their approval.

The National Farmers Union, feeling that there was grave doubts as to reclamation policies as set forth in the San Luis contract wrote Senator Anderson who was chairman of the committee at this time asking to be heard at a public hearing on the San Luis contract. After consideration by the committee, Senator Anderson wrote us that the decision to hold no hearings had been made. However, Senator Morse was heard by the committee as we recall in April of 1962.

Farmers Union, feeling that the views of Senator Morse deserved study and consideration wrote to certain Congressmen urging them to use their influence to prevent any appropriations being made to carry out the San Luis contract. (A copy of this letter is attached.) Subsequently, on May 15, 1962, this witness appeared before the House Appropriations Committee urging that no funds be appropriated to implement the San Luis contract. The point should be made that the National Farmers Union was and still is in support of the San Luis reclamation project; believing that this is one of the best projects in the Nation and that failure to provide water in the area will be a major disaster to agriculture in southern California. (Statement before House Appropriations Committee attached.)

Previously James G. Patton, president of the National Farmers Union on September 25, 1961, wrote the Secretary of Interior expressing concern that officials in the Department of the Interior were going ahead with the final stages of the Federal-State agreement with apparently no regard for the 160-acre limitation. In this letter, Mr. Patton called attention to the numerous lands held in the San Joaquin Valley and to the fact that 4 million acres was mainly concentrated in the hands of a few owners. He emphasized the point that Congress had never intended to subsidize such gigantic landowners as the Southern Pacific Railroad Co. (A copy of this letter is attached.)

Now we come to the contract under consideration here which provides for the expenditure of \$157 million. This amount is included in an original \$483 million authorized by the Congress in 1960. Attention is called to the land pattern in the San Luis area. As indicated on a map exhibited on the Senate floor in 1959, the Southern Pacific land holdings result in a checkerboard pattern. This railroad was awarded every other section in the early days of railroad building because of a promise to build a railroad in the area. It was stated on the Senate floor that the railroad was never built. We have no competency in the engineering field but we wonder just how it is possible to build a distribution system of drains and conduits in the area when the land pattern is such as we have described. It would appear that the distribution system would be designed to water the acres owned by the Southern Pacific Railroad.

I think it is pertinent to point out that representatives of this railroad have indicated at least twice to congressional committees that they have no intention of selling their excess lands as required by law. It would appear that the situation is such as to call for special measures by those who are supposed to be interested in strict enforcement of our reclamation laws.

Various officials of the Department of Interior have defended the San Luis contract by applying a tortured interpretation of the law. Despite the fact that the reclamation law says that excess landowners shall not receive irrigation water from Federal projects unless they sign recordable contracts agreeing to dispose of their excess lands it is contended that merely because the law does not spell out the exact time when the excess landowners shall sign such contracts that the Department need not require signing of the contracts until the distribution system is completed. It is obvious that the Government by that time would have lost its bargaining power and would have no weapon to force landowners to get rid of their excess lands.

The San Luis contract includes an amazing provision designed to protect excess landowners in the event that they receive project water through underground channels. On page 28 of the contract it is stated that excess landowners shall not be held in violation of the law even if they receive water by the underground route. This contract indicates a plan and a desire to assist the large landowners in their presumed violation of the law. The law it seems to us is correct. I quote: "no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such excess lands under terms and conditions satisfactory to the Secretary of the Interior * * *." (43 U.S.C. 423e.) There is nothing so far as we know in the statute which sets forth ways in which large landowners obtain project water nor is their anything in the law which prevents the Secretary of Interior from requiring excess landowners to sign recordable contracts before the distribution system is constructed.

We are aware of the language inserted in the contract for the purposes of window dressing to make it acceptable to this committee. The Secretary of Interior seems to be following a pattern in his activities pertaining to the 160-acre limitation.

We call your attention to another contract relating to the Glenn-Colusa Irrigation District of the Sacramento River Valley. Our national president wrote Secretary Udall on April 11, 1964, protesting approval of this contract which he pointed out "constitutes one of the greatest giveaways in history." It appears that the Secretary canceled claims of the U.S. Government of irrigators in the Glenn-Colusa area amounting to millions of dollars. Irrigators have been using Shasta Dam water free of charge for 20 years. Secretary Udall claims that he canceled these claims of the Government to avoid a costly lawsuit. Other parts of the Glenn-Colusa contract would also seem to be adverse to the interests of the United States. Ninety percent of the water was turned over to the big landowners in the area and a charge of \$2 an acre-foot is to be made for water the Department considers project water.

Here too an attempt is made to avoid the 160-acre limitation. In paragraph 19(c) of the Glenn-Colusa contract language is inserted which provides that the limitation shall not apply if the amount of project water is less than one-half of that amount to which the irrigators had originally held water rights. Thus with a stroke of the pen the Secretary of Interior wipes out the 160-acre limitation in this area also.

In view of widespread protests and concern from farm, labor, religious, and other groups, we urge the committee to hold up approval of the San Luis contract until an authoritative investigation can be made. We look with grave concern on the policies of the Secretary. We suggest that he may be in conflict with other officials and authorities in this special field of legislation.

I call attention to a portion of a document dated April 3, 1964, by an official of the Department of Interior which seems to argue that the "unavoidable" clause as set forth on page 28 of the San Luis contract lacks legal authority, reflects a philosophy of permitting payment to buy off excess land laws and concludes by saying, "even if the clause were good law, the recharge of the Central Valley underground is so central a portion of the objectives of both the district and the United States that it hardly can be maintained that the water arrived underground in a mere incidental and unavoidable manner; * * *."

The Honorable SECRETARY OF THE INTERIOR.

DEAR MR. SECRETARY: This is in response to your letter of December 26, 1961, requesting my consideration of two opinions of Solicitor Frank J. Barry, of your Department, relating to the applicability of the acreage restrictions of the Federal reclamation laws. One of the opinions is concerned with the San Luis project authorized by the act of June 3, 1960 (74 Stat. 156) and the other with the Kings River and Kern River projects constructed under the authority of the Flood Control Act of 1944 (58 Stat. 887).

In the Kings and Kern River opinion Mr. Barry has concluded that the Federal reclamation laws do not authorize the Secretary of the Interior to enter into a contract with water-user organizations being serviced in the Kings and Kern River areas which provides that they may be freed of the excess land restrictions

of those laws by making a lump-sum or accelerated payment of the construction costs allocable to them. I agree with this conclusion.

The San Luis situation presents, in my judgment, a most difficult problem. Mr. Barry has concluded in his San Luis opinion that the act of June 3, 1960, does not require that a contract executed by the Secretary of the Interior and the State of California pursuant to section 2 of the act contain provisions applying the excess land limitations of the Federal reclamation laws to the "State's service area"; i.e., the lands outside the "Federal San Luis unit service area" referred to in the act.

As you know, the policy of the Federal Government requiring acreage restrictions in federally financed reclamation projects is one of long standing and one not lightly abandoned. The Congress insisted upon the application of this policy in the Federal service area. Whether or not they intended the policy to apply to the State service area is not free from doubt. Strong arguments can be made to the effect that they did not intend to abandon the policy even within the area to be serviced by the State. The legislative history is far from conclusive. Nonetheless, after a careful examination of the relevant laws and legislative history, I concur in the conclusion of your Solicitor that the San Luis Act does not require that an agreement executed by you and the State of California contain provisions imposing the acreage restriction upon the State service area.

Having arrived at this conclusion as a matter of law, I would, nonetheless, urge you to seek a congressional reexamination of this question. I think that the Congress itself should make a clear determination whether or not the acreage limitations should apply in the State service area. Fortunately, under the provisions of the San Luis Act they will have the opportunity to do so, and I sincerely hope that they will take positive action in this respect.

Sincerely,

Attorney General.

STATEMENT OF ANGUS McDONALD, ASSISTANT DIRECTOR OF THE
NATIONAL FARMERS UNION

Mr. Chairman and members of the committee, as a representative of the National Farmers Union, I am appearing here in opposition to the San Luis reclamation project in the Central Valley of California. We are appearing with a great deal of reluctance because the project is one of the best ever to be considered by this committee.

It is perhaps pertinent to point out that the National Farmers Union has never had an opportunity to present its views on this legislation. The bill which became a law in 1960 was introduced in the House on February 13, 1959. Hearings were held before the House on March 16 and 17 at the time representatives of our organization were attending our annual convention in Springfield, Ill. Hearings were held before the Senate Interior Committee at approximately the same time. Although both of these committees approved the legislation in substantially the same form as introduced, both the Senate and the House amended the bill on the floor by deleting a provision which would have exempted the State service area.

We supported the bill after it was amended and worked to secure its passage since the most objectionable provision had been removed. Subsequently the Secretary of the Interior, relying on an erroneous interpretation of the law, recommended a contract embodying the controversial provision which Congress had refused to accept. The Attorney General later reluctantly approved the contract, suggesting in a letter to the Secretary of the Interior that strong arguments could be made against excluding the State service area from the 160-acre limitation. He went on to say that Congress should review and decide whether or not the State service area should escape the limitation.

On January 24 we wrote Senator Anderson, chairman of the Senate Interior Committee, urging that in the light of the legislative history of the project and the Attorney General's opinion that public hearings be held on the contract. Senator Anderson wrote us on January 29, the committee would make a determination on the question of hearings. On February 28 the Senator wrote us that the committee had decided not to hold hearings.

On April 2, Senator Morse introduced a resolution, also sponsored by Senators Douglas and Proxmire, which directed the Interior Committee to refer the San Luis contract to the Senate in order that a judgment could be made on the Senate floor.

This the Senate committee refused to do. However, the committee, despite its previous determinations, generously agreed to hear Senators Morse and Douglas at an open hearing. At this hearing Senator Morse repeated with great emphasis his opinion that the opinion of the Solicitor of the Department was erroneous and that the contract was illegal. Despite these convincing arguments the contract automatically went into effect at the end of the 90-day period as called for in the San Luis law, neither House or Senate Interior Committees have sent the contract back to Interior for reconsideration.

I will not burden the record or take the time of the committee to review the facts revealed in the legislative history of the San Luis bill. It will suffice to say that the legislation, in part, defeats the sole purpose of the Reclamation Act and subsequent acts of the Congress which is simply to distribute subsidies from reclamation projects as widely as economically practicable. This contract uses the Federal Government as a steppingstone to enrich the great feudal landowners of California. It gives a "black eye," so to speak, to all reclamation projects since a typical Federal reclamation project is made possible by a subsidy of at least 75 percent of the cost. Congressmen from humid areas because of the San Luis contract, which would indirectly enrich gargantuan landed and real estate interests in California, may look with a jaundiced eye on any proposed reclamation project, however meritorious it may be.

We feel strongly that the Congress of the United States should have an opportunity to review the contract. We feel that, as pointed out in the lengthy debates in both the House and Senate, that the reclamation law should not be amended in a project bill. Our reclamation program has been and is a great program. It has benefited not only the arid West but the entire United States by making possible the development of our great industrial complex. It has provided cheap, nutritious, protective foods not in oversupply. It has provided a great market for industry and has made possible a stable and prosperous agriculture in dryland areas.

For these reasons, we urge the committee to recommend that the contract be sent back to the Department of the Interior to be renegotiated. This contract which appears to be the result of shortsighted political opportunism should not be allowed to stand.

SEPTEMBER 25, 1961.

HON. STEWART L. UDALL,
Secretary of Interior,
Washington, D.C.

DEAR MR. SECRETARY: My attention was recently called to an article in the Western States News of September 1961. According to this article, entitled "San Luis Project Underway," State and Federal officials report "that satisfactory, if not speedy, progress is being made in negotiating the final stages of the Federal-State agreement on the San Luis unit of the Central Valley project." I call your attention to Public Law 86-488, 86th Congress, S. 44, June 3, 1960, and specifically to the words in section 2 of the law:

**** Said agreement shall recite that the liability of the United States thereunder is contingent upon the availability of appropriations to carry out its obligations under the same. No funds shall be appropriated to commence construction of the San Luis unit under any such agreement, except for the preparation of designs and specifications and other preliminary work, prior to ninety calendar days (which ninety days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) after it has been submitted to Congress ***.*

The above-mentioned article makes no mention of the 160-acre limitation. It seems logical to assume that the California officials referred to are expecting to bypass the limitation on the State service area. It seems to us that the concentration of landownership is a proper frame of reference in which to consider the proposed San Luis agreement.

On the west and south sides of the San Joaquin Valley, landownerships amount to about 4 million acres and according to the record of various county clerks are mainly concentrated in the hands of a few owners. Here is a list of the ownerships:

Owner	Acreage	Percent of total
Standard Oil Co.-----	218, 485. 48	5. 5
Other oil companies-----	264, 678. 64	6. 6
Kern County Land Co-----	348, 026. 46	8. 7
Southern Pacific Railroad Co-----	201, 851. 00	5. 1
Tejon Ranch-----	168, 531. 07	4. 2
Boston Ranch-----	37, 555. 58	. 9
U. S. Government-----	192, 762. 13	4. 8
Other private holdings over 1,000 acres each owner-----	1, 323, 821. 57	33. 1
Private holdings under 1,000 acres each owner including all city, State, county, and subdivided land-----	1, 240, 648. 24	31. 1

Congress refused to approve a section of the bill authorizing the project which would exempt the State service area from the 160-acre limitation. The section was deleted by a voice vote on the Senate floor during the debate. The section was deleted by a substantial margin on the House floor after a 2-day debate. The evidence is overwhelming that the Congress did not want the State service area exempted from the 160-acre limitation.

Here are a few details about the background of the controversy. The bill was supported by all the special interest groups in California that I know of, including Kern County Land Co., Southern Pacific Railroad Co., and various other large landowners who are anxious to get Federal subsidies and have been fighting the 160-acre limitation for many years. While it is true that the Federal service area, consisting of 440,000 acres will be subject to the limitation under the legislation another block of 500,000 acres is provided for in the joint project. The State is supposed to contribute funds to enlarge the project so that there will be sufficient water to irrigate the 500,000 acres. The point which should be emphasized is that facilities of the Federal Government already built including the Delta-Mendota Canal, pumps, etc., will be utilized. Utilization of Federal reservoirs and canals is a violation of the law according to the Warren Act of 1911 which says that water from Federal reservoirs and passing through Federal canals shall be subject to the limitation.

Farmers Union will oppose any scheme which results in an avoidance of the 160-acre limitation. The feasibility of the project is not dependent on size of the ownership.

Farmers Union is not apologizing for its defense of the family-type farm and will go all out to defeat any appropriation measure which directly or indirectly perpetuates the system of agricultural feudalism in California. Conversely, we will use all our efforts to bring about authorization of feasible reclamation projects when the limitation is strictly adhered to.

Kindest personal regards.

Sincerely,

JAMES G. PATTON, *President.*

Mr. McDONALD. The historic position of the National Farmers Union is in support of the 160-acre limitation. We consider that part of reclamation law an economic Magna Carta for farmers who are directly or indirectly dependent on irrigated projects. In county, in State, in National conventions over a period of many, many years, our organization has reaffirmed its support of this law.

We were especially interested, Mr. Chairman, in the inception of this project which is discussed here today, the San Luis project, which was introduced as Senate bill 44, in the Senate in 1959, sponsored by the two Senators from California. Those following that debate regarding the authorization of this bill will recall that certain questions were raised in regard to the State-Federal service area.

The State-Federal service area was an undesignated, undefined portion which was, under the terms of the original bill, to be exempted from the 160-acre limitation.

The Federal service area, an area of approximately 500,000 acres, similar, it was said, in size to the State service area, was to be subject to the 160-acre limitation in the original bill. Senators Morse, Neuberger, and Douglas questioned whether or not the Congress should exempt the State service area from the limitation. After 4 days' debate, the amendment, or that part of the bill which exempted the State service area, was eliminated in the form of an amendment by these three Senators. Subsequently the legislation appeared on the House side.

In 1960, there was extensive debate in that body, and a similar action resulted. The House of Representatives eliminated the provision which exempted the State service area.

At that time, no one thought there was any possibility of the Secretary of the Interior evading or weakening or bypassing the limitation in the Federal service area. We felt, however, that the action of the Congress in deleting the objectionable provision meant that the State service area was to be included in the exemption. However, Secretary Udall subsequently approved a contract for San Luis, a complete authorization of some \$483 million of Federal money, which exempted the State service area.

Subsequently, our national president, James G. Patton, wrote to the Secretary protesting this action, saying that because of the action of the Congress in refusing to exempt the State service area, he felt it should be included.

The Secretary of the Interior did, however, ask for an opinion of the Attorney General in regard to the legality of this overall San Luis contract. The Attorney General did approve the contract, but very reluctantly, and as I indicate in my testimony, he said he had grave doubts as to whether the Congress intended that the State service area should be exempted or not, and that he urged the Secretary to look into the matter, and that he thought Congress should consider the question, which everyone thought had been decided in the debates on the San Luis legislation.

However, the Secretary went ahead and signed the contract.

When the time came for initial appropriations for the San Luis project, this witness appeared before the House Appropriations Committee suggesting that no appropriation be made. Previously, we had written to Senator Anderson, in January—I shall put the date in later; I think it was January 1962—in which we asked for hearings on the overall San Luis project.

Senator Anderson later wrote us that the committee had decided to hold no hearings. However, Senator Morse did appear before this committee and, at great length, indicated his violent disagreement with provisions of the San Luis contract, and suggested that the contract was illegal.

Now we have this contract here today, which provides for the appropriation of \$157 million. I believe a part of the original authorization would provide funds to build a distribution system. This con-

tract is somewhat similar to the overall contract which we had previously examined, except for one new provision in it, which is to us amazing.

On page 28 of the Westlands contract, in the last paragraph, it stated, in effect, that if there is a violation of the 160-acre limitation, this should not be considered a violation. That is my interpretation of what this says.

It refers to the seepage of water, water reaching the underground strata, and goes out of the way to say something which has never been said before so far as I know in any contract or by any Secretary of the Interior, that this shall not be considered a violation. That is to say, these landowners are assured in advance when they get this underground water, "Do not go ahead and sign recordable contracts, you do not need to, because we have already got this contract in which we say here you will not be held in violation"—an amazing provision in a reclamation law.

It appears that this Secretary of the Interior, who has the responsibility to enforce the letter and the spirit of the law, is neither enforcing the letter nor the spirit. He is going out of his way to violate the letter of the law by putting this provision in here. He is legislating where I believe it should be the responsibility of the Congress to legislate.

Now, in regard to signing the recordable contracts, I have heard the testimony this morning. I believe that the chairman agrees with me that witnesses from the Secretary's office said there was nothing in the law which prohibited them from requiring recordable contracts.

And I think it is quite obvious, looking at the map over here. This map, Senator, is a portion of the San Luis area of the Westlands district, and those squares there represent holdings by the Southern Pacific Railroad which owns 120,000 in the San Luis project as a whole.

There has been some contradictory, or rather, inconsistent statements made about the amounts of that 120,000 acres.

Senator NELSON. Which are the Southern Pacific holdings?

Mr. McDONALD. The squares here represent the holdings of the Southern Pacific Railroad. This map, incidentally, includes only 130,000 acres, and it is an enlargement of a portion of the map which George Ballis had up here a few minutes ago.

Senator NELSON. Where are their acreages?

Mr. McDONALD. These are the squares, these colored areas—I believe that is orange. I am slightly color blind—no, that is red. Well, the red squares represent holdings of the Southern Pacific Land Co., and this, of course, is not all of the project.

Senator NELSON. What is that one big solid section in the middle?

Mr. McDONALD. That is the Boswell Ranch Co.

Now the white on that—I think the brown is oil companies, and the white represents holdings of, I believe, less than 1,000 acres. But this map gives you an idea of the kind of land pattern that is in the Westlands Irrigation District.

In view of the fact that a representative of the Southern Pacific Railroad, Mr. van Loben Sois, in 1958, in 1959, in 1960, I believe, reiterated that his company has no intention of getting rid of its lands, I think this is a special case, and I think that if the Secretary

of the Interior were really interested in enforcing the 160-acre limitation, he would certainly require this large landowner to come forward and sign recordable contracts now.

You will notice, when you questioned some of these men this morning about whether or not these big landowners were going to sign recordable contracts, they did not know. They had heard that these people had said in public meetings somewhere that they were going to sign. I would say that the answers to your questions this morning were rather evasive on that point.

Now, in regard to whether this refusal to require big landowners to sign contracts in advance, whether that would be a novelty, whether it would be a departure from past policy. I am informed by former Commissioner Michael Strauss, who told me in a very long conversation I had when I first heard about this contract a few weeks ago, that he, as Commissioner of the Bureau of Reclamation, had required landowners to sign contracts in advance and he agreed in some instances that he had not had them sign contracts, but he had received verbal signs, he had received promises in good faith that they would get rid of their excess lands.

I don't want to take too much time here but I would like to refer briefly to the Glenn-Colusa contract which the Secretary signed a few weeks ago and which President Patton, president of our organization, in a letter to the Secretary called one of the biggest giveaways in history.

The Glenn-Colusa contract involved irrigation water that certain irrigators on the Sacramento River had been using for a period of 20 years without paying 1 cent to the U.S. Government. They had refused to from 1944 to 1964—had refused to pay for this Shasta Dam water. They were the same kind of people, landownershipwise, that we are dealing with here today. They were defiant at the U.S. Government.

To avoid a suit, the Secretary of the Interior said he signed the contract in which he canceled all the claims for a period of 20 years, canceled them all, and as for future use of Shasta Dam waters on the Sacramento River, he only required them to pay for 10 percent. He gave them a division of the water, water they claimed they originally owned because of the water rights under State law.

The Secretary gave them 90 percent of the 795,000 acre-feet which we think they were going to use and required them to only pay for 75,000 feet at \$2 an acre-foot. Mind you, \$2 an acre-foot. I have the contract right here which I will leave with you, if I may, the Glenn-Colusa contract. The Secretary said furthermore, on page 32 of this contract, that if these big irrigators on the Sacramento River during these months of July and August, when project water was to be furnished to them, that if they furnished over half of their necessary water, of the water to be used, and that project water was less than half that went into their irrigation, that they need not be bound by 160-acre limitation. That is what the paragraph says on page 32 of the Glenn-Colusa contract which unfortunately was not sent to this committee.

The committee did not have a chance to pass on this contract because the 90-day limitation was a novelty and was attached only on the San Luis contract.

I submit that the record of this Secretary of Interior and his assistants is not good. I think that the committee should study the document in depth. I think the committee should hold up his contract until investigation can be made. I think the committee will find—and I hold in my hand an opinion by the Assistant Solicitor which I will leave with the committee, in which the Assistant Solicitor, on April 3, 1964, says that this “unavoidable” provision in the San Luis contract is illegal and a giveaway.

Senator NELSON. Are you offering that as part of the record?

Mr. McDONALD. I am offering it for the committee’s perusal.

Senator NELSON. Are you asking that it be part of the record?

Mr. McDONALD. I will leave that to your discretion. I do not want to embarrass any of the officials in the Department of Interior and I would leave it to your judgment as to whether this document should be in the printed hearings or not.

That concludes my testimony.

Senator NELSON. Thank you very much.

I will now call on Mr. Graham.

STATEMENT OF HARRY GRAHAM, LEGISLATIVE REPRESENTATIVE OF THE NATIONAL GRANGE

Mr. GRAHAM. I apologize for having to be out for just 1 minute when you called me previously. I am going to submit the statement which I had prepared for the record and just make a few comments on it in the interest of brevity and time.

Senator NELSON. Your complete statement will be included in the record.

(The statement referred to follows:)

STATEMENT OF HARRY L. GRAHAM, LEGISLATIVE ASSISTANT TO THE NATIONAL MASTER, NATIONAL GRANGE

My name is Harry L. Graham. I am legislative assistant to the master of the National Grange.

May I point out, as a matter of background, that when the National Grange meets in its annual session in Atlantic City this fall it will be the 98th meeting. We had our beginning in a period of social turmoil and economic revolution which has few parallels in the long history of our country. The eastern seaboard and European countries offered a good market for agricultural products yet American farmers were in a deep depression. The inflow of capital had made us one of the richer countries of the world yet most of the people lived in poverty. We had fought and won a war to save our system of government and yet our Government was rocked with scandals that reached into the highest places.

The American farmers correctly interpreted the cause of their troubles as being the excessive concentration of economic power in a few hands. The major offender was the railroads and they were also the major source of financial scandal. Indeed, in 1868, on the first trip which Oliver Hudson Kelley took into the Midwest to try to form the organization which he envisioned as a means of “educating and elevating the farmer,” he wrote back to his associates in the Nation’s Capital and said, “I don’t find much interest in educating and elevating the farmers. All they want to talk about are those darn monopolies.”

It was in this situation that there was born a unique phenomenon in American history which both Grange and secular historians have called “the Granger movement.” It swept across the Nation like a prairie fire and in one 3-month period over 6,000 local granges were formed. In battling the railroad monopoly, Grange leaders pointed out the fact, amongst others, that large gifts of Federal land comprising every other section of land on each side of the trans-continental railroads for a distance of 10 miles, was an unnecessarily large contribution on the part of the Federal Government to enable the railroads to span the Nation.

The Government officials who had given away this land and the railroads who had received it argued that it was only as this land was given to the railroads and sold to the settlers as they came westward that the settlers could be induced to inhabit the vast plains and eventually the western valleys of our Nation. The railroads also argued that the high costs of construction would force them to sell these lands as soon as purchasers were available for them.

At the same time the Homestead Act was in operation and for a minimum cost farmers could build up their claims and settle the 160-acre farms that were made available to them under the homestead law. In this the 160-acre land policy was initiated and is a part of our legislation today.

It was argued at the time that this gift of land to the railroads should be conditional upon further regulations which would require them to divest themselves of the lands when purchasers became available. This was argued down on the basis that economic conditions and public pressure would force them to sell these lands to the highest bidder when the need arose.

During the century that has gone by since the beginning of the land giveaway to the railroads and the homestead laws, the 160-acre concept has been reaffirmed by the passage of the Reclamation Act of 1902, by successive legislative statements on the part of the Congress, and by decisions from the highest courts of the land.

Now the wheel has turned the full circle and we come face to face again with the problem of the holding of these patent grants by the Southern Pacific Railroad with 201,851 acres in the San Joaquin Valley and with 120,000 acres in the Westlands Water District. This land, you will remember, spreads like a checkerboard across the valley. Interspersed with land belong to other large holdings, it is bound together in lease arrangements, in such a way that out of the 4 million acres in the San Joaquin Valley, less than one-third is in holdings of under 1,000 acres, including all city, State, county, and subdivided land.

The landholdings within this district which are in excess of the 160-acre limitation are already being watered by 800 deep wells pumping their waters through a maze of irrigation ditches. It is to this concentration of economic and productive power in one of the most fertile valleys of the world that the U.S. Government is being asked to furnish money to provide water service from Federal water with complete disregard for the 160-acre limitation for large landholders, with deliberate attempts to evade this limitation by evasive double-talk in the contract which is before this committee, and with not the slightest assurance on the part of the excess land holders that they intend to divest themselves of their excess holdings within the legal 10-year period. Indeed, if we can take the Glenn-Colusa area "settlement" as a pattern of what we may expect here, then we may expect that after 10 years the excess landholders will be given a gentle tap on the wrist, forgiven their transgressions, and sold additional water at far below cost to the Federal Government.

There is nothing in the administration of the Bureau of Reclamation at the present time, nor in the expressed attitudes of especially the Southern Pacific Railroad, that gives us any confidence whatsoever that there is any intention on the part of either of them to subscribe to the 160-acre limitation and to divest themselves of their excess holdings.

The pattern seems to be fixed. The Bureau of Reclamation of the Department of the Interior, having failed to eliminate the 160-acre limitation by legislative action, now attempts to repeal it by administrative orders. The National Grange hereby enters a vigorous dissent to this highhanded attempt to bypass the will of the people expressed in legislation for 100 years and which is now asking that the taxpayers' money, amounting to a half billion dollars, be expended in the interest of those who would concentrate productive wealth in a few hands.

It was precisely this concentration of wealth which the granger movement sought to modify and was successful in the passage of the Sherman antitrust law and the succeeding legislative clarifications and applications of this law. By the modification of the classical form of capitalism, the United States was able to avoid the extremes of capitalism which brought it into disrepute in Europe and in other countries and made it a spawning ground for communism. By preventing the rise of a European-type feudalism in America, we have eliminated the basis on which communism can grow in America. The primary historical accomplishment of the Grange and the granger movement was this modification which it chose rather than turning toward socialism which was the only other alternative to *laissez-faire* type of capitalism.

All across the world today free countries which have inherited this concentration of wealth and feudal landholding system are racing against time to divide

up their properties in a land reform movement to prevent communism from feeding on the unrest of the peasants. They come into our office from Iran, from the Netherlands, from Norway, from Central and South America, from Japan, India, and Pakistan, Tunisia, Tanganyika, and Ethiopia, asking us how we prevented feudalism in America and what our recommendations are for land reform. We have been able to point with pride to Government programs which limit the homesteading of more than 160 acres or the use of Federal funds for the irrigation of land beyond 160-acre limitation.

Yet, today, as seldom in our history, the concept of the family farm is being ridiculed and the basic laws around which it has grown are being challenged. Large newspapers with immense holdings of land rationalize their position by saying that the family farm is out of date. Great bankers pontificate that our production should rest in a few hands. A highly respected study group suggested that a third of the farmers should be squeezed off the land. A noted professor in one of our agricultural colleges makes the same suggestion. Even a national farm organization insists on economic policies which, if followed to their logical end, would end in a concentration of land in the hands of a few people, the establishment of an American landed aristocracy, and the return to a modern-type feudalism on American soil.

In the midst of this clamor for the reversal of the American modified capitalistic economic system, this group of organizations who appear before you today representing farm, labor, and religious organizations, as well as interested individuals and citizens, come to express grave and deep concern at the turn of events in American agricultural economic life.

While we have a Secretary of Agriculture who is consistently and enthusiastically championing the family farm in America, while we are trying to adopt a war-on-poverty program which includes in it provision for the purchasing by the Federal Government of large holdings and dividing them up into family-size farms, while we insist that those who share in American funds in aid programs around the world adopt a land reform program, by connivance the Bureau of Reclamation of the Department of the Interior changes, by administrative fiat, the basic land laws of our country and makes our long-established land policies an object of ridicule at home and abroad.

We are not prepared to argue at this point that the 160-acre limitation is realistic in this modern world. At present land values it means a capitalization for 160-acres of land alone in the Central Valley, once it has received water, of one-quarter million dollars. I propose to this committee that this is a substantially sized family farm and that its capital requirements are about as far as most farmers can meet.

We propose further that if there is to be a change in this basic law that it should be made after the proper hearing procedures and after legislative action on the part of the Congress and not by a bureau of a department of the Government which expresses its contempt for the action of Congress by administratively doing what it was forbidden to do or what it could not receive permission to do from the Congress.

I wish it was possible for us to believe that this was the result of people only being naive. The long experience in the Federal Government and agencies related to the use of water of the men who designed this contract would indicate that this is not so. Furthermore, the fact that staff members from some of our Government departments have, at considerable risk to their own job security, expressed their deep concern with what is happening in this Bureau of the Department of the Interior indicates that our suspicions are not without foundation. The National Grange is not one of the organizations which has joined in the hue and cry against executive action or executive power. We believe that this is what the Constitution intended. But we do not believe that the excessive use of executive power was intended, nor do we believe that properly constituted legislation is to be nullified by executive action.

Furthermore, we are not reassured in these circumstances, by the fact that in the regular irrigation developments recordable contracts are not required in advance of the construction of the distribution facilities. This is not an ordinary situation, nor should we be willing to take ordinary assurances in the light of this unbelievable concentration of landholdings in the service areas.

In our judgment, the public support necessary for the carrying on of reclamation work in the Nation will be seriously jeopardized by the continuation of a program to subvert the intent of the law. No one who appears here today to my knowledge is not a friend of reclamation. No one who appears here has not had to defend himself and his organization against charges that in the midst of

agricultural surplus we still support reclamation projects to bring highly valuable land into production. Members of Congress face these same problems in their relationship with the electorate that we face with our own membership.

Therefore, we earnestly urge this committee that it not grant its approval to his present contract; that it specifically instruct the Department of the Interior to present recordable contracts within the meaning and spirit of the Reclamation Act of 1902 before Federal funds be granted for the construction of the distribution systems; that an appropriate committee of the Congress take a long, hard look at the action by the Bureau of Reclamation which resulted in an unbelievable giveaway of Federal money in the Glenn-Colusa project; that it clarify by legislative action the question of the exemption of State service areas from the 160-acre limitation and that an appropriate committee of the Congress be constituted as a watchdog over the activities of this particular bureau of the Department of the Interior.

Mr. GRAHAM. May I say very quickly that the National Grange for the almost hundred years of its experience—and we will be in our hundredth year in just 3 years from now—has been facing these problems of concentration of wealth and probably the fights we have had with the railroads in years gone by are well enough known that I don't need to go very far into that.

May I say that, in the interim, we think the wheel has turned pretty well around and we have been very much the supporters of the railroads, to get some freedom to move in the transportation field which has been denied them, and properly was denied them, when they were a transportation monopoly, which they are no longer.

I say this because I want to direct most of what I want to say on the Southern Pacific's landholdings in relationship to this contract, to this particular group.

I would point out that this land was given to the Southern Pacific, along with other lands to other transcontinental railroads, at the beginning of the railroad building program in the Nation; that it was given to them to sell, to pay the costs of construction.

At the time there was a very severe attack on this giveaway because it seemed to be far beyond the bounds of necessity. Back in those days, the argument was that they must have this to pay the cost of construction. They would sell it as quickly as there were settlers in the areas alongside the railroad, where they had these patent grants.

A hundred years have gone by and the Southern Pacific still has these vast holdings in the Central Valley of California. They spread out like a checkerboard, as we have seen. It appears to us that it would be practically impossible to devise a distribution system to the landholders of even under 1,000 acres, in the light of the map that has been shown to the committee, and, because of this, it also appears to us to be unavoidable that water should accrue to the benefit of the companies that own more than half, in some of these areas, of the land.

Now, this was the case as in the Boston holdings here where we could avoid servicing the area because their holdings are a large block. This is one thing; when it is a checkerboard holding, this is an entirely different thing, and we just do not believe that this contract is justified, in light of the characteristics of this particular area.

Now, Senator Kuchel asked the question of how this contract was different from the others. The difference is in the distribution of land and this checkerboard characteristic. This is vastly different from reclamation areas in Arizona and New Mexico. It has no similarity at all, and we think this is the major reason why particular at-

tention should be given to obtaining these contracts, before this distribution system is built and paid for. By the very nature of this setup they must cross in order to receive the eligible lands. They must cross distribution ditches already built.

There is going to be substantial responsibility, in my judgment—and I have worked as a real estate appraiser and condemnation appraiser for 4 years, and I know what I am talking about. I think there is going to be substantial responsibility that will have to be incurred by the Federal Government to cross these lands if they do have the recordable contract so they can put their water into the existing ditches.

Another thing that has changed—and I want to state this for the record—is the world situation in which we live and this has some relationship to what we are talking about today. Day before yesterday, there came into my office a relatively young man from the Republic of Panama who, when the new administration takes over this fall, will be either Secretary of Agriculture or Secretary of their land reform movement.

Under the aid for allies—aid for Alliance of Progress—under our foreign aid perhaps generally, we are requiring the people who receive substantial grants of money from the United States to institute land reform programs to break up these great estates. This is true in Panama where they are proposing an irrigation system something like this, the building of a dam and a distribution system.

Yet our Government will not loan them enough money to do this unless they require this breakup.

They come to our office from Iran, the man who represents the Shah of Iran, and who is in charge of the land reform program there, and we get them from all over the world, talking about this problem. This is a key problem today in the fight against communism and it seems to me we are no more reasonable in trying to argue civil rights in an area where we did not have civil rights legislation than they are in arguing land reform when they are asking the Federal Government to provide subsidies that will continue the type of monopoly control, heavy concentration of land in the hands of a few people and requiring our friends around the world to divest themselves of the same kind of lands in order to receive Government aid.

This is a problem that consequently, I think, is much more far reaching than what happens in the Central Valley of California. We don't believe that this contract has properly safeguarded the interests of the American public and taxpayers. We don't believe it was ever the intention of reclamation law that they should service such high concentration of land in the hands of private or corporate ownership. Yet this is precisely what we are asked to spend \$157 million to build a distribution system into these areas where only a third of the land is under 1,000 acres, to say nothing about the 320- or 160-acre limitation.

I want to commend the chairman for the study which he did and for that which he entered in to the record and to say that, in our judgment, his study and his contributions are correct and that we would support, we do support very earnestly, what you have had to say previously and that we do oppose the present contract in its present form.

We have these recommendations: That the committee not grant its approval to this present contract; that it specifically instruct the Department of the Interior to present recordable contracts within the meaning and spirit of the Reclamation Act of 1902; that appropriate committees of Congress take a long hard look at the recommendation which would result in a giveaway of Federal money as it did in the Glenn-Colusa project; that an appropriate committee of Congress be constituted watchdog over the activities of this particular Bureau of the Department of the Interior.

I would add also that, because of the substance, your questions which you raised with the Solicitor of the Department—that it seems that clarification of these questions by act of Congress would be considerably more desirable than the clarification of them by administrative review. We believe this is a function of legislative government. The National Grange does not join in the hue and cry against the executive branch of Government. We believe the Constitution provides that the executive branch should have powers. We believe that the legislative branch of the Government should direct the executive branch of the Government in the ways that they intend for their power to be used, especially when it comes to the expenditure of public moneys.

That is the end of my statement and I thank you for permitting me to present it to you.

Senator NELSON. Thank you very much, Mr. Graham.

We will now hear from Mr. Curran and Mr. Taylor.

STATEMENTS OF JACK CURRAN AND GEORGE TAYLOR, LEGISLATIVE REPRESENTATIVES, AFL-CIO

Mr. CURRAN. My name is Jack Curran and I represent the AFL-CIO. We have a prepared statement which we will submit for the record and Mr. George Taylor of the research department will summarize the opposition.

Mr. TAYLOR. Thank you, Mr. Chairman.

For the record, my name is George H. Taylor and I am an economist in the Research Department of the American Federation of Labor and the Congress of Industrial Organizations, also secretary of AFL-CIO Staff Subcommittee on Atomic Energy and Natural Resources.

With your permission, I would like to have included in the record a wire which had been sent by Mr. Tom Pitts, executive secretary of the California Labor Federation, AFL-CIO, which deals with certain points which have been raised during the course of these hearings, particularly on the geology of the San Luis Federal service area.

With your permission, I would like to have this included in the record.

I wish, in summarizing our statement, to express very strong opposition of the AFL-CIO to the proposal of the Department of the Interior for the water distribution system. As this statement says, the interests of organized labor in this particular issue of land monopoly goes back nearly six decades. Even before that, California organized labor, back as far as 1870 and 1880, was fighting the railroads and other land monopolies in California, so our interest in the issue before this committee today is not a new one. It is one that has long

history and it has been recently reiterated in terms of our strong and unqualified support of the 1960 provisions in the Federal reclamation law and at our last convention held in New York City in November 1963.

(The statement referred to follows:)

STATEMENT BY GEORGE H. R. TAYLOR, ECONOMIST, AFL-CIO RESEARCH DEPARTMENT, AND SECRETARY OF THE AFL-CIO STAFF SUBCOMMITTEE ON ATOMIC ENERGY AND NATURAL RESOURCES

Mr. Chairman, my name is George H. R. Taylor, I am an economist in the Research Department of the American Federation of Labor & Congress of Industrial Organizations. I am also the secretary of the AFL-CIO Staff Subcommittee on Atomic Energy and Natural Resources.

I wish to express the strong opposition of the AFL-CIO to the proposal of the Department of the Interior for a water distribution system contract to serve the Westlands Irrigation District in the Federal service area of the San Luis project in the Central Valley of California.

We believe this contract is against established public policy and we believe this contract is against the public interest. It violates the antimonopoly provisions of reclamation laws. It proposes a gigantic giveaway to large landholders in the Westlands district. And it runs directly against the policy set by Congress of encouraging family farm ownership by limiting to 160 acres the amount of land owned by an individual and eligible to receive irrigation water from irrigation works built and operated by the Federal Government.

In 1901, the American Federation of Labor endorsed the antimonopoly, anti-speculation landownership policy which was to be adopted by Congress the following year as an integral part of the original Reclamation Act of 1902. The labor federation declared at that time:

"* * * we are unalterably opposed to the cession, by sale or otherwise, of such lands to corporations or speculators, or to the several State governments, every such course having heretofore resulted in sales to monopolists, with subsequent grave injuries to the rights of actual settlers and producers."

The labor movement has maintained this interest and concern in the public lands policies of the U.S. Government. We are concerned about them because the manner of their administration exerts profound effects upon the development and use of land and water and energy resources, and hence upon the economic, social, and political institutions not only of the Western States but of the Nation as a whole.

The 1963 Constitutional Convention of the AFL-CIO again called for "preservation and strengthening of historic Federal safeguards against monopolization of America's resources heritage * * * including excess landownership provisions * * *."

On May 1, 1964, the Secretary of the Interior submitted to the Senate Interior Committee a proposal to provide water to the Westlands Irrigation District in the Federal service area of the Bureau of Reclamation—State of California San Luis project in California's Central Valley by means of a distribution system costing an estimated \$157 million.

Under the San Luis Project Act (Public Law 86-488), the Westlands contract will go into effect within 90 days of such submission unless specifically rejected by the Senate Interior Committee, since the House committee has already approved the proposal without hearings.

The AFL-CIO, after careful study of this contract, concludes that it circumvents and nullifies the excess land provisions of the Federal Reclamation Act, of the Central Valley Project Act, and of Public Law 86-488 which is subject to the restrictions in the other two laws. On June 2, 1964, Andrew J. Biemiller, director of the AFL-CIO Department of Legislation wrote to the chairman of this subcommittee to protest this proposed Westlands contract and to request full scale hearings.

The California Labor Federation, AFL-CIO, joined with the parent organization in this request as did the Industrial Union Department of the AFL-CIO.

Specifically, we ask this subcommittee—

(1) To reject the Westlands contract, to return it to the Secretary of the Interior and to notify the Senate Appropriations Committee officially of this action.

(2) To instruct the Secretary to comply with the San Luis Project Act by submitting a revised contract for the entire San Luis Westlands Federal service area, not merely Westlands.

(3) To instruct the Secretary to remove from any such future contract any reference to delivery of percolating water as "unavoidable."

(4) To instruct the Secretary to require all owners of land in excess of 160 acres in the Federal service area to sign recordable contracts agreeing to dispose of such excess lands, as a condition of receiving Federal water, with a definite time limit for agreeing to such contracts.

In recent years the AFL-CIO and affiliated labor organizations were deeply involved in the battle over extension of Federal reclamation law to the so-called State service area of the San Luis project. All those who had fought for such inclusion in the authorization act assumed we had won the legislative battle.

Unfortunately, an opinion of the Interior Department's Solicitor—approved by the Secretary and, with some reservations, by the Justice Department—allowed the minority in the Congress to win. This opinion held that Federal acreage limitation policies need not extend into the State service area. Thus the will of Congress and the plain legislative history were nullified by administrative fiat.

The San Luis Project Act specifically requires congressional oversight by the Interior Committee of both Houses of Congress on the water service contracts for the Federal service area. This is the specific issue with which I am primarily concerned in my remarks to you today.

The Westlands contract embodies every bad precedent and nullification of acreage limitations law by legal legerdemain that have become standard practice in the operations of the Bureau of Reclamation in the Central Valley for many years.

The Secretary of the Interior failed to meet his responsibilities under the San Luis Act when he submitted only the Westlands contract and not a contract for the entire Federal service area. The act does not call for a contract covering part of the Federal service area or even a succession of contracts eventually adding up to the whole.

The legislative history of the San Luis Project Act makes it absolutely clear that Federal reclamation laws are wholly applicable to the Federal service area. This was assumed even by those in both Houses who argued that Federal law should not prevail in the State service area.

There are about 500,000 acres of land in the Federal service area, about 70 percent of which is held in blocks of land in excess of 160 acres. The Westlands district comprises about 400,000 acres—360,000 irrigable.

For example, the Southern Pacific Railroad owns about 120,000 acres in a kind of checkerboard pattern, with 65,000 acres of this total in the Westlands district. Southern Pacific has given no indication that it is prepared to sell its excess lands in order to qualify for Federal water from the San Luis project.

Why doesn't the Interior Department cut Southern Pacific and any other like-minded excess landholders out of the water distribution system and deliver water only to those who comply with the conditions of law? Why has the Interior Department asked for a water delivery system before it has first obtained ironclad contracts with the excess landowners agreeing to divest?

The answer involves the pattern of irrigation that has prevailed in this area, and its geology—but it also involves the supine willingness of the Bureau of Reclamation to use both factors to excuse large landowners from divesting themselves of excess land by recordable contracts before they are connected with the Federal water distribution systems.

These land barons want free Federal water—but they don't want to obey the law on disposal of land in excess of the 160-acre limitation.

The Secretary of the Interior has asked Congress for a water transmission system costing \$157 million to serve the entire Westlands district, including land held by the Southern Pacific and other large landholders.

You are asked to approve a contract which has a provision on page 28 alleging that the furnishing of water to excess lands would be an "unavoidable result."

This is an open admission that a gigantic giveaway to the land barons will result from this contract.

Under this contract, owners of ineligible excess land may pump up project water which has percolated under their land as an "unavoidable result" of project water being furnished to eligible land.

As I have mentioned previously, about 70 percent of the land in the Westlands district is in the excess class. It is estimated that about a third of the million acre-feet of water to be delivered will percolate underground. It is only reasonable to assume that a large amount of project water will feed the underground supply of the excess landowners as an "unavoidable result" of supplying water to the eligible area.

Delivery of water through percolation on such a large scale is both foreseeable and avoidable. Also it is prohibited by law when received by ineligible excess landowners. The law plainly states (43 U.S.C. 423e): "No such excess lands so held shall receive water from any project or division if the owners thereof refuse to execute valid recordable contracts for sale of such excess lands under terms and conditions satisfactory to the Secretary of the Interior * * *."

While the owner of excess land has the choice of coming in or staying out under the conditions stated above, the Secretary of the Interior has no choice under the law. He is obligated to comply with it to the letter. If he does otherwise, as he is proposing to do in the Westlands contract, he is responsible for a plain violation of the law he is required to enforce.

The Bureau of Reclamation has a long record of failure to get valid recordable contracts after Federal water is made available. This observance is reinforced by the letter of May 26, 1964, from Floyd E. Dominy, Commissioner of the Bureau, to the chairman of the Senate Interior Committee, a letter written in response to an inquiry about the Westlands contract. The Commissioner's letter states plainly that previous contracts between the Bureau and Central Valley project irrigation districts have not required any time limit for divestiture of excess landholdings.

Unfortunately, when the water systems are built first and contract negotiations take place subsequently, the primary bargaining lever held by the Bureau is surrendered.

We believe the Senate Interior Committee should condemn this past practice and certainly should refuse to allow or to sanction the same surrender in the Westlands contract to owners of excess land. Illegal past practice is no justification for continuing violation of the law.

Administration of Federal land ownership policies must conform to the *Ivanhoe* decision of the U.S. Supreme Court which declared that the purpose of the Federal reclamation program is to benefit people, not land. If the Westlands contract is revised to comply fully with existing reclamation laws, we can foresee creation of more than 3,000 irrigated family farms averaging 100 acres, with \$100,000 subsidy per family—1,200 of such farms on lands forced out of the hands of Southern Pacific. Effective enforcement of existing reclamation laws, especially acreage limitations, will strengthen the concept of the family farm which has been a basic foundation of our land policies since the days of Thomas Jefferson.

The support of the American labor movement for reclamation development in the Western States is based on antimonopoly land laws enacted by the Congress and on the willingness of the Department of the Interior to abide by the letter and the spirit of these antimonopoly provisions.

However, it is clear that the Secretary of the Interior is failing to enforce these provisions, and the AFL-CIO urges the Congress in general and the Senate Interior Committee in particular to make clear to the Secretary that he must apply the law and fulfill his responsibilities in administering the law not only in connection with the Westlands contract but also in connection with all reclamation projects.

The Department of the Interior and its subordinate Bureau of Reclamation must improve administration of the law and faithfully protect the general interest in accord with long established policies set by Congress.

President Johnson has declared war on poverty, not only in towns and cities, but in America's rural areas. The Westlands contract sets forth a policy directly contrary to the administration's program to alleviate rural poverty by aiding small farmers. It runs counter to the historic landownership policies of this Republic. It also makes a travesty of the Kennedy and Johnson administration's efforts to provide meaningful aid to the countries of Latin America by encouraging these countries to break up the feudal landholding pattern and establish land reform to strengthen family farm ownership.

The administration's attack on rural poverty is given a tremendous setback when its own Department presents to the Congress a water service contract with

landowners in the San Joaquin Valley which would make it difficult, if not impossible for family sized farms to be established in 70 percent of an enormous and fertile area.

America's own land barons will get perpetual control over the land, water, and people of the San Joaquin Valley if this kind of contract is approved.

The hope for new family-sized farms in this area, a better break for migratory farmworkers and a lessening of the iron grip of the corporation farmers on the economy and politics of the West can very well be lost in our lifetime if this contract is not rejected by your committee.

To enforce proper administration and to protect the public interest, we repeat our specific requests to this subcommittee and to the full Senate Interior Committee:

(1) We urge you to reject the Westlands contract, to return it to the Secretary of the Interior and to notify the Senate Appropriations Committee officially of this action.

(2) We urge you to instruct the Secretary to comply with the San Luis Project Act by submitting a revised contract for the entire San Luis Westlands Federal service area, not merely Westlands.

(3) We urge you to instruct the Secretary to remove from any such future contract any reference to delivery of percolating water as "unavoidable."

(4) We urge you to instruct the Secretary to require all owners of land in excess of 160 acres in the Federal service area to sign recordable contracts agreeing to dispose of such excess lands, as a condition of receiving Federal water, with a definite termination date for signing such contracts.

Mr. Chairman, I appreciate this opportunity to present the views of the AFL-CIO on the proposed Westlands contract. Thank you.

Mr. TAYLOR. Just briefly I want to add some comments which I think are justified, in terms of the discussion and colloquy which passed between Senator Kuchel and some of the witnesses, with respect to the establishment of a policy of including the "unavoidable" clause in previous contracts dating back some 26 years. I think the figure was stated during the course of these colloquies, that part of the policy of the Bureau of Reclamation in the Central Valley project when consummating contracts with individual landholders—I think one of the things that ought to be made clear here, at least it is our feeling, that these contracts which have been consummated in the past 26 years or any other number of years, whatever the correct figure is, have not required congressional oversight.

This has not been a common practice. Only one special situation arose when somebody asked for hearings on something. I don't know how many occasions there have been but it is not a common practice.

The San Luis bill is an exception to this. The whole issue around which the San Luis bill was built was debated on the floor of the House and Senate and the issue was the practicability first of the Federal acreage restriction provisions in reclamation law (a) to the State service area, (b) to the Federal service area, and there was no debate on the latter.

The debate which took place and which we thought we had won was to extend the Federal service to the State service area, Federal reclamation law dealing with excess land ownership.

Now, there was a kind of a compromise, if a review of the legislative history of this bill was required during the debate in both Houses and that is that if this act was passed, you might say that the law does not specifically require Federal law to extend into the State Reclamation Act served by the San Luis project; that any contract still is, as far as the Federal service area is concerned—it would be submitted to the oversight of this committee of the House.

So there is reason for a very strict scrutiny of this matter and particularly with the assurance of those who opposed our position at that time and Federal reclamation law should apply throughout. There were assurances on the floor that there would be absolutely no question of the applicability of Federal reclamation law in the Federal service area in the project.

I do not see how this committee can, in the future, fail on such contracts as this because of this pattern to exercise oversight, even though it isn't required by specific provisions.

There is a pattern in here, Mr. Chairman, which goes back to the days of Ray Lyman Wilbur, where by administrative act in the Imperial Valley in California the average size of the farm down there in the Imperial Valley right now is 1,000 acres and every drop of water served in that area is made possible by the Federal Government and the projects which serve the landowners.

Now, in the Salt River Valley there is an equivalent matter and in previous contracts in the Central Valley, there is the "unavoidable" contract. I think that this situation merits a stern scrutiny by this committee to see to it that the Bureau of Reclamation and the Interior Department isn't rewriting the law in these cases. They should be brought up short just as in this case. I don't have very much more to say except that it seems to me that right here you have a classic example of a department of Federal Government and an irrigation district composed of large landholders which are a client of this Department, which is the people's Department.

We have no farmers here. AFL-CIO are working people, but we have an interest in public policy, an interest in President Johnson's attack on poverty.

The administration proposes to change landholdings in Latin America and we think that one large department of this Federal Government right now, by this contract, is running distinctly contrary to President Johnson's policies, in terms of increasing the family-sized farm and aiding rural individuals and farmers in the war on poverty.

How in Sam Hill—if you will excuse the expression—with 70 percent of the individual landholders and some 400,000 to 500,000 acres of land obtaining this water by means of the "unavoidable" clause in here—how can we get some 3,000 small farms in that area? How can we build up small communities and help migratory workers?

I leave these questions with the committee and I hope that they will seriously consider them before they take action to approve this contract.

Thank you, sir.

Senator NELSON. Thank you for your presentation.

We will now hear from Mr. Clayman, of the Industrial Union Department, AFL-CIO.

STATEMENT OF JACOB CLAYMAN, ADMINISTRATIVE DIRECTOR, INDUSTRIAL UNION DEPARTMENT, AFL-CIO

Mr. CLAYMAN. Mr. Chairman, in deference to the time problem that you have—and I recognize that you haven't had lunch yet—I must be kind to you. I don't want to read my statement but I want to present it for the record.

Senator NELSON. Your statement will be included in full in the record.

(The statement referred to follows:)

STATEMENT BY JACOB CLAYMAN, ADMINISTRATIVE DIRECTOR, INDUSTRIAL DEPARTMENT, AFL-CIO

Mr. Chairman, my name is Jacob Clayman. I am administrative director of the Industrial Union Department of the American Federation of Labor and Congress of Industrial Organizations. I appear on behalf of the industrial union department, an organization of 59 affiliated international unions with a total membership of some 6 million workers.

I am here to express our firm opposition to the proposed contract between the Department of the Interior and the Westlands Irrigation District in the Federal service area of the San Luis project in the Central Valley of California.

We are in complete accord with our parent organization, the AFL-CIO, in the statement presented on its behalf here today by George Taylor.

It is not our intention to lengthen the record here by attempting a detailed history of the reclamation law. All of you are familiar with that history, with the intent of Congress, with the pressures brought to bear on the Congress and the executive branches before and since the enactment of the Reclamation Act of 1902. Much of that history has been or will be touched upon in revealing detail by other witnesses, particularly by that esteemed citizen and guardian of the 160-acre limitation, Prof. Paul Taylor.

The history of the Reclamation Act has been one of struggle between those who would use the powers and finances of the Federal Government for development in the public interest, with careful protection against the unnecessary enrichment of large landholders, and those who would by one means or another use that same power and money for the enrichment of a few. Organized labor has always supported resource development, including reclamation and irrigation projects, but we have as consistently insisted that our support was premised on development in the public interest. In the case of reclamation, this means, above all else, the avoidance of giveaways to great landed interests and, instead, development to strengthen the family farm and inhibit increasing concentration in the ownership of land.

In his fifth annual message to Congress, December 5, 1905, President Theodore Roosevelt stated our position today quite clearly:

"The creation of small irrigated farms under the Reclamation Act is a powerful offset to the tendency of certain other laws to foster or permit monopoly of the land.

"The Reclamation Act derives much of its value from the fact that it tends to secure the greatest possible number of homes on the land and to create communities of freeholders * * *. *The law requires that no right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner. This provision has excited active and powerful hostility, but the success of the law itself depends on the wise and firm enforcement of it.* We cannot afford to substitute tenants for freeholders on the public domain." [Emphasis added.]

The reclamation law as described by Theodore Roosevelt in 1905 has not been changed by Congress. The acreage limitation provision has been held to be constitutional by the Supreme Court. The acreage restriction provision has continued to excite active and powerful hostility, but the Congress has not yielded to that hostility by changing the law. But may we stress another sentence in that 1905 statement, that " * * * the success of the law itself depends on the wise and firm enforcement of it."

In our view, the proposed water contract is neither wise nor firm enforcement of the reclamation law. It would confer upon a few large landholders immense subsidies and, in our opinion, would never be improved by subsequent contracts.

We are aware that Interior has too frequently pursued the construction and even operation of irrigation projects before securing contracts requiring the disposition of excess lands. We are also aware that even where such contracts have been secured, early or late, it is common practice to put no final date for consummation in those contracts so that violation of the acreage restriction continues year after year on the basis of one pretext or another. But we are opposed to

these practices as violations of the spirit and letter of the Reclamation Act, and we are here to express our unyielding opposition to adding one more bad contract on all the others.

We are experts in neither irrigation nor geology, but we place our faith and trust in those longtime champions of the public interest and the documentation they give their case, that extending water service to the Westlands District would result in furnishing water to excess-land-holders.

We urge this subcommittee, in the exercise of its legitimate oversight function, to disapprove the Westlands contract, return this proposed contract to the Secretary of the Interior at once, and halt any further appropriations for construction until the Secretary has secured contracts from all owners of land in excess of 160 acres in the Federal service area agreeing that they will dispose of such excess lands as a condition for receiving water and stipulating a deadline for the disposal of such lands.

Moreover, we would like to urge you to conduct a general investigation of the Federal land laws, particularly in relation to reclamation. The reports we receive would indicate that this proposed contract is only the latest in a long series of acts which deserve to be revealed publicly and corrected by law or administrative action.

In view of the position we are taking here today, we would like to call to your attention a portion of a speech made at the Theodore Roosevelt Conservation Conference, October 1, 1958, by Ken Holum, then chairman of the Western States Water & Power Consumers Conference and presently Assistant Secretary of the Interior.

In reviewing the attacks on resources development and conservation, Mr. Holum said:

"Theodore Roosevelt championed the small farmer and the place of the family farm in our society. Do we still regard him highly today? Is the 160-acre limitation on reclamation projects that Roosevelt championed safe and secure? * * * Have we learned to admire bigness above economic freedom? * * *"

We express this same concern today, and urge this subcommittee to exercise its powers and influence to take firm action on this immediate problem and then focus the glare of public attention on any other evidences of carelessness, malfeasance, or lack of wisdom in administering this great program.

Mr. CLAYMAN. Our statement is pretty much a rephrasing of the opposition of the AFL-CIO. I simply want to lift a couple of historical references and highlight them by reading them.

I am impressed, although it was a long time ago, by what President Theodore Roosevelt had to say. It may be good to again reiterate his remarks about the basic reclamation law. I will read from his statement:

The Reclamation Act derives much value from the fact that it tends to secure the greatest possible number of homes on the land and to create communities of freeholders. The law requires that no right to the use of water for land in private ownership shall be sold for tracts exceeding 160 acres to any one landholder. This provision has excited active and powerful hostility but the success of the law itself depends on the wise and firm and full enforcement.

As I listened this morning, Mr. Chairman, quite frankly I thought I caught the clear admission that there has certainly been no firm enforcement of the law and perhaps not even a wise enforcement, and reference is made to the fact that, since 1924, 40 years ago, a precedent was started which indicated that there was going to be loose compliance with the law.

I want to make the point that I suspect that it is clear to all of us that 40 years of laxity and wrongdoing doesn't make it right, nor does a hundred years of laxity and wrongdoing make it right and we just made this determination in the House on the civil rights issue.

We said that for a hundred years or so we have been doing wrong and Congress finally arose, in all of its majesty and all its dignity, and said, "Let us put an end to it."

We suggest that with this issue, with this contract, once and for all the Department of the Interior and this committee will say, "Let's put an end to it."

I want to conclude by reading a statement made by Mr. Holum who appeared here this morning. He is a gentleman of distinction and dedication. He made this statement in 1958. He was then the chairman of the Western States Water and Power Consumers Conference and he is now Assistant Secretary of the Interior, and I quote him:

Theodore Roosevelt championed the small farmer and the place of the family farm in our society. Do we still regard him highly today? Is the 160-acre limitation on reclamation projects that Roosevelt championed safe and secure? Have we learned to admire bigness above economic freedom?

I want to suggest that my friend, Mr. Holum, was right as rain in 1958 and I am afraid that he is as wrong as sin on this issue and I respectfully suggest, Mr. Chairman, that this committee disapprove this contract and that, if you please, is my statement.

Senator NELSON. Does that complete your statement?

Mr. CLAYMAN. Yes.

Senator NELSON. Thank you very much.

Next on the list is Father Vizzard, but he wished to make his presentation when Senator Kuchel was here. Do you want to wait?

Mr. Shore of the Legislative Committee of American Veterans will be heard from next.

Mr. NEUFELD. Mr. Shore had to leave. I am a member of the committee. I wonder if I might say a few words.

Senator NELSON. Do you wish to submit a prepared statement?

Mr. Shore's statement will be made a part of the record at this point.

(The statement referred to is as follows:)

STATEMENT OF CHESTER C. SHORE, FOR THE AMERICAN VETERANS COMMITTEE (AVC)

Mr. Chairman, members of the committee, my name is Chester C. Shore and I am appearing in behalf of the American Veterans Committee, and have been particularly requested to appear by our California chapters which are deeply concerned with this contract.

The American Veterans Committee is an organization of veterans of both World Wars and the Korean conflict. We are here today to ask that this committee reject the Westlands Water District contract.

As a veterans' organization we are particularly interested in this contract because one of the purposes of the Newlands Act of 1902 was to open farming opportunities for veterans. Moreover, our organization has been notably concerned with reclamation. Further, we have always been strong advocates of family farms. If I may quote from our platform:

"We are convinced that families on family farms can best conserve these priceless national assets and that they are an essential balancing force in the social, economic, and political structure that is vital to the stability, preservation, and improvement of representative democratic government."

We are opposed to the Westlands contract because we believe it would defeat the above stated principles. We oppose the Westlands contract for the same reason that we have in the past opposed other attempts by monopoly minded groups to defeat the maximum limitation that Congress in its wisdom has placed upon the amount of water developed at public cost for private benefit that may be granted to any one private landowner. Our position today is based on a longstanding position of AVC that dates back to 1947 when Chat Paterson our national legislative representative opposed legislation to exempt certain projects from the 160-acre limitation.

Other groups with far more experience in these matters have and will testify and analyze impressively and in detail the effect that this contract would have

upon its 160-acre limitation of reclamation law. I shall not repeat their testimony, but it is clear to our organization that this contract does not have the necessary safeguards to enforce the 160-acre limitation. The effect would, therefore, be to place small farmers in this area at a competitive disadvantage and further reduce the number of small family farms.

President Johnson has declared all-out war on poverty. AVC has endorsed his program in the fight against poverty. One weapon in the fight against poverty in rural areas is to make land available for family farms. This contract would defeat that purpose.

We therefore urge this committee to positively reject the Westlands contract and return it to the Secretary of the Interior without approval. Not only may it create a disservice to the San Luis area but also would create a bad precedent for contracts in other areas.

STATEMENT OF BEN NEUFELD, MEMBER OF THE NATIONAL BOARD OF THE AMERICAN VETERANS COMMITTEE

Mr. NEUFELD. For the record, I am Ben Neufeld, a member of the National Board of the American Veterans Committee and former chairman of the California State Council.

Mr. Shore was unavoidably called away this afternoon. He submitted copies of his statement for the record. It is a short statement and I will not read it, but what it says, in effect, is that we are vitally interested in this matter of the 160-acre limitation and we subscribe to the statements made by the other witnesses here today who urged that this committee send the contract back to the Secretary of the Interior for improvements and corrections.

In particular, I just want to mention two points. I want particularly to subscribe to the statement made a little earlier by Mr. McDonald in which he pointed out that he didn't feel that some of the answers given this morning to your questions by the Interior Department's attorneys completely answered the questions that were being asked.

Secondly, I would like to point out that the issue in the contract is not whether the project shall be built for 100-percent signup, or not at all. I think one of the things that needs to be pointed out to all the people involved, when it comes time to sign a contract, is how much of the area is signed up under recordable contracts and then, at that time, let the people involved in the area decide whether they want to go ahead with the projects that they have requested or not.

That is all I have to say, Mr. Chairman.

Senator NELSON. Thank you very much.

Mr. Brody, would you like to appear now? Mr. Brody is accompanied by Mr. Timothy V. A. Dillon, a Washington attorney now in private practice who formerly served in the Department of the Interior. Mr. Dillon, we are glad to welcome you along with Mr. Brody.

STATEMENT OF RALPH M. BRODY, CHIEF COUNSEL, WESTLANDS WATER DISTRICT, ACCOMPANIED BY TIMOTHY V. A. DILLON, WASHINGTON LAWYER

Mr. BRODY. Mr. Chairman, before proceeding to my own statement, because of his own inability to be present and at his request I would like to read into the record a telegram addressed to Representative B. F. Sisk from Mr. Manuel Lopez, secretary of the Building Trades Council for the area concerned.

(The telegram follows:)

FRESNO, CALIF., July 7, 1964.

Representative B. F. SISK,

House Office Building, Washington, D.C.:

All labor in area, both building trades council and central labor council, in accord with your position on proposed contract for distribution and drainage system replacement contract between Westlands Water District and U.S. Government. Following resolution adopted by action of executive boards, both councils; urge you to voice our support at July 8 hearing of Subcommittee on Irrigation and Reclamation.

Resolution of Fresno, Madera, Kings, and Tulare Counties Building and Construction Trades Council and executive board Fresno-Madera Central Labor Council urging approval of proposed contract between Westlands Water District and the United States.

"Whereas the building and construction council has consistently supported water resource development as being in the best interest of local areas, the State, and the Nation, as well as the rank and file of labor; and

"Whereas the building and trades council has heretofore strongly supported the San Luis unit of the Central Valley project; and

"Whereas a proposed distribution system contract between the Westlands Water District and the U.S. Government is now pending before Congress; and

"Whereas the construction program in the amount of some \$157 million is of great interest and benefit to union membership in that it will provide employment opportunities in labor-depressed areas and generally enhance the economy of the area; and

"Whereas any action other than the approval of such contract would cause undesirable and adverse effects upon the economy of this area as well as upon employment opportunities in such labor-depressed areas and would be contrary to the best interests of union membership; and

"Whereas, in our opinion, said proposed contracts meet the requirements of law and complete and adequate provisions for enforcing acreage limitations and anti-speculation provisions of the law and fulfilling the intent of Congress; and

"Whereas the reasons thus far suggested for modifying said contract, and thus delaying construction, are without merit and not based upon a study of facts involved; and

"Whereas any action other than the approval of said contract would cause serious and undesirable delays and would be harmful to membership as well as the community in general; and

"Whereas it is demonstrable that the acreage limitation and anti-speculation provisions of Federal reclamation law, as well as sound water resource development, would be best served by the approval and execution of said contract: Now, therefore, be it

Resolved, That the Fresno, Madera, Kings, and Tulare Counties Building & Construction Trades Council and the executive board of central labor council do and it does hereby respectfully urge the Interior and Insular Affairs Committee of the U.S. Senate to approve the proposed contract between Westlands Water District and the United States for the construction of a distribution system for said district and this organization does further urge that said contract be executed promptly by the Secretary of the Interior and the Westlands Water District; be it further

Resolved, That these councils strongly urge that the Congress presently in session appropriate funds necessary to commence construction of the aforesaid distribution system; be it further

Resolved, That the secretary-business manager of the building trades council be, and he is hereby authorized and directed to transmit copies of this resolution to the appropriate committees of the Congress, and he take such other action as may be required or necessary to call this resolution and the strong support of the council of the proposed contract to the attention of the Members of Congress.

"MANUEL LOPEZ,

"Secretary, Building Trades Council."

Mr. BRODY. Mr. Chairman, my name is Ralph M. Brody and I am chief counsel of Westlands Water District. As I started to indicate when I took the floor earlier today, I am going to digress some-

what from the prepared statement that I have, because of some of the prior statements and testimony that have been presented here today.

As a matter of personal privilege, as I indicated earlier, I want to indicate something of my personal background.

Senator KUCHEL. I do not need it for my purpose.

Mr. BRODY. For the record?

Senator KUCHEL. For the record, you may.

Mr. BRODY. I am not a stranger to the support of acreage limitations. I have heartily supported the principle of acreage limitation and acreage limitation provisions of reclamation law, during all of my professional career. I have supported this in hearings before this committee as well as other committees of Congress and I believe, because of prior presentations to this committee as well as the other committees of Congress as ample witness of that fact, and my support of that limitation, as well as my own integrity——

Senator KUCHEL. I will testify to both.

Mr. BRODY. When I was asked if I would be interested in being employed by the Westlands Water District, I indicated such an interest subject to one qualification, and that was that, when I obtained employment, knowing of the size of ownership in that area, I would take it on condition that I would do nothing to frustrate the acreage limitation provisions of law, and that I would do nothing to obtain advantages for that district, over any other district which executed such a contract that would frustrate the objectives of the law.

The district employed me, knowing that reservation and subject to it and both of us, the board of directors of the district, as well as myself, have rigidly lived up to that in the past and up to this point, and will in the future.

Now, insofar as the objectives of reclamation law are concerned, my objectives are the same as those witnesses who appeared here earlier. I do disagree with them in the manner in which they attempted to put the objective and their points across. I do disagree with them in terms of the methods by which they would seek to accomplish it.

I think that the best interest of acreage limitations provisions of the reclamation law mean that the objectives would be accomplished in a fair and equitable manner and a manner consistently provided by the Congress or as the Congress may elect to change it, but only in that fashion.

Congress did not adopt these provisions of law without study and I believe that the mechanics provided in the law itself very effectively meet and will fulfill the objectives that I will point out in a few moments.

Nor can I sympathize, nor let go past unnoticed, what appears to me to be either deliberate deception or absolute ignorance of some of the facts involved here by the objectors, either of which is inexcusable, in urging a congressional committee to hold hearings on this subject and putting the committee, both in terms of expense and time as well as the people these objectors purport to represent, without first attempting or accepting the opportunity to ascertain what the facts are.

I am not a man given to violent language, as the Senator will testify, but as I have listened to the testimony here today, I could not help

but resent the distortion and apparently deliberate misrepresentation of the facts which has been made, and I will attempt to point out a few of them.

The most recent one was that which was made by Mr. Taylor in his presentation. First of all—and I respectfully suggest that the committee verify this through its committee staff, through an examination of legislative history—the reason for the imposition of the requirement for the review of this contract was that in the House of Representatives, Congressman Saylor, as I recall, was fearful that drainage facilities which were provided for in the authorization act would not be confined to the Federal service area and would be provided for the State service area as a part of Federal construction. As a result, he wanted to see the contract come before Congress to make sure that this was not done. Secondly, he wanted to insure that the contracts would not exceed the legislative authorization costs provided for in the San Luis authorization act.

I have had occasion to read through this legislative history very recently. I am certain you will find it was not, as Mr. Taylor well knows, as a result of compromise or for review with respect to acreage limitation. This requirement was imposed for the reason I have specified and the legislative history will reveal this fact.

As I stated earlier, my own objectives are the same, as far as acreage limitations are concerned, as those of the witnesses testifying earlier. I have no desire to see large landowners reap unreasonable benefits and huge subsidies out of reclamation programs. But, as I said earlier, I believe that the development of the program and the fulfillment of the objectives of the excess lands law will best be achieved through a fair, equitable, and legitimate development of the mechanics which have been provided by Congress.

I would like for a moment to indicate why there is such a predominance of large landholdings in the Westlands Water District and the Federal service area, at the present time.

Despite the fact that Mr. Ballis will dispute the geological facts, there is the inescapable fact that there is a heavy impervious layer of material underlying the land of Westlands Water District and it is inescapable that the ground water table under Westlands Water District is diminishing and dropping.

Now, in order to irrigate the lands within that area in the past, it was only possible to do so by putting down wells. The wells are necessary to irrigate that land and they cost anywhere from \$35,000 to \$70,000, and then they do not yield a full supply of water for the land itself.

In order to actually develop these lands and grow crops on them, the wells which cost the figure which I mentioned will only produce an average of $1\frac{1}{2}$ acre-feet per acre whereas a crop requirement is 3 acre-feet per acre. What is done is that during the peak irrigation season, when the 3 acre-feet per acre is needed on the land, they will apply that water to 160 acres of land and, in the off-peak season will apply water to the other crops which do not require that peaking water requirement, so that you do not grow enough to be able to develop a section of land in that area under present conditions, in order to cooperate and to be able to put down the well in the first instance.

Now, I will acknowledge that, in a case like that of Southern Pacific, you do have the old land grants, something which neither the present generation of landowners in the district nor the Southern Pacific can be blamed for. That pattern of ownership developed there as a result of Government action. But, insofar as the other large ownerships are concerned in that district, the operating farm units there have to be large in order to permit operation under present ground water conditions, and I might point out, as I will indicate in a few moments when I talk about the water supply which is to be available for the district from the project that, even under the Bureau of Reclamation program, the district will not obtain a full supply of project water for its land. At least a third of the supply will have to be pumped from underground.

Now, if, in the first instance, it was necessary to operate in large units, in order to be able to put down the kind of wells that are necessary to pump the supply. This situation will not be changed by the project when only a portion of the water supply is going to be made available from the project, and the remainder has to be pumped. But the district itself is taking steps which will insure the ability of landowners to operate in smaller sized units. It is to accomplish this that the district is paying and investing some \$10 million or more in the cost of the distribution system, to provide capacity and facilities for integrating ground water into the system itself. It will be in a position to deliver a full surface supply to all of the land in the district, and make it unnecessary for the individual small landowner to put down his well, so that he can make the investment necessary to start on a smaller sized farm.

If it was the large landowners' desire, as has been painted here, to maintain their large landholdings, it certainly would have been in the interest of this particular board of directors, which has been described as all large landowners, if they wished to continue the pattern of large ownerships, not to have provided for the integration of ground water and made it physically impossible for the small landowner to settle in that area, by virtue of the fact that he could not invest in the \$30,000 to \$75,000 for the well that is necessary.

I do not contend, Mr. Chairman, that every landowner is going to rush in with his pen in hand immediately upon signing this contract, and offer to sign a recordable contract, and this is not what has been envisioned by the law over the years, and this is not what Congress intended, and very legitimately so.

When Congress passed the 1926 act, it said that, before any water may be delivered from a project, not before construction started, but before any water may be delivered from a project, a repayment contract must be executed between an organization such as is involved here, a district, and the United States.

This organization assumes a general repayment obligation and historically, over the years, this has been construed by the Department of the Interior, and I think legitimately so, that it must be an organization which has the taxing power so the security would be in existence for the United States to recover the cost of the project.

Now, as a matter of policy, over the years, in recent years, Congress has insisted that, before construction commences, repayment contracts be executed.

Now, at the time of the San Luis authorization hearings, these same witnesses who appeared before you today, appeared before the committees of Congress and again, examination of the record by your staff will reveal this, they urged Congress to include a requirement which the Congress did not incidentally do, that there be repayment contracts executed before construction of the project started.

At no point in those discussions, despite the fact, on the Central Valley project, for the past 18 years, these recordable contracts have not been required as a matter of execution before construction—despite the fact that they were aware of the landownership pattern because they testified as to it at the hearings; despite the fact that they were aware of the provisions of the contracts which had existed prior to that time and are the same as those involved here, at no point was it suggested to Congress at that time that there be a requirement that recordable contracts be executed prior to the time of construction of the project.

They did urge that repayment contracts be executed in advance of construction. As a matter of fact, a repayment contract has been executed insofar as the water service contract and the main project works are concerned by Westlands district, and it will be executed insofar as the distribution is concerned, if this contract is approved, prior to the time of construction of the distribution system, which is what they asked for. These objectors were aware of all the facts which they are presenting to you today at the time they testified at the earlier authorization hearings but they asked for no requirement as to recordable contracts at that time.

At this late point of time they come before you and ask that that requirement be instituted. Now, what is the real situation here?

I started to say a moment ago that Congress, in the passage of the 1962 act, required contracts with organizations with taxing powers. At the same time, Congress provided that no water should be furnished to any owner of excess land if he refused to execute a recordable contract, under the terms of which he agreed to dispose of his excess land within a specified period of time. It further provided, as a matter of law, and without reference to recordable contracts, that he could not sell that land and have the land be eligible to receive water at a price which included any increment in value brought about by the project water. Such an owner has a choice. He may sign a contract and receive project water or not sign and not receive water.

The Westlands Water District contract, as well as the contracts executed elsewhere in the Central Valley project, include such provisions.

Now, I spent a number of years with the Bureau of Reclamation. I negotiated a good many of the contracts on behalf of the Government for the Central Valley project along the east side of the San Joaquin Valley.

What happens in connection with a contract of this type? You do not find, in any district, whether it be for acreage limitations, whether it be because a man wants to continue dryland farming, whether it be for whatever reason he may choose, you never find unanimous support of any contract, and you cannot, at any given point of time, say that every landowner within that project wants

water and is going to take it or is willing to comply with the provisions of the contract concerned.

I can recall instances in the Central Valley project where a landowner said, "I have been a dryland farmer all my life. I do not want water from the project and I am not going to take any water." Whether he was an excess landowner or not, makes no difference. The fact remained that that man, by virtue of being in the district, was assessed and is assessed for a portion of the cost of the project. Yet, if you followed the suggestion of these objectors, this man could block the whole project.

What happens is that economic circumstances of the taxes imposed by the district itself bring an economic pressure to bear upon him which forces him into irrigation because that is the highest and best use of the land, and the same situation prevails in connection with the excess land provisions.

Congress knew that, at the time of the construction of the project and at the time that the water was starting to be served to land within the district, that not all landowners sign a recordable contract, but they also knew that, by virtue of being within this district that has the taxing power and, perforce, must use it, that the man would be persuaded by economic circumstances at some point of time to sign the recordable contract, and become eligible to receive project water. At the same time the Congress gave him the choice not to do so.

Congress was well aware of this and there can be no doubt that if you wait for everyone to come in, or perhaps even the majority of the landowners to come in, you would not build the project. You will never get the unanimity that is necessary, it is other pressures which will be brought to bear. Where I disagree with objectors here is in the fact that they wish this to be done by revolution rather than evolution.

They want this to happen overnight. These holdings were not built up overnight. It took a long time and it will take a long time, in my judgment, for all of them at least to be broken up, but broken up they will be, only because of economic pressures and circumstances, and there is no other way. You cannot physically force a man to put his name to a contract. All you can do is create a situation and circumstances under which he is going to find it is difficult for him to continue economically in that kind of situation, to operate as he has done in the past.

Now I am confident that, by virtue of the very mechanics which Congress provided in the law itself, this is what has produced the results in other areas. Let me point out to you again something that has been somewhat neglected here, that there are three other districts in that same general area, on the west side of the San Joaquin Valley, which are getting water for part of their areas from the San Luis unit and from the Central Valley project generally.

One of them, the San Luis Water District initially had 58 percent of its lands in excess holdings. Within about 5 years after water became available from the Central Valley project the excess land holdings within that district were reduced to 16 percent.

The Panoche Water District had 79 percent of its lands in excess holdings initially, which is greater than the percentage of excess holdings now in Westlands; the Panoche Water District excess holdings have now been reduced to 38 percent, as I recall.

Senator NELSON. Over how long a period?

Mr. BRODY. On the Panoche Water District my recollection is that it was within the last 8 or 9 years.

Senator NELSON. It took 8 or 9 years to get 79 to 38 percent?

Mr. BRODY. In the case of the Broadview Water District 77 percent of the lands were initially in excess holdings. Today there are no excess holdings within that district. In other words, they have been reduced from 77 percent to zero. Since the identical excess lands provisions which were so effective in the Broadview Water District are likewise applicable to holdings within the Westlands Water District it would seem clear that substantially the same result will be achieved.

Senator NELSON. Let me ask a question. If the economics of coming under a contract are so compelling, how has this 38 percent been able to operate for 8 or 9 years without coming in?

Mr. BRODY. Under recordable contracts they have 10 years in which to dispose of their excess land. It also takes time for the economic pressures to be felt and I am not suggesting, Mr. Chairman, that you will ever reach a point where you will get 100 percent signup in every project, but it is possible that you will and I know you will get substantial signup.

On the east side of the San Joaquin Valley, you will find the greater percentage of excess lands in any district, the greater amount of money that is raised by assessment, and this in turn has had an impact upon the amount of excess land which has continued as excess land.

I would like first, before I get further into the economic impact, to come back to this question of water supply because I think this is something that has been completely misunderstood and is a subject which bears careful scrutiny by this committee.

I will point now to the fact that insofar as he alleges that the project feasibility report differs from mine he is in error. My figures were based upon Westlands Water District area and the report covers the entire service area of the project. In addition, my letter purported only to comment upon a letter of Mr. Thomas Pitts in which he referred to the deep wells and deep underground areas and I qualified my letter by saying I was referring to the deepwater areas when I spoke of deep ground water seepage of 65,000 acre-feet.

I would like, since that chart is rather difficult to see, to hand to members of the committee copies of a smaller form of it and, by your leave, I would like to walk to the chart and point out the items on it.

Let me say that these figures were not developed for this testimony and these figures were not developed in connection with acreage limitations at all. The figures which are presented here are Bureau of Reclamation figures which are based upon official reports of the Federal Government, both in and out of the Bureau of Reclamation, which were developed for the purpose, in part, of determining how much water the district should be supplied from the project itself.

I want to qualify one point here. The figures which appear here and particularly the line which is identified by the arrow, identified "Import requirement 725,000" was increased to 783,000 in our contract because of the fact that the consumptive use of the crops was agreed upon by the Bureau and ourselves as requiring an additional amount of water and because there were additional lands to be con-

sidered by way of annexation which required raising that figure to 783,000.

But the relative portions of these figures still prevail.

Now the total requirements of the district to raise the crops, and provide the most ideal cropping pattern for the district itself, on the basis of those studies was 1,016,000 acre-feet. This was developed after intensive study. Now of that amount 783,000 acre-feet were to be provided by the project itself and 312,000 acre-feet of water were to be pumped from the underground, from the deep wells, all of which would be applied for surface irrigation from the distribution system.

No one has ever denied that there have been perforations, and there are perforations in the wells above and below the Corcoran clay.

Senator NELSON. Can you tell me why that is so named, the Corcoran clay?

Mr. BRODY. There is a 100-foot layer of clay throughout most of the area underlying the land of the district.

Senator NELSON. How thick a layer?

Mr. BRODY. In many instances a hundred feet thick.

Senator NELSON. Where did it get its name?

Mr. BRODY. That is a common name in that area and it may be that it was named for a Corcoran family, a family name. There is no question as to the existence of the Corcoran clay and no question as to the fact that the clay is impermeable. There are methods of water getting below in limited amounts through the well casings and the gravel packs around the wells.

Senator NELSON. Are most of the wells in that area below the Corcoran clay?

Mr. BRODY. They penetrate below the Corcoran clay. The water above the Corcoran clay has historically been very limited in amount and there are quality problems.

Senator NELSON. You will get 783,000 acre-feet of water from the project surface application and pump 312,000 acre-feet. Now where does this come from?

Mr. BRODY. Historically, over the years, there has been an inflow from the east side of the San Joaquin Valley, from natural precipitation, as well as whatever irrigation takes place there, as a result of project activities over the east side of the valley which will occur whether this distribution system is built or not.

Below the Corcoran clay, there has been an inflow of 190,000 acre-feet, of which 30,000 go beyond the district, and above the Corcoran clay there is an inflow of 30,000 acre-feet of water.

There will be a pumping then of 225,000 acre-feet of water from below the Corcoran clay, and the balance of 312,000 acre-feet, 87,000 acre-feet from above the Corcoran clay itself, 30,000 of which comes from the east and 57,000 from seepage and percolation; above the Corcoran clay there is an added inflow of 29,000 from subsurface inflow from the west.

There will be 32,000 acre-feet of leakage from the canal. Then 11,000 acre-feet are—I am referring only to Westlands water district in this respect—will come from infiltration from west side streams and 21,000 in terms of seepage from the distribution system itself.

Now, when 1,016,000 acre-feet of water, 781,000—which is just about the amount that we import by means of the project—781,500 acre-feet, is lost forever by consumptive use by the crops themselves.

Of the 1,016,000, 61,800 acre-feet is lost through nonproductive consumptive uses, so that leaves a balance of water which gets into the underground of 173,000 acre-feet of water as a result of the total surface application.

Now, bear in mind that this 173,000 is comprised in part of import requirements that come from the project, and part from the water which is pumped from the underground in the first instance. It is not all project water.

Now, because of the quality of the water above the Corcoran clay and the constant leakage, it will be necessary for the district to take water out of the ground above the clay. The 144,000 acre-feet of this 173,000 that gets below the clay leaves a balance of what is applied by means of irrigation at the surface of the land of only 29,000 acre-feet of surface application which gets to the underground at all.

Now, from the other contributions that come in here through well casings and gravel packs, 65,000 acre-feet of water gets below the Corcoran clay itself, and I have estimated that less than 29,000 acre-feet of that are attributable to what is applied at the surface as a result of project activities, because obviously the 29,000 of the 1,016,000 acre-feet applied to the surface, which is comprised of both pumped water and project water reaches and remains in the underground, and certainly less than that figure is the portion of the 65,000 which gets below the Corcoran clay.

Now, these are the sources of the water that get into the underground, Mr. Chairman, but where the benefit comes to the landowners in the district is in the fact that whereas at the present time, they are pumping several hundred thousand acre-feet of water out of the ground water, and much less water is coming in from the east and from the other sources coming from the west, under natural conditions. So that, to the extent that you stop pumping, to the extent of 783,000 that is applied at the surface, what comes in is going to tend to build up the ground water table.

The pumping depth on the average, throughout our district, as distinguished from the Federal service area, is 375 feet. It is estimated that the water, because of the pressures occurring below the Corcoran clay, will rise in the well casings under ideal conditions to 300 feet, making a decreasing pump-lift to some 75 feet.

This is on the assumption that you eliminate the overdraft from the ground water table. In other words, the entire 783,000 acre-feet of water must be applied to the surface, and thereby reduce the pumping to that extent.

The way in which you apply this—and these figures are all developed on the assumption that the ground water is going to rise to the 300-foot depth—is based on the assumption that every acre of the land is going to take water and reduce pumping, or that you are going to, in some fashion, use the 783,000 acre-feet of project water instead of pumped water. The only way you can use it is by applying it to the crops.

If a substantial portion of the excess landowners do not sign recordable contracts and become eligible to take project water, then the ground water table will not rise to the 300-foot level on an average throughout the district, as is contemplated in the Bureau program.

As I said before, this is not developed with any view of acreage limitation in mind whatsoever. This was under the assumption that

the land in the district would be eligible, and on the assumption that all the land would be taking a water supply. To the extent that the district does not use this full 783,000 acre-feet of water instead of pumping, as the Bureau has testified, the ground water table is not going to rise.

Senator NELSON. Now if 80 percent of the land came under contract, that would leave you about 70,000 acres not under contract. Would that be right?

Mr. BRODY. If 80,000—I am sorry. I did not get the question.

Senator NELSON. If 80 percent of the land came under contract, 20 percent of the excess lands would not. That would leave you about 70,000 acres of excess land not under contract.

Aren't there about 350,000 acres involved here?

Mr. BRODY. As I recall the figures given here today, about 250,000 was excess, as I recall the figures.

Senator NELSON. But there is about 350,000 acres total involved in the Westlands contract, so if 20 percent of the total lands there didn't come under contract, you would have about 70,000 or something like that. Why wouldn't it be economically sound for about that amount of excess lands not to come under, considering the investment they already have in wells and assuming that the water level would rise appreciably.

Mr. BRODY. Mr. Chairman, bear in mind that, in order to get this—your questions assume that the ground water table is going to rise to this economic pumping depth. They are not going to get that economic benefit unless it does rise. Unless you cut out the 75-foot additional pumping depth that they have.

Senator NELSON. Yes, this is one of the purposes of the project and you say it is not possible to raise that level to 300 feet if 70,000 of the 350,000 do not participate?

Mr. BRODY. I am saying that unless you apply 783,000 acre-feet of water to the surface which is designated from the project, and reduce pumping, it will not rise to that level. In other words, it is not a matter, Mr. Chairman, of this water getting in the underground and raising the water table. It is the fact that these people stop pumping. If they continue to pump, it is going to continue to draw down the water table.

Senator NELSON. That is what I am getting at. If 80 percent of the landusers stop pumping, and they continue to pump for 70,000 acres, what effect would that have on the table?

Mr. BRODY. If that would occur, it would depend on whether they used a full project supply. In other words, if that resulted in the application of 783,000 acre-feet of water and adequate reduction in pumping, the ground water table would rise to 300 feet.

I would like to elaborate on that point, however. Now bear in mind that if this 300-foot pumping depth exists, and assuming that all they have to pay is their pumping cost, then it is more economical, as Mr. Ballis read from the report, for the landowner to continue to pump his supply.

So what occurs? The man who is paying for the project water supply says, "I will continue to pump and stop taking project water." So the water table goes down again.

Senator NELSON. Why would he continue to pump if he is eligible and could get water on the surface?

Mr. BRODY. He has to pay for that water and if it is cheaper for him to pump, the cost of pumping is less to him than what he has to pay the district in terms of a toll charge for the water he is going to pump.

Senator NELSON. Nothing is preventing him, under the contract, from pumping, so you have no prediction about what would happen?

Mr. BRODY. No, sir. In my principal statement that I will submit for the record, I have pointed out that the way in which a district raises its funds to meet its obligations is by the last three ways under the law by which it can do it: One, completely by assessment and no toll charges, just using the water unrestrictedly.

Another is completely by toll charges, a charge for water actually used, and the third is the combination of the two.

Traditionally, the latter, the last one mentioned, is the one that is followed. The reason you establish a toll charge for water is to prevent a waste of water. If entitled to water in unlimited amounts, they are going to waste it but if you establish a toll charge that toll charge must be competitive with and less than what it costs the man to pump the water supply or else he is going to continue to pump.

I had an analysis made of what the burden would be upon the Southern Pacific Co., as an example, because the Pitts letter directed its principal comment toward that company, and what I say applies to all landowners.

Our obligation under the contract—and this is another point that has been mentioned here—once we have signed the water service contract, we have a fixed obligation to make payments for that water, whether we use it or not. Once the repayment contract for the distribution system is signed and the system is built, we have an obligation to pay for the distribution system whether it is used or not, so that these are fixed annual obligations which we must meet.

Senator NELSON. Do you have taxing authority to require all landholders in the district to make a contribution to meet that obligation?

Mr. BRODY. We have that authority and we will use it. All districts use it.

Now, I have assumed for the purpose of my figures here that our distribution system is not going to cost \$157 million, in order to give the most unfavorable light to these figures. Under those circumstances, our obligation in 1970, assuming the distribution system has been completed, would be \$5,640,000; and in 1975, under the terms of the contract and with a buildup in water supply an obligation of \$9,041,000—this is what the district has to pay to the United States.

Now, bearing in mind that we would have to collect a part of our revenue by toll charges and the balance by assessments, and bearing in mind that the toll charge must be such that it is less than what it costs the man to pump in the district and in the most favorable pumping locations in the district, as we view it, our toll charge cannot be in excess of \$6 and probably will be closer to \$4.

Senator NELSON. Per acre-foot?

Mr. BRODY. Per acre-foot, yes. Bearing in mind the 3 acre-feet per acre now needed under existing conditions, the Southern Pacific Co.'s cost of water at the present time, is roughly \$10 an acre-foot. I am talking of an average of land throughout the district.

Senator NELSON. This is what it is now costing them to pump?

Mr. BRODY. Their present pumping costs, and this is for $1\frac{1}{2}$ acre-feet per acre. They cannot get a full supply out of the wells that they have, so that their total cost per acre is \$15, and their total water cost for the year is roughly \$871,650.

Now, if we levied a \$6 toll charge and collected the balance by assessment, in 1970, instead of the \$871,000 which their water now costs them, their cost of pumping, plus the assessments they will have to pay to the district would be \$1,288,000 in the first year and in the fifth it would be \$1,555,000. And this is for only $1\frac{1}{2}$ acre-feet instead of the 3 required.

Under a \$4 toll charge, their cost of water in the first year would be \$1,436,000 and in 1975, the fifth year of the contract, it would be \$1,718,000. This represents an increase in their present water supply cost under the \$6 toll charge of 48 percent for incomplete water supply that they are now getting, an increase of 48 percent in that cost and in 1975, a 78-percent increase, and under the \$4 toll charge it would be a 64-percent increase in 1970 and a 97-percent increase in 1975.

Now, if these people attempted to obtain the equivalent of a full project supply for their lands; that is, if they attempted to put down more wells than necessary to pump from underground to get the 3 acre-feet per acre that they need, their water cost would be \$56 per acre plus our district assessment. Assuming 3 acre-feet, that is about \$18 an acre-foot plus the assessment which they would have to pay to the district itself.

These are not ephemeral things, Mr. Chairman. These are matters which have to be pursued and there is no way of avoiding them. It might be argued "Well, suppose you go entirely to assessments." In that case the burden falls in greater amount to the large landowner who is not taking the water because the more you collect by assessment, the greater the burden is on him.

The simplest way to explain it is: That our water is going to cost us \$8 an acre-foot canalside, without distribution cost. If we charge a \$6 toll charge for the man who is actually using the water, that man who is not using the water has contributed toward it \$2 an acre-foot plus the fact that he has contributed toward the cost of a distribution system which he cannot use. He is largely subsidizing the remaining landowners in the district who are eligible to use water, and there is no way in which he can escape this.

Now, reference was made to the fact that there are 105,000 acres of land which it was intimated would be benefited by not being a part of this project.

I would like to mention that I have known Mr. Pitts over the years. He is a personal friend of mine. When I heard that he was going to send this letter, I called on the telephone and said I would like to give him some of the facts that are involved here. I could not reach him. I spoke to Mr. Vial of his office and we arranged a meeting. The meeting was canceled and they said they would set up another date and it was never set up again.

Had they been aware of the fact that it would have been necessary for water to run uphill in order to benefit the 105,000 acres or had they been able to discuss and study this matter, they would have found that in the area to the west of the canal, the landowners of this 105,000-plus acres have been negotiating with the Bureau of Reclamation in an attempt to get a water supply contract.

The big problem is that there is not enough project yield to supply it and the probability is that our district is going to annex those lands; the Westplains Water Storage District has already taken action approving such a course of action.

There is no question in my mind that such a water supply will be made available as was suggested be done in the rest of the Central Valley project. If you had insisted that one contract be executed to cover the entire area, you would have had one contract on the east side of the San Joaquin Valley instead of some 20-odd.

There has never been a requirement that there be one district or one contract to cover an entire project service area. The only reason the Westlands Water District was formed with its present boundaries was because it was formed in 1952, some 7 or 8 years before the project was authorized by Congress, and there was no indication at that particular point of time, what the specific Federal service area would encompass. It was formed to try to develop a project to serve these lands.

There has been no studied attempt on the part of the people to evade the acreage limitations. They urged the project, knowing that the acreage limitations would be applied, knowing they would have to dispose of their excess land if they wanted project water. While we are on that subject, there has been reference to the attitude of the Southern Pacific Co., and I am not here in the position of championing Southern Pacific but I do believe that all of the facts should be made known. When one looks at the entire statement made by the Southern Pacific Co. at the hearing to which reference was made, and one does not take the statement out of context, it is found that the statement says this:

We are progressive and we are anxious to see steps taken to preserve and increase the economic welfare. We will expect to cooperate in any equitable and reasonable water program. If it is determined that the Federal Government, rather than State, or a partnership or both, shall undertake this project, we will wish to cooperate. If a Federal program is decided upon at San Luis, we shall cooperate and trust that the terms provided for will be equitable.

Now, I am not suggesting that the present attitude of the Southern Pacific Co. is that they are going to sign a recordable contract. I cannot and I will not attempt to speak for them. I can only say that there are all the incentives in the world for them to do so. Once the contract is signed and the distribution system is constructed, all the incentives will exist which will militate toward that end. I do know that the man, Russell Giffen, referred to by Mr. Ball—

Senator NELSON. May I interrupt? There is a rollcall and we will have to recess for 15 minutes.

(At this point a recess was taken.)

Senator KUCHEL. Ladies and gentlemen, I think Senator Nelson is coming over shortly. If there is no objection, we will continue, in the interests of time.

As we broke up for the rollcall, Mr. Brody, you were mentioning a statement which Mr. Russell Giffen had made. I wonder if you would repeat that for the record and go on from there.

Mr. BRODY. Yes, Mr. Chairman. I was about to mention, when the meeting was interrupted, that Mr. Russell Giffen, the chairman of our board of directors—and it was mentioned by Mr. Ballis in his testimony—at a meeting of the California District Securities Commission, which had this particular contract before it for approval as is

required by State law—Mr. Giffen, unsolicited and in describing the situation in the district in terms of crops grown there, and one thing and another, said that he owned more than 160 acres of land. He further said he intended to sign a recordable contract, that he was morally obligated to do so, and he fully intended to do so.

Insofar as the other Board members are concerned, I know that Mr. J. E. O'Neil, predecessor of Mr. Harry Baker, president of the Producers Cotton Oil Co., at the time this project was being considered for authorization, had indicated that he was of the mind to sign a recordable contract and intended to, and I know of no change in attitude announced by Mr. Baker.

Mr. Diener, another Board member, as far as I am aware, intends to sign a recordable contract. I cannot speak for any of these people insofar as their specific intention in concerned, but I have no indication otherwise.

I do know I have had discussions with a considerable number of landowners who feel they have no alternative. I can understand that these people are not anxious to dispose of their holdings. I do believe and know that they intend to comply with the law and do not relish the economic facts which are unavoidably going to exist if they do not. On the other hand, the law is complied with even if they do not sign so long as they do not get project water.

I want to point this out: I cannot conceive of any landowner, no matter what his intentions were with respect to signing a recordable contract, actually signing one until water becomes available, or until he wants water for his land. This is what the law contemplates. To say that a project should be held up because one landowner might never want to have water upon his land, or that it should be held up until he signs, or for any portion of the landowners to sign, would be to defeat the very purpose for which the project is being built, and that is to serve those people who are eligible.

Now coming back to this matter of the benefits, I would like very briefly to mention one other point. It is true that there will be a decrease in the pump lift as a result of the buildup in the ground water supply as a result of water coming in from the east of our district. This buildup, however, will occur to the extent only that 783,000 acre-feet of project water is applied to the surface and pumping is reduced.

Now, this decrease in pump lift, which is the benefit that anyone could get out of it, will be on the order of 75 feet on an average throughout the district. This amounts to a benefit of about \$2 an acre-foot.

Now, the additional costs, by way of assessments, which would be incurred by the excess-land owner will be at least four times that \$2 an acre-foot. So that whatever benefit they get, if you can call it a benefit, will be more than dissipated in terms of the assessments which will have to be levied upon this land. The additional costs of their present water supply, at its present depth, will be substantially greater and will be an amount of water that is only half sufficient.

Water that is economically unavailable is just as unavailable as if it were physically unavailable. The fact that these excessive costs are going to have to be imposed upon the man who does not sign and who will not be getting a full supply of water, and who has to pay so much more for his existing inadequate supply, is going to remove any element of benefit that he could conceivably get.

Now, one other point that I think merits mention here. Reference was made by Mr. Ballis to the provision in the water service contract which referred to the mingling of water in the distribution system.

First of all, let me state that we accepted the provisions on the acreage limitation that were offered by the Bureau of Reclamation. We sought no change in them, and no change was made. These were the provisions that have been traditional in the last 18 years. Insofar as this mingling is concerned, any lawyer examining this would say that the water which is referred to in that particular article would be water which is furnished by the United States, a surface supply of water, any nonproject water including pump supplies of the individual landowner which was put in a distribution system financed by the United States would be subject to the acreage limitations.

This has happened in other districts in the San Joaquin Valley, where the same language occurs, where water is put into federally financed distribution systems, water which has been independently acquired by the district other than from the United States.

I can cite a specific example. In the case of the Lindsey-Strathmore Irrigation District, they have a water supply available to them from an independent source. This water is transported in Bureau facilities under a provision identical with this one. That water, even though it is not supplied by the Bureau of Reclamation, since it is transported by it, is made subject to the acreage limitation. This would be true in our own case; to the extent that any water pumped into the distribution system built under the contract, would be subject to acreage limitation.

I believe, Mr. Chairman, that that covers most of the points that I intended to cover without reading my statement in detail. I would like to mention one more point here in connection with the water that gets into the underground. Even if we were 100 percent wrong in our figure, and instead of the 65,000 acre-feet of water getting into the deep underground, twice that amount got in there, it would be an infinitesimal amount in terms of spreading it over the entire district or the excess land. As I recall, it amounts to something like two-tenths of an acre-foot over the entire district. These figures are based upon geological studies and hydrographic studies conducted by the USGS independently of the Bureau of Reclamation, and studies conducted by the Bureau of Reclamation itself.

It has been strange that no engineering reports or engineering analyses other than generalized statements have been advanced to refute these figures.

By way of conclusion, I want to make one generalized statement. It is easy to attract support and arouse emotions on a matter that is stated in terms of a large landowner getting a windfall or a large landowner getting a great subsidy in a situation like this. I would be aroused by that kind of statement. I would hate to see such a thing occur. It is easy to arouse emotions on this kind of an issue, by making generalized statements about it. But I think that it does a great injustice to the people who are eligible for water, and to the reclamation program generally, to advance these statements without analyzing all of the facts involved, without attempting to ascertain them, and to insist on a congressional hearing to hear the facts presented which the same people were unwilling to listen to and have presented to them without the necessity for the imposition on the time

and expense of the Congress and the district, as well as themselves.

It is this kind of thing that makes this kind of activity difficult. In the interest of equity, it would seem to me that a greater analysis of what actually is involved and an opportunity to discuss it and at least present the other side should have been given. I think this hearing could have been rendered unnecessary.

I can only further conclude by saying that there is no question but that the acreage limitations provisions in this contract are in conformity with the law. They are what have traditionally been used and followed, and which have been effective. They will not be effective overnight, but they will achieve the results intended by Congress and in the time intended by the Congress itself.

I would ask, Mr. Chairman, that my entire statement be included in the record.

Senator KUCHEL. It will be done.

Mr. BRODY. Together with the attachments, composed of my letter of July 11, 1964, to the chairman of the subcommittee, as well as copies of the pertinent articles of the contract in question.

Senator KUCHEL. They will all be included as a part of your testimony, Mr. Brody. Thank you very much.

Mr. BRODY. Thank you, Mr. Chairman.

(The documents referred to follow:)

STATEMENT OF RALPH M. BRODY, MANAGER-CHIEF COUNSEL, WESTLANDS WATER DISTRICT

Mr. Chairman and members of the subcommittee, we sincerely appreciate this opportunity to appear before you to discuss the proposed distribution and drainage system repayment contract between Westlands Water District and the United States. This hearing, as we understand it, developed out of assertions to the effect that the contract did not comply with acreage limitation and anti-speculation provisions of the law. It was suggested that the Congress disapprove the contract and return it to the Secretary of the Interior with instructions to require the signing of recordable contracts prior to the construction of the system. Particular concern was expressed that project water would reach the underground strata and ineligible landowners would receive project water by pumping from that source.

A brief historical review is merited at this point. After authorization of the San Luis unit, negotiations were undertaken between Westlands Water District and the United States for a contract for water service. On June 5, 1963, the contract was executed by the district and the United States. This contract contains detailed provisions for the enforcement of the excess land and anti-speculation provisions of reclamation law. The provisions are the same as those used for the past 18 years throughout the Central Valley project in districts carrying on the same type of water program with what I believe the Department of the Interior and the Congress have considered to be effective results. Westlands Water District neither sought nor was granted any concessions with respect to them. It has agreed to those provisions and intends to comply fully with them.

The physical situation in the remainder of the Central Valley project is not significantly different from that in the San Luis unit—at least not to the extent of justifying a variation from the requirements imposed on those areas. If any material difference exists, it lies in the fact that the possibilities of ground water replenishment from project water are greater in the rest of the Central Valley project area than in the San Luis unit, and yet this has not presented a problem of enforcement in those other areas.

The June 1963 contract now in effect, and which contains detailed provisions to implement the excess land and anti-speculation provisions of law, is an agreement by which the United States will make a water supply available to our district. This water is to be delivered to the district at the main canal. In order to transport the water made available under that contract from the points of delivery at San Luis Canal to the lands in the district, it will be necessary to construct distribution works. The form of contract now before you provides for the construction and operation of those facilities.

It would seem that even if the arguments now being raised had any validity, the time to have raised them would have been when the water service contract was being considered, before June 1963, since it is the one concerned with water supply. It is the water that creates the problem, if one exists, and not the distribution system by means of which the water is transported. Yet, despite the fact that the water service contract was openly arrived at and negotiated with considerable publicity well in advance of its signing, no arguments were raised against it. It would seem that the form of distribution system contract now before you completely covers the use of the system to be constructed in that it is clearly stated that it may not be used to transport water to or for lands not eligible to be furnished with water under the contract for water service.

It is the contention of those who have raised this issue that project water furnished to the district and applied to the surface for irrigation will reach the deep underground strata of excess land, will be pumped by the owners, and thus provide project water without their having executed a recordable contract.

The actual facts are:

1. Less than 3 percent of the project water applied at the surface will reach the deep underground area from which these objectors claim the owner of excess land will pump.

2. Any excess landowner who does not make himself eligible to be furnished with project water will find the pumped water supply he is now using without the project costing from approximately 48 to 78 percent and perhaps as much as 97 percent more than it is costing him today.

3. In addition to the added cost of his present supply, the owner of excess land who does not sign a recordable contract will be able to obtain only the same amount of water that he has available today or about $1\frac{1}{2}$ acre-feet per acre. The average crop requirement is approximately 3 acre-feet per acre. To obtain a full supply by pumping would cost him more than twice that which it would be if he signed a recordable contract and received a project supply.

4. The added costs by virtue of assessments which it will be necessary to impose upon an owner who does not sign a recordable contract will be several times any conceivable benefit he could derive by way of reduced pumping lifts of naturally replenished ground water which might result from the cessation of pumping by others.

The assertions regarding the ground water benefits are precisely the opposite of what will occur. This can be determined from an examination of what occurs to the project water that is furnished to the district. Under the contract executed in June of 1963, the district is given a firm commitment for the delivery of 783,000 acre-feet of project water. This will not constitute a full water supply for the district. As a result, there will be a continuation of pumping to the extent of 312,000 acre-feet. It has been concluded by the Bureau of Reclamation that with the application of the 783,000 acre-feet and the pumping of 312,000 acre-feet from ground water, the total requirements of the district can be met and the water table will become stabilized at 300 feet. Of the some 1 million acre-feet thus placed in the distribution system and applied to the surface, only 173,000 will penetrate the underground. The remainder is lost through consumptive uses and distribution system losses. While the 173,000 acre-feet reaches the underground, 144,000 acre-feet must be drained from the district because of its very poor quality and unsuitability for use. This would leave approximately 29,000 acre-feet of water which gets to the underground as a result of surface application.

Underlying the lands of the district is a layer of impervious material 100 feet or more in thickness known as Corcoran clay. Only limited amounts of water can pass from the area above the Corcoran clay to the area below it from which the deep wells pump, through the wells and gravel packs that penetrate it. Studies reveal that only 65,000 acre-feet will pass through the Corcoran clay in this fashion. It is estimated that less than half of this 65,000 acre-feet represents project water supply applied at the surface.

If we assume the application of the full 783,000 acre-feet of water to which the district is entitled under its contract, it will mean that there will be a decrease in the overdraft from deep ground water and the water table will rise. As I have previously indicated, it is estimated that the water table will become stabilized at an average depth of 300 feet. The present average pumping depth is approximately 375 feet. The savings occurring as a result of this decrease of 75 feet in pump lift will be about \$2 per acre-foot. However, this savings will only occur if the full 783,000 acre-feet are applied and, even then, the stabilization at 300 feet would occur only after a considerable period of years.

On the other hand, if the excess landowner does not sign a recordable contract and continues to pump his supply which, incidentally, will yield him only $1\frac{1}{2}$ acre-feet per acre instead of the full crop requirement of 3 acre-feet per acre, the cost of that water supply will be from approximately 48 percent to as much as 97 percent greater than it would have been had there been no project. If such a landowner attempted to pump a full, or the equivalent of the project, supply from the underground, his cost would be more than double that of the project supply. Each of the additional wells and pumps alone necessary to accomplish this would cost from \$35,000 to \$70,000, in addition to substantially greater power costs. The increased costs to which I have referred will be several times greater than the \$2 savings in pumping costs which the excess landowner might receive. Thus a landowner who does not sign a recordable contract will be paying a substantially higher price for the same kind of water supply that he is obtaining today without the project.

This increase in cost arises from the inescapable fact that the district will be required to collect a large portion of the funds necessary to pay for the water and the distribution system through assessments. A portion of the district's funds will be raised through toll charges for the water actually used and the remainder by means of assessments of all lands throughout the district, whether water is used or not. The tolls are necessary in order to prevent a waste of water. However, they must also be sufficiently low as to make it more economical for the eligible water user to use project supplies instead of continuing to pump. The lower the tolls, the greater the amount that must be collected through assessments. It is patent that, under these unavoidable circumstances, the owner of excess land who does not sign a recordable contract will have very substantial economic pressures brought to bear on him. These will serve as the most effective inducement for him to sign a recordable contract.

The execution of recordable contracts as a condition precedent to the commencement of construction is not a statutory requirement. The owner of excess land is not required; nor is there any way of requiring him, to execute a recordable contract if he does not desire to be furnished with project water. The law contemplates a choice upon his part. He may choose to execute a recordable contract and avail himself of the project benefits until the excess land is sold by or for him or he can refuse to execute such a contract and not receive those benefits. The Congress wisely concluded that through the taxing power of the districts, the owner of excess land who chooses not to sign will be deprived of project benefits and would be forced through economic circumstances to execute a recordable contract. Whether he elects to do so or not, there is no question that the failure to sign plus the inevitable tax consequences will effectively deprive him of the project benefits.

The basic questions involved here are whether the form of contract complies with the law, and whether the contractual provisions will achieve the objectives of the law. In each instance the answer must be in the affirmative. There will be no benefit to any large landowner unless he does sign the necessary recordable contract—a contract agreeing to dispose of his excess holdings. Indeed, the failure to execute such a contract will result in substantial economic impact upon him. He receives no benefit and he still pays.

This is the sanction that the Congress obviously considered to be the most effective means of forcing the breakup of large holdings. It does leave the excess landowner with a choice as to whether he will execute a recordable contract. But if he does not do so, he subjects himself to the payment of very substantial charges. This economic sanction constitutes a burden which will have a serious impact on the failure to execute recordable contracts. The fewer the excess landowners who execute such contracts, the greater their assessments and present water costs must be.

Furthermore, if an excess landowner elects to sell his land he cannot sell it for a price which includes any increment in value brought about by the availability of project water. This restriction applies under our proposed distribution system contract and our existing water service contract, irrespective of whether the owner signs a recordable contract.

All has been done that could conceivably be done in order to comply with acreage limitation insofar as Westlands Water District and the United States is concerned. The most that this district or any other district can do to comply with the excess land provisions is to execute the contract containing the requirements these contracts do contain and to enforce them. The district complies with and enforces the provisions by not delivering water to excess land

unless a recordable contract has been executed. Neither the district nor the United States can physically force any owner to execute a recordable contract. It can only refuse him project water if he fails to do so.

The acreage limitation did not render it illegal to own more than 160 acres of land. It established a condition precedent to the obtaining of project water. The landowner complies with the law either by executing a recordable contract and using project water or in not executing such a contract and not receiving the benefit. He is not violating the excess land provision by failing to sign. He is, however, imposing upon himself a serious financial burden that undoubtedly will, in a short time, induce him to sign.

To follow the suggestion that recordable contracts be executed prior to construction would defeat the entire purpose of the statute itself. By one landowner who intends never to execute a recordable contract refusing to do so, the entire project is blocked and, in addition, that owner escapes the added assessments. In the meantime, those who were willing to sign would not be able to do so and no eligible landowner would receive water. This obviously was not the intention of the Congress.

The contract now before your committee is one that has been carefully drafted so as to fully implement the excess land and antispeculation provisions of reclamation law. It has worked effectively during the past 18 years in the Central Valley project. There are no facts existent in this instance which require a different treatment of Westlands Water District than that which has been accorded to other districts in the project. Our district has agreed to the contractual provisions and will abide by them.

In conclusion, Mr. Chairman, I would ask that my letter of June 11, 1964, to the chairman of this subcommittee be made a part of the record of these proceedings following my own testimony.

Attached to my statement, also, are the provisions of the water service contract of June 5, 1963, which deal with the excess land and antispeculation provisions of reclamation law. I ask that they also be made a part of the record. A reading of these articles will reveal that the provisions of law have been implemented effectively and in great detail.

WESTLANDS WATER DISTRICT,
Fresno, Calif., June 11, 1964.

HON. FRANK E. MOSS,

Chairman, Subcommittee on Irrigation and Reclamation, Committee on Interior and Insular Affairs, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We have just received a copy of the letter of Mr. Thomas L. Pitts, secretary-treasurer of the California Labor Federation, relating to the proposed distribution and drainage system repayment contract between Westlands Water District and the United States. We also have a copy of the material prepared by Mr. William Reich which we assume has also been made available to you. After reading Mr. Pitts' letter and Mr. Reich's comments and finding such lack of knowledge of the contract and the physical facts, I feel that I cannot in good conscience let the remarks go unchallenged.

It is worthy to note that some time ago I learned of the imminence of Mr. Pitts' letter and contacted his assistant, Mr. Don Vial, who, as I understand it, handles this type of matter. I asked if I might meet with him and Mr. Pitts to present the facts regarding this situation to them. A meeting in San Francisco was arranged. Subsequently, the meeting was cancelled by Mr. Vial with a promise that another date would be set up and I would be notified. I have not yet heard from either Mr. Pitts or Mr. Vial, although a considerable period of time has elapsed.

During the course of my conversations regarding a possible meeting, I learned that at the time Mr. Pitts' letter was written, neither he nor Mr. Vial had seen, and I believe have not yet seen, a copy of the contract itself. I know that the matter has not been discussed with any representative of this district and am reasonably confident that it has not been discussed with any representative of the Bureau of Reclamation.

I have known Mr. Pitts for some time and have always respected and admired him as a responsible official of a worthy organization. It was for this reason in particular that I was surprised at his taking a hostile position to a public pro-

gram which means so much to the community and his own members without some effort being made by him to discuss it with ourselves or the Bureau of Reclamation to make certain of his facts. I particularly felt this way since the subject with which he is dealing is patently so unfamiliar to him and his people in its technical aspects.

Mr. Reich's statement also is based upon gross misstatements of fact. For example, Mr. Reich states with reference to Southern Pacific Co.:

"The company has refused to join the district or sign recordable contracts."

The fact of the matter is that all lands owned by that company lying below the San Luis Canal (the western boundary of Westlands Water District) and within the Federal service area and comprising some 60,000 acres are now and always have been within the district since its formation in 1952. It joined the district at that date. The company lands are subject to assessment and have been assessed every year, along with the other lands in the district. It has supported the programs of the district, including the approval of the contracts containing the excess land provisions. It has supported the distribution system program for which it will have to pay a proportionately major part, even though the company will not be entitled to use the system if it does not sign a recordable contract. Furthermore, neither that company or any other landowner in the district has refused to execute a recordable contract. As a matter of fact, no one has been asked to sign such a contract since the occasion for signing has not yet arisen, insofar as this contract or the water supply contract are concerned.

While it is true, as Mr. Pitts has pointed out in his letter, the Southern Pacific Co. has stated that its "lands are not being offered for sale," it does not necessarily follow that they will not be. I suggest that at any given point of time, the AFL-CIO would also state that its own real property investments are not being offered for sale. This does not mean that under appropriate circumstances they would not be. Nor would the fact that any owner of excess land states that his lands are not being offered for sale or that he does not intend to execute a recordable contract mean that there is a failure to comply with the law. If an owner of excess land exercises the choice left to him by the law not to sign, the law is being complied with as much as if he had signed it so long as that owner is not provided with the benefits of the project facilities. This would be the case under the contract now before the Congress.

The same statement from which Mr. Pitts has selected the phrase quoted above also contains the following:

"We are progressive and we are anxious to see steps taken to preserve and increase the economic welfare. We will expect to cooperate in any equitable and reasonable water program.

* * * * *
 "If it is determined that the Federal Government, rather than the State or a partnership or both, shall undertake this project, we will wish to cooperate.
 * * * * *

"If a Federal program is decided upon at San Luis, we will wish to cooperate and trust that the terms provided for will be equitable."

The company has consistently given such cooperation to the same extent that it has been given by every other landowner in the district, large or small.

The statement of Mr. Reich quoted above is immediately followed by another which states:

"Thus it will receive a free ride at the expense of the taxpayers—all the benefits of an improved water supply and advancing land values."

The fact is that Southern Pacific Co. is one of the taxpayers in the district, and a very substantial one. Had Mr. Reich investigated, he would have learned, as will be pointed out hereinafter, that if the Southern Pacific Co. fails to sign a recordable contract, the cost to it in assessments will be much more than the value of any improvement in its water supply that might accrue.

As for Mr. Reich's statement that the Southern Pacific Co. would receive a "free ride at the expense of the taxpayers * * * [from] advancing land values," a similar statement was made to the writer by Mr. Vail of Mr. Pitts' office at the time the discussions of a meeting were being held. At that time it was pointed out to Mr. Vial that, under the contract in question and under the water service contract executed by Westlands Water District and the United States on June 5, 1963, the antispeculation provisions of reclamation law are made applicable to the sale of excess land without regard to the execution of recordable contracts. In other words, under those contracts, all sales of excess land are controlled by the antispeculation provisions of the law, even though a re-

cordable contract has not been executed. When this was pointed out to Mr. Vial he expressed great, but pleasant, surprise at the existence of the requirement. Had the contract been examined, this fact would have been readily apparent. As a matter of fact, the same provision has been included in all Central Valley project contracts, with which I would assume Mr. Reich, Mr. Pitts, and Mr. Vial at least would have had some familiarity, since the first was executed in the mid-1940's.

The burden of Mr. Pitts' letter is that, if recordable contracts are not signed prior to the undertaking of construction of the distribution system, "water would percolate freely into the deep wells of the excess landowner so that enforcement of the excess land provisions would be virtually impossible" and "the Southern Pacific stands to benefit by a potential subsidy of \$120 million."

Even if the rest of Mr. Pitts' analysis were accurate, the basic fact on which he bases it is grossly in error. As a matter of fact, of the total surface application of the 783,000 acre-feet of project water the district will purchase from the United States, plus the approximately 250,000 acre-feet of additional water to be pumped from natural groundwater supplies, only some 173,000 acre-feet will find its way to the underground.

Underlying the lands of the district is a thick layer of impervious material known as Corcoran clay. Only an amount representing about 3 percent, or less than 25,000 acre-feet, of the project water applied to the surface will reach the deep areas below the Corcoran clay. Because of quality deterioration, some 144,000 acre-feet of the water reaching the underground and which remains above the Corcoran clay will have to be drained from the district.

It is true that, to the extent that there is a reduction of pumping in the district, there will be a decrease in the overdraft from the deep groundwater. Conversely, however, to the extent that excess landowners do not sign recordable contracts and continue to pump their supplies, the drawdown of deep water will continue. In addition, even if all of the lands in the district, including those of the Southern Pacific Co., became eligible to and did receive a project water supply, and with the application of the entire 783,000-acre-foot project supply, the average pump depth in Westlands Water District would only become stabilized at 300 feet.

The present average pumping depth is 375 feet in Westlands Water District (450 feet in the entire Federal service area). Under the program which the district of necessity must follow in raising its funds, the cost to the excess landowners of the same supply that they are using today pumped from the underground, conservatively estimated, will be from approximately 48 to 78 percent greater than it would have been had there been no project. Even under these circumstances and under these increased costs, they will still be able to obtain only 1½ acre-feet per acre from their pumps instead of the average of 3 acre-feet per acre, which is the crop requirement for full production. Were the excess landowner to attempt to pump a full supply from the underground, his costs would be more than double that of the project supply. Each of the additional wells and pumps alone necessary to accomplish this would cost from \$35,000 to \$70,000 in addition to substantially greater power costs.

The maximum benefit, if it can be termed that, which the Southern Pacific could obtain from raising ground water levels, even if it and all other excess landowners signed a recordable contract, would be about \$2 per acre-foot, and even then it would be available only after a considerable period of years. At the same time, if it does not sign a recordable contract and continues to pump its water, the resultant added cost of that water will be several times the maximum possible benefit of \$2. This increased cost arises from the fact that it will be necessary for the district to collect a large portion of its necessary funds to pay for the water and the distribution system through assessments so as to keep the water tolls sufficiently low as to encourage the eligible landowners to utilize the project water supply. To accomplish this, the tolls must be substantially less than the cost of pumping. The lower the tolls, the greater the amount that must be collected through assessments from all landowners in the district, irrespective of whether they are eligible to receive project water. In addition, in view of the commitment upon the part of the district to pay for a fixed amount of water, the more excess land that does not become eligible to take water, the greater the assessments must be on the land.

Mr. Pitts' figure as to an alleged subsidy of \$120 million, or any other figure for that matter, is interesting but unfounded in fact. Instead of being subsidized, the Southern Pacific and other excess landowners will be subsidizing the other water users in the project, if it does not make its land eligible to receive project water by executing a recordable contract. Part of the subsidy which

Mr. Pitts alleges will exist, that related to the distribution system covered by the contract, is precluded by the terms of that contract and could not exist. This again would have been apparent to him had he or his writers taken the time to read the contract and ascertain that the owners of excess land are not permitted to utilize the distribution system, if they do not sign a recordable contract. If they cannot use the system, any so-called subsidy available from it will not be accruing to them.

In order to acquire the balance of the Pitts' subsidy, it would be necessary for the company to improve its existing situation. This could not come about for the reasons already stated. In addition, if an owner of excess land does not execute a recordable contract, it will be paying for the project benefits others will receive and in an amount substantially in excess of the value of any benefit it could receive under such circumstances.

All excess landowners not signing a recordable contract will be helping to pay for a water distribution system they cannot use and for water someone else is using. Their water costs for a half-adequate supply will in most, if not all, instances be almost twice as much as before the project was constructed.

Messrs. Pitts and Reich have suggested that, if the recordable contracts are not signed, the repayment contract should be rejected by the Congress with the result that the project would not be built. The fact of the matter is that, if any owner of excess land did not intend to execute a recoverable contract, the course of action recommended by Messrs. Pitts and Reich, if followed, would be more to his advantage than would be the case if the contract before the Congress were to be executed and the distribution system constructed. If the project is constructed and he fails to sign a recordable contract, he cannot avoid the great additional cost which by far exceeds the minimal benefit, if any, he might receive from ground water under project conditions. If the works are not built, he is not faced with the substantial assessments necessary to pay for them and the project water.

The only result of the Pitts-Reich "solution" would be injury to the small landowners and those owners of excess land in the district who were then willing to sign recordable contracts.

The procedure being followed is precisely what the Congress very obviously had in mind in requiring repayment contracts with organizations having the taxing power and in not requiring the execution of recordable contracts as a condition precedent to the commencement of construction. The law contemplates a choice upon the part of the excess landowner. He may execute a recordable contract and avail himself of the project benefits until the excess land is sold by or for him or he can refuse to execute a recordable contract and not receive those benefits. The Congress wisely concluded that through the taxing power of such organizations, the owner of excess land who chooses not to sign will be deprived of project benefits and, undoubtedly, will be forced through economic circumstances to execute a recordable contract. But whether he does so or not, there is no question that the failure to sign plus the inevitable tax consequences will effectively deprive the excess landowner of the project benefits.

The San Luis project was started several years ago and is now well under construction. On June 5, 1963, a water service contract, which governs the furnishing of water to the district and in which the excess land provisions were included in detail, was executed between the United States and the district. It would seem that, even if there were any validity in the points being raised by Messrs. Pitts and Reich, they should have been raised at least prior to the execution of that contract. The contract now before the Congress does not have to do with the furnishing of a water supply. This was covered by the 1963 contract. The contract now being considered only provides for the construction and operation of a distribution system through which the water will be delivered. This contract can only, and does only, pertain to the use of the system insofar as the excess land provisions are concerned. In this respect, the contract very clearly and adequately precludes the transportation of water to or for any excess land the owner of which refused to execute a recordable contract.

An examination of the legislative history of the San Luis Authorization Act will reveal that Mr. Pitts' organization strongly supported the project authorization subject to inclusion in the act of the acreage limitation provisions of the Federal law without change. The Congress did authorize the project subject to those provisions. At no point was the suggestion made that the law be modified, even though that would have been the appropriate time to do so, if it were to be done.

The effect of the recommendation of Messrs. Pitts and Reich, at this point of time, would simply be to deprive the United States of revenue from the project and postpone or render useless the main project works now underway in which the United States has invested millions of dollars. At the same time, as pointed out herein, the owner who intends never to execute a recordable contract would find himself in a more favorable position as a result of the course of action suggested by these two men.

Every assurance that can be given at this time that the excess land provisions of the law will be enforced has been given. Under the law, the Secretary of the Interior is required to place such provisions in the contract between the district and the United States. He has done this and has complied with the legislative requirements. The district, under the law, must agree to those provisions and it has so agreed. It has complied to the fullest extent that it can at this point. It will give further compliance by signing the contract and enforcing the contractual provisions. If it does not enforce those provisions, it will have breached its contract and the United States can further enforce the law through legal proceedings or otherwise. The law is, therefore, in any event being implemented and enforced to the letter.

It should be pointed out that the frequent allusions to the Southern Pacific Co. has been necessitated by the emphasis and references made in the comments of Mr. Pitts and Mr. Reich. What we have stated, however, is applicable to all excess landownerships in the district.

We regret exceedingly and apologize for the necessity for such a lengthy presentation and the resultant imposition on your time. Nevertheless, we felt it necessary in order to present the facts as they are. We recognize that no particular action is required by you, and we suggest none. Our sole purpose is to supply you with accurate information on the subject. We are convinced that this factual information will demonstrate that there is complete and effective compliance with the requirements enacted by the Congress to insure the fulfillment of its objectives. Fairly viewed, as we are certain it will be by you, it will be seen that the statements and suggestions made by Mr. Reich and Mr. Pitts are without basis, merit, or responsibility.

Respectfully submitted.

RALPH M. BRODY,
Manager-Chief Counsel.

CHANGES IN ORGANIZATION OF DISTRICT

21. While this contract is in effect no changes shall be made in the district either by inclusions which in the aggregate will total more than 12,500 acres of land or exclusions which in the aggregate will total more than 12,500 acres of land, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the contracting officer's written assent thereto.

TRANSFER OF CARE, OPERATION, AND MAINTENANCE OF SAN LUIS UNIT

22. The United States may transfer the San Luis unit or a portion thereof to the State of California for care, operation, and maintenance and such transfer shall not affect the rights or obligations of either party to this contract.

LAND NOT TO RECEIVE WATER FURNISHED TO DISTRICT BY UNITED STATES UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

23. (a) No water made available pursuant to this contract shall be furnished to any excess lands as defined in article 25 hereof unless the owners thereof shall have executed valid recordable contracts in form prescribed by the United States, agreeing to the provisions of this article and articles 24 and 25 of this contract, agreeing to the appraisal provided for in article 24 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such lands at the date of the appraisal without reference to the construction of the project, all as hereinafter provided, and agreeing to the sale of such excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess lands shall carry the right to receive water made available pursuant to this contract unless and until the purchase price involved in such sale is approved by the contracting officer and upon proof of fraudulent representation as to the true consideration

involved in such sales the United States may instruct the district by written notice to refuse to furnish any water subject to this contract to the land involved in such fraudulent sales, and the district thereafter shall not furnish said water to such lands.

(b) If project water furnished to the district pursuant to this contract reaches the underground strata of excess land owned by a large landowner, as defined in subdivision (a) of article 25 hereof, who has not executed a recordable contract and the large landowner pumps such project water from the underground, the district will not be deemed to have furnished such water to said lands within the meaning of this contract if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of project water by the district to nonexcess lands or to excess lands with respect to which a recordable contract has been executed.

VALUATION AND SALE OF EXCESS LANDS

24. (a) The value of the excess irrigable lands within the district held in private ownership of large landowners as defined in the next succeeding article hereof, for the purposes of this contract, shall be appraised in a manner to be prescribed by the Secretary. At the option of a large landowner, however, the value of such land may be appraised, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the district and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the district are unable to agree upon the appointment of the third, the presiding justice of the Fifth District Court of Appeals of the State of California shall be requested to designate the third appraiser.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such lands on account of the existing or prospective possibility of securing water from the project;

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The excess land of any large landowner shall be reappraised at the instance of the United States or at the request of said landowner. The cost of the first two appraisals of each tract of excess land shall be paid by the United States. The cost of each appraisal thereafter shall be paid by the party requesting such appraisal.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large landowner shall be appraised in like manner.

(e) Excess irrigable lands sold by large landowners within the district shall not carry the right to receive water made available pursuant to this contract for such lands and the district agrees to refuse to furnish such water to lands so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the district and said sale price is not in excess of the appraised value fixed as provided herein.

(f) The district agrees to take all reasonable steps requested by the contracting officer to ascertain the occurrence and conditions of all sales of irrigable land of large landowners in the district made subsequent to the execution of this contract and to inform the United States concerning the same.

(g) A true copy of this contract, of each recordable contract executed pursuant to this article and articles 23 and 25 hereof, and of each appraisal made pursuant thereto shall be furnished to the district by the United States and shall be maintained on file in the office of the district and like copies in such offices of the Bureau of Reclamation as may be designated by the contracting officer and shall be made available for examination during the usual office hours by all persons who may be interested therein.

EXCESS LANDS

25. (a) As used herein the term "excess land" means that part of the irrigable land within the district in excess of 160 acres held in the beneficial ownership of any single person; or in excess of 320 acres held in the beneficial ownership of husband and wife jointly, as tenants in common or by the entirety, or as community property; the term "large landowner" means an owner of

excess lands and the term "nonexcess land" means all irrigable land within the district which is not excess land as defined herein.

(b) Each large landowner as a further condition precedent to the right to receive water made available pursuant to the contract for any of his excess land shall:

(i) Before any water is furnished by the district to his excess land, execute a valid recordable contract in form prescribed by the United States, agreeing to the provisions contained in this article and article 23 and 24 and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such excess land and within a period of 10 years after the date of the execution of said recordable contract and agreeing further that if said land is not so disposed of within said period of 10 years, the Secretary shall have the power to dispose of said land at the appraised value thereof fixed as provided herein or such lower price as may be approved by the owner of such land, subject to the same conditions on behalf of such large landowner; and the district agrees that it will refuse to furnish said water to any large landowner other than for his nonexcess land until such owner meets the conditions precedent herein stated:

(ii) Within 30 days after the date of notice from the United States requesting such large landowner to designate his irrigable lands under the project which he desires to designate as nonexcess lands, file in the office of the district, in duplicate, one copy thereof to be furnished by the district to the Bureau of Reclamation, his written designation and description of lands so selected to be nonexcess land and upon failure to do so the district shall make such designation and mail a notice thereof to such large landowner, and in the event the district fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer, who will mail a notice thereof to the district and the large landowner. The large landowner shall become bound by any such action on the part of the district or the contracting officer and the district will furnish said water only to the land so designated to be nonexcess land. A large landowner may with the consent of the contracting officer designate land other than that previously designated as nonexcess land: *Provided*, That an equal acreage of the land previously designated as nonexcess shall, upon such new designation, become excess land thereafter subject to the provisions of this article and articles 23 and 24 of this contract and shall be described in an amendment of such recordable contract as may have been executed by the large landowner in the same manner as if such land had been excess land at the time of the original designation.

Senator KUCHEL. I received two telegrams from representatives of organized labor in California, one favoring, one opposing, the contract. The one favoring is the same telegram which Mr. Brody previously read as having also been addressed to Congressman Sisk by the Building Trades Council and Central Labor Council in Fresno.

(The telegram referred to is printed on p. 97.)

The other one is addressed to Hon. Frank E. Moss, chairman of the subcommittee, from Thomas L. Pitts, secretary-treasurer of the California Labor Federation, AFL-CIO, which supports the position taken by the representative of the AFL-CIO who testified earlier. It will be printed at this point.

(The telegram referred to follows:)

SAN FRANCISCO, CALIF., July 6, 1964.

HON. FRANK E. MOSS,
Chairman, Irrigation and Reclamation Subcommittee, of the Senate Committee on Interior and Insular Affairs, Senate Office Building, Washington, D.C.:

Re Westlands contract hearings July 8, California Labor Federation strongly supports position to be presented before subcommittee by national AFL-CIO. Our letter to California delegation in opposition to contract without more specific assurance of compliance with excess lands law sets forth State AFL-CIO views. A copy of this already in your committee hands. Arguments of contract pro-

ponents as expressed repeatedly by Ralph Brodie on behalf of large landholders and repeated by others, contest our statement that water would seep into the lower water zone from which large landholders pump. Brodie ridicules this by referring to the so-called impervious layer of diatomaceous clay, known as corcoran clay, that separates the upper water zone from lower zone. This argument would make sense only to a person unfamiliar with the area. We have contacted Department of Interior Geologists in Sacramento and they point out that Corcoran clay "leaks like a sieve" because the casing of two-thirds of existing wells is perforated above and below the clay. While the water above clay is of poor quality, its mixture with water below the clay makes it usable for irrigation. We call to your attention specifically diagram on page 427 of Geological Survey water-supply paper 1360-G of Department of Interior.

Also, following quote from page 479 of survey: "Ground waters contained in the deposits of the lower water-bearing zone originally were effectively separated from overlying waters throughout most of the Mendota-Huron area by the diatomaceous clay. However, most wells tapping the lower water-bearing zone admit water from the upper water-bearing zone either through perforations or casing leaks above the clay, or down the gravel envelope through the clay. Because of the large head differential developed by the heavy pumping from the lower zone, these upper-zone waters move down to the lower zone when the pumps are idle and are drawn back into the wells when pumps are operating, resulting in mixing of the waters with high concentration of solids of the upper zone with the less-concentrated native waters of the lower water-bearing zone." We do not claim Mr. Brodie's omniscience regarding the Westlands District, but we do have a high regard for the policy of Congress. San Luis Authorization Act requires enforcement of law and does not suggest that we leave it to the possibility of economic sanctions in the vague and distant future. If proponents have so much confidence in economic sanctions they should not be opposed to clear indication of acceptance of enforcement at this time. Further, omissions of the past of Department regarding enforcement should not be made the basis for future nonenforcement in an area thoroughly dominated by excess landholders.

THOS. L. PITTS,

Secretary-Treasurer, California Labor Federation, AFL-CIO.

Senator KUCHEL. Now we are going to call on the Reverend Father James Vizzard, whom I am pleased to call my friend, and whom I welcome to the committee.

STATEMENT OF REV. JAMES VIZZARD, S.J., DIRECTOR, WASHINGTON OFFICE, NATIONAL CATHOLIC RURAL LIFE CONFERENCE

Father VIZZARD. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Father James L. Vizzard, S.J. I am director of the Washington office of the National Catholic Rural Life Conference, the national headquarters of which are at Des Moines, Iowa.

At the outset I want to thank the subcommittee for providing this opportunity for public hearings on the disputed Westlands contract. I share Mr. Brody's viewpoints that these hearings really are not necessary or should not have been necessary. We believe, however, that without this forum those of us who oppose both the contract and the attitude which allows it to come into being might have no adequate way in which to assure that our protests are effectively heard.

At the time I composed this statement I did not know the complete list of witnesses who would appear before the subcommittee. Still, I am quite confident that the only defenders of the contract will be the parties to the contract, namely, the Department of the Interior and the Westlands Water District. I am sure—and my confidence has been fulfilled—they will fill the hearing record with documents, statistics, engineering reports, and legal verbiage in an attempt to justify the

unjustifiable. Most, if not all, other witnesses will have no personal ax to grind. They, like myself, will be here only in an attempt to protect the public interest.

As this subcommittee knows, I am neither a geologist nor an engineer, nor a lawyer, nor even a politician, and I suppose it wouldn't be difficult for members of these honored professions to expose my ignorance in these fields. But I can read, and I can make simple deductions from obvious facts. After having read dozens of documents and reports and studies on the San Luis project, and in particular the Westlands Water District contract, I come to the inescapable conclusion that there is here a serious violation of public interest and public policy.

Before this subcommittee I do not have to belabor the point that the whole purpose of the irrigation and reclamation activities of the Federal Government is to promote family farming in this country and to prevent land and water monopoly. This has been the Federal policy, approved repeatedly by both Republican and Democratic Congresses and administrations ever since passage of the National Reclamation Act in 1902.

This purpose, and only this purpose, has been considered important enough to justify the spending of vast sums of Federal funds for the development of land and water in the arid West. Nowhere has this been more emphatically enunciated than in a speech in 1905 by the Honorable Francis G. Newlands, cosponsor of the act. Addressing the Sacramento Valley Development Association at Red Bluff, Calif., Senator Newlands stated:

The National Reclamation Act intended to meet the demands of the homeseekers of the country. Guarded in every way against monopoly and speculation, intended to secure to every man of industry an area of land sufficient, according to the soil and the climate or productiveness, for the support of a family, and sufficient for that alone, it is also intended to break up existing land monopoly.

And so we provided that water rights could be secured for lands in private ownership within the reach of Government projects, to be guarded against monopoly by preventing any proprietor from securing water rights for more than 160 acres, the amount of land fixed in the bill.

Here let me say that in my own opinion California has no greater curse than these large landed estates.

My native State of California—our native State, Senator—in my judgment, still has “no greater curse than these large landed estates.” In an area where chamber of commerce brochures boast that a prosperous family farm can be operated on a good deal less than 160 irrigated acres, we find vast holdings in the thousands and tens of thousands of acres. These huge industrialized operations are the very antithesis of the family farm. It is these factories in the fields which have been the chief violators of human rights and dignity in the employment of seasonal farmworkers. It is these great corporate holdings which by legal trickery and political power strive constantly and often effectively to pervert public policy. It is these interests which by one device or another attempt to bend public servants to their will. It is these “large landed estates” which, contrary to the clear intent of the law, hope for unwarranted private benefit from the enormous expenditure of public funds on the San Luis project.

In this statement I do not feel it necessary for me to present a detailed analysis of the San Luis project or of the Westlands Water Dis-

trict contract. Other statements, particularly that of Dr. Paul Taylor, who will follow me, do that more than adequately. I am thoroughly familiar with his presentation and declare myself in full accord with his conclusions. The evidence demonstrates beyond all reasonable doubt that not only in this matter but in a whole series of reclamation projects and proposals the Department of the Interior is, to put it mildly, showing less than adequate respect for facts, for law, and for longstanding public policy.

The Department, for instance, surely must know that the supposedly impervious layer of Corcoran clay, shot through as it is by literally thousands of wells, I understand about 3,000, is about as impervious as a sieve. Otherwise why does the Department, through the so-called unavoidable clause in the contract, try in advance to repudiate responsibility for the inevitable percolation of project waters into the underground pumping areas of noneligible lands?

Is any other conclusion possible than that either the Department is too ill informed to be able to recognize the demands of law and of public interest or too weak to enforce them? There is, of course, a third alternative, which understandably, one is reluctant to mention: that the Department recognizes the destruction of public policy and the illegal diversion of public funds to private gain and concurs in it.

I know this is raising extremely grave questions, and I do not do it lightly. But the approval of the Westlands contract does not stand as an isolated example of the Department's flouting the demands of law, the intent of Congress, and the protection of public interest and public policy. In recent months alone there have been repeated instances.

There is, for example, the massive Glenn-Colusa giveaway in which the Department of the Interior not only canceled millions of dollars of indebtedness to the United States for water diverted from the Sacramento River, but also contracted to supply many hundreds of thousands of acre-feet of project water at a mere pittance to the excess landholders of the Glenn-Colusa area.

Then there is the Department's comprehensive water plan recently proposed for the Pacific Southwest which, according to former Senator William F. Knowland's Oakland Tribune, would make the State of California—

the "marketing agency" for many Federal water projects, thus evading the 160-acre limitation which requires "Federal water" buyers to break up huge farms into "family farm" plots (February 16, 1964).

Most recent was the Department's proposal of a "partnership" between the Federal Government, public power agencies, and private utilities in a power intertie between the Northwest States and California, where the majority of the funds would be supplied by the Federal Government but the private utilities would be in a position to exercise control.

These and other developments in the last 3 years or so must suggest to this subcommittee (1) that the Westlands Water District contract as it presently stands should be disapproved, and (2) that a thorough review should immediately be undertaken to examine the Department of the Interior's failure to discharge its responsibility for public policy. Private citizens and even individual legislators do not have the money

or staff or time to police every aspect of the enforcement of reclamation law and reclamation policy. We have to depend on the duly constituted bodies of Congress to insure that public moneys voted by them for public purposes do in fact achieve these purposes and are not diverted to private gain.

As the completion of my formal statement, Mr. Chairman, I would like to add one other observation. I have listened all day to the testimony and the comments and heard it frequently stated that the so-called unavoidable clause has been included in most if not all other contracts between water districts and the United States, and why should the unavoidable clause be eliminated from the Westlands contract.

The question has been repeatedly asked, In what way is the Westlands Water District situation different from that in other water districts?

I can see at least three, perhaps four, ways in which the Westlands business differs fundamentally from other irrigation or reclamation projects in California and elsewhere.

One way, which seems to me to be overwhelmingly clear, as brought out repeatedly in the testimony, is that in this project, as differing from those other projects, a primary purpose of the project is to recharge ground water, recharge ground water which will be available to eligible and noneligible owners of land.

This simply is not true in other contracts, in other projects.

What is more, in other projects, the majority of them, if not all of them, only a relatively small proportion of the land was held in excess over the 160- or 320-acre limitation, whereas in this project, in this district, 70 percent of the land is ineligible unless recordable contracts are signed.

Third, in this project it is admitted beforehand, and it was built into the planning, that there would be violation. That is, it is built into the project that there will be deliberate and planned recharging of ground water available to ineligible holders of land as well as eligible holders. That simply is not true in other projects.

Finally, this project is an enormous project. It is far greater, involving far larger expenditures of public funds than any of the other projects to which it has falsely been compared.

On these grounds and on perhaps other grounds, this particular project differs very drastically from the other projects, and a practice which may have been justified—and I question whether it was—is not justified in this case. What is more, as far as I know, there are no prescriptive rights on sin. Just because a man has living in sin for 20 years or more does not mean it becomes a virtue. Just because the Department of the Interior has been writing contracts in one fashion or another does not necessarily mean that now it becomes legal or proper.

I see no weight whatever to that argument. If they were wrong in the first place, they are still wrong, and at long last they should be converted from their sin.

Thank you, Mr. Chairman.

Senator KUCHEL. Thank you, Father Vizzard. Let me just ask a very few questions.

Taking point 3 as outlined by you as your feelings, as to how this contract before us now is different, you suggested that an ineligible

landowner would nevertheless receive supplemental water. How does that work? I do not follow you there.

Father VIZZARD. I do not mean he will get surface water, Senator. I mean he will get enhanced ground water supply, which is greatly to his advantage.

Senator KUCHEL. Just looking at one statement of yours, it is your view, Father Vizzard, that the law enacted by the Congress in 1926 would require the Secretary of the Interior to obtain recordable contracts from all ineligible landowners within a service area prior to entering into a contract with the district?

Father VIZZARD. Not necessarily so, Senator. I am not at all sure that it would be good policy at all to demand 100-percent compliance before going ahead with the construction of the works. But there should be a very minimum, a very substantial proportion of the potentially eligible land should be signed up, in my judgment, before the moneys are spent.

After all, once the distribution system is built, once that \$150 million of citizens', taxpayers' money has been spent, it is a very late date at that point to find out whether it is well spent and whether it is going to be well used, and whether it is going to be properly used. The time to assure that, it seems to me, is before you spend the money, not after you spent it.

Senator KUCHEL. Would you interpret the law, therefore, to bestow upon the Secretary of Interior a discretionary authority to require in some instances, if it appealed to him, recordable contracts from all excess landowners and in other something less than that?

Father VIZZARD. No. As I attempted previously to state, I am not sure it would be good practice or public policy to demand 100-percent compliance before starting. But as I say, a very substantial proportion should be, in my judgment, and I think in this particular case the proportion should be indeed very substantial, because of the very large proportion of ineligible lands in this project, 70 percent of it.

Senator KUCHEL. On the allegation that the Bureau of Reclamation has been living in sin since 1926, and should seek conversion now by revising its policy and its interpretation of the law, how then would you spell out the policy which the Secretary of the Interior should in your judgment adopt in entering into contracts under the circumstances?

Father VIZZARD. Senator, I could not make a universal statement on that. I think the circumstances of each individual project should dictate to him the procedures he should follow. On this particular project, because of its particular importance and size and the differences between it and other projects, I think he should have adopted and should now still adopt a procedure different from that which he has practiced in the past.

If I may inject another ecclesiastical observation on this matter, the very use of the "unavoidable" clause seems to me like something to seek absolution and then going out and committing the crime. We just don't allow that.

Senator KUCHEL. Well, thank you very much, Father Vizzard. I appreciate your testimony.

Father VIZZARD. Thank you very much.

Senator KUCHEL. Is Mr. Towland Watts here?

**STATEMENT OF ROBIN MYERS, RESEARCH CONSULTANT, NATIONAL
ADVISORY COMMITTEE ON FARM LABOR**

Miss MYERS. I am here for Mr. Watts. Miss Myers.

Senator KUCHEL. Proceed, please.

Miss MYERS. Mr. Watts had expected to be here today, but he had to fly in from Wisconsin, and he has not made it. I am, however, Robin Myers, a research consultant to the National Advisory Committee on Farm Labor, and, therefore, I am here in case there are any questions you might wish to ask.

I would simply like to insert his statement into the record, in view of the fact that you have it before you, and in the interests of saving time, making only a few very brief comments to emphasize the points which appear to us to be most important.

The National Advisory Committee has been concerned, as I know you have been, more and more over the period of years with the concentration of landownership and the concentration in agriculture, at the same time that the family farm is declining in numbers. This is an overall trend, of course. It has been perhaps more difficult in California, because of some of its amazing and almost miraculous successes, more than anywhere else. Nevertheless, it has raised great problems, and some of the speakers here have talked more about the problems involved in the concentration of farm ownership than I, and, therefore, I will not go into it in detail.

But this situation does mean, I think, that we give unusually careful attention to a situation in which we have an area in which 70 percent of the landowners are what are called excess landowners in terms of reclamation law. So it seemed to us that the Westlands District contract was particularly important because of its size and because of the fact that 70 percent of the landowners are excess.

It seemed to us, therefore, very important that a hearing be held, that Congress examine this, that it do its utmost to see that the original purpose of Congress, the promotion of individual or family farms and the avoidance of monopoly be upheld.

The question has been raised this afternoon that perhaps we are overly suspicious. I think a slight reference to history is necessary in order to explain why we are suspicious.

We seem to see a steady erosion of the 160-acre limitation and the protection of the family farm. I think California has made us suspicious, particularly because of the Imperial Valley situation. We should not go into that, because that contract is not before us, and yet we must, because it is so important a case, in which the 160-acre limitation was set aside by the Department of the Interior, that it makes us look carefully at contracts, and it makes us wonder, when we see a clause like this "unavoidable" clause, in which it is stipulated that large landholders are exempt in some way.

Now, we have had a very complicated discussion today of just what this underground water is. But the fact remains that it is of sufficient importance that contracts were written to specifically exempt excess

landholders who were getting ground water. Obviously, they are getting water from the project, federally financed, or it would not have been necessary to write in an exception.

It seems to us that this situation is so serious that the time to act is now. If the project is built and the water is ready to be distributed, the Government has no bargaining lever left to attempt to persuade landowners to divest themselves of land under a signed contract. Now there is still time to go after them and see that they sign before this additional \$150 million is committed.

Another point, and the one point I think that no one else has made, is that it is not only the excess land holders who have to be warned about this. We also must advertise the opportunities for little people to buy farms. If we don't do anything about it until the water is ready to be distributed, if we find the landholders doing what happened in the case of Glenn-Colusa, going ahead and using until the Government catches up with them, and then being able to compromise, we have never provided any opportunity for the extra thousands of small landowners or potential small landowners who would like to have this opportunity. The opportunity will be here, I think, only if this Senate committee gives it the opportunity, because it seems to us to have gone through every other channel. It is still possible for you to protect the 160-acre limitation.

There is, I suppose, some possibility that they all will sign and the land will be distributed. But I don't think you can rely on that kind of possibility, because it has not always happened, particularly in California.

The time to make sure of what does happen is now, and this is what we ask the committee to do. We ask them to do it by rejecting this contract and sending it back to the Secretary of the Interior, so that he can review it, remove this "unavoidable" clause, so that it is absolutely certain that the 160-acre limitation applies to all landholders getting any water through this Federal project; and secondly, to see that contracts are signed by the excess land holders before Federal funds are further committed to the project.

Senator KUCHEL. Do I understand your position to be that you believe the Secretary should require as a condition precedent a report of the contract by every landowner in the district who otherwise would be ineligible for supplemental water? Is that your position?

Miss MYERS. I would say again, as Father Vizzard said, you don't ask for 100 percent. But it seems to me the sensible thing is, one suggestion which came up this morning, that enough excess land holders should sign recordable contracts to make sure there is enough eligible land involved to carry out the purposes of the project; that is, enough, for instance, to require enough water to be distributed to make this 300-foot level.

Every project is different, but I think you can find a point at which the number will make the project successful, and that number should be committed before the fund is provided.

Senator KUCHEL. And that number in your judgment should rest in the discretion of the Secretary?

Miss MYERS. I would think so.

Senator KUCHEL. Well, thank you very much.

Mr. Watts' prepared statement will be made a part of the record at this point.

(The statement referred to follows:)

PREPARED STATEMENT OF ROWLAND WATTS, NATIONAL ADVISORY COMMITTEE ON FARM LABOR

My name is Rowland Watts. I am appearing here today on behalf of the National Advisory Committee on Farm Labor. This committee is composed of the 25 prominent Americans whose names appear upon this letterhead. The purpose of the committee is to gather and present information about the conditions of farmworkers and about farm labor practices and policies. The committee believes that any action that permits a further erosion of the 160-acre limitation upon the use of federally financed irrigation water is a serious disservice to the American economy.

It was my privilege to act as counsel to the public hearings on farm labor and rural poverty which the NACFL held in Washington on May 18 and 19 of this year. At these hearings, Mr. Gilbert G. Stamm, Acting Assistant Commissioner of the Bureau of Reclamation, testified on some of the matters related to the present hearing. Other witnesses told of the struggle to survive of family farmers and farmworkers in the agribusiness economy of California.

The proposed distribution systems contract for the Westlands Water District which is now before your committee has a built-in means of avoidance of the 160-acre limitation in a district where 70 percent of the land is owned in holdings larger than those stipulated in the Reclamation Act. This is the provision that if stored water reaches the underground strata of excess land owned by a landholder who has not executed a recordable contract (agreeing to dispose of excess land) and he pumps up the water, the contractor (the district) will not have been held to violate his contract if the water reaches the underground as a reasonably unavoidable result of surface delivery of the stored water.

This concept of "unavoidable" delivery of water is related to the nature and purpose of this specific project. Agricultural land has been developed in the relatively dry Westlands area by pumping underground water from deep wells. Water tables have been lowered so that there is a table of nearly 475 feet on depth today contrasted to 250 feet 15 years ago. The result is both that the cost is becoming prohibitive and the quality of the water is deteriorating to the extent that it threatens the fertility of the land.

The need for the project and its purpose, therefore, were conceived as being not only for surface irrigation but also and equally for the replenishment of the water table. At a minimum, an estimated 17 to 25 percent of surface water finds its way down and becomes part of the underground supply. It can then be pumped up by landholders not eligible for surface water and they profit in two ways: As the water table rises, the expense of pumping decreases, so there is a continuing financial gain. And since the water was nearing exhaustion they would receive water that would not have existed without the Federal project, and, therefore, in no sense water to which they are automatically entitled by their ownership of the land.

Moreover, the Westlands District includes only two-thirds of the Federal water district whose water table will be raised by the project. The statutory requirement of a single contract for a whole service area seems to have been ignored.

The distribution system for which this contract provides is constructed to supply all the lands in the area, not just presently eligible land, and to deliver water generously (1,080,000 acre-feet annually for the first 5 years, contrasted with a need of 960,000 feet if all lands are included and 288,000 if only those now eligible are included). Whatever amount may be surplus will be more for the underground water table.

The contract must be strengthened to structure the distribution system on the basis of eligible lands, and to eliminate the exemption of lands which receive underground water "unavoidably."

The Government's bargaining position—to secure compliance with the 160-acre limitation—is strong so long as it has not approved the distribution system without which the project cannot operate. It must insist that excess landholders sign recordable contracts agreeing to dispose of their excessive holdings before it

constructs a distribution system to service them. If it waits until water is ready to be delivered, excess landholders will have no incentive to comply. It has been reported that the Bureau expects to sign contracts on only 150,000 of the 350,000 acres in excess holdings permitting 210,000 acres to obtain Federal irrigation water by ground percolation. (In 1956, Southern Pacific, which holds 65,000 acres in the Westlands district and 120,000 in the Federal water district, stated that it did not intend to give up these holdings.) The example of Imperial Valley, which Secretary of the Interior Wilbur exempted from the acreage limitation 30 years ago, has strengthened the determination of the landholding corporations to profit by evading the Reclamation Act limitations.

Our reluctance to believe that corporate owners will move to comply with the law or that the Bureau of Reclamation will act to enforce it at the point when water is available is strengthened by the fact that Secretary Wilbur's ruling has been allowed to stand. In a letter to me dated May 7, 1964, Acting Assistant Commissioner Stamm wrote:

"Although the Department of Justice, in pleadings filed in the case of *Arizona v. California*, has expressed disagreement with Secretary Wilbur's ruling, the continuing press of other matters has caused us to defer a current study of the Imperial situation. We hope, however, to review this matter in the future as the circumstances of time permit."

If the Bureau of Reclamation feels no sense of urgency, why should the excess landholders? In the State area of the project, in addition to Southern Pacific, these corporations include Tejon Ranch Co. with 168,000 acres, Standard Oil with 218,000 acres, and Kern County Land Co. with 343,000 acres.

It has been suggested that since the "unavoidable" provision was written into other contracts in the Central Valley project, and that it was incorporated into the Westlands water service contract approved last summer, it is now too late to rectify the situation. Fortunately, this is not true. The distribution system contract can be returned to the Secretary of the Interior to be strengthened so that the system is built to service only those lands that have made themselves eligible. The water service contract—which is incomplete without a distribution contract—can be amended to delete the "unavoidable" provision. The fact that excess land requirements have been successfully avoided in previous contracts is not an excuse for continued circumvention of law, but rather a lesson that greater care must be taken to implement the law in present and future contracts.

It is estimated that in the Federal part of the San Luis project, which includes the Westlands district, the Federal investment will be about \$1,000 an acre, and that the Federal Government contributes another \$1,000 an acre because that investment is repaid on an interest-free basis. The cost of the San Luis project is about half a billion dollars, and that of the Westlands district about \$157 million.

Despite all the complications and side issues, the basic question is relatively simple. Will Federal water in the Westlands district make possible 3,000 to 6,000 thriving independent farming families, or will it add additional millions to the corporate wealth of entities like Southern Pacific and Standard Oil? The Reclamation Act intended to prevent water and land monopoly and to promote the American family farm. That has been public policy for 62 years. Its continuation can be insured only by the rejection of the Westlands contract by this committee. We urge you to reject it.

Senator KUCHEL. I have a statement of Fay Bennett, executive secretary of the National Sharecroppers Fund, which will be included in the record at this point.

(The statement referred to follows:)

TESTIMONY OF FAY BENNETT ON THE WESTLANDS WATER DISTRICT CONTRACT,
JULY 8, 1964

My name is Fay Bennett. I am executive secretary of the National Sharecroppers Fund, an organization which has been working for more than a quarter of a century to bring economic and social justice to sharecroppers, tenants, small farmers, and farmworkers. I appreciate the opportunity to appear before this committee, and I do so to urge the Subcommittee on Irrigation and Reclamation to reject the contract proposed by the Secretary of the Interior to govern distribution of water from the San Luis unit of the Central Valley project in California through the Westlands Water District.

We have long held that Congress and the Nation made the right decision 62 years ago when they decided that reclamation and irrigation funds provided by the public should be used to benefit the family farm and the working farmer. The contract now before you circumvents this policy in at least two basic ways. If this contract is adopted as currently written, fundamental policies will be changed—not by open discussion and the emergence of a new consensus—but by the evasion and erosion of existing, and binding, legal requirements.

Our major criticism of the Westlands contract is that it allows the giant corporate interests which own 70 percent of the land in the area to avoid the acreage limitation required to benefit from publicly financed irrigation. As this committee knows, the law now provides that delivery of water is limited to the amount necessary to irrigate 160 acres in a single ownership or 320 acres for a husband and wife; larger landholders must contract to divest themselves of acreage in excess of this within 10 years. But the current contract is seeking funds to build and prepare the irrigation system before the eligibility to receive the water has been determined.

Of equal importance is the fact that the United States has agreed to replenish the area's ground water basin as well as to provide surface irrigation. Much of the water used on the surplus lands is now pumped from this basin. Yet there is no stipulation that the farms which will continue pumping this water, to be supplied by the same federally financed project, must comply with the eligibility requirements of the law.

We feel it is urgent that the Secretary's contract be amended to force compliance with the eligibility formula now, before construction begins. It is utopian, at best, to think that the giant landholders who have already openly expressed their hostility to compliance will submit when the waters are about to flow. Past experience and simple logic dictate that action must be taken before the public moneys are committed.

The very magnitude of the public commitment to this project, which has been eagerly welcomed by even the biggest landholders, including the Southern Pacific Railway and the Kern County Land Co., places a special responsibility on Congress and the Secretary of the Interior to see that public policy is fully enforced. In an editorial strongly critical of the proposed contract, the St. Louis Post-Dispatch noted:

"It is estimated that in the so-called Federal part of the San Luis project the Federal Government will invest \$1,000 an acre and provide an additional subsidy in interest-free money amounting to an additional \$1,000 an acre. This would provide a windfall for holders of excess and ineligible lands conservatively estimated at \$360 million, of which an estimated \$65 million would accrue to Southern Pacific alone * * * *"

Prompt action is demanded by other considerations as well. This administration, and the Nation as a whole, is today waging a serious war on poverty. The 3,000 to 6,000 viable family farms which could be created in this region would be a substantial contribution to winning that war.

American agriculture, as the members of this subcommittee surely know, is today experiencing a period of severe crisis and change. The impact of technology, land monopolization, and the growing investments necessary to keep the small farmer competitive are serious problems for small farmers. We feel that now more than ever the small farmer, or that farmer's son, or the man who wants to own his own farm in the future, need strong commitments from Congress that their interests will be protected. The rejection of this contract would be a ringing affirmation that the central goals of our farm policy have not been sacrificed for the balance sheets of mammoth land corporations.

It would also give renewed hope to the farm laborers of the giant California ranches who are still among the most exploited members of the "other America." Proper enforcement of the acreage requirement in the Westlands Water District would create a thriving area where opportunities for all would be greater. At least a few thousand more families will be able to make a decent living on the land. Small farmers will live in the area, buy in the area, and help it grow, while corporation farm profits go to absentee owners. The decline in family farming and the poverty of many farm areas are not absolute trends that cannot be reversed. Here, the investment of hundreds of millions of Federal funds are worthwhile for they can, in at least one area, reverse this trend. They can benefit thousands of farmers instead of impersonal corporations.

Public policy for the whole of this century, exemplified in the Reclamation Act, calls for strengthening of the family farm and preventing monopoly of land or water. Today, the war on poverty in the farm areas likewise calls for strengthening the position of the independent farmer. Rejection of the Westlands contract by this committee and its return to the Secretary of the Interior will make possible the defeat of monopoly and the use of Federal funds to benefit thousands of farmers in California. We urge this committee to stand firmly behind the Reclamation Act and to reject the contract that would evade its limitations.

Senator KUCHEL. Mr. Taylor?

Mr. Taylor, I am glad to welcome you to the committee. I will be very happy, on behalf of the committee, to hear you.

STATEMENT OF PAUL S. TAYLOR, BERKELEY, CALIF.

Mr. TAYLOR. Thank you, Senator Kuchel.

My name is Paul S. Taylor. My residence is Berkeley, Calif. I speak here as an individual.

The background of my experience with the question presented here is of some 21 years' duration, as consultant on this particular subject to three Secretaries of the Interior, between 1943 and 1952, and I have followed this subject professionally and personally out of my personal interest ever since.

I have prepared a statement and an analysis, and I would appreciate if it those would be printed in the record of the hearings, so that I can conserve the time of the committee and not make my full statement, but make a few comments on what has been going on during the day, leaving the full statement to the record.

Senator KUCHEL. Yes, Mr. Taylor. It will be set forth in the record in its entirety.

Mr. TAYLOR. Thank you very much.

A little earlier, Mr. Brody had decried the emotionalism surrounding this issue. I don't decry the emotionalism insofar as it is directed to national purposes, but I would like to read this very short statement, which represents the best thinking that I could muster, and it is the result of a good deal of careful thought, analysis, and preparation.

The Westlands contracts now before the Congress are illegal, unethical, and a calculated circumvention of reclamation law. I urge this committee to send these contracts back to the Secretary of the Interior, to withhold further appropriations for the San Luis project until conditions have been rectified, and to ask the Secretary to make an explanation meeting these serious charges.

Congress is now being asked to approve two contracts with Westlands Water District; that is, give its legal blessing to the documents and to the course of conduct of which they are a result.

In substance, the Bureau of Reclamation has adopted a course of calculated circumvention of the law that govern it. Circumvention is accomplished by the planned delivery of Central Valley water to ineligible lands.

The law is clear. It forbids ineligible excess lands to receive water. The project plan of the Bureau of Reclamation intends to serve those lands by replenishing the ground reservoir that underlies them. Water in the reservoir serves ineligible lands, regardless of the distinction imposed by law, all of which is fully known by the Bureau of Reclamation.

Mr. Brody has mentioned that the rise in the water table could be accomplished in part by the pumping of water delivered on the surface to eligible landholders. Insofar as that is true, I think that what he is telling us is that the eligibles are complying to raise the water table for the ineligibles, making it easier for the ineligibles to pump and more difficult for the Secretary of the Interior to enforce the law.

I was gratified with his statement, if I understood correctly, that he has a communication from Mr. Russell Griffin, that he will sign, and that there are apparently others. I think that is very fine. In fact, I think that is a public-spirited attitude, a patriotic attitude. I suggest we conclude from that, if these great landholders will sign, how about the others? Eventually, why not now?

Now, I would like to emphasize that this is a new project; this presents many new aspects. This is not just one more project of the kind that we have seen year after year after year.

We have listened to the statements of representatives of the Bureau. We have seen their correspondence with the chairman of the Interior Committee, for example, emphasizing that in this instance they are only using the usual methods, following the normal procedures, and leaving the inference to be drawn that the usual methods, the normal methods, are adequate to meet what is in fact an abnormal situation.

Now, I would like to take up the first part of that, the record of the usual procedures which are recommended in this case.

In this year of 1964, I believe, the Bureau of Reclamation concluded contracts, district contracts from the Kings and Kern Rivers, 10 years after the completion of construction of the dams. In April of this year, they concluded contracts which I believe are not yet concluded with all Sacramento River diverters, but they concluded contracts with some of them 20 years after the completion of Shasta Dam to impound the waters that have been benefiting them.

One of the elements of, shall we say, this delayed success in getting contracts after 20 years, is that the Bureau of Reclamation apparently though it necessary to forgive 20 years' cost of water obligations owing to the United States as bait for complying with the law by signing district contracts 20 years late.

I have before me the Sacramento Union of about 2 weeks ago, June 26, and I think this suggests the story of the Sacramento River and the extent of enforcement 20 years late. I think it forecasts the result that is likely to occur on the Federal service area of the San Luis project if the usual procedure of proceeding with construction first and getting contracts afterward is followed.

May I read from the Sacramento Union of June 26, 1964:

* * * the Yolo County farmers plan to use the Federal water only on a 160-acre plot—but they believe the same water can be reused on other land because it does not pick up contamination from the earth in other fields. They also expect to use ground water and other water supplies for their additional acreage and do not believe they will have to break up their holdings.

Thus a battle which has been waged since 1944 when the Shasta Dam was built ended.

The Bureau of Reclamation is offering to waive all charges for project water drawn previously by farmers if they sign a 1964 contract.

Which, may I say parenthetically, seems to me to be a very odd way of looking at a financial obligation to the United States.

The Bureau has now told 30 potential signers that to get the waiver they must sign the 1964 contract.

Robert Pafford, director for region 2 of the Bureau of Reclamation, said that he does not believe many of the land holdings will be broken up except some through economic factors.

Similar contracts are also being prepared for users of San Luis project water.

There is the precedent of the usual method of construction first and contracts afterward, perhaps, also to be found in the Imperial Valley, where there is no enforcement of the acreage limitation after 31 years of water deliveries, or approximately that—31 years after the ruling was made.

Then, there is the story of the Salt River Valley of Arizona, which is told in my statement, and which I will not elaborate here except to say that there is, so far as I know, the shadow of enforcement, that a member of the Water Users Association may vote only for 160 acres of land, and he has no voting power beyond that.

Those comments relate, then, to the usual methods or the normal procedure or the uniform procedure, which I think is really meant by Commissioner Dominy in his letter to Senator Henry M. Jackson.

Now, let us see what is new in this project.

The project is a new kind of project. It presents a new situation in some respects. First, the replenishment of the underground. The stabilization of that water supply is intentional as a very important part of the project, as described in the contract and the project books upon which the project is built.

Second, while there have been other projects built entirely upon private lands, I think that no large projects, if any at all, have faced 70 percent of the area ineligible to receive water under the law.

Now, the Bureau, if I understood the testimony this morning correctly, admits that it will wait in obtaining the recordable contracts. That is to say, to some degree it admits violations in the law which forbids the lands to receive water. That is the language of the statute.

Now, it is different in another respect, and that is the extreme prevalence of ground water conditions that underlie the Federal service area over which the Westlands Water District is a part.

And in the ground water, it is not possible to make distinctions between eligible and ineligible lands that may make use of them.

There has been a good deal of discussion, which I do not intend to go into greatly, but I will say that the Geological Survey Water Supply Paper 1618 of the U.S. Department of the Interior, published in 1964, describes the ground water conditions. The title of it is, "The Use of Ground Water Reservoirs for Storage of Surface Water in the San Joaquin Valley of California."

It regards as suited to this kind of storage the particular area we are discussing: that is, the Federal service area. It describes the movement of water from the surface downward. It describes the improvement in the quality of the water from mixing the water delivered on the surface with those minor patches of water where the salt conditions are unfavorable, the result being usable water available where it was not usable before.

It describes changing the direction of movement of the ground water by pumping and changing the gradients—and I think we must remember that it is the subsurface gradients and not the surface ones that determine the movements of ground water.

So, where there is heavy pumping, you can initiate or accelerate the movement of water underground into those areas where the levels or the pressures have been lowered.

In addition, it describes the impermeability, so-called, of the diatomaceous Corcoran clay, denying that it is impermeable. It is relatively less permeable. It describes the puncturing of Corcoran clay by 1,000 active wells and by 2,000 abandoned wells.

So I think that the Department of the Interior's Geological Survey study makes it pretty clear that we are dealing with a ground reservoir that underlies this, and whether it is above the clay or below the clay, the water once there is available to ineligible and eligible lands alike.

Now, the next point that I would like to make is that the plan to circumvent acreage limitation, making use of the ground water reservoir with the characteristics that I have described, and even with references to this particular area, that that plan to circumvent it has a long history. I don't know when it began, but the first dating of a discussion of that sort with which I am familiar was back in 1937.

You will find in the hearings before the Senate Public Lands Subcommittee in 1937, in the statement of Mr. Roland Curran, who was at that time a leading opponent of acreage limitation, the record of the discussion between Bureau of Reclamation officials and himself and others who were opposed to acreage limitation at that time. So, the first dating is 1937, so far as I know.

In 1944 there was active debate on acreage limitation in the Congress of the United States, in the rivers and harbors bill, particularly, but also in the flood control bill. On the 13th of May of that year, the national magazine, Business Week, published an article under the title, "Valley Divided." There were laid out a variety of the tactics available to excess landowners, and planned by them, San Joaquin Valley excess landowners, a blueprint of the tactics that they had planned at that time to circumvent the acreage limitation.

I have put in my statement the relevant paragraphs in the article in Business Week. Summarizing very briefly, there were four principal tactics.

The first tactic was exemption of the Central Valley from acreage limitation. Congress denied that.

The second tactic was to assign construction of the projects to the Army Engineers, because at the time it was proposed the acreage limitations of reclamation law did not apply. Under the pressures from the local landowners, some of whom were adjacent to the area that we are discussing, the Federal service area, the Pine Flat and Isabella Dams on the Kings and Kern Rivers, were assigned to the Army Engineers. Congress acquiesced, but it did not acquiesce until it extended the acreage limitation provisions of the U.S. reclamation law to projects with irrigation features constructed by the Army Engineers. So those two were closed off.

The third proposal was to make use of the State of California, if necessary the State to pay the entire bill, as a means of circumventing the acreage limitation. I have commented on that briefly in my statement. If you wish me to comment further, I will, but unless you do, I will proceed to the fourth point, which is the proposed use of pumps by overlying landowners in order to draw on the ground water.

In 1947 this potential avenue of escape for landowners from the reclamation law was described in detail by Senator Sheridan Downey, who was leading the attack on the acreage-limitation provisions. Senator Downey described this in his book, printed in 1947, and he stated it to the Senate Public Lands Subcommittee hearings on the bill S. 912, to exempt the Central Valley project from the acreage limitation, as his major conclusion that when the water went underground, it was not possible to distinguish between the eligible and ineligible. I have quoted his statements in my own testimony here, and will pass on to a second conclusion, which was that once underground, the overlying landowner, excess landowner, would simply pump, and there would be no enforcement.

In fact, Senator, former Senator Downey went so far—and you will find this on page 485 of the hearings on S. 912 in the year of 1947, when Senator Downey had about four or five representatives of veterans' organizations before him, asking for the preservation of the excess land law, because reclamation projects carry a veterans' preference. He told them, in effect—and I have the language—that they were laboring under an illusion if they thought any farm opportunities were going to be made available to them under the Central Valley project because of these conditions. As he said, of course, if some excess landowner wanted to make his excess holdings available, he could, but the water underneath his land was his own property, and he could pump it, and no one could conceive of him doing anything else.

Well, I think that reviews some of the history of a move to take advantage of ground waters, to escape from the acreage limitations.

Now, Senator, if I may respond to questions that you did not put to me but you have been putting this afternoon and this morning, I would like to say a word. That is, about the "unavoidable excuse" clause in the contract. You have spoken of that. You have referred, I believe, to the insertion of that in contracts since perhaps 1926.

Well, I don't believe that has been in any contract since the late forties. But it has been, as you say, in some contracts since a date which I believe to be approximately the late forties.

Now, I don't think that furnishes any precedent, and I wonder if the Senator really seriously would like to have it regarded as good law or practice that what bureaucrats write into an article, and the fact that Congress may have gone on and made other authorizations and other appropriations, and so forth—I wonder if the Senator really would like to have that regarded as a precedent which, shall we say, has the congressional blessing, sort of the laying on of hands. It might be convenient in this particular instance, but my impression is that the Congress of the United States has before it thousands of pages, and in the contracts it has scores of pages, usually, per contract, and I think it would be a very difficult proceeding for a Senator or a Congressman or even a committee to vote on the subject, to comb those contracts with a fine-tooth comb.

Actually, I think it would be an invitation to bureaucrats to have a field day to amend, alter, rewrite the statutes of Congress in the fine print where it would be buried, to be taken out at such time as might be convenient. I offer the more-than-suggestion that the insertion of those clauses at a time when it was planned to circumvent,

as I have cited to you, giving the places and dates and persons—I offer the suggestion, and more than the suggestion, that the insertion of those clauses had something to do with point No. 4 of the plans of the landowners described in the “Valley Divided” in Business Week of May 13, 1944.

A good deal has been said—and I believe this is another of Senator Kuchel’s questions. If I am departing in any respect and discussing matters in which you are not interested, I am sure you will advise me.

There has been a good deal of discussion of the Secretary’s discretion. Now, of course, the Secretary has discretion as to how he shall accomplish the enforcement of the law. I do not think that the Secretary has discretion which results in escape from the law, in its circumvention. I do not think he has discretion to allow a violation.

May I read from the statute of 1926:

No such excess land so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such excess lands under terms and conditions satisfactory to the Secretary of the Interior.

There is no exception made there as to whether the water is delivered underground or any other way, on the surface or otherwise. The mandate on the Secretary is absolute.

Now I am not here to say exactly the manner in which the Secretary should exercise his discretion without violating the statute, but by accomplishing its enforcement. But I would like to say this, that the statute enacted by the Congress in April—I believe it was April 9, 1938—on the Arch Hurley project in New Mexico, did go so far as to require that every excess landowner should sign a recordable contract prior to construction.

Senator KUCHEL. This is in the congressional statute authorizing that particular project, Doctor?

Mr. TAYLOR. Yes. I am going to read the excerpt to you now. I am not familiar personally with the Arch Hurley project in New Mexico, but I am confident that it is not a project where the excess landholdings are so vastly concentrated into giant holdings as here in the Federal service area in the San Joaquin Valley area of our State.

May I read the relevant passage from the statute?

Provided, That construction work is not to be initiated on said irrigation project until—

And then there are several conditions, which I shall skip until subparagraph (c)—

contracts shall have been made with each owner of more than 160 irrigable acres under said project.

Senator KUCHEL. What year was that statute passed, Doctor?

Mr. TAYLOR. That is the statute of April 9, 1938, and the legal citation is 43 U.S.C. 600-A.

Senator KUCHEL. It seems to me that the very fact that Congress in a specific instance legislated on the point in a fashion which you would want adopted here does lend considerable credibility to the position which the Solicitor of the Department of the Interior takes here, that under the reclamation law as it was rather extensively amended in 1926, there has been a consistent policy in accord with what is being done in the Westlands situation, but in the instance that you cite here,

Congress actually had the problem confronted legislatively and adopted that language that you read. So from a point of view of judicial construction or interpretation by the Department, it seems to me that one might very well use the specific exceptional congressional act, quite the other way around from how you use it, and cite it as a basis for underpinning what Mr. Barry said.

Mr. TAYLOR. Senator, if you are arguing the law—

Senator KUCHEL. No; I do not. I just raise it as you mention it, because this is—

Mr. TAYLOR. Yes; because I think it makes a difference whether one is arguing the law. I did not conclude from this, I did not draw the legal conclusion that the law therefore on the San Luis project requires the Secretary of the Interior to adopt the same procedure that was enacted by Congress on the Arch Hurley project, but I think that it relates to his discretion. There is nothing so beyond the possible view of what Congress might approve in the idea of what the contracts should be, even to the point of 100 percent—maybe it is 98 or maybe it is 99—but Congress imposed upon the Secretary the absolute and unqualified duty to assure that there will be no violation. I think he has something here that will support him if he altered his policy which, at the present time, appears to be, well, we shall wait and see, maybe economic pressures will produce compliance.

I do not think that the Secretary, charged with the duty to see that those ineligible lands do not receive water, has the discretion to adopt a procedure which, through the discussion of today by the supporters of the Westlands contract, whether officials of the Bureau or of the district, tacitly and explicitly indicate that they expect only a degree of slow compliance.

I think the discretion of the Secretary is to be exerted in how he secures compliance.

Senator KUCHEL. And you feel in this instance that the Secretary has—

Mr. TAYLOR. A duty.

Senator KUCHEL. And in this particular instance has failed to exercise that duty?

Mr. TAYLOR. Up to the present time, yes, indeed. Yes, you understand the meaning of my testimony very well.

What I am referring to, Senator Kuchel, is the repeated recitations that the excess land law does apply that occur in the contracts, in the letters of the officials of the Secretary of the Interior, and in the explanations. I would like to make it clear for the record that those recitations, those professions of devotion to the purposes of the law and to its letter and spirit, do not accomplish the application of the law. They do not prevent the violations. The only one, the only sure method of obtaining compliance is through the recordable contract.

I think this idea that there is going to be some lone holdout on the project, mind you, an excess landowner who will hold out on a project, and as a result, the unfortunate owners of 100,000 acres who are in compliance with the law are going to be starved out and their lands will go back to desert—now it seems to me that there is something wrong with that picture.

Nobody is having anything forced on them at Westlands or in the Federal service area. The Federal Government has authorized \$290 million for their benefit, private lands entirely, and it is now being

asked to release another \$175 million. That, I think puts the situation in a quite different light, and when one goes to the record of the hearings and the debates in Congress when this project was up, the story was quite different.

It was their need, and Congressman Sisk, whose name has been mentioned, was as emphatic as the quotations that have been made from the Senator about the sagebrush and desert. He spoke, I believe, of starvation and the necessity of leaving the area.

So we get one expression of the conditions on the project when money is being asked for, and we get another description when the question of acceptance of those conditions is up for consideration, that Congress has laid down as justifying the expenditures and qualifying the excess lands to receive the benefits.

Senator, I think that is all I need say now. The rest of my remarks you will have before you for the record.

(The complete statement and background data follow :)

STATEMENT OF PAUL S. TAYLOR, BERKELEY, CALIF.

INTRODUCTION

My name is Paul S. Taylor and I reside in Berkeley, Calif. This statement in opposition to Westlands contract (or contracts) represents my personal views. Between 1943 and 1952 I served as consultant in the Interior Department during the administration of President Franklin Roosevelt and Harry Truman, under Secretaries Harold Ickes, J. A. Krug, and Oscar Chapman. I shall appreciate it if this prepared statement, together with an attached documented analysis, can be printed in the record of the hearing, to permit summarization of my testimony orally, conserving the time of the committee, and providing more opportunity to discuss points the committee may find of special interest to it.

LEGISLATIVE OVERSIGHT

Westlands Water District construction contract is before Congress under a 90-day review procedure sometimes called legislative oversight. The purpose of legislative oversight is not to decide fundamental law and policy, for Congress already decided those in passing the San Luis Authorization Act of 1960 (Public Law 86-488). That act applies reclamation law to the Federal service area of which Westlands Water District is a part. Reclamation law includes excess land ("acreage limitation" or "160 acre") provisions. These require individual owners of land in excess of 160 acres to execute recordable contracts accepting the excess land provisions if they wish to make their excess land holdings eligible to receive water. They also require the Secretary of the Interior to take the steps necessary to prevent ineligible lands from receiving project water.

The purpose of 90-day "legislative oversight" is to give Congress opportunity to verify in advance that proposed administrative measures conform to law and will effectively achieve its purposes. The procedure can be double edged. Congress is faced with many pages and much technical language covering complex legal, geological, and administrative matters requiring knowledge and experience of specialists to understand properly. It would not be surprising if sometime Congress should discover that unintentionally it had allowed bureaucratic "amendment" of law to gain color of legality through "legislative oversight", when Congress had merely overlooked "fine print" interpretations it failed either to see or to understand. Westlands contract presents that danger, in my opinion.

THREE "WESTLANDS CONTRACTS" AND THE EXCESS LAND LAW

The Westlands construction contract and other documents now before Congress recite the applicability of the 160-acre limitation to lands within Westlands Water District, but mere recitation of applicability does not suffice to guarantee that the law will be applied.

Three contracts (or types of contracts) are involved in the Federal service area. Two of these are contracts between Westlands Water District and the

United States. The third is a set of contracts that, if and when executed, will be between individual owners of excess lands and the United States.

(a) First is the contract placed formally before Congress on May 1, 1964, by the Secretary of the Interior. It covers a portion of the Federal service area, about 391,000 out of 496,000 acres. It provides for construction of a water distribution system and drains within the district, and for repayment. It recites the applicability of excess land law but, as noted, this does not necessarily assure its application.

(b) Second is a contract for water service to Westlands Water District, executed on June 5, 1963. The Secretary of the Interior refers to it in his letter transmitting the construction contract to Congress. The water service contract, too, recites the provisions of the excess land laws in articles 23, 24, and 25. But this recitation does not necessarily assure compliance. On the contrary, the water service contract also contains evidence of a calculated circumvention of the excess land laws. The deliveries of water that will be made to eligible lands are so planned that "unavoidably" they will be received by ineligible lands as well: i.e., if the Bureau of Reclamation continues its neglect to ascertain and assure eligibility prior to release of funds for further construction by Congress to be followed by construction and delivery of water. Recognizing that water deliveries for eligible lands will be received also by ineligible lands, the water service contract has prepared in anticipation an excuse not present in the statute. Article 23(b) of the water service contract calls these illegal deliveries "unavoidable," and excuses them. This might be called a form of advance "absolution" for planned delivery of water to ineligible lands. Unless repudiated by Congress now, the Westlands contracts bid fair to achieve in the Federal service area, the same practical effect as amending and weakening the reclamation law, without changing a line or a word of the statute; it would accomplish this outside of the approved legislative procedures of resolution, study, hearings, and floor deliberation.

(c) Third, are recordable contracts by which excess-land owners individually agree to comply with law in return for water. Execution of these contracts is prescribed by law as the only means by which owners of excess lands can qualify their holdings as eligible to receive water. Likewise, they are the only means by which the excess land law can be applied. Likewise, it is the duty of the Secretary of the Interior to qualify all lands in the Federal service area, knowing that when he begins water deliveries at Westlands all lands will receive the water, and that without the previous execution of recordable contracts he will have violated the law.

Now Congress, having released around \$290 million for construction of San Luis project already, is asking to release \$157 million more, for further construction to benefit giant landholdings presently ineligible to receive those benefits. No recordable contracts qualifying any excess lands to receive water are before Congress, nor in the hands of the Bureau of Reclamation. The Bureau has chosen to give expenditure of public funds priority in time—and perhaps in importance—over establishing the condition required by law to justify the expenditure.

INCENTIVES TO CIRCUMVENT EXCESS LAND LAW IN THE FEDERAL SERVICE AREA

All lands in the Federal service area are privately owned. About 70 percent, or 360,000 acres, are in ownerships exceeding 160 acres. A single landholder, the Southern Pacific, owns about 120,000 acres, 65,000 within Westlands District, and 55,000 acres adjacent within the Federal service area but outside the district.

From the beginning of Federal reclamation in 1902, eastern skeptics opposed western reclamation on the ground that a few western giant landowners eventually would get most of the benefits for themselves. Western spokesmen for reclamation tried to defend by reciting the provisions of the excess land law as protection and proof that this would not occur, and they were successful in persuading Congress at that time. Congressman Frank Mondell, of Wyoming, in charge of the reclamation bill in the House, gravely offered assurance that the excess land provisions in the bill (which were personally inspired by President Theodore Roosevelt) would result in "breaking up any large landholdings which might exist in the vicinity of Government works and * * * insure occupancy by the owner of the land reclaimed" (35 Congressional Record 6678).

Congressman George W. Ray, of New York, was not persuaded, however. Leading eastern opposition, he charged that nationally financed reclamation would eventuate in huge speculative gains for the western few. He said:

"* * * and so we find behind the scheme, egging it on, encouraging it, the great railroad interests of the West, who own millions of acres of these arid lands, now useless, and the very moment that we, at the public expense, establish or construct these irrigation works and reservoirs, you will find multiplied by 10, and in some instances by 20, the value of now worthless land owned by those railroad companies, the title to which they obtained through grants from the Government for building great transcontinental railroad lines" (35 Congressional Record 6685).

Southern support was thrown behind western reclamation by Congressman Oscar W. Underwood, of Alabama, and the 1902 bill passed. Congressman Underwood, more trusting of the future than Congressman Ray, said the bill would prevent creation of "land barons" in the West, and would open opportunities for farm boys who "want farms of their own" "whether they now reside in the East, South, or West" (June 12, 1902).

The incentive of excess landholders to obtain federally subsidized water without regard to the excess land law remains about as strong in 1964 as New York's Congressman Ray thought in 1902 that it would be. A prospect of cutting water costs and capturing speculative incremental land values arising from development of the country without legal limitation, is doubtless very attractive.

Another way of estimating incentive to circumvent the law is on the basis of public subsidy for water development. A rough figure of \$1,000 an acre subsidy appears fair, not counting indirect subsidies resulting from participation of San Luis unit in Central Valley project. (Roughly, the Federal Government is investing one-half billion dollars to reclaim one-half million acres, or \$1,000 an acre. No interest is charged to landholders for deferred repayments which extend over a period of 40 years; the value of this assistance to the landholder is roughly \$1,000 an acre.) Owners of 360,000 acres might expect, on this basis, to receive the benefit from subsidies of \$360 million; an owner of 120,000 acres might receive the benefit of a subsidy of \$120 million. The excess land law sets a ceiling of \$160,000, computed on this basis, on the subsidy any individual is entitled to receive.

CURRENT ESTIMATES OF PROBABLE COMPLIANCE WITH EXCESS LAND LAW

The Federal San Luis service area, and specifically the Westlands Water District, now becomes the scene of a current test whether the benefits of Federal reclamation will be monopolized by a few giant landholders, as prophesied by New York's Congressman Ray 62 years ago, or distributed widely among the many, as promised by Wyoming's Congressman Mondell, and as prescribed by the excess land provisions of reclamation law.

Only a few weeks ago it was reported by the press that the Bureau of Reclamation expected at that time to obtain recordable contracts from owners of 150,000 acres, out of the approximately 360,000 acres in excess holdings in the Federal service area. That figure represents an estimate of about 41 percent compliance. The basis for the estimate was not given by the press. The Oakland Tribune stated on March 12, 1964:

"* * * the bureau now expects to get similar (recordable) contracts from owners of 150,000 acres in the San Luis project area, a huge, dry, soon-to-be-irrigated region between Los Banos and Kettleman City on the west side of the San Joaquin Valley in Merced, Madera, Fresno, Kings, and Stanislaus Counties" (p. 4).

On May 26, 1964, in a letter to Senator Henry M. Jackson, chairman of the Interior Committee, Commissioner of Reclamation Floyd E. Dominy apparently was prepared to raise the March 12 estimate of compliance from 41 percent to "general acceptance." The basis for this more optimistic prophecy was not given. Neither was there an indication that it had occurred to the Commissioner to capitalize on this currently more favorable mood among excess landowners by obtaining recordable contracts from them now, and thus giving positive assurance to Congress, as it weighs whether to release \$157 million more for construction, beyond the \$290 million released earlier in 1960, that the benefits of these funds will go to persons entitled to receive them.

THE EXCESS LAND LAW (43 U.S.C. 423e)

Reclamation law makes no exceptions to its requirements, nor to any particular mode of delivering water, nor does percentage compliance meet its standards. The duty of the Secretary of the Interior and Commissioner of Reclamation is spelled out in unequivocal language and without exceptions. The statute says: "no such excess lands so held shall receive water from any proj-

ect or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such excess lands under terms and conditions satisfactory to the Secretary of the Interior * * * (43 U.S.C. 423e).

A good administrator so charged with a duty by a statute he is sworn to uphold, it seems to me, would move promptly to get recordable contracts first. He most assuredly, in my opinion, would not conspire to prepare excuses for barefaced violations of both the letter and spirit of the reclamation law.

GROUND WATERS AND CIRCUMVENTION OF EXCESS LAND LAW

Commissioner Dominy, in his letter of May 26, 1964, to Senator Henry M. Jackson, includes percolation of San Luis project surface water into the ground water reservoir among the "three possible sources" of Westlands Water District irrigation water supply in the future. He writes:

"First will be pumped water derived from the continuing nondistrict natural recharge of the deep-lying aquifers. The rate of withdrawal of this source will undoubtedly be diminished as surface deliveries of project water are initiated and there is a corresponding decrease in the districtwide pumping rate. Second will be the import of project water made available through San Luis unit works and facilities. The third is related to the first two and will be ground water supply resulting from deep percolation losses from surface water applications, irrespective of such water's source prior to application" (Commissioner of Reclamation Floyd E. Dominy to Senator Henry M. Jackson, May 26, 1964).

In his memorandum of April 23, 1964, to the Secretary of the Interior, Commissioner Dominy states that "the contract provides for * * * certain facilities for integrating ground water with surface water" (p. 1). Another passage in the same memorandum states that "well water will be mixed with surface project water in the main laterals" (p. 2). The water service contract executed on June 5, 1963, referred to by the Secretary in his letter transmitting the construction contract to Congress, recites among the "whereases" that justify and explain the contract, "that ground water underlying the district is seriously depleted and in need of replenishment, and that an additional water supply to meet these present and potential needs can be made available by and through the works constructed and to be constructed by the United States * * * (p. 2).

From these statements, as well as from other evidence, it is clear that the surface water to be provided by the San Luis project will be integrated throughout with water available to the area from any other source. Since water in the ground reservoir moves both downward and laterally, project water delivered at the surface inevitably becomes available to eligible and ineligible lands alike. Once the Bureau of Reclamation delivers water to eligible lands in Westlands Water District, it will not be long before a portion of it will be available to ineligible lands also (unless ineligibility has been eliminated by prior execution of recordable contracts by the owners of excess lands). Wells and pumps are already installed, ready to use the project water.

According to Commissioner of Reclamation Dominy, there are "approximately 400 existing wells in the area [that] will be integrated into the distribution system" (memorandum, Commissioner Dominy to the Secretary of the Interior, Apr. 23, 1964, p. 2). In the entire Federal service area the number of wells may be much larger. Most wells are perforated in both upper and lower water storage zones.

A geological fact, of crucial importance to enforcement of the excess land law in the Federal service area and some other parts of the San Joaquin Valley, was stated by the Bureau of Reclamation last year in these words: "The ground reservoir underlies the entire San Luis service area" (Bureau of Reclamation, Sacramento, "Geology and Ground-Water Resources, San Luis Service Area, Central Valley Project, February 1963," p. 17). The ground reservoir is separated into an upper and a lower zone, but the layer separating these is punctured like a colander by a thousand active irrigation wells, most of them perforated in both zones, and twice that number of abandoned wells, through which surface water percolates in quantity to both zones, and becomes available to all lands, eligible and ineligible alike (U.S. Geological Survey Water Supply Paper No. 1618, "Use of Ground-Reservoirs for Storage of Surface Water in the San Joaquin Valley," pp. 24, 41-45, 81-88, 117-119 (1964)).

This geological feature has appeared for a long time to some opponents of the excess land laws, to open a prospect that the excess land law would not be successfully applied where ground water conditions prevail. Ground waters,

as shown above, become available to eligible and ineligible lands alike, providing, of course, that eligibility through the execution of recordable contracts is not insisted upon by the Bureau of Reclamation as a project precondition.

The archopponent of the excess land law in the 1940's, Senator Sheridan Downey, wrote this simple fact clearly into his book printed in 1947, in words he also had used in testifying before the Senate Public Lands Subcommittee earlier in the same year. He said:

"We have conclusively established: 1. That the [Central Valley] project cannot be operated except by replenishing the ground waters of the project area. 2. That it is impossible to replenish such ground waters for nonexcess farmers without equally benefiting the excess land owner * * *." (Sheridan Downey, "They Would Rule the Valley," p. 161; hearings before Senate Public Lands Subcommittee, 80th Cong., 1st sess., on S. 912).

Senator Downey did not say, if recordable contracts were insisted upon before water was made available to the ground reservoir, or were made a precondition of project construction, that there would be no ineligible lands by the time water was delivered to concern those responsible for obtaining compliance with the law. The excess land law is administratively enforceable no matter what the ground water conditions. Probably this generally unadmitted and unspoken fact, together with another, that ground water conditions are not equally favorable to irrigation in all parts of Central Valley, is the chief reason that Senator Sheridan Downey and the excess landowning interests for whom he was a spokesman in the 1940's, worked so unremittingly for outright congressional exemption. They could not depend either upon nonexistent nonenforcement by Bureau administrators, or be certain that succeeding Congresses would necessarily feel obliged or willing to authorize and appropriate funds for projects expected to serve water to ineligible lands.

The earliest reference, so far as I know, to the curious idea that ground waters might be incompatible with the excess land law, or to the more comprehensible idea that it might possibly facilitate its circumvention, places its realization in the year 1937, at the beginning of construction of the Central Valley project. A decade later in 1947, a leading opponent of the excess land law then engaged in an unsuccessful contest for exemption in the 80th Congress, Mr. Roland Curran, attributed the idea to officials of the Bureau of Reclamation:

"In 1937, I was serving as secretary of the Kern County Water Development Commission, an agency of the county of Kern. We were requested by responsible officials of the Bureau of Reclamation to take the lead in organizing into water districts those areas in need of supplemental project water and which were not already within the boundaries of a public district, able to contract for project water. The question was raised about the application of acreage limitations, at that time, as a considerable percentage of the lands to be brought into a district organization were in holdings exceeding 160 acres. We were assured by officials of the Bureau of Reclamation that, as there were no public lands in the area and that at least half of the project water would be used, of necessity, for recharging the ground water table and as there was no legal or physical way in which any landowner could be prevented from pumping what waters underlay his surface lands, that we could count with certainty that before the project was completed, the acreage limitations would be removed.

"Until 1944, this was the general understanding. In February of 1944, the Commissioner of Reclamation advised that, if any correction was made in the law or remedial legislation asked for, it was up to the people of the project area to bring it about, or to use his exact words: 'I am handcuffed on this matter.' Subsequently, at the request of local agencies in California, Congressman Elliott introduced an amendment to repeal the acreage limitations on the project" (hearings before Senate Public Lands Subcommittee, 80th Cong., 1st sess., on S. 912, p. 1310).

In 1944 another reference was made, this time by Mr. Russell Giffen, probably the largest farm operator on the San Joaquin Valley's west side and now president of Westlands Water District. He told a Senate committee in April, shortly after the House had passed the Elliott exemption rider and action in the Senate was pending, that a Bureau of Reclamation engineer had said the 160-acre law "was not to be taken seriously." Referring to a financial contribution made by landowners to west side water studies, Mr. Giffen said:

"It seems to me that the Bureau was completely in bad faith in taking that \$25,000 knowing that they were going to support as vigorously as they have the 160-acre limitation * * *" (hearings before Senate Military Affairs Sub-

committee on Central Valley Water Project, San Francisco, Calif., Apr. 7, 1944, p. 93 (mimeo, by Bureau of Reclamation, Sacramento)).

The excess land law was receiving an airing by Congress, and little more than a month later, in May, the national magazine Business Week reported what might be described as a technical blueprint for eliminating or circumventing the excess land law. Four principal tactics were enumerated, including pumping from replenished ground waters.

"If the big landowners in the valley lose out in this particular fight, they have several other proposals to accomplish their end. One of them is a House bill which would authorize the Army to add irrigation and power development to its present navigation and flood control powers. The legislation also would call for construction of a series of irrigation and power projects throughout the country, especially in Central Valley. This would circumvent the 160-acre rule, since the Army is not bound by that restriction.

"Another proposal, said to have originated among the big landowners of Fresno County, is for the State of California to take over the Central Valley project, paying the entire bill. This, too, would sidestep the 160-acre limitation. Still other landowners are sinking wells around their holdings in order to be prepared to pump irrigation water from the raised water table, * * *" ("Valley Divided," Business Week, No. 767, May 13, 1944, p. 24).

The 78th Congress foreclosed the first two tactics by denying exemption from the excess land law and by extending it to projects built by the Army Engineers.

Two months later, in July 1944, Senate hearings again moved to California. There Mr. S. T. Harding, a consulting engineer for Tulare Lake Basin Water Storage District, adjacent to the San Luis Federal service area, explained to the Subcommittee on Irrigation and Reclamation his opinion of the usefulness of pumping ground waters in circumventing effective application of the excess land law:

"Use of ground water by pumping is not widely practiced on Bureau projects except on the Salt River project, where, as shown above, the excess land provisions have not been enforced. The presently authorized Central Valley project will supply more water for ground water pumping than for surface delivery. In California an overlying landowner has a vested right to the use of a proportional part the ground water supply available to all of the overlying lands. Ground water is now extensively used by means of wells and pumping plants owned and independently operated by the individual landowners. Such operations are not under the control of the local irrigation organizations. No means either legal or physical have been suggested for preventing the continuation of such pumping * * *.

"The Bureau of Reclamation and others in these hearings have admitted that the excess land provisions will not be effective in such ground water areas" (hearings before Senate Subcommittee on Irrigation and Reclamation, 78th Cong., 2d sess., on S. Res. 295, p. 358).

NONENFORCEMENT AS A "WORKABLE SUBSTITUTE" FOR CONGRESSIONAL EXEMPTION

Although opponents of the excess land law preferred outright congressional exemption from the excess land law in 1944, they were willing to consider alternatives. Responding to a "challenge" to offer a "workable substitute" for exemption (or repeal), Mr. S. T. Harding included a possibility (which he did not regard as fully satisfactory), among others, of nonenforcement of the law:

"Another procedure might be to proceed under existing laws, including excess land provisions in repayment contracts and assume that they would not be enforced. As previously indicated enforcement has been lax or possibly entirely missing on some past projects. On some other projects excess landowners have been allowed to continue farming the excess areas as no purchasers at the excess land terms have been found. This would not be a safe solution here. Landowners could not rely on continued future nonenforcement" (hearings before Senate Subcommittee on Irrigation and Reclamation, 78th Cong., 2d sess., on S. Res. 295, p. 363).

A record of nonenforcement, long continued, had been described only a few weeks earlier to the Senate Commerce Subcommittee by Mr. Northcutt Ely, speaking for the California Water Project Authority:

"There has been no application of the excess land provision in projects involving supplemental water supplies as distinguished from projects involving development of raw land, Federal land, that has been called to attention here, and I know of no successful answer that has been found to that problem. If no action were

taken at all as to Central Valley, I imagine that the course would be exactly as it has been on the Salt River project and in Imperial Valley; that the law would remain on the books, the prohibition of delivery of water to holdings in excess of 160 acres, and that somehow the lands now under cultivation would continue to be cultivated" (hearings before Senate Commerce Subcommittee, 78th Cong. 2d sess., on H.R. 3961, p. 632 (1944)).

ENFORCIBILITY OF EXCESS LAND LAW BY ADMINISTRATIVE DISCRETION

Congress, as noted earlier, has imposed unequivocally upon the Secretary of the Interior a duty, viz, to assure that "no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such excess lands under terms and conditions satisfactory to the Secretary of the Interior * * *" (43 U.S.C. 423e). This duty is unqualified, and there is no exception for water received by ineligible lands via underground seepage or percolation.

ADMINISTRATIVE DISCRETION

The Secretary of the Interior may exercise discretion in the means he chooses to employ to enforce the law and carry out his duty, but the tolerable limits of executive discretion certainly are exceeded if, as a result of the procedures he elects to employ, the law is circumvented.

The simplest, most administratively feasible means of fulfilling the Secretary's duty under the law is to require first, the execution by excess landholders of recordable contracts prescribed by law as the action necessary to qualify their excess lands to "receive water."

EXERCISE OF ADMINISTRATIVE DISCRETION ON FEDERAL SERVICE AREA

The Secretary of the Interior and Commissioner of Reclamation, however, have chosen another course, viz, to ask Congress to release \$157 million for construction of a water-distribution system first. They have made this choice before either they or Congress can possibly know what lands ever will be qualified by their owners to receive water legally from the works to be constructed. They have made it in face of the known fact that about 360,000 acres in the Federal service area are ineligible to "receive water" at the present time. They have made it in face of the known fact that among the owners of these excess lands are some who have been leading and most consistent opponents of the excess land law during the past two decades. They cannot have failed to know that every day of delay in asking for execution of recordable contracts, and every move toward release of funds—which, by presenting the Westlands contract they now are asking this subcommittee and the Congress to approve—and every cubic yard of earth moved in construction, strengthens the resistance of excess landholders to execution of recordable contracts and brings closer the day of delivery of water to ineligible lands, in violation of a law they are sworn to uphold. It places no strain on credulity to believe that the foreknowledge of violations to come, under the discretionary course presently pursued, is the motive for inclusion of the "unavoidable" excuse clause in the Westlands water service contract executed on June 5, 1963, and placed before the Senate on May 1, 1964 by reference.

It is apparent, from a reading of his letter of May 26, 1964, that Commissioner of Reclamation Floyd E. Dominy, in face of the legal prohibition of water deliveries to ineligible lands which he himself cites in the same letter, contemplates with equanimity spending money to construct a water distribution system before he knows whether the lands the system will be physically able to serve, and cannot avoid serving if water is run into the canals, are eligible or ineligible to receive water. He states:

"Inasmuch as heretofore executed Central Valley project contracts in general establish no specific time prior to which large landowners must have placed their excess lands under recordable contract, no such restrictions have been included in San Luis unit contracts. Under this policy, recordable contracts may be executed by the excess landowners at any time prior to delivery of water. However, in the normal course the majority of such contracts are executed shortly before irrigation facilities have reached a stage of completion where water deliveries can be made. It must be also recalled that, even though construction is completed and water deliveries are physically possible, the owner of excess lands is precluded by statute from receiving project water for his

excess lands unless and until he has executed a valid recordable contract agreeing to their orderly disposition" (Commissioner of Reclamation Floyd E. Dominy to Senator Henry M. Jackson, May 26, 1964).

LESSONS FROM ADMINISTRATIVE EXPERIENCES AND PRECEDENT

Commissioner Dominy cites Central Valley project precedent for his decision to defer asking for recordable contracts, perhaps until "shortly before irrigation facilities have reached a stage of completion where water deliveries can be made."

The Commissioner might have cited even wider precedent for delay in asking for recordable contracts than the experience of the Bureau of Reclamation in Central Valley, Calif. But do these precedents commend themselves to an official devoted to achieving the intent of the law for the administration of which he is responsible? A few examples of the results of the discretionary election to ask for funds and construct first and delay asking for recordable contracts until later will suffice:

(a) In April of this year the Bureau of Reclamation concluded some contracts with Sacramento River diverters 20 years after completion of construction of Shasta Dam; apparently others remain to be signed. The Sacramento Union of June 26, 1964, barely 2 weeks ago, tells the story:

"* * * the Yolo County farmers plan to use the Federal water only on a 160-acre plot—but they believe the same water can be reused on other land because it does not pick up contamination from the earth in other fields. They also expect to use ground water and other water supplies for their additional acreage and do not believe they will have to break up their holdings.

"Thus a battle which has been waged since 1944 when the Shasta Dam was built ended.

"The Bureau of Reclamation is offering to waive all charges for project water drawn previously by farmers if they sign a 1964 contract.

"The Bureau has now told 30 potential signers that to get the waiver they must sign the 1964 contract.

"Robert Pafford, director for region 2 of the Bureau of Reclamation, said that he does not believe many of the landholdings will be broken up except some through economic factors.

"Similar contracts are also being prepared for users of San Luis project water. However, salt conditions in the land preclude extensive reuse of the water" (p. B-16).

So far as I know, no recordable contracts have yet been signed along the Sacramento. And by what authority, one asks, does the Bureau of Reclamation give away the river and waive financial obligations owing to the United States?

(b) District contracts were signed on the Kings and Kern Rivers this year, 10 years after completion of construction of Pine Flat and Isabella Dams. I have not seen these district contracts, but if they resemble those executed on the Sacramento River and apparently planned for San Luis, as described by the Sacramento Union, Congress ought to scrutinize what goes on along the Kings and Kern Rivers, where not only recordable contracts but even district contracts were postponed while construction advanced. Are excess landholders whose lands are ineligible to receive water, receiving it on the Kings and Kern?

(c) It is true that district contracts, followed by recordable contracts, were obtained by the Bureau of Reclamation along Friant-Kern and Madera Canals after construction was far advanced. This difficult feat was accomplished mainly through the skill, and extraordinary devotion and determination of Richard L. Boke, Sacramento regional director of reclamation at that time, who was supported stanchly in his efforts by Commissioner of Reclamation Michael W. Straus and three successive Secretaries of the Interior; namely, Harold L. Ickes, J. A. Krug, and Oscar Chapman.

(d) In Imperial Valley, Calif., construction was completed in the thirties. Water has been delivered and received ever since without regard to the excess land law. Solicitor of Interior Fowler Harper said in 1945 that nonenforcement of the law in Imperial Valley was without sound legal foundation (Opinion M-33902, May 31, 1945) and the Department of Justice told the U.S. Supreme Court in 1957 that the excess land law properly applies to Imperial Valley. That was 7 years ago, and apparently nothing has changed.

(e) In the Salt River Valley of Arizona construction was completed nearly 50 years ago. Apparently the only form of compliance with the excess land law there has been a shadowy limitation on voting power of members of the Water

Users Association, to 160 acres. A California Congressman spread upon the pages of the Congressional Record in 1949 the extensive concentration of land-holding in Arizona and cited the lack of enforcement of law there, as argument to defeat the Central Arizona project proposed to Congress in that year. I have no personal knowledge of the steps taken, if any, to obtain compliance in Arizona since that time. (Bureau of Reclamation, landownership survey on Federal reclamation projects, 1946: Pendleton, "History of Labor in Arizona Irrigated Agriculture," unpublished thesis, 1950, in University of California Library, Berkeley: 95 Congressional Record 10126ff: Klaus G. Loewald, hearings before Senate Irrigation and Reclamation Subcommittee, 85th Cong., 2d sess., on S. 1425. S. 2541, S. 3448, pp. 230-238.)

These important precedents offer little support for Commissioner Dominy's decision to delay until some time later any move to obtain recordable contracts on the San Luis Federal service area.

MEANING OF FREE CHOICE BY EXCESS-LAND OWNERS

Some defenders of Westlands contract and the delaying tactics of the Commissioner, emphasize the "right" of excess-land holders to exercise free choice, whether to ask for water in compliance, or to refuse to ask. This is a distortion of reality and law. They have no right to receive water without asking for it according to law, nor has the Secretary of the Interior any right to permit them to receive water without signing recordable contracts. A specter is held up of some lone, obdurate, excess-land holder blocking construction of the San Luis project by refusing to sign a recordable contract, to the injury of those owners whose lands are eligible. The specter is used to dissuade the Secretary from pressing now for compliance with law. One can only wonder which excess-land owner, among those with excess holdings in the Federal service area, would take responsibility for blocking the project by refusing to sign.

"There is something wrong with this picture"—seeking to restrain enforcement against excess-land owners in the interest of those in compliance. The "picture" emphasizes the rights of excess-land holders to refuse to comply with law, but forgets the landless for whom the reclamation law as passed in the first place. Congressman B. F. Sisk, who, in a letter of June 2, 1964, to Thomas L. Pitts, of the California Labor Federation, foresaw dangers from some lone excess-land holder as "holdout," described the relations between people and project in truer terms in 1959 when he was asking the House Interior Committee to authorize San Luis project. He said:

"Some 10,500 people live in the rural areas and other 12,000 in 3 small cities in or adjacent to the service area. The people of these towns have struggled hard and effectively to improve their communities, but even they admit there is much to be desired in the way of business and community facilities.

"What do they face in the future if this project is not provided? Most of the cultivated land which is the basis of their economy will revert to desert. They will have to leave and seek livings and homes elsewhere, for without water, they will have no jobs and no businesses. This will be a desert in the middle of the finest and most productive agricultural area on the face of the earth, starved out of existence by lack of water" (Hearings before House Subcommittee on Irrigation and Reclamation, 86th Cong., 1st sess., on H.R. 301 et al., p. 13).

Senator Thomas H. Kuchel told the Senate on May 5, 1959, that San Luis was a "rescue" project to "save some good cropland from returning to sagebrush and sand" (105 Congressional Record 7485). No one is forcing anything on the owners of excess lands at Westlands or in the remainder of the Federal service area.

THE CONGRESSIONAL PRECEDENT FOR OBTAINING COMPLIANCE WITH EXCESS-LAND LAW

The proper view of the relation of ground waters to compliance with law, is to see the extraordinary responsibility it lays upon the Secretary of the Interior and Commissioner of Reclamation to obtain compliance before it is too late. Congress itself has not hesitated to exact compliance by recordable contract from each and every excess-land holder prior to initiation of construction work on the project. This was prescribed for the Arch Hurley project in New Mexico by act of April 9, 1938 (43 U.S.C. 600a). This furnishes a precedent that could have been followed to advantage more often by Congress in the past, and it supplies a good model for the exercise of administrative discretion now.

The reason for special vigilance in obtaining compliance early at San Luis, it needs be repeated, is that water deliveries that replenish ground reservoirs reach eligible and ineligible lands alike. Denials that this condition obtains at Westlands frequently are encountered even now. In light of the latest and best geological studies available these need not be taken seriously. The Secretary of the Interior and Commissioner bear a pressing responsibility because of this geological condition that so far they have shown no indication they are prepared to assume. In the same month of April of this year, when the Bureau of Reclamation was pressing for execution of district contracts—contracts described by the Sacramento Union on June 26—the Secretary of the Interior testified before the House Education and Labor Committee on the economic opportunity bill, or war on poverty bill. In listing those contributions that the Interior Department could make to this domestic war, he spoke of departmental assistance to Indians, and of employment opportunities for youth on public lands. If the Secretary of the Interior made any mention of his Bureau of Reclamation, I could not find it. (See hearings on H.R. 10440, pt. 1, p. 11, sec. 3, and pp. 341-361.)

One more defect of Westlands contract, sufficient of itself to merit prompt disapproval of the Senate, is its failure to include 105,000 acres in the Federal service area outside Westlands District, 55,000 acres of which belong to Southern Pacific. Ground waters delivered to Westlands will become available to these 105,000 acres, for which the Secretary of the Interior has made no arrangement for either repayment or compliance. To fractionate contracting with the Federal service area in this manner is both poor administration and contrary to the procedural requirements specified in section 8 of the San Luis Act of 1960. Even the execution of recordable contracts by each excess-land holder in Westlands District tomorrow, therefore, would be insufficient to correct the serious maladministration, indeed, the calculated circumvention of reclamation law now before this committee.

The preceding testimony does not constitute a catalog of all the deficiencies of Westlands contract. More are known, and probably still others have not been detected in the limited time available for examination of the contracts, both the document formally transmitted to Congress, and the document submitted by reference. One wonders, for example, when reading article 5 of the water service contract executed on June 5, 1963, prohibiting Westlands from disposing of water outside the district "without the written consent" of the Secretary of the Interior, whether, as in connection with a similar provision in the Glenn-Colusa contract on the Sacramento River, there may be another document on some desk somewhere saying, "Such consent has been promised to the district by means of a separate letter to be given to the district at the time of execution of the proposed contract" (memorandum from Commissioner of Reclamation to Secretary of the Interior, Dec. 19, 1963, subject: Glenn-Colusa Irrigation District, approved by James K. Carr, Acting Secretary of the Interior, Dec. 27, 1963, p. 4). I recommend to this committee, or to any persons who may make further inquiries into Westlands contract, that they examine the proviso in article 9(c), and also article 27 (a) and (b) ii, to determine whether these clauses circumvent reclamation law in one respect or another, or otherwise work to its disadvantage.

In light of the permeation of current discussion of Westlands contract with an atmosphere of stout resistance to compliance with reclamation law, and of the marked reluctance of the Department of the Interior to proceed expeditiously toward obtaining compliance, it may be well to remind this subcommittee that there is a popular view of the excess land law. A statement made in 1951 by then Attorney General Edmund G. Brown, of California, is as valid in reflecting public opinion in California today, as it was when he made it to a House committee:

"The people most intimately concerned with its operation do not seem to find it entirely obnoxious if we may judge from the votes in the various contracting districts * * *. Thus the vote has been better than 7 to 1 in favor of the contracts authorized under the irrigation district Federal cooperation law. Numerically, therefore, my position represents that of the vast majority of the people who have had an opportunity to express themselves * * *" (report of a special House Subcommittee on Irrigation and Reclamation * * * on Central Valley project, California, as a result of hearings held Oct. 29, 30, and 31, 1951, Sacramento, Calif., pp. 110, 111).

The only proper action to take in regard to Westlands contract is to disapprove it, return it to the Secretary of the Interior at once, halt any move toward appropriations for construction, investigate administration of reclamation law

wherever it may lead, search for legal remedies to correct past and current mistakes. For Westlands is only one piece of a shabby story filled with disregard for law in general and for the interest of reclamation law in particular.

We are at the threshold of a new era in western development. Use of atomic power to desalinate water and move it vast distances may produce profound results. Now is the time to initiate serious and sustained study to discover appropriate and effective ways to assure that the benefits of this future development, in large measure subsidized by Government, shall not be monopolized by a few, but shall be distributed widely.

BACKGROUND DATA ON THE PROPOSED WESTLANDS CONTRACT

Will Congress consent to destruction of its own established public policy, by allowing the Secretary of the Interior to bargain from weakness instead of from strength?

Will Congress send the Westlands contract back to the Secretary, and by so doing preserve the independence and integrity of Congress as the legislative branch of Government?

Will Congress, by returning the Westlands contract to the Secretary, assure economic opportunity to the many, in the form of 3,600 family-size farms of 100 irrigated acres each?

Will Congress, by failing to disapprove the Westlands contract, virtually assure to a handful of owners of 360,000 acres in California their escape from Federal antimonopoly water policy (160-acre limitation), and their receipt of reclamation subsidies estimated conservatively at \$1,000 per acre, or \$360 million in total?

Decision will be made very soon, within less than 90 days at the outside from around the first of May.

Excerpt, Thomas L. Pitts, secretary-treasurer, California Labor Federation, May 7, 1964:

"We therefore urge:

"(1) That the Westlands contract be returned to the Secretary of the Interior without approval;

"(2) That weakening clauses such as the one which refers to delivery of percolating water as "unavoidable," be eliminated in any future contract;

"(3) That the Secretary of the Interior be required to submit the Westlands file to Congress prior to decision; and

"(4) That no contract be accepted that does not cover the entire Federal service area and that does not clearly indicate the lands to be served, together with the status of recordable contracts necessary to qualify excess lands to receive water."

1. The Federal service area consists of 496,000 acres on the west side of the San Joaquin Valley, Calif. Much of it, perhaps 70 percent or more, is in large ownerships. About two-thirds of the area is in Westlands Water District. The Southern Pacific owns about 120,000 acres checkerboarded, some 65,000 of it in Westlands Water District. The Southern Pacific advised Congress on October 1, 1956, that "it is not prepared to commit these lands for sale under the usual Bureau of Reclamation recordable contracts" (Senate Irrigation and Reclamation Subcommittee hearings on S. 1887, p. 196 (1958); same subcommittee hearings on S. 178, p. 84 (1956); House Subcommittee on Irrigation and Reclamation hearings on H.R. 301 et al., p. 34 (1959)).

2. The San Luis unit, Central Valley Project Act of 1906 (Public Law 86-488) requires application of acreage limitation to the Federal service area.

3. The Bureau of Reclamation will require, and the Westlands Water District portion of the Federal service area will sign, a contract accepting acreage limitation.

4. But acreage limitation will not actually be applied in the Federal service area unless and until holders of excess lands sign recordable contracts requesting that they be supplied with water and accepting acreage limitation as the legally required condition for obtaining it.

5. As early as 1944 excess landholders in the San Joaquin Valley hoped to obtain Central Valley project water without signing recordable contracts in compliance with acreage limitation provisions of Federal reclamation law. One prospective means of evasion was to encourage the Federal Government to supply water underground through percolating strata, first, then to decline to sign recordable contracts because the water was already in hand.

Valley Dividend, Business Week, May 13, 1944; Sheridan Downey, "They Would Rule the Valley," page 161: "We have conclusively established: (1) That

the project cannot be operated except by replenishing the ground waters of the project area. (2) That it is impossible to replenish such ground waters for nonexcess farmers without equally benefiting the excess landowner who admittedly has the legal right to pump and use the intermixed waters." (NOTE.— Since surface water deliveries reduce costs below pumping costs, and because not all Central Valley lands overlie percolating strata, Senator Downey demanded complete exemption from acreage limitation, which Congress refused.)

6. The common method of irrigating lands in Westlands Water District is by pumping underground water from deep wells. Water tables are lowering, water quality is deteriorating. For these reasons, Westlands District President J. E. O'Neill appealed to Congress in 1956 for help in obtaining subsidized water under Federal reclamation law.

"The chief obstacle to the survival and prosperity of agriculture within this area is the rapid depletion of its underground water supplies. The average well will range from 1,500 to 2,000 feet in depth, with a water table of nearly 475 feet in depth today, as opposed to some 250 feet 15 years ago * * *. Such water is fast becoming prohibitive in cost. In addition, as the water supply is depleted, the quality of this water deteriorates and, today the high mineral content of this deep well water is rapidly becoming a serious threat to the fertility of the land" (Senate hearings on S. 178, pp. 109, 110 (1956)).

7. It is impossible to deliver surface water to Westlands District without delivering water at the same time to lands outside the district as well, to lands eligible to receive it and to lands ineligible to receive. The reason is geological. As the Bureau of Reclamation itself points out, water percolates freely.

"The ground reservoir underlies the entire San Luis service area" (Bureau of Reclamation, Sacramento, Geology and Groundwater Resources, San Luis service area, Central Valley project Feb. 1963, p. 17).

8. Westlands contract contains a clause excusing the district for making "unavoidable" deliveries of water through percolation. Why? What justification supports this excuse clause? The contract before Congress contemplates making underground deliveries in Westlands District.

Westlands contract states that "ground water underlying the district is seriously depleted and in need of replacement, and * * * an additional water supply to meet these present and potential needs can be made available by and through the works constructed and to be constructed by the United States * * *" (contract between the United States and Westlands Water District, June 5, 1963, p. 2).

Reclamation law forbids delivery of water to excess-land owners not in compliance with law, whether by surface or through the ground reservoir. Genuine respect for law would appear to require either:

(1) A vigorous advance effort by the Secretary and the district to obtain compliance with law, or

(2) A request that Congress amend the law, after public hearings and debate, to permit deliveries of water underground to excess landowners not in compliance with law. Only the first alternative is consistent with reclamation law; Westlands contract shuns both alternatives. Instead, it seeks a sort of advance, unspoken absolution for the fracturing of law that is the inevitable result if Westlands District and the Secretary of the Interior continue together on their present "collision course" with the law.

Excess-land holding interests caused delay for many years in the coming of water to thirsty lands, including those of San Luis Federal service area. The so-called State project, with which San Luis is intertwined, raised its head in 1951, and the principal reason for the State project was to help excess landholders to escape Federal acreage limitation. Five years later, Senator Kuchel told the Interior Committee that "if the State had not indicated its interest," it was his opinion that "we would have had long before last year's flood a Federal dam * * *" (1956 hearings on S. 178, p. 279). For anyone now to oppose a few months' delay for the purpose of assuring enforcement of law, after 13 long years of delays for the purpose of thwarting law, would be a complete inversion of any proper sense of civic responsibility. If Interior will quickly mobilize Senator Kuchel's force of public opinion" to support, instead of defeat, the law, there still need be no additional delay in bringing water to thirsty Westlands lands.

9. Deliveries of water through percolation—certainly deliveries on a large scale—are both foreseeable and avoidable. Also they are prohibited by law when received by ineligible excess lands: "no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such excess lands under terms and conditions satisfactory to the Secretary of the Interior * * *" (43 U.S.C. 423e).

10. The prohibition of water deliveries without contracts is absolute. If water is received by excess landholders without contracts, the Secretary of the Interior is responsible for the breach of law. The record of the Bureau of Reclamation in obtaining contracts requiring effective compliance is poor. The Secretary faces known plans to avoid compliance with law, and known geological conditions at San Luis that favor the well-advertised tactics of escape. Fidelity to law and good administration require every possible precaution to conserve the public interest. Delay in obtaining contracts is a form of laxity. By delay, the Secretary risks being euchred into a bargaining position from which water delivery in violation of law turns out to be "unavoidable." Is foresight that this may occur a reason for the "unavoidable" clause in the Westlands contract? Postexplanations of water deliveries to ineligible lands, that they were unintentional and "unavoidable" will have no value. And at this moment the hollow shout, "All's well so far," from a man falling from the 12th floor as he passes the 4th, carries no conviction.

11. The magnitude of the possible, even probable subversion of law that impedes if Congress fails to disapprove Westlands contract can be estimated from known data. Of the 1 million acre-feet of water annually allocated to Westlands district in the pending contract, as much as 250,000 acre-feet can be expected to percolate into the ground reservoir underlying the service area. The project also will increase the natural annual ground water recharge available for pumping by perhaps another 80,000 acre-feet; this will result from substitution of surface deliveries for pumping in Westlands district. The ground table will be raised and costs of pumping lowered to the extent that pumping may be employed. These project benefits will be received by all lands of the Federal service area, outside Westlands district as well as within it. They are equivalent in amount to making more than 3 acre-feet per acre available in the 105,000 acres outside Westlands district, of which 55,000 acres is owned by Southern Pacific. Average water duty in Central Valley is only 2.6 acre-feet.

12. The Secretary of the Interior has placed no contract before Congress covering repayment and compliance with law on these 105,000 acres, notwithstanding the very great benefits they stand to receive from approval of Westlands contract and execution of its provisions.

13. This omission, together with this submission of Westlands contract to Congress in the present circumstances, appears to fit into the classical trap described and forecast by Sheridan Downey in 1947: "Once (water) had been placed in a common ground table the proponents of the acreage limitation * * * had to show how excess landowners could be prevented from freely and legally pumping" it to the surface to irrigate their lands (from "They Would Rule the Valley," p. 102).

Has not the Secretary of the Interior fallen into this trap? Is he not desperately in need of rescue by Congress if repayment and law are to be surely preserved?

14. Strict adherence to legal and administrative procedure proscribed by the San Luis Act will help to accomplish the rescue of the Secretary, the law, the policy, and repayment. Perhaps anticipating attempts at circumvention of the law on this vast scale, Congress prescribed that the Secretary is to submit to it "a contract" covering distribution and drainage systems for the Federal area. (Public Law 86-488, sec. 8.) Westlands contract fails to meet the statutory specification, for which there are many good reasons. Congress did not contemplate a contract like Westlands, which covers only a portion of the Federal service area but effectively serves it all. Neither did Congress contemplate the exercise of legislative oversight of a succession of contracts that, combined, may ultimately cover the entire Federal service area, or may not.

15. There may be other escape hatches in the Westlands contract beyond those already identified. Its destructive effect on both substance and procedure of the law has been pointed out sufficiently already to justify immediate and emphatic rejection of the contract by Congress.

16. More than law and repayment are involved. The integrity of Congress itself, as the legislative branch of Government within a constitutional structure prescribing separation of powers, is also at stake. The Westlands contract represents more than failure by the executive branch to place itself in position to enforce acts of the legislative branch. It virtually "invites" Congress to go along with the executive, silently and behind the scenes, in destruction of a major and historic land policy arrived at openly and after repeated public debates. Will Congress allow itself to be cast in a role of "in particeps criminis," so to speak?

17. The sensible way to enforce the law and avoid illegal water deliveries in the Federal service area is simple, direct, and well known from past experience. The Secretary should obtain recordable contracts from excess landholders before he asks Congress for final approval of money and water allocations for construction to benefit lands the extent and location of which, eligible to benefit, neither he nor Congress now know. The Secretary is asking Congress to assume the position of the cart before the horse.

18. Leading spokesmen in Congress for the San Luis bill were publicly of an opinion that the Secretary of the Interior, following proper procedure, would be able to obtain compliance with law from even the greatest landowner of all, viz, the Southern Pacific. Senator Thomas H. Kuchel, Republican of California, told the Senate:

"In my judgment they will be compelled to participate through the force of public opinion" (Aug. 15, 1958, 104 Congressional Record 17733).

Immediately Senator Clinton P. Anderson, Democrat of New Mexico, added his thought that the Southern Pacific would "participate in the project, and will subdivide its lands," although he could not "announce it affirmatively." (104 Congressional Record 17733.) Unfortunately it appears that the Secretary of the Interior has not followed these leads pointing to reliance on the power of an informed public. His apparent failure to do this raises grave doubts of his ultimate success in obtaining compliance.

19. It is only fair to the public interest that Congress, by disapproving the Westlands contract, should in effect ask the Secretary to find out which excess landholders and excess lands wish to qualify under law to receive water. Delay need not be great, and the question has been uppermost in the minds of excess landholders for a great many years, as the public record discloses. Congress did not force the \$483 million San Luis unit of Central Valley project upon unwilling landholders. On the contrary, their spokesmen, excess landowners among them, plead with Congress for help. Even the Southern Pacific advised Congress that "Federal aid would be 'welcome,' provided the conditions thereof are reasonable and bearable," and noted its objection to acreage limitation. (L. Frandsen to Senator Clinton P. Anderson, Senate Irrigation and Reclamation Subcommittee hearings on S. 1887, p. 196 (1956).) Asking for approval of the Westlands contract at this moment is in effect a request that Congress give approval to spending \$157 million to build water distribution and drainage systems for the benefit of their privately owned lands.

20. One of the readily measurable costs to the public of making it possible for lands in the Federal San Luis service area to receive water is the investment of \$483 million approved in the San Luis Act. Repayment by the landowners is interest free and extended over a long period. The value of interest-free money over so long a payout period is equal roughly to the capital investment. Interest on the investment as part of the public debt is paid by the public, which subsidizes landowners in this manner and to this extent: \$483 million authorized for San Luis unit; 496,000 acres in Federal service area, not all irrigable; \$1,000 investment per acre, approximately; \$1,000 per acre subsidy, approximately.

The above figures do not include substantial additional subsidies received by San Luis landholders as part of Central Valley project.

21. The incentive of excess landholders to assure and hasten the delivery of water without having complied with acreage limitation, therefore, is very strong. It is even stronger than the preceding estimates indicate. If they can escape acreage limitation now, and receive water, they are in a position to capture future incremental values arising from growth of the State of California. Aside from these incremental values, however, which it is the purpose of acreage limitation to spread widely among the many, not to concentrate upon the few, it appears to be sufficiently impressive to take note that by very conservative estimate, owners of the 360,000 acres of excess lands at San Luis stand to gain about \$360 million in subsidy from escape, and an owner of 120,000 acres stands to gain \$120 million in subsidy from circumvention of the law.

22. The public is entitled to be reminded that if Westlands district receives approval from Congress of financial and water allocations and if water can be got flowing before excess landholders execute recordable contracts, the chances of their escape are excellent because of the ground reservoir. The longer the Secretary delays his demand for recordable contracts, the more money is actually spent toward construction of water distribution and drainage systems—with veto of plans in the hands of a district dominated by large landowners—the greater the need of eligible lands for water—and this is growing—then the greater becomes the probability that water deliveries will start before recordable

contracts are signed. Excess landholders can exert pressure behind the scenes meanwhile for early deliveries, while eligible landowners can press for water in public. The Secretary of the Interior, his bargaining position already weakened by the approval he has given to the Westlands contract, will be still less able to protect the interests of the United States if Congress goes along now. (According to the Fresno Bee, the House Interior Committee, without holding hearings, has indicated its approval of the Westlands contract to the House Appropriations Committee.) The first year that water flows, percolation will soon carry it within reach of all. Compliance with law is unlikely to go farther. Law and policy and economic opportunity for the many will have disappeared from sight, submerged in the ground reservoir. Bargaining from strength could prevent this.

23. To foresee this sad outcome for an historic public policy is not fanciful. The Bureau of Reclamation is all too well experienced in failure to obtain contracts after the flow of water is assured. Its failures are not small; they are vast, and counted in many hundreds of thousands of acres denied to families seeking farms (e.g., USDI Bureau of Reclamation, "Landownership Survey on Federal Reclamation Projects"; 95 Congressional Record 10126ff; "Opinion of Solicitor," USDI, May 31, 1945, M-33902).

24. The true and declared purpose of reclamation is to create opportunity on the land for families, distributing water and benefits widely in accordance with the greatest good to the greatest number of individuals. Reclamation is "to benefit people, not land." (357 U.S. 275, 297.) Its purpose is not to preserve land and water monopoly and concentrate speculative gains in a few hands. The true purpose is easily forgotten.

25. The roots of the present question lie far back in Western history. Among the numerous historians' criticisms of Federal land-grant policies to railroads is one by Stuart Daggett in 1922:

"The land-grant policy of the Government was a mistake, but it was a mistake because it unnecessarily enriched a few men by securing to them an extravagant share in the unearned increment due to the development of the State of California, without aiding them materially in the task which the Government most desired them to perform—not because the grantees endeavored to build up landed estates or to discourage the growth of population" ("History of the Southern Pacific," p. 64).

Apparently the landed estates not for sale are in early prospect at Westlands. Perhaps Stuart Daggett wrote the last lines too soon.

26. To allow the Westlands contract to stand is to remove a principal historic justification for appropriating national funds for regional and especially for private benefit, through Federal reclamation. The words of Congressman Oscar Underwood, of Alabama, justifying Southern support for reclamation subsidies to the West in 1902, remain relevant today:

"* * * these lands are being opened to settlement for all the people, whether they now reside in the East, South, or West. The farm boys in the West want farms of their own. It gives them a place where they can go and build homes without being driven into the already overcrowded cities to seek employment. If this policy is not undertaken now, this great western desert will ultimately be acquired by individuals and great corporations * * *. They will acquire the waterways and water rights for the purpose of watering stock and become land barons. Then it will be impossible to ever convert it into homestead lands for our own people * * *" (June 12, 1902).

27. It should be unnecessary to debate policy on the Federal San Luis service area today. Congress decided on policy at Westlands in open debate, and no one opposed. It is strange that Congress should find itself facing, in the Westlands contract, the issue whether wittingly or unwittingly, it will emasculate its own policy by falling side by side with the Secretary of the Interior into a trap set two decades ago for use in areas of percolating waters, and bearing the formula:

First, appropriations, construction, and delivery of water.

Second, use pumps.

After that there will be no acreage limitation.

28. Westlands contract is permeated with history, but is not lost in a romantic past. It is embedded in "legislative oversight," not as routine but rather presenting a test case whether the procedure known as oversight is to be regarded and relied upon as a protection to congressional decisions on public policy, or as a convenient device for burying them quietly. Westlands contract raises issues of substance as well as procedure and principle. These can be indicated

roughly and conservatively in this way: 360,000 acres with \$360 million subsidy to a few (120,000 acres with \$120 million subsidy to 1) versus 3,600 irrigated family farms of 100 acres each, with \$100,000 subsidy per family (1,200 irrigated family farms of 100 acres each on Southern Pacific lands, with \$100,000 subsidy per family).

29. Westlands contract is not misbranded as "western" or "water," but these conceal how vitally it touches on issues bearing other labels that today fill our headlines, our television screens, and even our streets. Our answer to Westlands contract—

Will promote or impede the war against poverty, particularly its promise to help agricultural migratory laborers and to purchase land to create adequate family farms;

Will promote or impede established farmland purchase programs through veterans' and Farmers Home Administration loans; and

Will promote or impede creation of equal economic opportunity as a solvent for racial tensions; members of so-called racial minorities are numerous in agriculture and in areas of Federal reclamation.

30. Theodore Roosevelt, as President of the United States, personally inspired the 160-acre water limitation provisions of reclamation law. Theodore Roosevelt saw these provisions as solvents of tension and as pillars of political stability. In 1911, he spoke these words to the Commonwealth Club in San Francisco:

"Now I have struck the crux of my appeal (for the excess land law). I wish to save the very wealthy men of this country and their advocates and upholders from the ruin that they would bring upon themselves if they were permitted to have their way. It is because I am against revolution; it is because I am against the doctrines of the extremists, of the Socialists; it is because I wish to see this country of ours continued as a genuine democracy; it is because I distrust violence and disbelieve in it; it is because I wish to secure this country against ever seeing a time when the 'have-nots' shall rise against the 'haves'; it is because I wish to secure for our children and our grandchildren and for their children's children the same freedom of opportunity, the same peace and order and justice that we have had in the past."

31. The same spirit was carried into office with the present administration. The final report of the Kennedy-Johnson Natural Resources Advisory Committee, chosen to help support the Kennedy-Johnson campaign, declared shortly after the election:

"The reclamation of land should be restored as an essential part of our natural resources program under historic policies initiated by Theodore Roosevelt to control speculation and monopoly as a means of assuring the greatest good to the greatest number of people" (final report, January 17, 1961, Washington, D.C., p. 3).

32. Senator Paul H. Douglas, of Illinois, assured the Senate on May 11, 1959, during consideration of the San Luis bill authorizing reclamation of the Federal service area of which Westlands Water District is a part of his determination: "to protect the people of the United States from one of the greatest land steals that has ever been attempted in the history of this Nation."

Three years later, Senator Douglas took the floor of the Senate again to describe the difficulties of assuring that the executive branch of Government will effectively administer the laws as passed by Congress. On April 2, 1962, he said:

"I think we all know the practical difficulties in such a situation as this. The land is owned by a relatively small number of persons and corporations, each one of which owns an enormous amount of land; not merely thousands of acres, but in many cases, tens of thousands of acres. They are organized. They are powerful. They do not wish to have their holdings broken up by the application of the 160-acre limitation, and they can marshal tremendous resources in support of their position, and against anyone who tries to stand against them. On the other hand, those who might benefit from the acreage limitation, the small farmers who would come into being if the huge estates were broken up, are persons in the future. They do not exist at present. Since they exist only in the future and not in the present, they lack voices and are in a sense unrepresented.

"This has been the difficulty in the long struggle to preserve or to extend the democratic system of landownership and management in California * * *."

33. Westlands Water District is the kind of situation Senator Douglas was describing. In Congress, recognizing the tremendous strength and resources of excess landholders, going to allow the Westlands contract to stand? Or

will Congress, thinking of the "persons in the future" who "lack voices" return the contract, disapproved, to the Secretary of the Interior. Will Congress respond today, in respect to the Westlands contract, to those words of President John Fitzgerald Kennedy calling, in his inaugural address, for a "world of law where the strong are just and the weak secure."

Senator KUCHEL. Well, Dr. Taylor, I thank you and I have been interested in what you have to say. While I do not have the pleasure of knowing you personally, I do know you by your devotion to the public interest as you see it, and I know you credit me with—I think you will—

Mr. TAYLOR. Of course; of course.

Senator KUCHEL (continuing). With my devotion to my public trust. I am not unacquainted with the history of the San Luis project nor, if I may say, with the history of the development in our State, so tremendously assisted by the Federal Government and the Bureau of Reclamation in projects which, from time to time, have been authorized by the Congress.

You have a far more intimate understanding of the history of many of the specific projects in our State and in the Far West than I have. I have heard from time to time in discussions here in the committee and with the committee staffs on other questions that did occur many years ago, and I am one who can say as a general principle without hesitation that I object to unjust enrichment, both under Federal law and under applicable State law as well.

I did feel that my sponsorship of the San Luis project in the Senate was in the public interest. I wanted to have the benefit of your views and the views of those other witnesses who have come forward today, and I came here thirsting for information. I must say that I listened with great interest to the Solicitor of the Department earlier today. I tried in my mind to line up the arguments in favor and those in opposition to this contract.

I was struck also with what I thought was the painstakingly careful testimony by Mr. Brody with respect to the actual facts as the engineers of the district have given him those facts with respect to the underground water.

I remember in the beginning—and I do not intend to make a speech about it, but I think I had a duty to indicate my own views here—I remember in the beginning I was rather struck with the fact that we have many people in California, and I remember them, as you recollected some of the groups there, who wanted to do away entirely with the acreage limitation provisions.

I remember a group who wanted to have California buy out the Federal Government interest in the Central Valley project. I remember other groups who came back here to this committee and wanted to try to have a different means of dealing with the problem so that they might avoid that provision and avoid the Federal reclamation law.

So that it always seemed to me that it was rather refreshing to have these fellow citizens of ours in this Westlands district say, "We hope we might obtain the benefits of Federal assistance, and having done that we want to comply with the reclamation law which the Congress has passed."

That was a controversial issue and a novel one and we had most complex questions of a State identity intermingled in some instances

with the proposed Federal project, but finally, the Congress ruled. And here now we have a water service contract of June 5, 1963, the contract which has been approved by a court of competent jurisdiction in our State. That contract contains the customary "unavoidable" clause which is incorporated by reference into the proposed distribution system contract that is now in issue. A contract should not be set aside or repudiated unless—as I see it—unless it clearly is against the public interest and by objecting to the distribution system contract the objectors would have us, in fact, repudiate the court-validated June 5, 1963, water service contract.

Without my discussing what my judgment of the jurisdiction of this committee is at the moment, I must say that as I have listened carefully to the arguments that have been made supporting the contract and opposing it, my judgment is that the contract is a valid one under the Federal reclamation law, and speaking only for myself, that the public interest would be served in having the contract proceed to be signed in accordance with the present law of the land.

This problem is before the committee, of which I am only one member, and I must say it has been helpful to me to have the questions aired pro and con. I think sometimes, some phraseology has come into our hearings today which I take to be a little objectionable. I dislike to listen to some witnesses who would almost accuse the persons involved with this contract as guilty of, in some fashion, a fraud, although I recognize clearly that in our society, anyone has a right to state his opinion and I recognize that right in those who testified here today.

That will be all. This hearing is closed.

I am sure my colleague, Senator Nelson, who was nominated as the chairman today, will bring the matter to the attention of the full committee.

Thank you very much, sir.

Mr. TAYLOR. Thank you, Senator.

(Whereupon, at 5:30 p.m., the subcommittee was adjourned, to reconvene subject to call of the Chair.)

(Under authority previously granted the following statements and communications were ordered printed:)

STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I appreciate the opportunity to express my support of the proposed contract between the Secretary of the Interior and the Westlands Water District for construction of a distribution and drainage system to serve water from the San Luis unit of the Central Valley project to the lands of the district.

I would like to make the following points in summary of my reasons for approval of this contract:

The provisions of the contract regarding excess land and antispeculation fully comply with reclamation law. They are the same as those included in some 25 similar contracts executed with other districts through the past 18 years in the Central Valley project area. These contracts have proven effective in implementing these provisions of the law.

Three of these contracts have been entered with districts adjacent to Westlands, two having excess landownerships in larger percentage than Westlands. One which had 77-percent excess land when the contract was signed now has none. Another, which had 79-percent excess now has 38 percent and the third which had 58 percent now has 16 percent. It is submitted this orderly reduction of excess holdings demonstrates that under these contracts the objectives of reclamation law are being attained as Congress intended they should be attained.

The physical and geological situation in the Westlands District will render the traditional contract provisions even more effective in accomplishing the purposes of the law, for very little project water can escape into the usable underground water supply and provide an economically feasible "free ride" for excess-land-owners.

To require execution of recordable contracts by all excess landowners prior to construction of the distribution system would place the fate of the entire project in the hands of a single noncooperative landowner. This would seriously injure smaller owners, of whom there are approximately 1,000 in the district, as well as larger owners who intend to and will dispose of excess holdings.

The delay or complete blocking of the project which would result if the objectors' suggestions were followed would cost the United States annual revenues of \$4 million and would force large areas of land out of crop production, with great economic hardship to the owners, to the community, and to Federal tax revenues. A project costing up to \$400 million already under construction, would lie idle and unused. It would postpone or eliminate a \$157 million construction program with large resulting employment in an area classified by the Department of Labor as suffering from substantial and continuing unemployment.

It is submitted that the objectors to this contract are completely misconstruing and misinterpreting reclamation law and are unhappy with the sanctions provided by Congress to bring about the enforcement of that law. They are seeking to interpret that law as they would like to be rather than as it is. The path toward the objectives they seek would lie through urging the Congress to change the law rather than through tortured interpretations of existing law. Meanwhile, those who are fully complying with the requirements under which they have assumed very large repayment obligations, should not be singled out for treatment different or more onerous than that accorded all other reclamation project users.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., July 23, 1964.

Hon. FRANK MOSS,
Chairman, Subcommittee on Irrigation and Reclamation, Interior and Insular Affairs Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR MOSS: At the hearing held July 8, 1964, before your subcommittee in connection with the proposed contract between the Secretary of the Interior and the Westlands Water District for distribution of water and drainage in the San Luis division, Central Valley project, Mr. George Ballis, secretary of the Western Water & Power Users Council, appeared as a witness.

In the course of his testimony, Mr. Ballis expressed certain conclusions of law regarding the effect of this proposed contract and the water service contract of June 5, 1963, which are in error. We are, therefore, taking advantage of the invitation Senator Nelson, who presided, afforded all witnesses to submit supplemental written statements for the record in order that the record may clearly show the basis for our views on the question of contract interpretation on which Mr. Ballis expressed an opinion.

Mr. Ballis is of the opinion that as a result of article 27 (copy attached) of the water service contract, dated June 5, 1963, between the Westlands Water District and the United States, nonproject water, and particularly water that is pumped solely from private wells, will be introduced into the distribution system to be built by the United States and then be delivered to excess lands without subjecting such lands to the excess land laws. This is not the case. He misunderstands the article.

It is clear from the language of the second sentence of article 27(a) that the distribution system referred to therein is not a system to be built by the United States, but is an existing system or future system built by private landowners without assistance from the Bureau of Reclamation to distribute water available other than that furnished pursuant to the water service contract.

Article 27, in recognition of these facts, authorizes the contracting officer to permit project water to be introduced into the nonproject facilities on the basis of the application of the so-called Tulare formula. This formula was approved by Solicitor's opinion M-36011, dated September 23, 1949. A copy of this opinion is attached. Pursuant to it, project water may be introduced into nonproject

facilities provided that in any 24-hour period no more than a quantity of project water sufficient to irrigate the eligible or nonexcess lands under said nonproject facility would be available. This insures that project water will be delivered to nonexcess lands or to excess lands on which recordable contracts have been executed, and to carry this out the Westlands water service contract specifically requires the district to install adequate and sufficient measuring devices.

Turning now to the distribution system contract that is before your committee, attention is directed to article 20 which reads as follows:

"No water shall be delivered through the distribution system to any lands or persons not eligible under the terms of articles 23, 24, and 25 of the water service contract to receive water made available pursuant to that contract."

This article limits delivery of water through the distribution system to be constructed by the United States (which will therefore be a project facility) to owners and lands eligible under articles 23, 24, and 25 of the water service contract to receive water service thereunder. Therefore, any water, project or nonproject, that is introduced into a project facility may legally be delivered only to eligible lands. The Tulare formula would not be applicable to any mingling of project water and nonproject water in a project facility. This is further supported by the language of article 27 of the water service contract which permits mingling and application of the Tulare formula only in distribution facilities which are nonproject facilities.

Notwithstanding the express language of article 20 of the distribution system contract, Mr. Ballis is of the view that the so-called unavoidable clause of article 23(b) of the water service contract will operate as a loophole so that water pumped from the underground water table might be carried in the Government-built distribution system to excess lands without the necessity of compliance with the excess land laws. Mr. Ballis arrives at this conclusion on the ground that in view of the unavoidable clause water pumped from the underground will not be considered to have been furnished by the district under the contract.

It is true that if an excess landowner not under recordable contract pumps water of the character described in article 23(b) of the water service contract and puts it directly on overlying excess lands, such water will not be considered thereby to have been furnished under the contract to such excess lands. It by no means follows, however, that if such water is pumped, but, either directly or as commingled water, reaches ineligible lands after having been introduced into the distribution system constructed under the distribution system contract, such lands may enjoy the benefit of that pumped water without compliance with the excess land laws. In fact, this result is precluded, by the express provision of article 20 of the distribution system contract.

Article 20 restricts deliveries of water through the distribution system to lands "not eligible under the terms of articles 23, 24, and 25 of the water service contract to receive water made available under that contract." That is to say, the lands which are ineligible for service through the distribution system are ineligible for delivery of surface water under the water service contract. Article 20 describes a class of lands. If water is pumped from the underground, placed in the distribution system and delivered thereby to excess lands not eligible to receive a surface delivery under the water service contract, a violation of article 20 of the distribution system contract occurs. The fact that under article 23(b) of the water service contract underground water might also be pumped for direct application to the same ineligible excess lands or carried to them in entirely separate nonfederally financed carriage facilities is immaterial, if pumped water is introduced into the water supply delivered to those excess lands through the federally constructed distribution system. Such lands are thereby covered.

Sincerely yours,

FRANK J. BARRY, *Solicitor.*

[Enclosures]

CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT
PROVIDING FOR WATER SERVICE JUNE 5, 1963

Article

27. (a) The provisions of this contract shall not be applicable to or affect water or water rights now owned or hereafter acquired by the district or landowners within the district other than from the United States. Water furnished pursuant to the terms of this contract may be transported by means of the same distribution facilities as water now available or which may become avail-

able to the district or landowners within the district other than pursuant to the terms of this contract if the contracting officer determines that such mingling is necessary to avoid a duplication of facilities; and notwithstanding such mingling of water, the provisions of this contract shall be applicable to the quantity of water furnished to the district pursuant to the terms hereof, and such mingling of water shall not in any manner subject to the provisions of this contract the quantity of water acquired by or available to the district or landowners within the district other than from the United States.

(b) With respect to the distribution works or portions thereof in which mingling is permitted as provided in subdivision (a) hereof, the district:

(i) Will be responsible for the operation and maintenance of separate outlets from the distribution system for nonexcess and excess lands as defined in article 25 hereof. At the request of the contracting officer the district will be responsible for the installation, operation, and maintenance of water-measuring equipment at delivery points to excess lands and, further, will be responsible for the installation, operation, and maintenance of similar equipment for measuring the water available to the district or landowners within the district other than from the project, and the contracting officer may check and inspect said equipment at any time;

(ii) Agrees that the quantity of water furnished to it by the United States during each 24-hour period will be delivered by the district only to eligible land through the aforesaid outlets to eligible lands. The district shall be deemed to be in breach of this article and articles 23, 24, and 25 of this contract if at any time there is furnished to all excess lands not covered by recordable contracts and served by the distribution works or portions thereof in which mingling is permitted, a quantity of water which is greater than that which the district or landowners within the district have introduced into said system from the supply available other than pursuant to this contract.

PROPOSED CONTRACT WITH TULARE IRRIGATION DISTRICT

160-acre limitation—Commingled water.

The 160-acre limitation in the reclamation laws is a limitation on the quantity of land in individual ownership that is eligible to receive project water.

In a situation where, as a means of transporting project water from the works of the Bureau of Reclamation to the works of an irrigation district, the project water is turned into a river channel and is commingled with river water, only so much of the commingled water as represents the quantity supplied by the Bureau of Reclamation must necessarily be regarded as project water for the purpose of the 160-acre limitation.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., September 23, 1949.

Memorandum.

To: The Secretary.

From: The Solicitor.

Subject: Proposed contract with Tulare Irrigation District.

This responds to your request for my comments regarding the proposed contract for the supply of irrigation water to the Tulare Irrigation District.

The basic facts may be summarized briefly as follows:

The farmers of the Tulare Irrigation District now obtain their water for irrigation purposes from the flow of the Kaweah River. However, the river does not supply enough water for their needs, and the district desires to obtain a supplemental supply of irrigation water from the Central Valley project of the Bureau of Reclamation. The plan proposed by the Bureau and the district contemplates that the Bureau will turn into the Kaweah River from the Friant-Kern Canal a sufficient quantity of water to irrigate not more than 160 acres of land for each individual landowner in the district, and that the farmers will then draw from the river this commingled project water and river water and will use it on their lands. Any individual landowner who owns more than 160 acres of irrigable land must, when irrigating, use on his 160 acres of "nonexcess land" a quantity of commingled water at least equal in amount to his share of the project water supplied by the Bureau of Reclamation for the particular irrigation period; and the remainder of the commingled water available to him may be used on his "excess land," even though he has not entered into any agreement respecting the sale of the "excess land."

A fundamental legal question in the administration of the reclamation laws has been whether the 160-acre limitation in these laws is (1) a limitation on the quantity of land in individual ownership that is eligible to receive project water, or (2) merely a limitation on the quantity of project water that may be furnished to an individual landowner.

The phase of the 160-acre limitation that must be considered in a situation such as the one presently before the Department, involving a proposal for the furnishing of water by the Bureau of Reclamation to an irrigation district, is found in section 423e of 43 U.S.C., 1946 ed. This section reads in part as follows:

"No water shall be delivered upon the completion of any new project or new division of a project initiated after May 25, 1926, until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts * * *. Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior * * *."

The Solicitor's Office has taken the position in the past that the 160-acre limitation is a limitation on the quantity of land in individual ownership that is eligible to receive project water. (See Solicitor's Opinions M-21709, dated Mar. 3, 1927, and M-22401, dated June 14, 1927.) I have no doubt regarding the soundness of that position, in principle, because of the specific statutory directive that " * * * no * * * excess lands * * * shall receive water from any project * * *" unless the owners of the excess lands have previously agreed that they will sell such lands under terms and conditions and at prices satisfactory to the Secretary of the Interior.

However, the problem as to the applicability of the previous ruling to the facts of the present case provides a question to which there is no certain answer. An easy answer to this question, from a lawyer's standpoint, could be based upon the bare language of the statutory prohibition quoted above and would be to the effect that, as the commingled water, when it reaches the farms in the district, will contain some project water, it cannot properly be applied to the "excess land" of a landowner who has refused to enter into an appropriate agreement respecting the sale of the land, because the laws says that the excess land of such a landowner shall not receive project water and it makes no exception in the case of project water that has previously been commingled with other water during the course of transporting it from the works of the Bureau of Reclamation to the works of an irrigation district.

On the other hand, I am confident that, when this statutory language was enacted, the legislators did not have in mind a situation where, as a means of transporting project water, it is to be turned into a river and commingled with river water in which the members of an irrigation district have rights independently of the reclamation laws and to which they have access without regard to the reclamation project, and where there will be no possible way of identifying the project water and of distinguishing it from the other water as of the time when the commingled water reaches the lands within the district.

If, instead of using the river channel for the transportation of the project water, separate transportation facilities for such water in the form of a canal were to be constructed from the Friant-Kern Canal to the lands within the Tulare Irrigation District, it seems to be clear that the Department could agree, if it seemed desirable to do so from the standpoint of policy, that the project water might be applied to the "nonexcess lands" of landowners in the district owning more than 160 acres, even though they had not previously entered into agreements respecting the sale of their "excess lands." As previously indicated, the statutory prohibition with which we are concerned here merely relates to the reception of project water by the "excess land" of a landowner in such a situation; and, so long as project water is applied only to the "nonexcess land" of the landowner and is not received by his "excess land," the Department is not required to object to the retention of the "excess land" or to its irrigation by means of water from another source. By thus meeting the irrigation needs

of his "nonexcess land" through the use of project water taken from the canal, the landowner would be free to use all his water from the river for the irrigation of his "excess land."

The same result, in substance, as that mentioned in the preceding paragraph would be accomplished under the plan that has been proposed with respect to the Tulare Irrigation District, whereby (a) the Bureau of Reclamation would turn into the river, for transportation to the district, only enough project water to irrigate 160 acres or less for each landowner in the district, (b) an equivalent amount, at least, of the commingled water would be used on the "nonexcess lands" within the district, and (c) the commingled water would be applied to "excess lands" only to the extent that the available supply of water might exceed the quantity of water delivered by the Bureau.

The circumstance of using a river channel, instead of a canal, for the transportation of project water from the Friant-Kern Canal to the lands within the Tulare Irrigation District should not have sufficient significance to require the Department, as a matter of law, to say that the commingled project water and river water can be used only on the "nonexcess lands" of persons who have refused to enter into agreements respecting the sale of their "excess lands," whereas, in the absence of commingling, the Department could, if it desired to do so, consent to the use of project water on the "nonexcess lands" and river water on the "excess lands" of landowners owning more than 160 acres who had refused to enter into agreements respecting the sale of their "excess lands."

I believe that, in the unusual situation with which we are dealing here, a reasonable argument can be made to support the view that only so much of the commingled water as represents the quantity of water supplied by the Bureau of Reclamation must necessarily be regarded as project water for the purpose of the 160-acre limitation. Therefore, I have concluded that it would not be necessary to disapprove the proposed plan on legal grounds if it should be deemed advisable, from the standpoint of policy, to enter into such an arrangement. In that event, the contract that has been proposed may need to be clarified in order to make sure that it conforms to the theory on the basis of which the arrangement can be regarded, as unobjectionable from the legal standpoint.

MASTIN G. WHITE, *Solicitor.*

FRIENDS COMMITTEE ON NATIONAL LEGISLATION,
Washington, D.C., July 9, 1964.

Senator FRANK E. MOSS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: On behalf of the Friends Committee on National Legislation, I want to express the hope that the Westlands Water District (California) construction contract and, by reference, the water service contract of 1963, now before the Senate Committee on Interior and Insular Affairs, be rejected in their present form. After careful consideration of the arguments pro and con at the committee hearings yesterday, I am convinced that, as they stand, these contracts unnecessarily violate the spirit, if not the letter, of reclamation law. By importing water which will add to the ground water supply, the proposed system will deliver water for the benefit of noneligible lands in large holdings. Under the particular circumstances in the San Luis District the logical way to protect the public interest as expressed in reclamation law is to get a substantial acreage under recordable contract before construction is started.

Figures given at the hearing by proponents of the contract, if I understand them correctly, make it appear that it will be cheaper for large owners without recordable contracts to pay an ad valorem tax and continue to pump water without paying for it than to operate under a recordable contract for 10 years and then break up their holdings. This prospect would not only circumvent the acreage limitation but also would threaten the success of the entire San Luis project.

It would endanger the project because evidence presented by proponents yesterday is that the ground water level will not rise unless more than 783,000 acre-feet of water are used on the surface. If each acre needs 3 acre-feet per year, this means that the project cannot succeed with less than 261,000 acres under contract.

Entirely aside from circumvention of the acreage limitation then, it seems to me that the Government will take an unnecessary risk if it spends another

\$157 million without reasonable prospects that the project will be successful. Admittedly the feasibility of the project has been accepted. But to administer it under the contracts as proposed would seriously undermine that feasibility.

The Friends Committee on National Legislation does not take a position that the west side of the San Joaquin Valley should not be developed on a sound and lasting basis. But we think that rigorous enforcement of the acreage limitation is necessary to justify the huge public subsidy which the project involves. And we are concerned that public development provide the maximum opportunity for individual enterprise and be conducive to the growth of wholesome communities and good working conditions.

By way of compromise, to bridge the gap between proponent of the contract in its present form and those who suggest that all owners should be under contract before construction of the distribution system is undertaken, I would like to suggest that the contract be amended so as to make the start of construction contingent upon signing of recordable contracts for a sufficient acreage to make the project successful—261,000 acres according to my interpretation of figures given at the hearing. At the same time, I would urge that the "unavoidable" escape clause be stricken from the water service contract of 1963.

Proponents argue that economic pressure will induce the signing of contracts in the long run. If this is so, why should large owners hesitate to sign contracts in advance?

I trust that you will give this suggestion careful consideration. In view of the strong opposition of so many public-spirited organizations and concerned individuals, it is especially important that the contract be remanded to the Department of the Interior for reconsideration before it becomes operative.

Sincerely,

C. EDWARD BEHRE,
Chairman, Subcommittee on Domestic Issues.

WESTERN WATER & POWER USERS' COUNCIL,
Porterville, Calif., July 2, 1964.

Hon. FRANK MOSS,
*Senate Office Building.,
Washington, D.C.*

DEAR SENATOR MOSS: With imminent subversion of reclamation laws and defiance of Congress on Westlands contract where no sincere attempt is made for timely procurement of signed agreements to dispose of excess acreage, and with barefaced enrichment of huge landholders, chiefly the S. P. Land Co., through the transparent "unavoidable" clause recharging the underground layers in a most profligate manner, we had better institute drastic counter-measures to put the guilty parties where they can no longer betray their sacred trust.

Let the committee do its duty and uphold the laws of the land to control feudalism and speculative profits at public expense.

Put Udall, et al, where they can no longer emulate "Give-Away-McKay" or "Give-Away-TVA" Goldwaterpower.

Get us another Harold L. Ickes to beat off the big leeches and parasites in no uncertain manner.

While you're cleaning up the gooey mess, take a searching look at the parallel violations upcoming fast on other segments of San Luis (sometimes jokingly referred to as "State service area" instead of Central Valley project where it always was), (where multimillions of U.S. money plugs up the holes and makes it at all possible) by such notable public benefactors as Kern County Land Co., Tejon Ranch, Irvine Ranch, Standard Oil Co., S. P. Land Co., et al.

Multiply roughly a half million acres by about \$1,000 to discover the incentive pay at stake, and calculate the irreparable damage to all future generations if we say, "so sorry, please, no room for honest families in America, we're giving your birthrights to six colossal landlords who acquired it in some very, very interesting ways. You 3,000 to 5,000 families can migrate to Australia or just swell the list of the unemployed. You know, just a small part of the 'war on poverty.'"

Sincerely,

VICTOR V. BOWKER,
Power Chairman, Western Water & Power Users' Council.

WESTERN WATER & POWER USERS COUNCIL,
Oakland, Calif., July 5, 1964.

HON. FRANK E. MOSS,
Chairman, Subcommittee on Irrigation and Reclamation, Senate Committee on Interior and Insular Affairs, Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: I urge your subcommittee to reject the proposed Westlands contract so that full compliance with acreage limitation in the San Luis project may be assured. During the Senate debates on the San Luis project bill, there were repeated assurances that, without question, acreage limitation would apply to the Federal service area. I believe it is now incumbent on the Senate to guarantee that this will be application in fact and not in theory. The history of reclamation is filled with examples where acreage limitation applies but is not enforced. Excess landowners have engaged in unflagging efforts to thwart the limitation. Southern Pacific, in the San Luis service area, has indicated its unwillingness to comply. Under these conditions, perhaps I may be forgiven for suspecting that the quietly and hastily advanced Westlands contract invites noncompliance with the law. If the landowners do intend to comply, what objection could they have to a full public clarification of that fact, and to signing recordable contracts before distribution facilities are built?

Some of the tortuous and deceptive arguments advanced to defend the proposed contract offer little reassurance that compliance with the law is intended. It is claimed that little delivered water will percolate into the ground water basin, so that, with appreciable pumping by excess landowners, an expensive drawdown of deep water will continue. No mention is made of the 181,000 acre-feet annually of deep underground flow into the basin from the east side of the valley, or of the 1955 calculation by the Bureau of Reclamation that for the entire service area the total estimated ground water recharge from all sources under project conditions will be about 667,000 acre-feet.

It is argued that assessments on lands within Westlands District will make it prohibitively expensive for member landowners to refuse to sign recordable contracts and thus pump instead of receiving delivered water. No mention is made of the ease with which they may flee the district. A synopsis of water district law states: "Exclusion (withdrawal): Petition by owners, hearing and order of board—petition must be granted *if land not irrigable from district works*, etc." [Emphasis mine.] Are we assured of the continuing land assessment policy in a district with one vote for each dollar of assessed valuation?

Finally, the delivery of percolating water to lands outside the district but inside the San Luis service area may not concern Westlands, but it should concern the Senate.

I should appreciate having this statement placed in the hearing record.

Very sincerely,

KEITH MURRAY,
Director, Western Water & Power Users Council.

AMERICAN VETERANS COMMITTEE,
Washington, D.C., July 16, 1964.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The American Veterans Committee (AVC) presented a brief statement at your committee hearing on the Westlands contract last week, and would like in addition to present some comments on the testimony presented by others.

Most striking, in the opinion of our spokesman, Ben Neufeld, was the lack of relation between the questions asked by members of the committee and the answers given by the representatives of the Department of the Interior. The fact, for example, that the Bureau has given water away for years does not answer the question about the legality of the "unavoidable" clause in Westlands or any other project. Mr. Brody's responses to questions about the effect of the delivery of water on the water table never did answer the specific questions posed by Senator Kuchel and yourself. He spoke only of total need and total import, a completely inadequate answer in view of your specific questions about the amount of percolation, the amount of seepage through the relatively impermeable Corcoran clay, and the amount of pumping from above and below the clay at present.

On the basis of testimony presented by others, and I refer to the prepared statements not the verbal presentations, the answers to these questions are very different from the impressions left by some of the witnesses. This fact alone seems to call for immediate rejections of the contract, until your committee can learn the true facts.

Second, there were questions about the actual effect that could be expected from economic factors. We are not satisfied with the subjunctive statements about the relative costs of pumping from the present level as contrasted with noncomparable costs of water from other sources.

Mister Brody made another striking statement while discussing the breaking up of the large landholdings in the valley. He said, "These holdings were not built up overnight and they cannot be broken up overnight." As a matter of historical fact, the Southern Pacific holding was indeed built up overnight, and the signing of a recordable contract calling for disposal of excess lands 10 years hence cannot possibly be viewed as a breakup overnight.

Finally, I should like to expand somewhat on Mr. Neufeld's statement respectfully disagreeing with Senator Kuchel's comment that reclamation projects cannot be made dependent upon 100-percent sign-up of lands within a service area. Mr. Neufeld suggested it would be appropriate for the Bureau or the distribution agency to solicit recordable contracts in advance of the signing of distribution or construction contracts followed by referral back to all of the signatories with a report on the status of the project. What we have in mind is this, stated in terms of the Westlands District situation:

When your committee rejects the contract under consideration, we respectfully request that it instruct the Bureau to ask the district to solicit recordable contracts from all lands within the Federal service area. At the expiration of a period of time to be determined by your committee, say 6 months, a report should be prepared showing what lands have been brought under recordable contracts.

On the basis of the report, and a statement to be prepared by the district, this statement to indicate the benefits to be created by the project as then envisioned and the cost to the landowner of the benefits, each owner who has signed a contract may, not sooner than, say, 30 days or later than 60 days, withdraw his own agreement.

If, for example, more than 5 percent of the lands are then withdrawn, a new report on the situation shall be prepared immediately showing the new cost and benefit schedules and another 15 days allowed for further action by landowners. This entire process should, of course, be subject to congressional review to insure compliance with the spirit of this requirement.

The final situation report, showing water demand, cost, underground benefit, and other pertinent factors shall then become the basis for a new contract which will be submitted, presumably, as a substitute for that now before you.

Our intent in making this proposal is to avoid forcing obligations upon landowners under terms which they do not consider advantageous.

Since the contracts will necessarily have been drawn in terms of disposal of excess lands at the end of a period starting with the first delivery of water, subsequent failure to build the project will eliminate all obligation under the contract with no further action on anybody's part.

We should like to emphasize that the desirability of the antimonopoly provision is not under discussion at this time. If a proposal is made in the Congress to change this requirement of reclamation law, we would like the opportunity to express our views on that. It would be our purpose at that time to defend the limitations because we see no reason why it is inimical to efficient and profitable farming.

In conclusion, may I say that we heard with interest the Department's testimony that it submitted to you the letter raising policy questions in connection with the Westlands contract. We have been unable to secure a copy of that letter and are therefore unable to express our views upon the specific points raised in it. We understand that your committee report on the hearing and contract will include this letter, but we sincerely hope no such contract as this will be approved until we and other public organizations have an opportunity to comment upon the points it raises.

Thank you for the opportunity to present this and our previous statement.

Sincerely yours,

J. ARNOLD FELDMAN,
Executive Director.

CORNELL UNIVERSITY,
DEPARTMENT OF HISTORY,
Ithaca, N. Y., June 4, 1964.

Re the Westlands District project for use of subsoil water in California.

Senator FRANK E. MOSS,
Chairman, Senate Interior Subcommittee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MOSS: As one who has long been interested in public land questions on which I have written a good deal, I am very much disturbed that Secretary of the Interior Udall, for whom I have great admiration, has apparently approved, subject to approval or rejection by the Congress, the Westlands District contract. This means that if the contract goes into operation, the large landholders in the district, including the Southern Pacific Railroad with its 50,000 acres, will have direct access to underground water that comes from the San Luis project; in other words, approval of the contract is a direct violation, as I understand it, of the 160-acre limitation in the Reclamation Act of 1902, and will enable the large landholders to evade the restrictive feature of this great Reclamation Act which Theodore Roosevelt and others planned for the benefit of the many, not for a few. If the Senate does not reject this contract it will repeal, in effect, the excess lands provision of the Newlands Act, but in a way that no person concerned with the rights of the many against special interest groups can condone.

By permitting this reversal or repeal through approval of the contract, the Congress will be destroying a basic feature of our land and water system, which was to extend the benefits of that system as widely as possible. Possibly, there are areas where more than 160 or 320 acres are needed for successful operation of farming land in irrigation districts but I cannot persuade myself that this is true in the San Joaquin Valley. If the Senate rejects the contract it may be hoped that the large landowners in the valley may follow the example of the DiGiorgio Co. in agreeing to dispose of part of its holdings in the valley.

I have read through hundreds of pages—no, thousands—of testimony presented before Senate and House committees on the excess lands provision of the Reclamation Act over the course of the last 10 or more years and can find no sound argument for rejecting the 160-acre excess lands limitation or in any way making it inapplicable to specific areas in California, as the Westlands District project, as submitted to the Senate now would do. True, it has been said over and over again that since part of the underground water comes from other than Federal projects the limitation should not apply to the water as pumped. But that I cannot accept for it was intended that water coming from Federal projects should be subject to use only by holders signing recordable contracts and agreeing to abide by the excess lands provision.

I strongly urge that the Senate reject the project as it comes from Secretary Udall.

Please have this letter printed.

Very truly yours,

PAUL W. GATES,
Professor of American History.

CALIFORNIA FARM RESEARCH AND LEGISLATIVE COMMITTEE,
Santa Clara, Calif.

HON. FRANK E. MOSS,
Chairman, Subcommittee on Irrigation and Reclamation, Committee on Interior and Insular Affairs, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR AND MEMBERS OF THE SUBCOMMITTEE: The California Farm Research and Legislative Committee at its 23d annual meeting held at Fresno State College May 23, concurred in recommendations submitted by its subcommittee on natural resources, among them one referring to the proposed construction of a distribution system for the Westlands Water District.

Approval of this project is now before you and fulfills our request that a contract between the Westlands Water District and the U.S. Bureau of Reclamation "for Federal construction of a \$157 million water distribution system for the 340,000 acres in the district should be carefully scrutinized to assure its conformity in every respect with Federal reclamation law * * *".

"The Westlands contract provides," our accepted report stated, "for construction of the distribution system first, without the signing of recordable contracts until the water is available for delivery. This is in accord with historical procedure * * *."

But, this reservation was made: "This is practicable when an area consists mainly of small farms with only a few landowners with excess acreage. But when an area consists of more than 70 percent excess acres, controlled by absentee landlords, an entirely different situation arises. Once the dam and the distribution system are completed, the Government may completely lose its bargaining power to enforce acreage limitation * * *."

There were a number of questions raised by our resources subcommittee for which we do not yet have the answers, and we hope that these may be supplied during your current hearings.

We have received the following letters and are therefore familiar with the viewpoints expressed:

(1) Letter to your committee from Ralph Brody, manager-chief counsel, Westlands Water District in reply to statements made by Thomas L. Pitts, secretary-treasurer, California Labor Federation, and taking issue with certain statements made in the California Farm Reporter by William Reich, dated, June 11, 1964.

(2) Letter dated May 26, 1964, from Commissioner of Reclamation Floyd Dominy to the Honorable Henry M. Jackson, chairman, Committee on Interior and Insular Affairs, U.S. Senate.

(3) Letter from Philip P. Dickinson, technical assistant to Senator Clair Engle, to William Reich, 7615 Sunkist Drive, Oakland, dated June 18, 1964, enclosing, at the request of Senator Clair Engle, copy of letter dated June 2, 1964, from Congressman B. F. Sisk, 16th District, California, to Thomas L. Pitts, on various aspects raised by Mr. Pitts pertaining to the Westlands distribution system.

(4) Letter from Senator Thomas H. Kuckel to Howard D. McEwen, 456 Patton Street, Sonoma, Calif., dated June 9, 1964, replying to certain questions raised by Mr. McEwen in regard to the Westlands contract.

The two most perplexing of these unanswered questions appear to be—

(1) Since there is no public agency which embraces the entire area which will receive San Luis water, what can be done to require excess-land owners outside the district to conform to the provisions of reclamation law?

(2) Based on the experience we now have in respect to failure of excess landowners in the Salt River project in Arizona to sign recordable contracts; the same nonconforming pattern for the Kings and Kern River projects, California; the recent fiasco in regard to the Glenn-Colusa Irrigation District, California; the delay in sale by the U.S. Bureau of Reclamation of excess lands held by the Di Giorgio Co., Kern County, Calif., now holding out for a second appraisal.

Why cannot the Bureau of Reclamation require excess-land owners who expect to receive water from the San Luis project, interest free, to sign recordable contracts before construction starts, thus insuring that reclamation law will be carried out, once the project is completed and Government funds have been totally invested?

It is our understanding that one such excess-land owner in the Westlands District has already signed such a contract, and the letter to Senator Jackson from Commissioner Dominy states that "recordable contracts may be executed by excess-land owners at any time prior to delivery of water." A broad interpretation of this statement could very well mean now as a gesture of good faith following which construction of the distribution system should proceed.

We are dealing with a fast-moving rural economy in a semiarid State, forced to share its water resources with new millions of urban dwellers and placing tremendous pressures on existing underground water supplies. Likewise agricultural units are dividing between farm family operations and industrialized, integrated farm business. Members of our committee are apprehensive that they will be deprived of their fair share of the water resources demanded by their family farm enterprises. It may well be that a new look at allowable procedures in the way of the timing of recordable contracts would be a constructive step in meeting the mounting doubts as to the efficiency of reclamation law as presently interpreted.

For your further information we are attaching an analysis made for us by Walter E. Packard, reclamation engineer, retired, who is a member of our natural resources committee. We would appreciate your having this letter and

the statement of Mr. Packard made part of the record of your July 8 hearing on the Westlands distribution system.

Sincerely,

Mrs. GRACE McDONALD,
Executive Secretary.

COMMENTS ON STATEMENTS DEFENDING THE WESTLANDS WATER DISTRIBUTION
SYSTEM CONTRACT

JUNE 27, 1964.

Mrs. GRACE McDONALD,
Executive Secretary, California Farm Research & Legislative Committee, Santa Clara, Calif.:

The following comments on statements defending Westlands water distribution system contract was prepared in answer to your request.

Sincerely,

WALTER E. PACKARD.

Floyd E. Dominy, Commissioner, U.S. Bureau of Reclamation; Ralph Brody, manager-chief counsel, Westlands Water District; B. F. Sisk, Congressman, 16th District, Fresno; U.S. Senator Thomas H. Kuchel; and Philip Dickinson, technical assistant to U.S. Senator Clair Engle, have submitted statements to justify the water service and water distribution contracts between the Westlands Water District and the U.S. Bureau of Reclamation and to reply to opposition arguments made by Thomas Pitts, secretary-treasurer, California Labor Federation, AFL-CIO, and William Reich.

Pitts and Reich raised the following issues:

(1) Since the Westlands district, with more than 70 percent of its land classified as "excess," is not a typical Central Valley project district, owners of "excess lands" should be required to sign recordable contracts (to dispose of the excess after receiving Government-subsidized water for 10 years) before the Federal Government commits funds to construct the distribution system.

(2) Owners of excess lands who do not sign such contracts may illegally receive benefits from the project (due to replenished underground) and will be under no compulsion to sign such contracts once the distribution system is in operation.

(3) The Westlands contract violates the San Luis Act which prescribes that the Secretary of the Interior is to submit to Congress "a contract" covering the distribution and drainage systems for the Federal area (Public Law 86-488, sec. 8). Congress did not contemplate a contract like Westlands which covers only a portion of the Federal service area but effectively serves it all. Neither did it anticipate the exercise of "legislative oversight" of a succession of contracts that may or may not cover the Federal service area.

In regard to (1) Congressman Sisk, in a letter to Thomas Pitts, June 2, 1964, says, "Any contention that the landowners be required to sign recordable contracts *before* the district of which they are a part has contracted for a water supply or the system to distribute it to them, is both impractical and *illegal*." [Emphasis author's.]

Commissioner Dominy contradicts this. "Central Valley project contracts," he states in a letter to Chairman Henry Jackson, Senate Interior and Insular Affairs Committee, dated May 26, 1964, "in general establish no specific time prior to which large landowners must have placed their excess lands under recordable contract * * *. Recordable contracts may be executed by the excess landowners *at any time* prior to delivery of water." [Emphasis author's.]

Philip Dickinson writes, "I believe the pressure of economic competition will force large landowners to participate in the project * * * and therefore to sign recordable contracts. *At least one has already done so.*" [Emphasis author's.] Letter to William Reich, 7615 Sunkist Drive, Oakland, June 18, 1964.

If, as Commissioner Dominy states, there is nothing new or illegal or unusual about requiring recordable contracts prior to making water delivery, then the simple, direct, and obvious way to secure compliance with the law would be to secure such contracts *now*, as Pitts and Reich suggest. [Emphasis in reference to Dominy, author's.]

In regard to (2) Congressman Sisk says, "Extensive hydrological investigation of the area shows conclusively that water applied to the surface will not

percolate or penetrate into the deep wells which are presently the sole source of usable irrigation water * * *. The maximum replenishment or usable water in the service area will continue to be approximately 240,000 acre-feet which will not be increased by project water." (Letter to Thomas Pitts, June 2, 1964.)

Yet the Westlands water service contract (p. 2) specifically states that San Luis water is to be supplied for percolation; "ground water underlying the district is seriously depleted and in need of replenishment * * * an additional water supply to meet these present and potential needs can be made available by and through the works constructed and to be constructed by the United States * * *."

A Bureau of Reclamation report on "Geology and Ground Water Resources of the San Luis Service Area (February 1963, p. 17) states "The ground reservoir underlies the entire San Luis area."

Therefore it is impossible to deliver surface water to the Westlands district without at the same time benefiting lands outside the district as well, to lands eligible to receive it and to lands ineligible to receive it.

Manager Ralph Brody says: "Of the total surface application of the 783,000 acre-feet of project water the district will purchase from the United States, plus approximately 250,000 acre-feet of additional water to be pumped from the natural ground water supplies, only 173,000 acre-feet will find its way underground * * *. Because of quality deterioration, some 144,000 acre-feet of the water reaching the underground and which remains above the Corcoran clay will have to be drained from the district * * *. To the extent there is a reduction of pumping in the district there will be a decrease in the overdraft from the deep ground water * * *. (Letter to Senator Frank Moss, June 11, 1964.)

Brody estimates the average depth in the Westlands District would be stabilized at 300 feet. The present average pumping depth is 375 feet in the Westlands Water District (450 feet in the entire Federal service area).

Brody continues: "The maximum benefit, if it could be termed that, which the Southern Pacific could obtain from raising ground water levels would be about \$2 per acre-foot.

Commissioner Dominy agrees that "enhanced ground water conditions" should reduce pump lifts from the present 400 feet or more (in the entire service area) to around 300 feet.

Senator Kuchel, in a letter to J. B. Neilands, of Berkeley, May 13, states that acreage limitation law applies to surface deliveries only and not to underground deliveries. "The underground basins from which the owners of excess land pump does not constitute * * * delivery of water within the terms of acreage limitation law," basing his opinion on "advice of the Solicitor's Office of the U.S. Department of the Interior."

I believe that the Solicitor lacks statutory support for this view. The law states that "no excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such excess lands."

This prohibition of water deliveries without contracts is absolute. The law does not differentiate between surface and underground water. If water is received by excess landholders without contracts, the Secretary of the Interior is responsible for breaking the law.

Manager Brody, Commissioner Dominy, and Congressman Sisk contend that project water will be available at an appreciable lesser cost than pumped water because, under the joint liability contracting concept embodied in the Westlands water service contract, all lands within the district will be assessed ad valorem taxes for a substantial part of the amounts necessary to meet the district's annual payments to the United States.

Manager Brody says: "All excess landowners not signing recordable contracts will be helping to pay for a water distribution system they cannot use and for water someone else is using.

"Their water cost for a half adequate supply will in most, if not all, instances be twice as much as before the project is constructed."

On the other hand, landowners who sign recordable contracts will get the cheap subsidized project water.

Commissioner Dominy says he has "reason to believe that the interaction of these circumstances will result in general acceptance of and conformance to

the recordable contracts by large landowners in the Westlands Water District in much the same manner as has been evident elsewhere in the Central Valley project."

What Dominy means by "in the same manner" is unclear. It is a well-known fact that large landowners in the Central Valley project area have waged an unrelenting fight to evade and nullify acreage limitation.

In the Kings and Kern River projects, recordable contracts were not obtained until more than 10 years after completion of the project reservoirs and they are now being tested in the courts.

These difficulties and delays could have been avoided by obtaining contracts before commitment of funds for construction.

Why does the Commissioner of Reclamation repeat past mistakes and why does the Secretary of the Interior allow this?

Commissioner Dominy, Manager Brody, and Congressman Sisk may be entirely mistaken about the effectiveness of this supposed financial incentive to make owners of excess land comply with the reclamation law in order to obtain cheap surface water rather than engage in expensive pumping from the replenished underground.

It is quite likely that landowners who refuse to sign recordable contracts, but who are taxed to help pay for the distribution system (and even for San Luis water, if receipts from those who sign are insufficient) may demand that the Westlands District reimburse them for their higher water costs. The California water code requires districts to serve lands with water "ratably," making no distinction as to source of water and the signing of a recordable contract.

Voting in the Westlands District is by assessed valuation of land, not per capita, and Southern Pacific controls 12 percent of the land and votes. This is but another example of the way in which Government loses control when construction is carried out before recordable contracts are signed and before other guarantees of compliance with the intent of the law are met.

None of the statements quoted above discuss point 3.

Mr. Brody's answer to the subsidy question raised by Messrs. Reich and Pitts avoids the basic issue. The Bureau of Reclamation was established to assist in the sound development of the irrigable lands of the Western States. The use of interest-free money was authorized by the Congress as a means of reducing the burden facing settlers on reclamation projects.

The acreage limitation provision was inserted in the act specifically to prevent land speculation and to insure the sound development of project lands by family farm operators making their homes on the land and furthermore to prevent the concentration of landownership in large holdings—a pattern which has caused social conflicts throughout history. The Federal Government will spend nearly half a billion dollars of interest-free money in the construction of the San Luis project, representing a very large public subsidy which, over the years, might equal the capital costs. Refusal to sign recordable contracts, as previously stated, is but a means of putting the Federal Government in an unfavorable bargaining position.

WALTER E. PACKARD.

BERKELEY, CALIF.

Walter E. Packard is well known—nationwide and internationally—as an authority, as an engineer, and economist in the field of land, water, and power resources development.

In 1930 he served briefly as consultant for the U.S. Bureau of Reclamation. In 1933 he made an economic analysis of the Columbia Basin project for the U.S. Army Engineers. In that same year, Packard prepared a report on "Flow of Benefits for the Central Valley Project" for the Office of State Engineer Edward Hyatt, Division of Water Resources, Department of Public Works, State of California, Sacramento.

From 1948 to 1954, Packard was chairman of the Commission on Land, Water Resources, and Power Development for the Economic Cooperation and Development Administration and planned and carried through a major project in Greece involving salinity control, reclamation, and power generation and distribution.

Walter E. Packard is a member of the California Farm Research and Legislative Committee's Natural Resources Subcommittee. He is presently retired from active work.

NATIONAL CONSUMERS LEAGUE,
Washington, D.C., July 13, 1964.

Hon. HENRY M. JACKSON,
Chairman, Subcommittee on Reclamation and Irrigation, Senate Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: The National Consumers League urges the subcommittee to refuse its approval to the Westlands Water District contract submitted by the Secretary of the Interior for the reason that it violates the intent of the Reclamation Act.

Although the league recognizes that the past policy of the Department of the Interior has been to allow such contracts even though some excess land holders have refused to sign recordable contracts for their divestment of excess land-holdings, the situation in the Westlands contract is not quite analogous to most of the previous contracts. In this instance some 70 percent of the land is in the hands of excess landowners; these landowners would obtain water since one of the stated prime purposes of the contract is to raise and stabilize the underground water level; there is no reason to believe that the excess landowners will sign recordable contracts after the project is undertaken and built. For these reasons, the National Consumers League feels that this particular contract would go beyond even the past policy of the Department and urges that your subcommittee return it without approval to Secretary Udall.

We would appreciate your making this letter a part of the hearing record.

Sincerely yours,

SARAH H. NEWMAN, *General Secretary.*

BERKELEY, CALIF., July 3, 1964.

Senator FRANK MOSS,
*Senate Interior Subcommittee on Irrigation and Reclamation,
Senate Office Building, Washington, D.C.*

DEAR SENATOR: Please reject Westlands contract for San Luis water until Secretary Udall amends it to comply with acreage limitation provisions of reclamation law for the entire San Luis Federal service area in the form of recordable excess land contracts from all benefited landowners.

Further enrichment of land monopolists through such administrative fiat and in contradiction to the historic intent of Congress has no place in any war against poverty.

Kindly enter my protest in the record of your hearings on July 8-9.

Very truly yours,

JOHN S. PAGE.

STOCKTON, CALIF., July 4, 1964.

Senator FRANK MOSS,
*Senate Office Building,
Washington, D.C.*

DEAR SIR: At your July 8 Senate Interior Subcommittee hearing in Washington, D.C., I wish to have you include my rejection of the Westlands contract in its present form for the purchase of irrigation water offered by Secretary Udall.

This proposal of the Westlake's contract skillfully circumvents present reclamation acreage requirements.

Thanking you for this request, I remain

Yours truly,

GEORGE KAISER, Sr.,
*Chairman of Water and Power, San Joaquin County Grange
and Stockton No. 758.*

SAN FRANCISCO, July 7, 1964.

Hon. FRANK MOSS,
Chairman, Subcommittee on Irrigation and Reclamation.

DEAR MR. CHAIRMAN: As an employee of the Bureau of Reclamation in California in the midforties, I played some part in the successful battle to maintain reclamation law on the Central Valley project, and I am thoroughly familiar with developments since then, some of which have, and some of which have not,

preserved the intent of Congress to spread the direct benefits of public financed irrigation and power production to as many farmers as possible.

While the Westlands project represents years of effort by able and conscientious men, several of them former Bureau employees or rank and repute, I do not think that your committee ought to endorse the contract for distribution facilities there in its present form.

The vice of the contract lies in the section which frees the district from any responsibility for "unavoidable" recharge of ground water under lands whose owners refuse to sign contracts agreeing to the various terms of reclamation law. On the face of it, such a provision is unexceptionable. Almost all applications of surface water recharge the underground water supply to some degree, and thus, in some degree, benefit noncomplying landholders on the fringes of projects. But this problem has never been very serious on the Central Valley project, for such replenishment, in most areas, has been casual and chancy, representing a wholly undependable source of supply. It is reasonable in such cases that contracting districts be relieved of responsibility for the unpredictable.

On the Westlands project, however, the situation is very different. The whole area may (to oversimplify) be said to overlie an underground lake, which powerful pumps over a very wide area may draw from. Additionally, the project is to a degree checkerboarded with the holdings of the Southern Pacific Co., which has flatly refused to consider a contract embodying the provisions of reclamation law. The Southern Pacific and other large holders have also lands contiguous to the project which could draw freely on the replenished underground. I believe that the total of lands outside the district which will receive a "free" water supply sufficient for irrigated production in the San Joaquin Valley amounts to about 100,000 acres, half owned by the Southern Pacific.

If the Congress approves the contract currently being considered, somewhere in the neighborhood of a quarter of all the water delivered to the Westlands District will go to owners of lands who have declared their intention not to comply with reclamation law. They will get this water free, except for the cost of pumping it. (The reason that Westlands District owners who have agreed to comply with the law do not object to this, I believe, is that many of them rent Southern Pacific and other noncomplying lands and will thus merely be shifting money from one pocket to another, not paying for water which will be delivered free to some second party.) This proportion is too high; in fact, it is so high as to raise the suspicion that the Westlands contract may actually be one of the long series of devices proposed to defeat the application of reclamation law in the Central Valley. I believe that your committee would be well advised to require of the Department of the Interior all correspondence, all records of discussions, and phone calls, on the whole Westlands matter since its very inception to determine whether there has been such an attempt to defeat the purpose of the law; whether or not accidental enrichment of noncomplying owners has not been a planned accident.

Your committee, I believe, should reject the contract in its present form and require the Department to come back next year with a new contract embodying devices which will make it more difficult for noncomplying owners to benefit. Such devices might embody offset pumping or some other technical means, or they might be built around sharply reduced water deliveries which would keep pumping at or near its present levels. Indeed, consideration should certainly be given to abandoning the Westlands project altogether until agreement from all landholders in its area to abide by reclamation law is gotten. This will not deprive the Government of the United States of a market for its water—there is more land needing water than there is water to give to it. The Government does not need to be put in the position of begging landowners to take water on any terms the landowners see fit to impose. The water could be very well sent farther south to smaller landholdings who have been deprived of the opportunity to purchase water at a price they can afford by the turning over of the southern part of the San Luis project as originally conceived, to the so-called State water plan.

Time is of the essence in this matter—time to think the contract over. Another year's delay will merely remove the pressure from the Government and put it on noncomplying landowners, where it belongs.

Most sincerely,

ORIN CASSMORE.

HANFORD, CALIF., June 29, 1964.

Senator FRANK MOSS,
*Chairman, Senate Interior Subcommittee on Irrigation and Reclamation, Senate
 Office Building, Washington, D.C.*

DEAR CHAIRMAN FRANK MOSS: We urge your committee to reject the approval of the Westlands contract. This contract allows Southern Pacific Land Co., and others to get a free ride at the expense of the taxpayers for not signing a recordable contract to dispose of their excess land after 10 years of water delivery, now.

The Government has no assurance they will sign when water is delivered. They will use it and the percolating water which comes from the Federal-State San Luis project. These excess landowners will enrich themselves and not break their excess land to 160 acres or 320, man and wife. They will use it year after year and leave the Government at their mercy, just as this has happened on Pine Flat Dam, Glenn Colusa District, Imperial Valley, the De Giorgio Corp. farms, and several others.

Please don't let excess land owners monopolize the water and land. We need many more family-size farms for the future of the young people interested in agriculture to have an opportunity to buy their own farm. One hundred acres is the most anyone will be able to afford.

2. At a recent meeting of the Family Work Shop on Fresno State College sponsored by C.F.R. & L.C., we learned from Mr. Howard Bertsch, Administrator of FHA, Washington, D.C., in his speech "Can we Save the Family Farmer?"

One fact was very clear to us; of 3.6 million farms, some 100,000 receive one-third of the benefits of price supports; about \$1 billion goes to a handful of big farmers.

In the cotton program, for example, \$36 million was split among 322 big farmers, for an average payment of \$111,000 each; the remaining \$40 million was split among 650,000 smaller farmers for an average of \$62 each. These huge subsidies now being channeled to larger than family farming interests push up the cost of Government program, incur the public's anger, and enable the huge factory-farm interest to further intensify their competitive position against the family farmer.

Never in history do we need more protection to keep the 160-acre limitation; to protect the family farms.

We propose that every step should be made to plug the loopholes, to prevent monopoly of the big interests, and to protect the family farmers in their try for a fair share of water from Federal projects.

Mrs. MARY ELIZABETH MENDES,
Chairman, Kings County Family Farmers.

FRESNO, CALIF., July 3, 1964.

Senator FRANK MOSS.

DEAR SIR: Keep up your good fight for the average American. Let the huge landowners of the west side know that we are fed up with the gimmicks to pour more millions into their bank accounts. I urge you to expose the big landowners. Please read my letter and place it in the record of the hearing of the Westlands irrigation, distribution contract. Let's stick to the limitation law (Federal). I am a small farmer.

I thank you, sir.

JOHN SHAMSHIAN.

HANFORD, CALIF., July 3, 1964.

DEAR MR. MOSS: We are very concerned with the Westlands contract. It is a huge giveaway to the excess landowners.

The Southern Pacific Land Co. has refused to sign recordable contracts with the Federal Bureau of Reclamation to dispose of their excess land. They will use percolating water and stand to gain huge profits at the expense of the taxpayers which the Federal Government is making possible and the San Luis Federal project. What will happen to the family farmers? Are these Federal projects only to enrich a few?

The San-Luis Federal project must have recordable contracts on all of the service area now.

Please make sure that this Westlands contract is not approved until a public hearing before July 8, 1964. Please enter this letter into the record on hearing.

Mr. and Mrs. JOHN GEORGE.

VISALIA, CALIF., July 1, 1964.

Senator FRANK E. MOSS,
Chairman, Senate Subcommittee on Irrigation and Reclamation,
Washington, D.C.

DEAR SENATOR: The equitable distribution of land has been one of the major social problems of all historic cultures. The United States learned well from earlier experiences and wisely adopted the policy of limiting the size of holding to receive irrigation water supplied at public expense.

If the Westland water contract is approved as it is now before your committee the seekers after land monopoly will have succeeded in nullifying this basic and historic principle. If the Nation is to change this historic stand let the action come by direct decision, not by this wily attempt at circumvention.

There have been enough unfortunate contracts in the past to show clearly that this contract will lead to years and years of evasion of the principle of water limitation.

I trust that you will include this letter in the record of the hearings on the Westlands contract, which I understand will be held on July 8, to show that there is grassroot concern and opposition to this contract.

Sincerely,

BARD McALLISTER.

OAKLAND, CALIF., July 1, 1964.

Hon. FRANK MOSS,
Chairman, Senate Subcommittee on Irrigation and Reclamation,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: The 15th Assembly District Democratic Club supports the position of the California Democratic Council in urging adequate safeguards to secure enforcement of the 160-acre-limit law in the contract for construction of the Westlands Water District distribution system by the Bureau of Reclamation.

We feel landowners should sign recordable contracts to dispose of their excess land before appropriations are made for the distribution system. There is nothing illegal about this. We have a letter from Reclamation Commissioner Floyd E. Dominy to Senator Henry M. Jackson, dated May 26, 1964, which states: "Central Valley project contracts in general establish no specific time prior to which large landowners must have placed their excess lands under recordable contract * * *. Recordable contracts may be executed by the excess-land owners at any time prior to delivery of water."

Officials of the Westlands district say most of the excess land owners are willing to sign recordable contracts. If this is so, what is the difference whether they sign now or after the distribution system is built? Unless, of course, they want to have the Government over the barrel, as was the case in the Pine Flat situation.

We feel that the entire San Luis service area should be under contract before a distribution system is built for Westlands. Unless this is done, owners of excess land in the Federal San Luis area but outside the Westlands district will benefit from the improved condition of the underground basin. We have a letter from Ralph Brody to Senator Frank E. Moss, dated June 11, 1964, which states that such benefits might be as much as \$2 per acre-foot.

The argument that excess-land owners who do not sign recordable contracts will pay more for pumped water than those who sign, is without merit. It is quite likely that those who refuse to sign, but who are taxed to help pay for the distribution system (and for San Luis water if receipts from those who sign are insufficient) will demand that the district reimburse them for their higher water costs. California water law requires districts to serve land with water "ratably," making no distinction as to the source of water and the signing of recordable contracts. Excess land owners control the district since voting is by assessed valuation of land, not per capita, with Southern Pacific controlling 12 percent of the land and votes.

Unless recordable contracts are signed before the dam and reservoir and distribution system are completed, there will be endless litigation on the part of large landowners to evade the law, as in the case of the Kings and Kern Rivers projects where contracts were not obtained until more than 10 years after completion of project reservoirs, and even now these contracts are being tested in the courts.

We request that this statement be made a part of the record of the hearings on July 8.

Sincerely,

WILLIAM REICH.

Legislative Chairman, 15th Assembly District Democratic Club.

BERKELEY, CALIF., June 4, 1964.

Senator THOMAS KUCHEL,
*Senate Office Building,
Washington, D.C.*

DEAR SENATOR KUCHEL: I appreciate your frank reply of May 13 to my letter of May 1 addressed to Senator Anderson, with copy to you. Also, I understand and respect the feeling of confidence that everything is in accord with reclamation law at Westlands and on the Federal service area. You are apparently supported on this point by attorneys of the Interior Department and the staff of the Interior Committee.

However, it is precisely concerning the actions of the attorneys and officials that I levy my challenge and ask for an airing of the Westlands contract * * * for, in my opinion, both the letter of the law and the integrity of the Interior Department are in question on the matter of acreage limitation. The Department is mistaken beyond the limits of a tolerable discretion in the administration of law; its errors carry it to a point where it is rendering the law itself null and void.

Reclamation statutes prohibiting delivery of water to ineligible lands makes no exception of deliveries underground. Indeed, the project itself makes plans for this form of enrichment of irrigation in the Federal service area. To exempt ineligible lands now, by using the phrase "unavoidable," can only be interpreted as a deliberate effort to evade the plain mandate of the law.

Historically, as you know, administration of acreage limitation by the Bureau of Reclamation is replete with evasions, avoidances, and nullifications. Westlands contract is only one of more recent instances and is one of the more flagrant. If reclamation law is to be changed to exempt underground deliveries of water, Congress should do so only after study, hearings, and debate. It should not be changed by bureaucratic evasion, avoidance, and downright subversion.

I urge you to support public hearings on Westlands by the Interior Committee. I urge also that the Westlands file in the Interior Department be opened to Congress prior to hearings; it is beyond belief that the view of attorneys and officials upon which many persons are now asked to rely has not been challenged within the Interior Department.

I ask also that this letter be printed in the hearings.

Sincerely yours,

J. B. NEILANDS.

Chairman, Committee on Natural Resources, Boatrockers Democratic Club.

SAN FRANCISCO, CALIF., July 9, 1964.

Senator THOMAS H. KUCHEL,
Senate Office Building, Washington, D.C.

Today's United Press story covering Senate Interior Committee hearing yesterday includes charges that Kern County Land Co. "would receive windfall benefits" from proposed \$157 million contract between Interior Department and Westlands Water District. We would appreciate greatly your introducing for the record the fact that KCL owns no land in Westlands district nor in San Luis service area and therefore will receive no benefits of any kind from the proposed contract.

KERN COUNTY LAND CO.,
HUNT CONRAD.

RICHMOND, CALIF., July 6, 1964.

Senator FRANK MOSS,

Chairman, Senate Interior Subcommittee on Irrigation and Reclamation, Senate Office Building, Washington, D.C.:

Strongly urge your subcommittee to disapprove Westlands Water District contract in present form and to insist that Secretary Udall obtain reasonable contracts from excess-land owners in compliance of acreage limitation provisions of reclamation laws and San Luis Act. Please enter in record of committee.

JOHN T. KNOX,
Assemblyman, 11th District of California.

FRESNO, CALIF., July 7, 1964.

Senator FRANK MOSS,
Washington, D.C.:

Urge that proposed Westlands contract be rejected unless acreage limitations apply now. Place this and make a part of the hearing records.

FRESNO COUNTY DEMOCRATIC COUNCIL.

IN WITNESS WHEREOF, the said Board of Directors has caused this Contract to be signed by its duly authorized officers and its corporate seal to be hereunto affixed, this 1st day of January, 1911.

Attest:

Secretary

Witness my hand and the seal of the said Board of Directors this 1st day of January, 1911.

Mayor

City of Chicago

APPENDIX

(Subsequent to the hearing the following communication was received from the Department of the Interior:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 9, 1964.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: As you know, the Department's contractual arrangements with the Westlands Water District have been a matter of considerable concern over an extended period of time. The Department has reviewed the matter very carefully. Secretary Udall has determined that certain modifications should be made in the water service contract. I enclose a copy of the memorandum which he approved October 7, for your information.

Sincerely yours,

KENNETH HOLUM,
Assistant Secretary.

MEMORANDUM

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 7, 1964.

To: Secretary of the Interior.

From: Assistant Secretary, Water and Power Development.

Subject: Amendment of water service contract, Westlands Water District, Central Valley project, California.

The form of contract to provide water service for the Westlands Water District from the San Luis unit of the Central Valley project, California, was executed on behalf of the United States and the district on June 5, 1963, and was later confirmed by court decree. The contract provides for delivery to the district of not to exceed 1,008,000 acre-feet through 1979 and up to 900,000 acre-feet annually thereafter during the term of the contract if joint Federal-State ground water studies indicate the need therefor.

To utilize the water allocated will require facilities to distribute water to the lands of the district and for necessary drainage. Federal facilities to provide these services are estimated to cost \$157,048,000. A contract providing for the construction and repayment was approved as to form on April 23, 1964, and was submitted the next day to the Congress to begin the required 90-day waiting period prerequisite to the appropriation of construction funds. The House Committee on Interior and Insular Affairs approved execution of the proposed contract by resolution adopted May 6, 1964. The Senate Subcommittee on Irrigation and Reclamation held a hearing, but neither approved nor disapproved the proposed contract.

At the hearing I led a group of witnesses representing the Department, Solicitor's Office, and the Bureau of Reclamation testifying in favor of the proposed contract. Mr. Ralph Brody, manager and chief counsel, supported the contract on behalf of the district. Senator Kuchel also expressed his support. Witnesses representing the AFL-CIO, Farmers Union, National Grange, and other organizations opposed the contract. Senator Gaylord Nelson also voiced his disapproval. Opponents requested that the proposed contract be returned to the

Department for revision to include additional provisions to insure that the benefits arising from the use of project water are not passed on to excess-land owners. Concern was also expressed lest the excess-land owners maintain control of the district and operate its revenue program to the disadvantage of the small landowner.

The contract provisions attacked by the witnesses have been repeatedly used in other contracts for 15 or more years in the Central Valley project. They are not new. However, in the Westlands Water District almost 70 percent of the land is in excess ownership and this fact causes me sufficient concern to recommend further contractual provisions to encourage the development of family-sized farms. I have carefully reviewed this matter and suggest amending the water service contract in several respects as a prerequisite to your executing the distribution system repayment contract. The proposed amendments are discussed below and if approved by you, the Commissioner of Reclamation will be authorized to initiate negotiations on these amendments with the Westlands district.

Contract recitals.—In two places, recitals state that an additional water supply (project water) is needed to replenish depleted ground water supplies. The recitals are unnecessary and should be stricken. It is anticipated that the addition of project water and the reduction of pumping will improve the ground water situation as an incident to the primary objectives of the project.

Unavoidable clause.—This clause provides that a district will not be in violation of the excess-land laws if it delivers project water to eligible lands and a portion of the water delivered thereafter unavoidably percolates into the ground water aquifer and is pumped by an excess-land owner. The unavoidable clause was inserted in the 1949 contract with the Orange Cove Irrigation District at the insistence of the California Districts Securities Commission as a condition precedent to its approval of the contract. In subsequent Central Valley project contracts this clause became a standard provision. Previously, during hearings in May and June 1947, before the Senate Subcommittee on Public Lands, Mr. Clifford E. Fix, chief counsel for the Bureau of Reclamation, presented a formal statement in which he quoted with approval portions of the Commissioner's letter of April 30, 1947. The substance of the portion quoted by Mr. Fix is included in Secretary Klug's letter of January 25, 1949, to the board of directors of the Orange Cove Irrigation District. Secretary Krug said in part:

"It is my understanding that you were informed (1) that if project water should augment the underground supplies of excess landowners * * * and (2) if such supplies should not be distinguishable from project supplies, neither the United States nor the district could, as a legal matter, enjoin the landowner from pumping such mingled waters and, further, that at the present time the engineers of the Bureau of Reclamation know of no way by which project water so mingled with natural supplies could be identified or segregated. I am in accord with this view and it was never the intention of this Department that the situation would or could be otherwise."

I see no reasonable ground for the California districts securities commissioner's insistence on the inclusion of this clause and it should be deleted.

Limit on water use.—The present water service contract provides a total water quantity limit for the district; for example, 1,008,000 acre-feet annually through 1979, but it does not limit the quantity supplied per acre. This could be done by citing the maximum average number of acre-feet that could be applied annually and providing for adjustment depending on crop pattern. This would be consistent with the Bureau's longstanding policy of limiting water application to reasonable beneficial use.

Ground water use on eligible lands.—Plans call for the conjunctive use of ground and surface water supplies. In the long run it is expected ground water levels will be stabilized and the safe yield will be pumped for use on district lands. The district is expected to operate a number of wells to accomplish this objective. Present contractual arrangements contemplate substituting project water for ground water wherever possible during the early years of the contract. The intent was to accelerate natural recharge of the ground water basin underlying the district. Opponents of the Westlands contract contend that a considerable portion of the recharge would come from project irrigation water percolating into the ground water basin. It is this benefit to which opponents to the Westlands contracts most object. Under the circumstances, a scaling down of the share of the irrigation requirement met by project water and the

acceptance of a lesser rate of ground water replenishment is preferable. It is estimated that between 10 and 15 percent of the project water applied on the surface will percolate into the underlying ground water and be pumped for use on district lands. To insure that this pumped water made available by the project is utilized on eligible lands, amendments in the contract should require that the district pump an equal quantity of water for application on eligible lands.

Ad valorem taxes.—District officials have on several occasions stated that the district expects to vary water tolls and ad valorem tax levies inversely to control ground water pumping as necessary to maintain a safe ground water yield. Taxes on land must be paid by the owner regardless of whether or not project water is used on his land. When part of the revenue to meet project water charges is derived from ad valorem tax revenues, it tends to increase the total irrigation costs of those farmers depending on pumped water. Also, the more ad valorem revenues are applied toward project water, the less that the water toll charge must be for such service. To evidence departmental endorsement of the procedure, we should seek a provision in the water service contract to assure that ad valorem tax revenues are used to make ground water pumping relatively expensive in terms of project surface water supplies until the lands of the district have been placed under recordable contract.

Municipal and industrial water deliveries.—Project plans contemplate that about 45,000 acre-feet annually will be used from the San Luis unit to satisfy water requirements of communities like Coalinga and to meet demands of the Leemore Airbase. In amending the water service contract, provision should be made for the district to furnish municipal and industrial water to communities and installations for which service is planned. This will require the determination of an appropriate M. & I. rate. Reclamation advises that the \$15 an acre-foot rate proposed in the 1955 feasibility report for the San Luis unit would be sufficient to meet the costs of the added facilities associated with the San Luis unit allocated to municipal and industrial service. This rate would not, however, provide payment for the use of the Delta-Mendota Canal or other facilities previously constructed as a part of the Central Valley project which may be used to provide service in the San Luis unit service area. Therefore, in accordance with recent recommendations of Reclamation, a \$2 participation charge is added and a San Luis canalside rate of \$17 an acre-foot is recommended. In addition, there will be a drainage service charge of 50 cents an acre-foot.

Consolidation of Westlands and Westplains districts.—The proposed contract amendments associated with irrigation water service are expected to reduce annual water project demand in the Westlands district for at least several years. We know that other contractors are anxious to obtain project water service; one of these is the Westplains Water Storage District which borders Westlands on the west. There are advantages to the Government in the combining of these two districts. For example, it will make ground water "safe yield" determination easier and excess land administration more effective. The water rate question arises because approximately 30 percent of the land in the Westplains district lies above the upper elevation of the Federal service area as conceived in the San Luis unit 1955 feasibility report. In that report an irrigator water service rate of \$7.50 an acre was accepted. This is the same rate used in the water service contract with the Westlands Water District. We would like to hold to the concept of a uniform rate for service to the combined districts. At the same time it must be recognized that the United States must incur proportionally higher costs for pumps and power to serve the higher lying lands outside the originally conceived Federal service area. It is proposed that the contracting district assume the annual cost of O.M. & R. for the Pleasant Valley Canal and Pleasant Valley pumping plant and in the consideration thereof a uniform rate of \$7.50 an acre-foot apply for all water service in the enlarged district. In addition, there would be the 50 cents an acre-foot drainage service charge.

The uncommitted water available from the Federal San Luis unit for agricultural purposes is sufficient to meet only about 35 to 45 percent of the water needs within the area of the present Westplains Water Storage District. This available water can be contracted on a permanent basis. The additional water required to meet the area's needs is expected to be supplied under a specifically stated contract provision and understanding that such water might later have to be withdrawn to meet prior commitments. These commitments are generally

for the proposed east side division of the Central Valley project. It is hoped, however, that withdrawal will not be necessary and that additional project water supplies will be developed on a permanent basis in time to avoid such withdrawal action. Meanwhile, contracting for the delivery of water on an interim basis would be of benefit to the district and the United States. The United States would benefit from revenue received for the marketing of this nonpermanent water supply; the district would benefit from the use of the water and would assume the risk of its withdrawal.

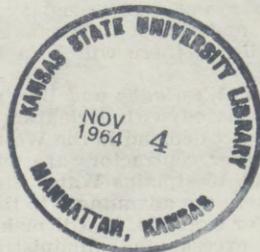
In reopening negotiations to amend the executed water service contract between the United States and the district, the district may seek other adjustments. Because of the possibility of having to again submit the waer distribution system contract to the Congress for the required 90-day waiting period, it seems desirable, if possible, to avoid amending that contract.

Your approval of the proposal to amend the water service contract is recommended, with the understanding that execution of the contract will be withheld until negotiations have been successfully completed and until we have reviewed the outcome of these negotiations and have approved the contract.

KENNETH HOLUM.

Approved October 7, 1964.

STEWART L. UDALL,
Secretary of the Interior.



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