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TULE LAKE-KLAMATH WILDLIFE REFUGE

GOVERNMENT

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HEARING
BEFORE THE
SUBCOMMITTEE ON
IRRIGATION AND RECLAMATION
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 784 and S. 793

BILLS TO PROMOTE THE CONSERVATION OF MIGRATORY
WATERFOWL AND WILDLIFE RESOURCES IN THE TULE
LAKE, KLAMATH, AND CLEAR LAKE NATIONAL WILDLIFE
REFUGES IN OREGON AND CALIFORNIA

APRIL 24, 1963

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CONTENTS

	Page
S. 784	1
S. 793	3
Departmental reports:	
Agriculture	10
Budget	8
Interior	4

STATEMENTS

Brandborg, Stewart, associate executive director, The Wilderness Society	106
Callison, Charles H., assistant to the president, National Audubon Society	107
Cushman, Lester M., vice president, Tulalake Irrigation District	89
Edwards, Max N., Assistant to the Secretary of the Interior and Legislative Counsel, accompanied by Daniel H. Janzen, Director, Bureau of Sport Fisheries and Wildlife, and David Finnegan, lawyer, Legislative Division	42
Engle, Hon. Clair, a U.S. Senator from the State of California	11
Glading, Ben, on behalf of the California Department of Fish and Game	97
Gutermuth, C. R., vice president, Wildlife Management Institute	101
Henzel, Richard, president of the board of supervisors for the Klamath Drainage District, accompanied by George H. Proctor, attorney	65
Janzen, Daniel H., Director, Bureau of Fisheries and Wildlife, Department of the Interior	55
Kimball, Thomas L., executive director, National Wildlife Federation	99
Landis, Alvin, attorney, Tulalake Irrigation District, accompanied by Lester M. Cushman, vice president; Ed Lance, manager; and Ivan Rose member board of directors, Tulalake Irrigation District	83
Langslet, Chet	69
Leffler, Ross L., general counsel, International Association of Game, Fish, and Conservation Commissioners	98
Penfold, Joseph W., conservation director, Izaak Walton League of America	108
Poole, Daniel A., editor, Outdoor News Bulletin, Wildlife Management Institute	107
Proctor, George H., attorney, Klamath Drainage District	69
Smith, Spencer M., Jr., secretary, Citizens Committee on Natural Resources	109
Ullman, Hon. Al, a Representative in Congress from the State of Oregon	42

COMMUNICATIONS

Allison, Robert B., president, Western Conservation Club, Inc., Los Angeles, Calif.: Letter, dated April 13, 1963, to Senator Jackson	37
Bain, Ralph V., legislative chairman, Santa Paula Sportsmen's Club: Letter, dated April 21, 1963, to Senator Jackson	33
Ballou, Robert M., Monte Vista, Colo.: Letter, dated April 16, 1963, to Senator Moss	116
Beach, Harold, president, Oregon Farm Bureau Federation: Letter, dated April 19, 1963, to Senator Moss	115
Brown, Gov. Edmund G., of California: Letter, dated February 19, 1962, to Senator Anderson	29
Burgess, Frank L., secretary, Pacific Rod & Gun Club, San Bruno, Calif.: Letter, dated April 15, 1963, to Senator Jackson	36
Callison, George T., manager, Klamath County Chamber of Commerce: Letter, dated April 16, 1963, to Senator Moss	81

COMMUNICATIONS—Continued

	Page
Chapin, Russell F., president, Syockton Sportmen's Club: Telegram, dated April 15, 1963, to Senator Kuchel.....	35
Cuenin, J. P., San Francisco, Calif.: Telegram, dated April 23, 1963, to Senator Jackson.....	114
Dahlstrom, Mrs. E. J., secretary-treasurer, West End Fish & Game Association, Inc., Ontario, Calif.: Letter, dated April 11, 1963, to Senator Jackson.....	35
Difani, George D., legislative advocate, California Wildlife Federation: Letter, dated February 7, 1963, to Senator Kuchel.....	41
Doddridge, H., president, Fresno County Sportmen's Club, Ltd.: Letter, dated April 8, 1963, to Senator Jackson.....	33
Durand, Forest V., director, Tennessee Game and Fish Commission: Telegram, dated April 23, 1963, to Senator Moss.....	117
Edwards, Max N., assistant to the Secretary, Department of the Interior: Letter, dated May 9, 1963, to Senator Jackson.....	50
Ferguson, L. E., secretary-treasurer, Dixon Game Conservation Club, Inc., Dixon, Calif.: Letter, dated April 15, 1963, to Senator Kuchel.....	36
Fuller, Herman, president, Forester's Rod & Gun Club, Oakland, Calif.: Letter, dated April 10, 1963, to Senator Jackson.....	34
Gabrielson, Ira N., president, Wildlife Management Institute: Letter, dated February 6, 1963, to Senator Kuchel.....	40
Graf, William, professor of wildlife management, San Jose State College, California: Letter, dated April 20, 1963, to Senator Jackson.....	31
Harnsberger, W. E., president, Klamath County Farm Bureau: Letter, dated April 17, 1963, to Senator Moss.....	81
Harris, Carl J., president, the Klamath Sportsmen's Association, Inc.: Letter, dated April 15, 1963, to Senator Moss.....	80
Harvey, Gailen R., secretary, Oregon Hunting & Retriever Club: Letter, dated April 19, 1963, to Senator Morse.....	118
Hatfield, Gov. Mark O., of Oregon: Letter, dated April 16, 1963, to Senator Moss.....	28
Hillendahl, Frank, recording secretary, District Council No. 3 of the Associated Sportsmen of California: Letter, dated April 18, 1963, to Senator Jackson.....	37
Kimball, Thomas L., executive director, National Wildlife Federation: Letter, dated February 14, 1963, to Senator Kuchel.....	40
Langslet, Carl, Anchorage, Alaska: Letter, dated April 18, 1963, to George Proctor.....	80
Laurinee, Al, executive officer, Sunnyvale Rod & Gun Club: Letter, dated April 9, 1963, to Senator Jackson.....	34
Lawrence, C. D., project manager, Bureau of Reclamation, region 2, Klamath project: Letter, dated March 15, 1963, to Edwin Lance.....	92
Long, Murel, et al., landowners in the Klamath Drainage District: Letter, dated April 1963, to Senator Moss.....	82
Lowery, John "Bill", Los Angeles, Calif.: Telegram, dated April 23, 1963, to Senator Jackson.....	114
Mangold, Fritz, secretary, Sports Council, Inc., Los Angeles, Calif.: Letter, dated April 21, 1963, to Senator Kuchel.....	32
Martin, Charley, president, San Diego County Fish & Game Association: Letter, dated April 12, 1963, to Senator Jackson.....	35
McCarty, Warren E., chairman, Wildlife Committee, California Division, Izaak Walton League of America, Inc.: Letter, dated April 9, 1963, to Senator Jackson.....	34
McDonald, R. E. "Bob", chairman, Legislative Committee, Arroyo Grande Sportsmen's Club: Letter, dated April 10, 1963, to Senator Kuchel.....	33
Meseke, A., secretary, Key Rod & Gun Club, Oakland, Calif.: Letter, dated April 17, 1963, to Senator Kuchel.....	36
Moore, George C., director, Kansas Forestry, Fish & Game Commission: Letter, dated April 18, 1963, to Senator Moss.....	117
Nichols, Gordon L., secretary-treasurer, Lodi Sportsmen's Club, Inc.: Letter, dated April 7, 1963, to Senator Jackson.....	34
Powell, Walter B., Legislative Committee, Pasadena Roving Archers: Letter, dated April 21, 1963, to Senator Kuchel.....	33

COMMUNICATIONS—Continued

	Page
Richards, T. H., Jr., commissioner, California Fish & Game Commission: Letter, dated April 16, 1963, to Senator Jackson.....	114
Rond, LaVerne, president, Vallejo Rod & Gun Club, Vallejo, Calif.: Letter, dated April 13, 1963, to Senator Jackson.....	36
Rovegno, Ron, San Bruno Rod & Gun Club.: Telegram, dated April 12, 1963, to Senator Kuchel.....	35
Saarni, Walfrid, secretary, San Pablo Avenue Sportsmen, Inc., Berkeley, Calif.: Letter, dated April 16, 1963, to Senator Jackson.....	38
Shannon, W. T., director, Resources Agency of California, Department of Fish and Game: Letter, dated April 19, 1963, to Senator Kuchel....	29
Sheppa, Vilma, secretary-treasurer, Tulare Fish & Game Association, Tulare, Calif.: Letter dated April 17, 1963, to Senator Jackson.....	37
Smith, Spencer M., Jr., secretary, Citizen's Committee on Natural Resources: Letter, dated February 1, 1963, to Senator Kuchel.....	41
Stevenson, George E., chairman, Klamath County Land Use Committee: Letter, dated April 15, 1963, to Senator Moss.....	82
Stewart, John L., Jr., president, Oregon Reclamation Congress: Letter, dated April 15, 1963, to Senator Moss.....	82
Thompson, Wallace G., secretary, Whittier Chapter, Izaak Walton League of America, Inc.: Letter to Senator Kuchel.....	41
Veatch, Robert E., mayor, Klamath Falls, Oreg.: Letter, dated April 15, 1963, to Senator Moss.....	80
Visalia, Charles E., president, Southern Pacific Rod & Gun Club, San Francisco, Calif.: Letter, dated January 12, 1963, to Senator Kuchel.....	41
Von Nostitz, Julius, president, Associated Sportsmen of California: Letter, dated April 10, 1963, to Senator Kuchel.....	31
Walker, R. R., county judge, Klamath County court: Letter, dated April 17, 1963, to Senator Moss.....	80
Ware, Paul S., secretary, Marin Rod & Gun Club, San Rafael, Calif.: Letter, dated April 15, 1963, to Senator Jackson.....	36
Weisenberg, Sam, secretary, San Diego County Wildlife Federation: Letter, dated April 20, 1963, to Senator Kuchel.....	32
Whiting, Robert J., president, Redwood Empire Chapter, Izaak Walton League of America: Letter, dated April 18, 1963, to Senator Jackson...	117
Wilder, Norman G., director, Delaware Board of Game and Fish Commissioners: Letter, dated April 19, 1963, to Senator Moss.....	116
Wilson, C. E., secretary, Hayward Sportsmen's Club, Inc.: Letter, dated April 15, 1963, to Senator Jackson.....	38
Yates, John, secretary, Concord Sportsmen's Club, Inc., Concord, Calif.: Letter, dated April 15, 1963, to Senator Jackson.....	32

ADDITIONAL INFORMATION

Flood control operation in Tulelake sumps, by Howard Stoddard, consulting engineer, for Tulelake Irrigation District.....	111
Jackson County Chapter, Izaak Walton League of America, resolution of... "Kuchel's Bill, Good for Ducks, Rice," article from the San Francisco Examiner, April 21, 1963.....	115
"Tule Lake Battle Is Not Over," article from the San Francisco Examiner, March 13, 1963.....	30
"Urgent Necessity for Congressional Action Protecting Vast Wildlife Refuges in Pacific Flying," excerpt from the Congressional Record, February 14, 1963, by Senator Kuchel.....	29
	38

COMPLETIONS—Continued

Well No.	Section	Completion Date	Notes
100	1-10	1952	...
101	1-10	1952	...
102	1-10	1952	...
103	1-10	1952	...
104	1-10	1952	...
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116	1-10	1952	...
117	1-10	1952	...
118	1-10	1952	...
119	1-10	1952	...
120	1-10	1952	...

ADDITIONAL INFORMATION

121	...
122	...
123	...
124	...
125	...
126	...
127	...
128	...
129	...
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131	...
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139	...
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TULE LAKE-KLAMATH WILDLIFE REFUGE

WEDNESDAY, APRIL 24, 1963

U.S. SENATE,
SUBCOMMITTEE ON IRRIGATION AND RECLAMATION
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a.m. in room 3112, Senate Office Building, Senator Frank E. Moss presiding.

Present: Senators Frank E. Moss, Utah; Clinton P. Anderson, New Mexico; Quentin N. Burdick, North Dakota; Thomas H. Kuchel, California; and Len B. Jordan, Idaho.

Also present: Jerry T. Verkler, staff director, and Roy M. Whitacre, professional staff member.

Senator Moss. This hearing will come to order.

The meeting this morning has been called to hear testimony on S. 784 introduced by Senator Engle, and S. 793, introduced by Senator Kuchel for himself and Senator Robertson. Both bills are similar to S. 1988 of the 87th Congress on which hearings were held February 23, 1962.

The report of the Department of the Interior recommends enactment of either of the bills if amended in accordance with the recommendations they suggest.

(S. 784, S. 793, and the reports of the Department of the Interior, the Bureau of the Budget, and the Department of Agriculture follow:)

[S. 784, 88th Cong., 1st sess.]

A BILL To promote the conservation of the Nation's migratory waterfowl within the Pacific flyway and to provide for the cooperative management of the land, water, and wildlife resources in the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges and the Klamath reclamation project in Oregon and California, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the policy of the Congress to stabilize the ownership of the land within the Klamath Federal reclamation project, Oregon and California, as well as the administration and management of the Klamath Federal reclamation project and the Lower Klamath National Wildlife Refuge, Upper Klamath National Wildlife Refuge, Tule Lake National Wildlife Refuge, and Clear Lake National Wildlife Refuge, to preserve intact the necessary existing habitat for migratory waterfowl in this vital area of the Pacific flyway, and to prevent depredations of migratory waterfowl on agricultural crops in the Pacific Coast States.

SEC. 2. Notwithstanding any other provision of law, the following lands of the United States are hereby dedicated to wildlife conservation and shall not be opened to homestead entry:

(a) All the lands lying within the Executive order boundaries of the Lower Klamath National Wildlife Refuge, the Upper Klamath National Wildlife Refuge, and the Tule Lake National Wildlife Refuge.

(b) Hanks Marsh, and first form withdrawal lands (approximately one thousand four hundred and forty acres) in Klamath County, Oregon, lying adjacent

to Upper Klamath National Wildlife Refuge; White Lake in Klamath County, Oregon, and Siskiyou County, California; and thirteen tracts of land in Siskiyou County, California, lettered as tracts "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," and "N" totaling about three thousand two hundred and ninety-two acres, more or less, and tract "P" in Modoc County, California, containing about ten acres, more or less, all as shown on plate 4 of the report entitled "Plan for Wildlife Use of Federal Lands in the Upper Klamath Basin, Oregon-California," dated April 1956, prepared by the United States Fish and Wildlife Service of the Department of the Interior.

SEC. 3. All the lands included in section 2 of this Act shall be administered by the Secretary of the Interior for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith, and shall permanently remain the property of the United States.

SEC. 4. The Secretary shall, subject to such conditions and regulations as he may hereafter prescribe, annually pay an amount not to exceed 25 per centum of the net revenues collected during each fiscal year from the leasing of Klamath project reserved Federal lands within the Executive order boundaries of the Lower Klamath National Wildlife Refuge and the Tule Lake National Wildlife Refuge for each full fiscal year after the date of this Act, to the counties in which those refuges are located. All of the payments are to be made on a pro rata basis to each county based upon the refuge acreage in each county, except that the total annual payment per acre to each county shall not exceed 50 per centum of the average per-acre tax levied on similar lands in private ownership in each county, as determined by the Secretary. No payments shall be made which will reduce the credits or the payments to be made pursuant to contractual obligations of the United States with the Tulelake Irrigation District or the Klamath Drainage District, and the priority for the use of the net revenues shall be—

(1) to pay or credit to the Tulelake Irrigation District the amounts already committed to such payment or credit; and

(2) to pay to the Klamath Drainage District the balance thereof until such sum as may be determined to be equitable by the Secretary and the district has been paid as full reimbursement for the construction of irrigation facilities to the lands involved.

SEC. 5. The Secretary shall, consistent with proper waterfowl management, continue the present pattern of leasing the reserved lands of the Klamath Straits unit, the Southwest Sump, the League of Nations unit, the Henzel lease, and the Frog Pond unit, all within the Executive order boundaries of the Lower Klamath and Tule Lake National Wildlife Refuges and shown in plate 4 of the report entitled "Plan for Wildlife Use of Federal Lands in the Upper Klamath Basin, Oregon-California," dated April 1956. Leases for these lands shall be at a price or prices designed to obtain the maximum lease revenues. The leases shall provide for the growing of grain, forage, and soil-building crops, except that not more than 25 per centum of the total leased lands may be planted to row crops. All other reserved public lands included in section 2 of this Act shall continue to be managed by the Secretary for waterfowl purposes, including the growing of agricultural crops by direct planting and sharecrop agreements with local cooperators where necessary.

SEC. 6. The areas of sump 1(a) and 1(b) in the Klamath project lying within the Executive order boundaries of the Tule Lake National Wildlife Refuge shall not be reduced by diking or any other construction to less than the existing thirteen thousand acres.

SEC. 7. In carrying out the obligations of the United States pursuant to treaties, international agreements, the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 et seq.), or the Migratory Bird Conservation Act, as amended (16 U.S.C. 715 et seq.), waters under the control of the Secretary shall be regulated to maintain levels that in the judgment of the Secretary are adequate and practicable for waterfowl management purposes: *Provided*, That to the extent the sumps within the Tule Lake National Wildlife Refuge are maintained, they shall be operated and maintained in accordance with the provisions of section 7 (b) and (d) of the contract between the United States and the Tulelake Irrigation District, dated September 10, 1956, and the rules and regulations of the Secretary.

SEC. 8. The Secretary is hereby directed to complete studies that have been undertaken relating to the development of the water resources and waterfowl management potential of the Clear Lake National Wildlife Refuge. The results of such studies, when completed, and the recommendations of the Secretary shall be submitted to the Congress.

SEC. 9. The Secretary may prescribe such regulations as may be necessary to carry out the provisions of this Act.

[S. 793, 88th Cong., 1st sess.]

A BILL To promote the conservation of the Nation's wildlife resources on the Pacific flyway in the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges in Oregon and California and to aid in the administration of the Klamath reclamation project

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the policy of the Congress to stabilize the ownership of the land in the Klamath Federal reclamation project, Oregon and California, as well as the administration and management of the Klamath Federal reclamation project and the Tule Lake National Wildlife Refuge, Lower Klamath National Wildlife Refuge, Upper Klamath National Wildlife Refuge, and Clear Lake National Wildlife Refuge, to preserve intact the necessary existing habitat for migratory waterfowl in this vital area of the Pacific flyway, and to prevent depredations of migratory waterfowl on agricultural crops in the Pacific Coast States.

SEC. 2. Notwithstanding any other provisions of law, all lands owned by the United States lying within the Executive order boundaries of the Tule Lake National Wildlife Refuge, the Lower Klamath National Wildlife Refuge, the Upper Klamath National Wildlife Refuge, and the Clear Lake Wildlife Refuge are hereby dedicated to wildlife conservation. Such lands shall be administered by the Secretary of the Interior for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith. Such lands shall not be opened to homestead entry. The following public lands shall also be included within the boundaries of the area dedicated to wildlife conservation and they also shall be administered by the Secretary of the Interior for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith. Such lands shall not be opened to homestead entry: Hanks Marsh, and first form withdrawal lands (approximately one thousand four hundred and forty acres) in Klamath County, Oregon, lying adjacent to Upper Klamath National Wildlife Refuge; White Lake in Klamath County, Oregon, and Siskiyou County, California; and thirteen tracts of land in Siskiyou County, California, lettered as tracts "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", and "N" totaling approximately three thousand two hundred and ninety-two acres, and tract "P" in Modoc County, California, containing about ten acres, all as shown on plate 4 of the report entitled "Plan for Wildlife Use of Federal Lands in the Upper Klamath Basin, Oregon-California," dated April 1956, prepared by the United States Fish and Wildlife Service. All the above lands shall remain permanently the property of the United States.

SEC. 3. Subject to conditions hereafter prescribed and pursuant to such regulations as may be issued by the Secretary, 25 per centum of the net revenues collected during each fiscal year from the leasing of Klamath project reserved Federal lands within the Executive order boundaries of the Lower Klamath National Wildlife Refuge and the Tule Lake National Wildlife Refuge shall be paid annually by the Secretary, without further authorization, for each full fiscal year after the date of this Act to the counties in which such refuges are located, such payments to be made on a pro rata basis to each county based upon the refuge acreage in each county: *Provided*, That the total annual payment per acre to each county shall not exceed 50 per centum of the average per acre tax levied on similar lands in private ownership in each county, as determined by the Secretary: *Provided further*, That no such payments shall be made which will reduce the credits or the payments to be made pursuant to contractual obligations of the United States with the Tulelake Irrigation District or the Klamath Drainage District, and the priority for the use of the net revenues shall be (1) to pay or credit to the Tulelake Irrigation District the amounts already committed to such payment or credit, and (2) to pay to the Klamath Drainage District the balance thereof until the sum of \$197,315 shall have been paid as full reimbursement for the construction of irrigation facilities to the lands involved.

SEC. 4. In carrying out the policy of this Act, the Secretary of the Interior shall retain full authority to lease for agricultural purposes the reserved public lands lying within the Executive order boundaries of the Lower Klamath and the Tule Lake National Wildlife Refuges. Leases for agricultural purposes shall provide for the growing of grains, forage, and soil-building crops, except that not more than 25 per centum of the leased lands may be planted to row crops.

SEC. 5. The areas of sumps 1(a) and 1(b) in the Klamath project lying within the Executive order boundaries of the Tule Lake National Wildlife Refuge shall not be reduced by diking or by any other construction to less than the existing thirteen thousand acres.

SEC. 6. In carrying out the obligations of the United States under any migratory bird treaty, the Migratory Bird Treaty Act (40 Stat. 755), as amended, or the Migratory Bird Conservation Act (45 Stat. 1222), as amended, waters under the control of the Secretary of the Interior shall be regulated, subject to valid existing rights, to maintain sump levels in the Tule Lake National Wildlife Refuge at levels established by contract and regulations pursuant thereto, which shall be levels that in the judgment of the Secretary are adequate and practicable for waterfowl management purposes.

SEC. 7. The Secretary is hereby directed to complete studies that have been undertaken relating to the development of the water resources and waterfowl management potential of the Clear Lake National Wildlife Refuge. The results of such studies, when completed, and the recommendations of the Secretary shall be submitted to the Congress.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 22, 1963.

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

DEAR SENATOR JACKSON: Your committee has requested a report on S. 784, a bill to promote the conservation of the Nation's migratory waterfowl within the Pacific flyway and to provide for the cooperative management of the land, water, and wildlife resources in the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges and the Klamath reclamation project in Oregon and California, and for other purposes. Your committee has also requested a report on a similar bill S. 793.

We urge the enactment of one of these bills, if amended as suggested herein.

The purpose of S. 784 and S. 793 is to provide a permanent basis for the management of the resources within the above four wildlife refuges in the Klamath Basin of California and Oregon. This would be accomplished in part by stabilizing the ownership of the lands within the Klamath Federal reclamation project. These refuges are important segments of the National Wildlife Refuge System because of their strategic location on the Pacific flyway.

Operation of the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges is closely interwoven with operations of the reclamation project and related activities. These bills recognize this, and give due emphasis to wildlife conservation as well as to reclamation activities within the project. Administration of the natural resources within this area necessarily requires adjustments relating to use of these resources. Wildlife conservation has been carried out satisfactorily most of the time since these refuges were established. Reclamation activities also have proceeded satisfactorily. However, various questions have arisen from time to time relating to the availability of land and water for wildlife management purposes and the procedures under which these resources are to be made available for these purposes. These bills, we believe, will establish suitable guidelines for harmonious and cooperative use of these natural resources. The critical needs of wildlife conservation and the advanced stage of the reclamation project indicate the desirability of this proposed legislation.

We recognize the need to provide permanency to the operations of these wildlife refuges, which are among the Nation's most important and are vital to the welfare of the waterfowl population of the Pacific flyway.

This is the greatest concentration point for waterfowl in North America. About 80 percent of the waterfowl in the Pacific flyway pass through the area, and nine-tenths of the birds that use the Upper Klamath Basin concentrate on Tule Lake and Lower Klamath, the two principal Federal refuges. During migration this area has provided feeding and resting facilities for more than 7 million ducks and geese. Thus, it is important that the availability of resources within the area for waterfowl management be stabilized as much as possible.

The Upper Klamath Basin continues to be an important concentration area for migratory waterfowl along the Pacific flyway. In addition to the millions of ducks and geese that use the area, Tule Lake and Lower Klamath, the two

principal Federal refuges, are important nesting grounds for waterfowl, shore-birds and various marsh-dwelling species. The two refuges produce annually an average of 78,000 ducks and Canada geese. Many of these ducks are redheads, a species which is dwindling in numbers over much of its range.

In addition to their conservation value, the waterfowl resource has a significant economic and recreational value. The sport of waterfowling at refuge public shooting grounds and throughout the Pacific flyway from Alaska and Canada to Mexico brings into commercial channels substantial sums of money each year. Also, the spectacular sight of millions of ducks and geese, and thousands of other water and marsh birds in one area on the Federal refuges of the Upper Klamath Basin is a prime tourist attraction.

These refuges perform an especially important service in preventing crop depredations. Refuge crops not only attract and hold the birds until local fields are harvested, but also delay their migration to the wintering grounds. While the birds are stopping over in the basin, farmers in the Central and Imperial Valleys of California can harvest their crops without serious depredation problems. Any substantial reduction in the food supply for waterfowl in the Upper Klamath Basin would cause an earlier migration to the Central Valley with serious losses to ripening rice and other crops.

The Klamath Federal reclamation project has made many important contributions to the Klamath Basin area. In fact, development of the Klamath project has benefited greatly our wildlife conservation activities and is the principal basis for the stable economy of the area.

Prior to the Federal reclamation project, which began shortly after the turn of the century, the area consisted of an isolated frontier town of 450 persons.

There were few roads and no railroads in the area. The town was supported by a few scattered ranches and a struggling lumber industry. Construction of the Federal project began in 1906 with the building of the main A canal and water was made available in 1907 to the lands now known as the main division. Subsequent development of construction features of the project includes 3 storage dams, 5 diversion dams, 29 pumping plants, 120 miles of canals, 477 miles of laterals and 644 miles of drains that serve more than 215,000 acres of productive farmland that provides homes for some 3,000 farm families. Principal crops from these developments are potatoes, vegetables, alfalfa, small seeds, grain, and pasture. In addition to the agricultural and wildlife benefits that have been the outgrowth of the reclamation project, recreational benefits have expanded rapidly in recent years. Picnicking, camping, boating, and fishing are becoming popular in the basin area.

Water supplies for the Klamath project are provided by two main water-courses. One is the Klamath River with its tributaries along the northwest edge of the project. Another is a closed basin consisting of Clear Lake, Tule Lake, and the connecting Lost River, together with tributaries and minor sump lakes. Klamath project facilities divert and distribute water from both of these water-courses to irrigate surrounding lands and control floods in the project area.

In 1960, this former undeveloped area produced crops valued at more than \$25 million. The accumulated value of crops grown in the project area has aggregated almost \$443 million, or about 30 times the original project costs. Livestock production also is important in this region. More than a fourth of the project acreage is devoted to the production of feed and forage crops that put 43 million pounds of finished beef on our dining tables—enough to feed 663,000 people for a year. Such beef production provides a saving in transportation costs by providing a local supply for the meat-deficient west coast area. This saving is passed on to the consumer at lower prices. Project farms also furnish winter and emergency feed to the surrounding rangelands, making possible a more efficient use of the range. Lacking this dependable source of feed, ranchers would have to ship in supplementary feeds or liquidate herds at times when natural feed is in short supply.

Retail trade in the area by some 1,200 businesses adds up to almost \$100 million annually. Farmers and the businessmen in the area have returned about \$100 million in Federal Internal Revenue payments since 1940. Also, more than three-fourths of the cost of Federal construction on the reclamation project has been returned to the Treasury. In these circumstances, we believe it is obvious that the economic growth of the Klamath area had its beginning with the development of irrigation. Such growth has paralleled the increase in irrigated acreage. These reclamation benefits should continue in harmony with other conservation activities in the basin. Equitable use of land and water resources is desirable for both agricultural and wildlife conservation purposes.

Some of the agricultural lands within the reclamation project boundaries have been retained in Federal ownership and farmed pursuant to lease agreements in the best interest of waterfowl management. The key lease area consists of some 15,000 acres within the Tule Lake refuge which has the best production of barley. Approximately 8,800 additional acres within the Lower Klamath refuge (principally the Klamath Straits unit) are leased to farmers for agriculture. Also, about 6,000 to 8,000 acres of the less productive lands in these two refuges are farmed by our field personnel or sharecropped under agreement. The grain produced is used by waterfowl, thus aiding in preventing damage to private crops in the vicinity of the project and in the Central and Imperial Valleys of California. The marsh and impounded pools of the Tule Lake and Lower Klamath refuges also produce vast quantities of essential aquatic duck foods which are heavily used by waterfowl in addition to the grain provided by farming activities.

Generally, S. 784 would provide that the present administration of the lands and waters within the Klamath Federal reclamation project shall continue. In addition, it would stabilize the ownership of the lands within the project and preserve the existing habitat for migratory waterfowl.

Sections 2 and 3 of S. 784 provide that all of the lands within the executive order boundaries of the Tule Lake, Upper Klamath, and Lower Klamath National Wildlife Refuges and certain other listed lands are to be administered for the major purposes of waterfowl management, but with full consideration given to optimum agriculture use of these lands. The administration of these lands for waterfowl purposes is not intended to interfere with the operation and maintenance of the Klamath project irrigation facilities. In addition these sections provide that none of the lands mentioned in section 2 of the bill shall be opened to homestead entry and that these lands will remain the property of the United States. At present the bulk of the waterfowl (geese, pintails, and mallards) feed largely on waste grain on leased fields in the Federal refuges after the crops are harvested and on unharvested grain grown in the refuges to control crop damage elsewhere. The leases require that a substantial portion of the lands be in cereal crops which provide most of the waterfowl food. These lands are unoccupied and contain no farm structures. The leases also restrict posting of lands, and portions of the leased fields are available to public shooting during the hunting season. If these leased croplands were allowed to be homesteaded, their value as waterfowl habitat would be reduced seriously. Acreages of row crops would be increased, and occupancy of farmsteads by humans and domestic animals would keep much of the wildlife off these lands. The present large units would be broken up by public roads and power and telephone lines—all a hazard to wildlife. In addition, opportunities for public shooting would be lost. It is clear, therefore, that the provisions of sections 2 and 3 are necessary for the proper administration of these areas for the purposes of this bill.

Section 4 of the bill provides for the payment of a portion, not to exceed 25 percent, of the net revenues collected from the leasing of lands within the Executive order boundaries of the Lower Klamath and Tule Lake refuges to the counties in which these refuges are located. These payments would be made on a pro rata basis to the counties based on the number of refuge acres therein, provided that the total yearly amount per acre to the counties is not to exceed 50 percent of the average per acre tax levied on similar private lands in the county. Further, these lease revenues will not be distributed to the counties until all contractual commitments with the Tulelake Irrigation District and the Klamath Drainage District are met. These lease revenues to the counties are in addition to any revenues that are presently collected by the U.S. Fish and Wildlife Service of this Department from those areas within the project that are administered by that agency and distributed to the counties under the provisions of section 401 of the act of July 15, 1935, as amended (16 U.S.C., sec. 715s).

Section 5 of S. 784 provides that the Secretary shall, consistent with proper waterfowl management, continue the present pattern of leasing certain described areas within the Executive order boundaries of the Tule Lake and Lower Klamath refuges for agriculture purposes, while at the same time giving him latitude to continue the present waterfowl management practices on all other areas mentioned in section 2 of the bill.

Section 6 and 9 of this bill are designed to generally stabilize the areas of certain sumps located in the Tule Lake National Wildlife Refuge and to aid in the administration of the Klamath project, including the four refuges, in accordance with the purposes of the bill and the various contractual obligations of the Secretary. Section 8 directs the Secretary to complete studies previously

undertaken regarding the development of the water resources and waterfowl management potential of the Clear Lake National Wildlife Refuge.

Finally, section 7 of S. 784 provides that the Secretary, in carrying out the various commitments of the United States under treaties, international agreements, and congressional enactments, shall regulate the waters of the Klamath project under his control to maintain levels for waterfowl management purposes. The proviso in section 7 of S. 784 would limit this general authority of the Secretary as to the sumps within the Tule Lake National Wildlife Refuge by providing that these areas be operated and maintained in accordance with the provisions of article 7 (b) and (d) of an existing contract between the United States and the Tulelake Irrigation District.

Article 7 (b) and (d) of the contract provides:

“(b) To the extent that the sumps within the district are maintained, they shall be operated and maintained primarily for the protection of the lands within the District for agricultural purposes, including flood protection and drainage, and the use of said sumps for said purposes shall be prior to all other uses, subject to the rules and regulations provided for in article 7(d).

* * * * *

“(d) Thirty (30) days in advance of the transfer mentioned in subdivision (a) hereof, the Secretary shall furnish the District a notice describing the project works and the property to be transferred which notice shall include the rules and regulations pursuant to which said project works and property shall be operated and maintained by the District. Additional transfers of property and modifications of rules and regulations may be made pursuant to this article at such time or times as the Secretary may determine.”

Article 7(b) of the above contract recognizes that the sumps within the refuge are to be operated and maintained primarily for the protection of the lands in the district for agricultural purposes, including flood protection and drainage, and that such uses are prior to all other uses, but subject to the rules and regulations of the Secretary as provided in article 7(d). Although the above contract provisions do not specifically mention wildlife management as a purpose, the word “primarily,” as used therein, and the references to “other uses” clearly indicates that the sumps are to be used for other than flood protection and drainage. The reference to regulations in article 7(b) is a limitation on the preceding portion of that article, for the reference is introduced by a comma and the words “subject to.” Article 7(d) specifies that the “reserved works” transferred to the district under the contract will be operated pursuant to the Secretary’s regulations. The contract is clear that regulations for the operation of the sumps, consistent with the primary project use of flood protection and drainage, are contemplated.

Thus, we have construed this to mean that the Secretary can require that the sumps be operated for wildlife conservation as long as such operation does not impair the primary function of the project, since we believe that reasonable management of the Tule Lake National Wildlife Refuge, of which the sumps are a part, is contemplated by the contract.

Under our present regulations, establishing sump water elevations, we provide for wildlife management in a manner that will not impair the district’s operations primarily for irrigation. The Tule Lake primary sump (1(a) and 1(b)) under present regulations is operated (1) to collect and contain drainage water and flood flows and to supply irrigation water, and (2) to maintain the objective water levels for waterfowl purposes to the extent such objective levels are attainable by the use of project works, natural inflows, and irrigation return flows and by following the procedures and criteria set out in the present regulations. The “natural inflows” are the unavoidable spill at Lost River Diversion Dam plus unavoidable inflow to the sump due to runoff below that dam. If S. 784 is enacted, as amended herein, we would continue to operate the Tule Lake primary sump in the same manner.

Therefore, while S. 784 clearly indicates that all the areas described in section 2 of the bill, including the Tule Lake sump, are to be administered for waterfowl purposes, subject to valid existing rights, we believe that section 7 of the bill should be amended to more clearly reflect the present operations of the sump in the Tule Lake refuge. Further, provision must be made to recognize whatever valid existing rights may exist to project waters, in addition to the district’s contract rights in maintaining levels within the project and within the sumps for waterfowl purposes. Finally, provision must also be made to permit the parties to the contract to amend it, including article 7 (b)

and (d), without reference to legislation. Accordingly, we suggest that section 7 of S. 784 and similarly, section 6 of S. 793 be amended to read as follows:

"Sec. 7. In carrying out the obligations of the United States pursuant to treaties, international agreements, the Migratory Bird Treaty Act, as amended (16 U.S.C., sec. 703 et seq.) or the Migratory Bird Conservation Act, as amended (16 U.S.C., sec. 715 et seq.), waters under the control of the Secretary shall continue to be regulated, subject to valid existing rights, to maintain levels that in his judgment are adequate and practicable for waterfowl management purposes. To the extent the sumps within the Tule Lake National Wildlife Refuge are maintained, they shall be operated and maintained in accordance with the provisions of article 7(b) and (d) of the contract between the United States and the Tulelake Irrigation District, dated September 10, 1956, or any amendment thereof, and the rules and regulations of the Secretary thereunder, and at levels that are in the judgment of the Secretary adequate and practicable for waterfowl management purposes."

While the basic purposes of S. 784 and S. 793 are substantially the same, and, while either bill, if amended as suggested herein, would meet the needs of the Department in the operation and maintenance of the four national wildlife refuges and the Klamath Federal reclamation project, S. 784 would provide more definitive guidelines for the harmonious and cooperative use of the natural resources of the wildlife refuges and the project.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

FRANK P. BRIGGS,
Assisant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., April 22, 1963.

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

DEAR MR. CHAIRMAN: This is in response to the committee's request for the views of the Bureau of the Budget on S. 784, a bill to promote the conservation of the Nation's migratory waterfowl within the Pacific flyway and to provide for the cooperative management of the land, water, and wildlife resources in the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges in the Klamath reclamation project in Oregon and California, and for other purposes. This is also in response to the request for our views on S. 793, a bill to promote the conservation of the Nation's wildlife resources on the Pacific flyway in the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges in Oregon and California and to aid in the administration of the Klamath reclamation project.

The purpose of these bills is to provide a more permanent basis for the management of resources within four wildlife refuges in the Klamath Basin area of California and Oregon. This would be accomplished in part by stabilizing the ownership of land in the Klamath Federal reclamation project and within the boundaries of the refuges. This public land would remain permanently the property of the United States and would not be opened to homestead entry. The land would be administered for the major purpose of waterfowl management, but with full consideration to continuing such agricultural use as is consistent with the major purpose.

These bills also provide that a portion of the net revenues from the leasing of Klamath Federal reclamation project lands within the boundaries of two of the refuges shall be paid annually to the counties in which the refuges are located. Such payments would be in addition to the payments to counties from receipts collected under the Migratory Bird Conservation Act (16 U.S.C. 715s). Other provisions of the bills reaffirm present authority of the Secretary of the Interior and establish a number of guides for the Secretary in the administration of the four refuges in the Klamath Basin area.

The provision of these bills in which the Bureau of the Budget has the greatest interest relate to the restriction on homestead entry and the establishment of additional payments to the counties within which two of the refuges are located.

The Bureau of the Budget concurs with the views of the Secretary of the Interior that allowing homestead entry on lands within the refuges would seriously reduce the value of those lands as waterfowl habitat. In this connection, it is noted that both S. 784 and S. 793 provide that land within the Executive order boundaries of the refuges would not be opened to homestead entry. Since it is conceivable that the Executive order boundaries could be changed at a later date, the committee may wish to provide some further clarification on this point, either in the committee report or in the language of the proposed legislation, possibly by inserting the word "present" before "Executive order."

A general policy for payments to counties from the revenues of national wildlife refuges was established by the Migratory Bird Conservation Act in 1935 (16 U.S.C. 715s). This act provides that 25 percent of the net revenues from refuge operations shall be paid to the counties in which the refuges are located. To date these revenues, mostly from the occasional sale of refuge products, have been fairly modest providing a total annual payment of about \$500,000 to all the counties concerned. On the other hand, two of the refuges in the Klamath Basin, i.e., Lower Klamath and Tule Lake Refuges, contain relatively productive agricultural lands which are leased to private operators by the Bureau of Reclamation. This provides a return of about \$500,000 a year to the reclamation fund. At the present time, none of this revenue is paid to the counties. Under the provisions of the bills, a portion of this money now going into the reclamation fund would instead be paid to the three counties concerned—Klamath County in Oregon, and Modoc and Siskiyou Counties in California. The effect of the provisions of the bills would be a total annual payment to these counties under present conditions of about \$60,000.

These provisions for annual payments to the counties inevitably raise the question of whether any new authorizations for Federal payments in lieu of taxes (or payments computed on the basis of taxes) should be made on a piecemeal basis instead of in a general enactment. We believe that a final decision on the merits of any particular proposal on this problem should also reflect, among other considerations, some specific showing by the local governments involved concerning (1) the extent to which the county governments are actually incurring expenses in furnishing governmental services to or because of the lands in question, and (2) the extent to which the lands in question and economic activity thereon result in local governmental revenues. One of the considerations to which importance has usually been attached in dealing with the problem of payments in lieu of taxes is whether the lands in question have actually been removed from a taxable status as a result of actions of the Federal Government. We understand that the lands dealt with in the subject bills, wholly or for the most part, have not been in a taxable status.

"As has been noted, the information furnished to us indicates that the cash income from those reclamation project lands that would be dedicated to the major purpose of wildlife conservation by the bills is and will continue to be large in comparison with the cash income derived from most migratory bird refuge lands. We believe that any formula considered for the present case should be examined in the light of its practical effect when applied to this relatively large cash income. It is noted also that the out-leased lands which would be affected by these payment provisions are located in counties already receiving other payments from the Federal Government. The Bureau of Land Management makes payments to Klamath County from revenues produced by operations on Oregon and California grant lands and the Forest Service makes similar payments to Klamath, Modoc, and Siskiyou Counties because of national forest lands. The Bureau of Sport Fisheries and Wildlife also makes payments to Modoc and Klamath Counties from receipts of operations at two refuges not included in the subject bills—Modoc and Klamath Forest Refuges. Your committee may wish to consider the equities and merits of providing for additional payments in the light of other Federal payments that are already being made to the counties involved.

At the same time, it should be pointed out that except for the income from reclamation project lands the four refuges in the Upper Klamath Basin area have produced very little revenue, and while payments from the reclamation fund would be in addition to any payments under the Migratory Bird Conservation Act, the latter payments have been and probably will continue to be rather small—totaling less than \$50 annually in the past 5 years.

Section 8 of the bills calls for studies and recommendations of the Secretary to Congress concerning the development of Clear Lake Refuge. Though the bills

do not specify the character of the recommendations to be submitted, we assume that the recommendations called for would take the form of proposed legislation. In any event, it would seem appropriate for the Secretary to submit such recommendations as may be developed to the President for his consideration as well as to the Congress. For the purposes of clarity, we would suggest amending the last sentence of section 8 to read. "The results of such studies, when completed, and the recommendations for legislation of the Secretary shall be submitted to the President and the Congress."

The Bureau of the Budget favors the objectives of the bills and, subject to your committee's consideration of the above comments and the views and recommendations of the Departments of Agriculture and the Interior in their reports being submitted, would not object to the enactment of legislation along the lines of S. 784 and S. 793.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., April 23, 1963.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to Senator Anderson's request of February 18, 1963, for a report on S. 784, a bill to promote the conservation of the Nation's migratory waterfowl within the Pacific flyway and to provide for the cooperative management of the land, water, and wildlife resources in the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges and the Klamath reclamation project in Oregon and California, and for other purposes, and his request of February 20, 1963, for a report on S. 793, a bill to promote the conservation of the Nation's wildlife resources on the Pacific flyway in the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges in Oregon and California and to aid in the administration of the Klamath reclamation project.

We would not object to enactment of these bills.

The bills would declare it to be the policy of the Congress to stabilize the ownership of the land in the Klamath Federal reclamation project as well as the administration and management of the Klamath Federal reclamation project and the Lower Klamath National Wildlife Refuge, Upper Klamath National Wildlife Refuge, Tule Lake National Wildlife Refuge and Clear Lake National Wildlife Refuge; to preserve the existing migratory waterfowl habitat in these areas; and to prevent depredations of migratory waterfowl on agricultural crops in the Pacific Coast States.

The bills would direct the Secretary of the Interior to administer all lands owned by the United States within the above-named wildlife refuges, together with certain other public lands in Klamath County, Oreg., Siskiyou County, Calif., and Modoc County, Calif., primarily for waterfowl management purposes, but with full consideration to optimum agricultural use that is consistent with this major purpose. All of the above lands would remain permanently the property of the United States.

The bills would provide that annual payments be made to the counties in which the Lower Klamath National Wildlife Refuge and the Tule Lake National Wildlife Refuge are located; would provide for the retaining of authority by the Secretary of the Interior to lease these lands for agricultural and other purposes; would maintain sump levels and stabilize the area of the water surface in the Klamath project lying within the Tule Lake National Wildlife Refuge by prohibiting reduction of the area by diking or any other means to less than the existing 13,000 acres; and would direct the Secretary of the Interior to so regulate water in the area as to maintain levels that are adequate and practicable for waterfowl management purposes.

The bills would affect this Department in only one respect. The Tule Lake National Wildlife Refuge overlaps the proclaimed boundary of the Modoc National Forest in California. The overlap involves some 400 acres in 3 separate parcels. We would construe the bills to eliminate this acreage from the national forest and to dedicate the areas to wildlife conservation to be administered by the Secretary of the Interior as a part of the Tule Lake National Wildlife Refuge. The present effective use of these parcels

is for waterfowl management purposes. We therefore have no objection to their dedication to that use.

Lot 10 of section 15, T. 46 N., R. 4 E., one of the affected parcels, is traversed by a nonprimary transmission line of the California-Oregon Power Co., under special use permit issued by the Forest Service in 1958. We would assume that the permittee would be permitted to continue such use.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

Senator Moss. The purpose of the bills is to provide a permanent basis for the management of the four wildlife refuges in the Klamath Basin of California and Oregon. S. 973 would so dedicate four refuges while S. 784 would dedicate three. They both would foreclose further homesteading in the Klamath Federal reclamation project and establish the use of about 15,000 acres of leased agricultural land within the Tule Lake refuge and 6,400 acres in the Klamath Straits unit within the Lower Klamath refuge for wildfowl purposes.

Since the hearings last year included the Executive orders of Presidents Theodore Roosevelt, Woodrow Wilson, Warren G. Harding, Calvin Coolidge, and Franklin D. Roosevelt establishing and modifying the various refuges, I think it entirely appropriate to incorporate the hearings of a year ago by reference.

Many of the witnesses scheduled for today were heard last year and their testimony is a part of that record. In the interest of time, I would suggest that where possible the statements be submitted for reproduction in full in the transcript and witnesses confine themselves to summarizing their position.

I might add that many letters and resolutions have been received concerning these bills. Where pertinent, I have instructed the staff that they be included in the printed record of today's proceedings.

Senator Clair Engle of California will be our first witness. Senator Engle has a committee meeting that he must attend elsewhere, and we are very happy to hear him first.

STATEMENT OF HON. CLAIR ENGLE, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator ENGLE. Mr. Chairman, I do want to express my appreciation to you for permitting me to go on first, although I think that ordinarily the base would be laid for the case by the governmental witnesses.

I am in the unhappy position of having three committee meetings this morning, and I suspect I am not in a very much different position than my colleagues sitting at the table.

I am here today seeking unity in the interest of waterfowl conservation, and an end to a pointless controversy that for too long has prevented the attainment of the basic objective that I think all of us want at Klamath and Tule Lake.

I am on the positive side in this effort—that is, against no specific provision in either of the proposals before you—but affirmatively for the preservation and protection of the existing wildlife refuges and the preservation as well of the existing reclamation project.

I respect everybody's good intentions toward these ends, which, I assert, are not incompatible.

The Department of the Interior, in Assistant Secretary Briggs' report on this legislation dated April 22, already has outlined to the committee why we need legislation to promote the conservation of the Nation's migratory wildfowl on the Pacific flyway and to stabilize the land ownership pattern in the Klamath-Tule Lake area. I endorse the Department's justification and will not repeat it. It is my purpose today to tell you why I advocate the particular provisions of my bill, S. 784, which, I point out, is identical to the bill introduced in the House by the Congressman from the area, Representative Harold T. (Bizz) Johnson.

First of all, these identical bills (S. 784 and H.R. 3817) are at least 99.44 percent pure on the wildfowl side. I say this because if enacted they will accomplish all the stated objectives of the wildlife interests, which are also my interests, by preserving in law the four national wildlife refuges (sections 1 and 2); by stopping further home-stead entry on the public lands (section 2); and by maintaining the Tule Lake water area at no less than its existing 13,000 acres (section 6).

My bill and Congressman Johnson's bill also require that in maintaining water levels "adequate and practicable for waterfowl management purposes" (section 7) the Tule Lake sump—

shall be operated and maintained in accordance with the provisions of section 7 (b) and (d) of the contract between the United States and the Tulelake Irrigation District dated September 10, 1956, and the rules and regulations of the Secretary.

That is the key difference in the two Senate bills before the committee. Section 7 of S. 784 has been described as a concession to local agriculture. That is correct—but it is a minor concession and a proper one—and it represents a small price to obtain united support at last and to get the legislation through both Houses of the Congress. Last year's bill did not achieve this unity and did not pass the Congress.

The agricultural interests and the irrigation interests want this protection by specific reference in this legislation to their existing reclamation contract with the United States. I think they are entitled to it. The contract is valid and proper. Nothing is lost by recognizing this fact in this legislation. Unity can be gained.

Certain opposition to section 7, according to what I have read in the papers, is based on the belief that it would give the Tulelake Irrigation District arbitrary control over the water levels of the lake. This is mistaken, as a reading of my bill will prove. The district will continue to physically operate the sump, but it cannot "govern" at its whim the lake levels. This is a matter governed by the Secretary, pursuant to contract.

Some opposition appears to be based also on an incident in the summer of 1959 when the lake was in fact pumped below a reasonable level and the Interior Department stepped in to control the operation in order to preserve the nesting areas of ducks and geese on the lake. Let me emphasize, Mr. Chairman, that the Department's intervention in 1959 was because the District's operation in that episode was in violation of the irrigation contract—not, as some have said, because it was in accordance with the contract. The 1959 maladministration has not been repeated. The individual responsible for it is no longer with the District. It will not occur again in my opinion, if the terms

of the irrigation contract in regard to maintaining Tule Lake water levels are recognized and respected.

I seriously doubt whether the 88th Congress, any more than the 87th, will pass a bill that permits the Secretary of the Interior, or may even encourage him, to ignore or abrogate a long-standing contractual obligation of the U.S. Government—a contract incidentally that was specifically approved by the 84th Congress in Public Law 877. I don't think the Congress should ignore this contract. That is why I have included reference to it in section 7 of S. 784. Most important, recognition of the irrigation contract in the new legislation will in no way impair our basic objective of preserving the Klamath-Tule Lake habitat for migratory waterfowl on the Pacific flyway.

I will not try to predict what would happen next in the event the Congress should pass Tule Lake legislation that failed to recognize the irrigation contract. But I could make a good guess that the controversy would not die; it would merely move to an arena far more retarding and difficult than this legislative forum.

Tule Lake lies within the Second Congressional District of California. I represented this district in the House for 14 years. I know the area well. I have hunted ducks on Tule Lake. I have deep concern for the interests of ducks and geese, duck hunters, sportsmen, and wildlife conservationists. I declare that these interests are not in any degree jeopardized by the provisions of section 7 of my bill.

I respectfully request, Mr. Chairman, that the committee make a calm appraisal of the minor but vital differences in the two bills before you. I think the approach taken by S. 784 upon careful analysis, can achieve the unity and therefore the success we are seeking for the general benefit of all concerned—especially for the benefit of wildfowl conservation on the Pacific flyway.

Then I would only summarize in two particulars.

I call your attention to that portion of my statement, in which I refer to what I regard as the key difference in the two Senate bills before this committee. And that is really section 7 of 784, which has been described as a concession to the local agricultural people.

That is correct, but it is a minor concession and in my opinion a proper one. It represents a small price to obtain united support at last and to get legislation through both houses of Congress.

What the section does, Mr. Chairman, is recognize legislatively the contract with reference to the operation of the reclamation district.

Ordinarily, I would say that it would be unnecessary to recognize a contract, but these people have some misgivings about the operation under that contract. It does not add anything to the contract, and it does not subtract anything from the contract, from the legal point of view. It simply gives them reassurance that the contract will be abided by.

Finally, I would like to say this: that I have introduced the bill with these minor concessions; and I will have to say that they are in the area of quibbling, almost, with reference to words.

Congressman Johnson, who today represents the district which I represented for nearly 16 years in the House, is the coauthor of this bill on the House side, and he is a member of the House Committee on Interior, and being a practical legislator, I have some doubts as to

whether or not we are going to take a bill through that committee that he does not approve of.

And I think we ought to be realistic about it. We do want to get legislation through in this area. This is important, and I certainly agree with the objectives of both bills. I only say that I think this bill represents a little more practical approach so far as its legislative feasibility is concerned.

Senator KUCHEL. Clair, may I ask you a few questions about this section 7?

Senator ENGLE. Yes, Tom, but let me finish with just one further statement.

That is that what I have said here is concurred in by the Assistant Secretary of Interior, and they will testify later that they asked for an amendment or two. But they say S. 784 would provide more definite guidelines for the harmonious and cooperative use of the natural resources of the national wildlife refuges and the project.

Senator KUCHEL. Do they point out what those guidelines are in their letter?

Senator ENGLE. I think they do, in general terms.

Senator KUCHEL. Could you indicate that for the record?

Senator ENGLE. The letter of April 22, 1963, from the Interior Department is I think already in the record, is it not, Mr. Chairman?

Senator MOSS. Yes, it has been placed in the record.

Senator KUCHEL. I just wonder if you can point to the specific language in this letter, where are located the more definite guidelines, which they suggest are in your bill.

Senator ENGLE. Without being too detailed about it, I would take page 4, starting with the third paragraph, and move through page 5, over on to page 6.

Senator KUCHEL. What bill, though? We have two bills before this committee, one of which was passed by the Senate unanimously last year. It is before us again. You have got your bill. Your statement is that both of them seek to accomplish the same thing.

I think for this committee to make its judgment and its determination, we ought to get as specifically as we can where the differences are and the reasons for them.

I have read this letter from the Department of the Interior, and I simply raise the question for the benefit of the committee where the definite guidelines are, so that we can have an opportunity to discuss them.

And then I would like to go back particularly to your section 7 and see what we can do with respect to finding the differences there. Maybe that would be one place to start.

Senator ENGLE. Yes, I would be glad to start there. And I mention that on page 2 of my statement. I say this:

My bill and Congressman Johnson's bill also require that in maintaining water levels "adequate and practicable for waterfowl management purposes"—this is section 7—the Tule Lake sump—

shall be operated and maintained in accordance with the provisions of section 7 (b) and (d) of the contract between the United States and the Tulelake Irrigation District dated September 10, 1956, and the rules and regulations of the Secretary.

Now, I go on to say:

That is the key difference in the two Senate bills before the committee. Section 7 of S. 874 has been described as a concession to local agriculture.

And I mentioned that before. But that is the guts of the case, as I see it.

Senator KUCHEL. Let's see what section 7 of your bill does.

First of all, you provide, in the Engle bill, and I read now from page 5, line 21:

Provided, That to the extent the sumps within the Tule Lake National Wildlife Refuge are maintained, they shall be—

that is mandatory—

they shall be operated and maintained in accordance with the provisions of section 7 (b) and (d) of the contract between the United States and the Tulelake Irrigation District, dated September 10, 1956, and the rules and regulations of the Secretary.

Now let me read into the record what section 7(b) of the contract provides. And this is a part of the letter from the Department of the Interior. Here is section 7(b) of the contract:

To the extent that the sumps within the district are maintained, they shall be operated and maintained primarily for the protection of the lands within the district for agricultural purposes, including flood control and drainage, and the use of said sumps for said purposes shall be prior to all other uses, subject to the rules and regulations provided for in article 7 (d).

Now, Clair, if we stop right there, is it fair for me to say that your language, by incorporating the provisions of 7(b) of this contract, requires that the sumps in question be operated for the protection of agricultural purposes which shall be prior to any other purpose whatsoever?

Senator ENGLE. With reference to those sumps, yes. And let me say this: this is what the contract says.

Now, I do not know how the Federal Government can violate its own contract. And I claim that it is surplusage, really, in a bill for the Federal Government to say, "We recognize the existence of a contract."

But these people have had experience with the operation of this contract, which creates misgivings in their minds. And all the language in this bill does is say that the Federal Government must keep its contract.

Now, that is what the contract says. I did not make the contract. The Department of the Interior made it. And all I am saying is that in the interest of trying to get this controversy resolved, we simply say legislatively that we intend to abide by the contract made by the Federal Government.

It ought not to be necessary. We should not have to reiterate in law that the Federal Government will keep its agreement. But that has not been the experience of these people.

And this is why I say to my colleague from California: We have had trouble with this legislation. And I think we should not have it.

Senator KUCHEL. Well, is it fair to say that we have a problem here which involves conservation and the use of Federal property in California for purposes of wildlife, on the one hand, and the

problems of farmers who live in the district and who in part have formed an irrigation district which has a contract with the Government? Are not those two things the elements of the dispute, here? That would be a fair statement, would it not?

Senator ENGLE. No, I could not concur in that.

Let me refer you to page 7 of the Secretary's report. And this is what he says. This is the first full paragraph on page 7. He says:

Thus, we have construed this to mean that the Secretary can require that the sumps be operated for wildlife conservation as long as such operation does not impair the primary function of the project, since we believe that reasonable management of the Tule Lake National Wildlife Refuge, of which the sumps are a part, is contemplated by the contract.

Senator KUCHEL. What does that mean?

Senator ENGLE. What it means is this: that you meet the requirements of the contract with reference to the operation of this project, and if you can consistently with that still do things that are in the interests of wildlife conservation, you do those, too.

Senator KUCHEL. Is that not the same thing, then, Clair, as saying that the agricultural purposes provided for in the contract are superior, in your judgment, to any action by the Department of the Interior with respect to conservation of wildlife there?

Senator ENGLE. That is what the contract says. It is not what I say. All I say is that we cannot abrogate this contract by legislation. There is no way we could do it, if we wanted to.

And I think this: that if we monkey around, we are going to end up in court for about 10 years, because this irrigation district will take the Federal Government to court if it undertakes to violate its contract.

Now, all I have tried to say in this bill is that the Federal Government will abide by its contract as long as the contract is in existence.

And properly interpreted, I think it is possible to operate a certain portion of this area, the sump area, within the language of the contract, and at the same time achieve these conservation purposes.

This is all I am saying. And that is the limit of it.

Now, I claim that language in the bill that in effect says the Federal Government will keep its agreement and its contract, is surplusage in the legislation, but rather than argue with these people up there in the Tule Lake area, I said, "All right. We will acknowledge the existence of its contract, and that it must be complied with."

And beyond that, we will try to accomplish these conservation purposes. And if we do, I think we have achieved a unity that makes it possible for us to pass this bill.

I think that if we do not do it, we will not only not pass this bill in the House of Representatives. I was chairman of that committee over there in the House for 4 years, and I cannot imagine a bill going through that committee that Congressman Johnson is against. Now, he is for this bill, and he will support it, and we can pass it.

But I assert to you that if the validity of this contract is challenged, this district will take the Federal Government to court, and we will be there for another 10 years. And I do not want to see that.

That is all I am trying to do—find a good, sensible compromise. And I think we have done it within the framework of this legislation.

Congressman Johnson has introduced this bill in the House. He is a member of the House committee. He will support it in the House. We can pass it through the House.

We can pass it here, too, if we will just recognize the realities. And the fact is that we are not dealing with substance. We are dealing with language. That is all we are dealing with, because the Federal Government must keep its contract in any case.

Senator KUCHEL. So that, if I may understand your position, you desire to have a compromise under which the conservation purposes of waterfowl management would be subordinate to the terms of the contract between the Tulalake Irrigation District and the Federal Government.

Senator ENGLE. What I am saying is that the Federal Government has to keep its contract, whatever the consequences of it.

Senator KUCHEL. Then do I state your position correctly, there, Clair?

Senator ENGLE. No. What I have said is—and I read the first paragraph, the first full paragraph, on page 7 of their letter, What they say is that:

We have construed this to mean that the Secretary can require that the sumps be operated for wildlife conservation as long as such operation does not impair the primary function of the project.

Senator KUCHEL. And what is the primary function of the project?

Senator ENGLE. The primary function of the project, of course, is irrigation.

Senator KUCHEL. Agriculture?

Senator ENGLE. Yes.

Senator KUCHEL. So that if the primary function of the project, to wit, agriculture, was involved in a decision by the Department of Interior with respect to waterfowl management, your judgment is that the primary purpose of the contract, agriculture, must prevail?

Senator ENGLE. Precisely right. And if we had to do this over again, ab initio, we might have arranged a different sort of priority, but that is not the case at all. The facts are that the contract is already made and the Federal Government must abide by the terms of that contract.

And what we tried to do is to get the Federal Government within the limitations of that contract to give the highest possible priority it can to wildlife conservation. And that is what this bill does.

Senator KUCHEL. Clair, let me ask you: How can the contract be changed, between the two parties?

Senator ENGLE. This contract is like all other contracts. It either expires by its terms, or it is changed by the mutual consent of the parties to the contract. There just is no other way to change a contract that I know of.

I do not have a date when the contract runs out, but I just happen to know that if I get involved in a contract, I cannot get out of it unless it expires by its own terms or is modified by the parties. That is what I am talking about.

Senator KUCHEL. Let me read part of the contract into the record, Mr. Chairman. I refer to section 32(a) of the contract.

Should any dispute arise between the district and any of the parties receiving water from the works operated by the district concerning the operation or management of the transferred works or any part thereof in which dispute it is claimed that the transferred works are not being properly operated or maintained or that any party is not receiving water in the manner and amount to which such party is entitled in the contract with the United States, and should the district and parties be unable to settle such dispute, the matter in dispute immediately shall be referred to the Secretary, who shall promptly render his decision on such disputed question. Such decision shall be accepted by all parties as final and conclusive.

Now, I stop right there for a moment, and I say, in my opinion, that that provision of the contract provides, Clair, that if there is a dispute upon the availability of water of the two sumps involved, in your bill and mine, the Secretary of the Interior has a right to determine them exactly as the Secretary of Interior did 4 years ago more or less when a dispute arose with respect to the two sumps.

Senator ENGLE. That is exactly what I said. Now, if you look at page 3 of my statement, I said that certain opposition to section 7, according to what I have read in the papers, is based on the belief that it would give the Tulelake Irrigation District arbitrary control over the water levels of the lake.

This is mistaken, as a reading of my bill would prove. The district will continue to physically operate the sumps, but it cannot govern at its whim the lake levels. This matter is governed by the Secretary, pursuant to the contract.

And my friend has cited the section that proves that to be the truth.

Senator KUCHEL. Then can we not, for the purpose of letting this committee decide what kind of a bill to write—can we not agree that we are trying to give the Secretary of Interior the authority to make conservation of wildlife in that area the paramount reason for this legislation? Can we not agree with that?

Senator ENGLE. That is the main purpose of our bill. But in making his determinations under this section that you cited, it would be necessary for him to meet the guidelines laid down in the contract.

You would not expect a responsible Secretary of Interior, even if he has the broad discretion which is indicated by this particular section, to exercise that discretion without regard to the guidelines laid down in the contract.

Now, this is a very broad section. I am surprised that an irrigation district would take it. But in the light of all the other guidelines in the contract, I suppose they thought they were safe with any responsible Secretary of Interior.

And I would think so, too. I would not worry about it, if I were a member of that district. I would think the Secretary would make sound decisions based upon sound guidelines in this contract.

Senator KUCHEL. Well, let's say the Secretary, under your bill, would have a problem with respect to the control of the sumps involved, where a certain decision would favor conservation purposes of waterfowl management, and if it was decided the other way, it would favor the agricultural purposes involved in the contract with the business.

Which way could he go, under your legislation? Either way? Or would he have to follow the contract?

Senator ENGLE. He could go either way, I would say, providing that in going either way he did not violate any of the basic guidelines in the contract.

Senator KUCHEL. And would you say one of the basic guidelines in the contract is this 7(b) to which you refer in your bill?

Senator ENGLE. Yes; it is. There is no doubt about it. And there is no escaping it. And here is what I am saying.

We cannot legislate this contract out. There is a provision of the Constitution of the United States that says that you cannot do that. And so we are going to abide by this contract, whether we like it or not.

All my bill says is that the contract is recognized. And so I say to my friends from Tulelake: "The contract will have to be recognized whether it is mentioned in the bill or not, but if it makes you more comfortable, in the light of your experience, I have no objection at all to putting it in."

And that is why it is there.

Senator KUCHEL. Then you do not believe, Clair, or do you believe, that that section which I read just a few minutes ago into the record, on adjustment of disputes, gives the Secretary the right to eliminate in his decision this section 7(b) of the contract to which you refer?

Senator ENGLE. I do not believe that the Secretary can be capricious in the exercise of his discretion. And I think if he was, they would take him right to a Federal court. And you know they would, too. He cannot be capricious.

Now, he can make decisions that involve discretion, and I think that any court would sustain him. But if he is arbitrary or capricious in the exercise of his judgment under this particular section, he can be challenged on it and most certainly would be. I do not believe he will be.

Senator KUCHEL. Clair, of course, he could if he were arbitrary and capricious. But suppose he determined that the public interest required him to overrule the contention of the irrigation district? That is to say, suppose he determined that the public interest required him to abandon the provisions of section 7(b) of the contract? Would you say that he would have a right to do that?

Senator ENGLE. I do not believe so. I do not believe that he could use this last section to, in effect, abrogate the contract, if that is what you are talking about.

Senator KUCHEL. Well, I do not think he can abrogate the contract, but my question is this: Assume a dispute. Assume a dispute between the district and the Secretary of Interior under your legislation. And assume that for purposes of conservation he makes a decision contrary to the position of the district, and that the district rests its case on section 7(b) of the contract.

I ask you: Do you believe that he has the right to make such a decision and to abandon section 7(b)? In other words, under your legislation, if he believes a decision to regulate those sumps is in the public interest, can he relegate agriculture within the district to a subordinate position to conservation?

Senator ENGLE. He cannot. And there just is no doubt in my mind about it.

Now, you can get in an argument about water levels out there. Section 7(b) says:

To the extent that the sumps within the district are maintained, they shall be operated and maintained primarily for the protection of the lands within the district for agricultural purposes, including flood protection and drainage, and the use of said sumps for said purposes shall be prior to all other uses, subject to the rules and regulations provided for in article 7(d).

Now, article 7(d) is the one that provides for the 30 days' notice, and so on. And the Secretary in his letter submitted to this committee has construed what he believes to be the meaning of this section. He says:

Thus, we have construed this to mean that the Secretary can require that the sumps be operated for wildlife conservation as long as such operation does not impair the primary function of the project, since we believe that reasonable management of the Tule Lake National Wildlife Refuge, of which the sumps are a part is contemplated by the contract.

Now, we turn over here to this next section, where you can resolve a dispute. But that gets into an argument whether the water level ought to be raised 12 inches or lowered 12 inches.

You cannot go outside the terms of this contract, basically. Sure, you can get into an argument about whether it ought to be lowered 6 inches or 8 inches. This is a discretionary matter with the Secretary.

And where he can use his judgment, his judgment then is final and binding. But that does not empower him to dump section 7(b).

Senator KUCHEL. It does not?

Senator ENGLE. It does not. And it cannot. And as I say, I did not write this contract. It was written a long time ago, in 1956, I believe, and it was specifically approved by the Congress. And here it sets.

And what I say is that you have to comply with it. All I do in this bill is pay homage to it.

Senator KUCHEL. You point out that section 7(b) provides that the sumps shall be operated and maintained for agricultural purposes prior to all other uses.

Senator ENGLE. That is precisely what the contract says.

Senator KUCHEL. That is true. Now, your bill, in section 3, Clair, reads as follows:

All the lands included in section 2 of this Act—
and they are the several refuges—

shall be administered by the Secretary of the Interior for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith, and shall permanently remain the property of the United States.

Now, I take it, the intention of this section is to make the major purpose of these areas, so far as your bill is concerned, the purpose of waterfowl management. Is that correct?

Senator ENGLE. That is correct.

Senator KUCHEL. "But with full consideration to optimum agricultural use."

Senator ENGLE. "That is consistent therewith."

Senator KUCHEL. Now, do we not have a non sequitur, here? In section 3, you give the major purpose of these areas to waterfowl management, but in section 7 of your bill you subject all the decisions

of the Secretary of the Interior to a provision of the contract which says "agriculture shall be the primary consideration." Do we not have a non sequitur between those two sections?

Senator ENGLE. No, there is not. You are mixing up two different areas.

The wildlife area is one area. Reclamation projects is another.

Now, the contract that I talked about provides for reclamation area. And there is nothing we can do about it. With reference to wildlife area, we tried to state in section 3 that we are going to give primacy to this business of wildlife management.

In the reclamation district, because of the terms of the contract, we must give primacy to the agriculture, with such uses as we can make of it for wildlife purposes that are not inconsistent with that.

That is what the contract says. And that is all I have said. And there are two different areas.

Senator KUCHEL. Let me put it this way. If the contract gave the Secretary of the Interior complete freedom to resolve a dispute as to how the sumps should be operated—let's assume that the contract gave that clear right—then, if that is what the contract did, would you say he would have a right to make a decision as to the operation of those sumps in favor of the major purpose of waterfowl management, as against what the irrigation district would contend?

Senator ENGLE. If I took your premise, yes; but I do not. I simply say that he cannot take one section of this contract and, in an arbitrary and capricious exercise of the power given him under the act, violate the guidelines laid down in section 7(b).

Senator KUCHEL. I will buy the "arbitrary or capricious," but I am assuming that the Secretary of the Interior, in making a decision in favor of waterfowl management, would not be acting in an arbitrary or capricious fashion.

Senator ENGLE. I would think not, too. And that is why I think that except for this section, which as I say contains some very broad powers, which would scare the average lawyer—

Senator KUCHEL. Just to let the members of this committee decide what they want to do with these two pieces of legislation, what are the specific differences between the two bills as respects "more definitive guidelines" that the Secretary mentioned in his letter?

Senator ENGLE. I would not want to read this whole report. But I think the Secretary's report, as I indicated previously, refers to those starting on page 4. You take the second full paragraph on page 4, clear through on to page 6, and you have what the Secretary regards as the more ample guidelines. That is why I think that the Department prefers this bill.

Now, let me say this: that I have no great pride of authorship about this, and it does not make a lot of difference to me, except that I think that this bill can be passed, because I believe that we can only pass it through the Senate, but we can pass it through the House.

And I think we ought to resolve this problem. And my judgment is that we have spent a lot of time nit-picking about language. We cannot avoid the impact of this contract. We must face it. We cannot legislate it out of the way. We simply have to face up to the fact that this district does have a contract.

They are prepared to go along with this language, which I have told them as plainly as I am telling this committee adds not one iota, or one ounce, to the strength or the validity of their contract.

But it does give them some legislative recognition, and they think that will be helpful to them in the light of their past experiences, and I can understand how people feel about that.

And much as I regard the language as surplusage, as far as its legal effect is concerned, I can see how it would be comforting to them to have it in the bill. And for all practical purposes, that is the difference between the bill introduced by me and the one introduced by my colleague.

Senator KUCHEL. I want to say to Clair and I want to say to the members of the committee: There was a dispute about 4 or 5 years ago on the operation of the sumps. The Secretary of the Interior held a hearing. The irrigation district wanted the sumps operated in a certain fashion to their benefit, and they pointed to section 7(b) of their contract.

The Secretary of the Interior overruled that point of view. And he used, as the basis for his decision, the language which I referred to earlier, which is also in the contract.

And that is as follows, and I read it again :

Should the district and the parties be unable to settle such dispute, the matter in dispute shall immediately be referred to the Secretary, who shall promptly render his decision on such disputed question. Said decision shall be accepted by all parties as final and conclusive.

I simply say to this committee that in the drafting of any legislation in this field which is supported by the Department of the Interior, by the State of California, and by every conservation interest that I know anything about, this provision of the contract ought to control, and I think in any legislation that this committee approves we ought not to particularly refer to the section of the contract that gives the irrigation district the supreme right with respect to agriculture.

Now, I quite agree that this contract has got to be upheld. I do believe that it is subject to any treaty obligation which we have with Canada, because treaties are the supreme law of the land.

But I believe in addition that the provisions of this contract themselves would give to the Secretary of the Interior the right to make a decision when a dispute arises, Clair, with respect to the operation of those sumps.

And I point to the fact that he has so exercised his authority under the contract. And if that is so, then I would believe we could agree to sponsor legislation which truthfully and accurately and consistently and completely would give to the Secretary of the Interior the right and the duty to administer these properties—

for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith.

And I say that, because this dispute settles down to where you want to put the emphasis. This dispute settles down to whether or not you want to chain the Federal Government to one single section of this contract, or whether you do not. And this I think is an important problem for this committee to pass judgment on.

Now, again I come back to the other point. The Secretary of the

Interior says, and he may be completely right, that in your bill there are better guidelines. If there are, let's adopt them. But I ask again: Where are the better guidelines?

Senator ENGLE. I will be very glad to read that whole section of the report to you. I would like to refer back to my statement, on page 3, in which I refer particularly to this matter that you just mentioned.

Some opposition appears to be based also on an incident in the summer of 1959 when the lake was in fact pumped below a reasonable level and the Interior Department stepped in to control the operation in order to preserve the nesting areas of ducks and geese on the lake. Let me emphasize, Mr. Chairman, that the Department's intervention in 1959 was because the district's operation in that episode was in violation of the irrigation contract—

Senator KUCHEL. What section of the irrigation contract?

Senator ENGLE (reading):

Not, as some have said, because it was in accordance with the contract. The 1959 maladministration has not been repeated. The individual responsible for it is no longer with the district. It will not occur again, in my opinion, if the terms of the irrigation contract in regard to maintaining Tule Lake water levels are recognized and respected.

Now, that actually happened, and it shows the efficacy of the safeguards in this particular contract.

And I am glad that it is in the record for us, because I think it makes it somewhat easier for us to define this problem and to give the setting. But I would say, in answer to my colleague, that the specific reference to one or two particular sections of the contract does not give those sections a higher standing in the law than they already have.

Senator KUCHEL. Why do you single those sections out and write them particularly into the bill? Does that very fact not give emphasis to those two sections?

Senator ENGLE. Because of the fear of those landowners that the contract will not be abided by.

Now, as I have told you, the reference in section 7 to this contract does not add one iota to its validity, or give it any stronger place in any court of the land. It simply, as I say, is comforting to these folks.

And if it is, since it does not hurt anything, why not put it in? And we have reached a consensus. We have a unity on it.

Senator KUCHEL. I question whether there is unity on your provision.

Senator ENGLE. The Congressman from the district has introduced this bill. He can put it through. Let's go ahead and get something done. That is what I would like to do, instead of nit-picking about, you know, these arguments as to language. I just do not think they are worth the time, Tom.

Senator KUCHEL. But I disagree with you completely when you say that we are nit-picking, because when you pick out the one section in that contract that says agricultural purposes shall be supreme, and you do not refer to the other section of the contract that says when there is a dispute the Secretary shall decide it, you give rise to a contention that the irrigation district would have the right to say the other provision of the contract does not apply to this piece of legislation.

Senator ENGLE. But I will be perfectly frank to say to you, my friend, that the statements made from this rostrum today are enough to set these fellows' hair on edge. If they ever believed that the Secretary under this one section, without reference at all to any guidelines laid down in 30 other sections of the same contract, can arbitrarily and capriciously make a decision and get away with it, they would not like it at all. They do not believe that.

Senator KUCHEL. But let's assume his decision was not arbitrary or capricious. Would not your answer be different, Clair?

Senator ENGLE. It certainly would be. And what I say is that he may exercise his discretion. And if he does, he may make a mistake. But if he is not arbitrary and capricious, he cannot be challenged in the exercise of his discretion under this particular section.

Senator KUCHEL. Let me read what I put in my bill, which, incidentally, the Department of the Interior came down here and approved last year, and which this year it also says is agreeable. Let's see whether you object to this language. Here is what I say:

SEC. 6. In carrying out the obligations of the United States under any migratory bird treaty, the Migratory Bird Treaty Act (40 Stat. 755), as amended, or the Migratory Bird Conservation Act (45 Stat. 1222), as amended, waters under the control of the Secretary of the Interior shall be regulated, subject to valid existing rights, to maintain sump levels in the Tule Lake National Wildlife Refuge at levels established by contract and regulations pursuant thereto, which shall be levels that in the judgment of the Secretary are adequate and practicable for waterfowl management purposes.

Do you agree with that provision that I just read?

Senator ENGLE. I would have no objection to it provided it met the requirements of section 7(b) of the contract in the reclamation district.

Senator KUCHEL. But why do you single out one section?

Senator ENGLE. Because section 7(b) lays the guidelines down as to the primacy of the project. And you cannot legislate it out. You simply cannot pass an act in this Congress and change the contract. The law of the land would prevent it.

Senator KUCHEL. But where a dispute arises, you have another section of the contract, section 32, which says the Secretary shall make the decision.

Senator ENGLE. And he did in 1959.

Senator KUCHEL. Exactly.

Senator ENGLE. Well, I have no objection to that.

Senator KUCHEL. So that my point is that section 7(b) is one section, but that section 32 of the contract gives the Secretary the right, if he deems it to be in the public interest, to overrule the provisions of section 7(b) if a dispute arises with respect to it. That is the point I make.

Senator ENGLE. I have no objection to putting that right in that section along with the others, as far as that is concerned.

Senator KUCHEL. Then why not eliminate all of them?

Senator ENGLE. But my point, my friend, is this: That you cannot legislate a change in this contract.

Senator KUCHEL. Who contends that?

Senator ENGLE. You cannot legislate a change in the priorities. The contract established the priorities. And the contract must be abided by.

Senator KUCHEL. Well, let me ask you this: Suppose there is a dispute on the question of priorities. Is it not true that the Secretary has the right to settle that dispute as he believes?

Senator ENGLE. You cannot dispute the priorities. You can dispute whether or not certain water measurements come within the priorities.

In other words, if this gets to be a question of how far the sump should be lowered, this is a discretionary matter. But the Secretary cannot say, "I change the priority. Agriculture shall no longer be the major priority inside the reclamation area. Wildlife conservation shall be the first priority."

He cannot say that, because the contract says different, and the Federal Government must keep its contracts.

Senator KUCHEL. Then, Clair, what purpose does your bill serve? What power does your bill give to the Secretary of Interior to do anything about wildlife conservation?

Senator ENGLE. It reassures our friends up there in Tule Lake that the contract is recognized in law by the Congress of the United States, which approved it in the beginning, and that is all.

Senator KUCHEL. That is all?

Senator ENGLE. That is all. And as I have said time and again, and every good lawyer knows this to be true, it does not add one ounce to the validity of that contract, the legality of it, or the enforceability of it. That contract was specifically approved by the 84th Congress in Public Law 877, and there it sets.

There is nothing you can do about it. We can just go back and say we still think it is all right, and it comforts these fellows up there in the agricultural business, and I say let them have it.

Senator Moss. Senator Anderson?

Senator ANDERSON. I only want to say I am tied up in a hearing of the Space Committee and cannot be here for this very interesting discussion.

I do want to say this is a matter that badly needs to be straightened out. I personally felt the legislation that we reported out a year ago and that passed the Senate was not bad legislation. If it proves to be, that is another story.

I do hope that the committee works hard to try to find a solution that is satisfactory to all parties out there. This has been an important matter for a long time.

I regret that I cannot be here to take part in it again. But it seems to be going along pretty well, and I am going to leave it in these competent hands.

I did want to come and say I have a deep interest in this bill, because this is one of the bills which I think will finally lead to good legislation regarding Tule Lake.

Senator Moss. I can say to the Senator there has been a very excellent exposition of the views, here, and I think we have built a very good record that this committee can look at, now, in weighing the language of the two bills.

I think there is general agreement that the bills are both aimed at the same general objective, and it is a question of which language will accomplish that.

Senator ANDERSON. The acting chairman just used an interesting word. I had some dealings with a board of directors which included a European, and we had a matter come before the board, and he took a very strong position contrary to the other members of the board, and by the persuasiveness of his arguments he won us all over to his side.

And just as we were about to surrender, he said: "Now, on the other hand——" [Laughter.]

So he went back and persuaded us that the other side was the correct one. And it got a little annoying to me, and I said, "Dr. Williams, I would like to find out where you are. Are you for or against this?"

He had very soft blue eyes and a very wonderful philosophy, and he said, "I am neither opposing nor proposing. I am exposing."

Senator KUCHEL. I want to say we have two shibboleths around the Senate. One of them is that a fellow is for you right up to the roll-call. That is No. 1. And No. 2, I often listen in committees to that same type of fellow you described, who nods his head and agrees with everything you say, and when you get through, he says, "Yes, but——"

Senator ANDERSON. Well, I approve both of these bills—"Yes, but——"

Senator ENGLE. I think we have a bill here that we can move with. I certainly concur in what the Senator from New Mexico said.

Senator KUCHEL. And I want the committee to do the best job it can. I think the whole history of this controversy, and it has been a controversy, is regrettable.

I think, Mr. Chairman, that the printed hearings of the testimony and the sessions of this committee a year ago indicate where the public interest lies.

I do want to point to one more section of the contract, and that is section 7(d), which I think ought to be made a part of the record. Let me read it.

Thirty days in advance of the transfer mentioned in subdivision (a) hereof, the Secretary shall furnish the district a notice describing the project works and the property to be transferred, which notice shall include the rules and regulations pursuant to which said project works and property shall be operated and maintained by the district. Additional transfers of property—

and this is the important part for this discussion, Mr. Chairman—
and modifications of rules and regulations—

I repeat that—

and modifications of rules and regulations may be made pursuant to this article at such time or times as the Secretary may determine.

The reasons which prompt legislative proposals in this field are many, and I am sure that we will have people coming forward to testify. The question is, Where do you want to place the emphasis? That is the question here.

When Secretary Udall appeared before this committee a year ago, and incidentally, endorsed the provisions of my bill which went out of the Senate unanimously, he wanted to place the emphasis of the bill on conservation. That is what he wanted to do. That is what the State government in California wanted to do. That is what the conservation groups that are here this morning and will testify wanted to do and want to do.

They do not want to ravage or harass people who belong to an irrigation district, and they do not want the harassment to run the other way around, either.

So that the questions that I have asked this morning, as I have read the two bills that are before our committee, are whether or not my colleague, in trying to arrive at a settlement of a dispute—there is no question about that—in placing emphasis on a couple of sections of this contract, does in fact tie the hands of the Department of Interior in exercising the responsibility that we seek to give him.

A long time before there were any people in California, and that is a long time ago, there were some 400,000 acres, Mr. Chairman, where millions of migratory waterfowl came from the north to the south and stayed. That has gone down to 100,000 acres, Mr. Chairman.

In 1908, President Theodore Roosevelt sought by Executive decree to protect what was left. The Presidents of the United States who followed him made similar decrees.

This legislation, by statute, would give some protection to this area, where today 7 million migratory waterfowl stop on their journeys south and north.

So that my concern is simply that this committee, recognizing the need for optimum agricultural purposes, nevertheless subjects those purposes to what I believe to be the public interest in favor of conservation.

That is the issue before us. And I think, generally speaking, Clair and I would agree on that as a description of the problem before this committee.

Senator ENGLE. No, I have no disagreement with that.

And let me say finally, Mr. Chairman, that the Assistant Secretary of Interior, Mr. Briggs, suggests certain amendments to section 7. I would have no objection to those.

And as I have indicated earlier, I would not have any objection to including a specific reference to section 32 in section 7, either. Or, for that matter, just simply referring to the contract, because the chairman is a good lawyer, a former district attorney, and he knows his business. And he knows that you judge a contract by its four corners, and not by one section particularly, and they have to be related to each other.

I think he would agree in the main with the legal approach which I take to this problem, which does not impair my interest in conservation at all. I am all for that. I simply say that I know how to get a job done, and this job will do it. So I hope we will have the favorable consideration of the committee.

Senator Moss. Thank you very much, Senator Engle. We appreciate it. I think we have had a very profitable colloquy here, an exposition of the differences that exist in the two bills that are before us.

Our next witness will be Mr. Max Edwards, who is assistant to the Secretary of the Interior and legislative counsel, accompanied by Daniel H. Janzen.

I have here a letter from the Governor of the State of Oregon, that I would like to place in the record at this point.

(The communication referred to follows:)

OFFICE OF THE GOVERNOR,
STATE CAPITOL,
Salem, Oreg., April 16, 1963.

HON. FRANK P. MOSS,
*Chairman, Subcommittee on Irrigation and Reclamation,
Senate Committee on Interior and Insular Affairs, Washington, D.C.*

DEAR SENATOR MOSS: It is my understanding that your committee has scheduled an April 24 hearing on S. 784 and S. 793, which have been introduced to promote the conservation of the Nation's wildlife resources in the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges in Oregon and California, and to aid the administration of the Klamath reclamation project, and for other purposes.

Because of Oregon's longstanding interest in the matters which are the subject of these bills, I feel your committee should know my views. First, may I say that we vigorously support the concept of these measures, since they are directed toward resolving a longstanding controversy within the Department of the Interior and between agriculture and wildlife interests relative to the administration of Federal lands in the Klamath Basin, Oreg., and Calif. It is my hope that this Congress will take affirmative action along the lines suggested in S. 784 and S. 793, with certain amendments.

Full consideration should be given to the reimbursement of the Klamath Drainage District for irrigation and drainage facilities constructed by the district in the Klamath Straits unit.

In addition, the following new language, which I understand is agreeable to both the Oregon State Game Commission and the Klamath Drainage District, should be considered for inclusion in whichever bill is finally acted upon:

"The Secretary of the Interior shall dispose of the public lands owned by the United States within the boundaries of the Klamath Drainage District by public sale or exchange for private lands adjoining or encompassed within the refuges in the Klamath Basin of Oregon or California."

"In the sale or exchange under this act the patents to the land in the Klamath Straits unit within the Klamath Drainage District shall reserve the hunting rights on such property in perpetuity to the public, to be administered in accordance with the laws of the State of Oregon and any rules or regulations that may be established by the duly constituted agency of the State of Oregon responsible for the same. The patents to said lands shall likewise provide that access to engage in the hunting shall be permitted by the owners during any of the times of the year when hunting is legally permitted. Said patents shall also provide that no dwelling houses or other structures shall be erected that would materially affect the use of the property by waterfowl, upland birds or the hunting public."

"The sum of \$197,315 previously accumulated in the leasing of the lands within the Klamath Straits unit shall be paid to the Klamath Drainage District as reimbursement for irrigation and drainage facilities constructed by the Klamath Drainage District for the Klamath Straits unit."

Passage of a bill incorporating these suggestions would result in stabilization of public and private rights, would afford opportunity for further protection of the waterfowl resource, and would recognize all legal and moral obligations. I trust your committee will favorably consider these thoughts.

Sincerely,

MARK O. HATFIELD, *Governor.*

Senator KUCHEL. Mr. Chairman, may I ask at this point that sundry letters and documents endorsing my legislation appear in the record also?

Senator MOSS. They may be placed in the record at this point.

(The exhibits referred to follow:)

STATE OF CALIFORNIA,
GOVERNOR'S OFFICE,
Sacramento, February 19, 1962.

HON. CLINTON P. ANDERSON,
Member of the U.S. Senate,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR ANDERSON: It is my understanding that S. 1988, a bill to aid in the administration of the Tule-Klamath National Wildlife Refuges, will be considered on February 23 by your Subcommittee on Irrigation and Reclamation.

Earlier this year I publicly endorsed this bill and I want you to know that we in California are continuing our support of this vital conservation measure.

The Tule-Klamath refuge area is the single most important waterfowl gathering place on the North American Continent. The bulk of the millions of waterfowl that winter in California utilize this refuge area on their migrations.

It is particularly important that these millions of birds migrating southward in the fall be held on the Tule-Klamath refuges, as long as possible to avoid heavy waterfowl depredation on rice and other major agricultural crops in both the Sacramento and San Joaquin Valleys.

To perpetuate the esthetic and recreational values provided by California's waterfowl resources, and to protect the great Central Valley's established agricultural interests, I consider it necessary that the refuge areas covered by S. 1988 be permanently dedicated to the primary purpose of waterfowl management.

Your support of this much-needed legislation will be appreciated.

Sincerely,

EDMUND G. BROWN, Governor.

THE RESOURCES AGENCY OF CALIFORNIA,
DEPARTMENT OF FISH AND GAME,
Sacramento, April 19, 1963.

HON. THOMAS H. KUCHEL,
Member of the Senate,
Washington, D.C.

DEAR SENATOR KUCHEL: Thank you for sending us a copy of your bill S. 793, the Tule-Klamath legislation.

We are pleased that you have introduced this important conservation bill, and we are giving it our wholehearted support.

We hope that you will be successful in your endeavors to have this legislation adopted by Congress.

Sincerely,

W. T. SHANNON, Director.

[From the San Francisco Examiner, Mar. 13, 1963]

TULE LAKE BATTLE IS NOT OVER

(By Walt Radke)

Any sportsman who thinks that battle to preserve the Tule Lake-Lower Klamath waterfowl refuges is all over, should take a look at some of the small print in the Engle-Johnson bill, presently wending its way through committee in Washington D.C.

Congressman Harold T. "Bizz" Johnson, in whose constituency Tule Lake lies, and Senator Clair Engle, who previously represented the area in the House, have cosponsored a measure which is strikingly similar to the famed Kuchel bill * * * with one glaring exception.

If they have their way, water levels in the Tule Lake National Wildlife Refuge would be operated and maintained in accordance with an irrigation contract.

It was under a similar contract, in 1959, that irrigators attempted to pump Tule Lake dry in an effort to force wildlife interests out, and to allow homesteading of sump areas.

The ensuing battle between the sportsmen and farmers went clear back to Washington, D.C., where the Interior Department finally had to step in and force the irrigation interests to maintain water levels compatible with waterfowl needs.

Should Congress pass the Engle-Johnson bill (S. 784), instead of the new Kuchel bill (S. 793), the farmers could still wind up in the driver's seat at Tule * * * and the ancient conflict between waterfowl conservation and agriculture would be perpetuated.

Fortunately for the sportsmen, the Kuchel bill is being supported by just about every interest other than agriculture.

The measure has the backing of the Interior Department, Governor Brown, the California Fish and Game Department, the Duckhunters Association of California, the National and California Wildlife Federations and the Izaak Walton League, the Audobon Society, among others. It also has the backing of the average Pacific flyway shotgunner and blind buyer.

Truly, a formidable list. But let's not underestimate the opposition.

[From the San Francisco Examiner, Apr. 21, 1963]

KUCHEL'S BILL GOOD FOR DUCKS, RICE

(By J. P. Cuenin)

Every duck hunter in California should immediately write his Senator and Congressman and ask them to not only vote for Senator Thomas H. Kuchel's bill, S. 793, but to work for its passage.

Kuchel's bill, if passed, will not only save ducks for the hunters, but it will help to prevent the destruction of rice by the birds that will pour into the Sacramento and San Joaquin Valleys before the rice is harvested.

Over the years a great deal of the original area of the famous Upper and Lower Klamath Lakes and Tule Lake has been taken over by homesteaders. They still are trying to grab more of this perfect waterfowl area which for centuries has been the main way station for millions of ducks migrating from Alaska and the vast Prairie Provinces of Canada to California.

TWO DEFINITE FLIGHTS

We have two definite flights of ducks that reach the Sacramento and San Joaquin Valleys. One of these comes down the coast from Alaska and turns east at Point Reyes toward the Suisun Bay, and from that area spreads up the Sacramento Valley and down the San Joaquin Valley.

The second and largest flight comes to California from the Ducks Unlimited region in Canada on an overland flight, with an extended stopover at Upper and Lower Klamath Lake and Tule Lake refuges.

The waterfowl which come to us via the Klamath and Tule Lake refuges remain in that area and seldom come down to the Sacramento and San Joaquin Valleys until most of the rice has been harvested. But if there is insufficient water on the refuges, they may swarm down to our rice growing districts and clean out a great deal of the rice.

In recent years there have been as many as 7 million ducks counted in 1 day on the Klamath-Tule refuges at a time when the harvesters were busy cutting rice on the Sacramento-San Joaquin Valley's 400,000 acres of rice. If at that time there happened to be a scarcity of water on the Klamath-Tule ponds, and that mass of ducks moved down to the Sacramento-San Joaquin Valley area, there would have been a tremendous loss of rice.

NEW REFUGES

However, the Federal Government and our State government have spent millions of dollars to create about 60,000 acres of refuges scattered about the Sacramento and San Joaquin Valleys, and there was no sudden increase in the numbers of ducks, though there were some planes used to herd the birds from the ricefields to the refuges.

Senator Kuchel's bill, if passed, will make it possible for the Federal Sport Fishing and Wildlife Service to get ample water to keep the ponds on the refuges filled to the correct height to prevent another outbreak of botulism. This killed more than 200,000 waterfowl in 1946 and 1947 in those refuges.

A couple of years ago when my sidekick, Walt Radke, went up to the Klamath-Tule district to hunt with a local guide, there was so little water in the pond they intended to hunt on, they had to push their boat over 200 yards of bare mud to reach the edge of the water. They bagged limits of ducks, but with that type feather edge water, and if the temperature that could prevail in August and September had been recorded then, there could have been a big outbreak of botulism.

During the last outbreak I went up to a meeting held in Klamath. After a long discussion it was decided that the dikes should be built so that the water depth could be kept up to 14 inches. That would prevent the mud on the bottom from building up enough heat to bring on a hatch of the dreaded botulism bugs.

At a meeting of Ducks Unlimited, Dr. Karl Meyer of the University of California, known throughout the world as the great botulism expert, told us that maintaining a depth of 14 inches on the ponds would prevent another outbreak.

SAN JOSE STATE COLLEGE,
DEPARTMENT OF BIOLOGICAL SCIENCES,
San Jose, Calif., April 20, 1963.

HON. SENATOR HENRY M. JACKSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR JACKSON: This is regarding S. 793, Senator Kuchel's bill on the Tule-Klamath Waterfowl Refuge Area.

I have been long familiar with this area and the problem. I was consulting biologist for the investigator hired by the Duck Hunters Association of California in 1959, to investigate the water management problem of Tule Lake refuge at that time.

The Tule-Klamath refuges are extremely important to the Pacific flyway and whatever affects these refuges will affect the flyway.

The important factor here is the proper management of the water level of the refuges. Full responsibility for all management factors must rest with the Fish and Wildlife Service personnel. This is not possible if the water is controlled by the irrigation district. In the investigation mentioned above it was clearly disclosed that the irrigation district was deliberately withholding water in order to embarrass the refuge personnel with the hunters. This was nothing but a "squeeze play" to eventually release refuge land for homesteading and private interests.

For this reason I cannot support S. 784 which puts the water control in the hands of the irrigation district. This will merely create the same old problem.

We do not need more potatoes and grain. We do need more permanent waterfowl areas. The waterfowl of the Pacific flyway are a \$20 million asset just in California alone.

I strongly urge the support of Senator Kuchel's bill, S. 793. The water must be controlled by the refuge personnel.

Sincerely,

WILLIAM GRAF, *Professor of Wildlife Management.*

ASSOCIATED SPORTSMEN OF CALIFORNIA,
San Francisco, Calif., April 10, 1963.

HON. THOMAS H. KUCHEL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR KUCHEL: This organization composed of 140 clubs and approximately 11,000 members are most concerned with the Tule-Klamath legislation.

It is difficult to realize that people, some in political circles, can so easily dismiss the importance of this Pacific flyway which unless maintained can easily sound the death knell of migratory waterfowl in the Western United States. The adverse effect such a catastrophe would have on the economical and recrea-

tional stability of these Western States would be astounding and we sincerely trust the Congress of the United States will this year provide for this area the protection so vitally required.

The membership of this association is fully conscious of your efforts in our behalf in this matter, Mr. Kuchel.

As a matter of sound principle and in appreciation of your efforts we are pledged to support S. 793 in any manner that may be helpful.

Please do not hesitate to call upon us for that assistance we may be able to render.

Sincerely,

JULIUS VON NOSTITZ, *President.*

CONCORD SPORTSMEN'S CLUB, INC.,
Concord, Calif., April 15, 1963.

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

DEAR SIR: We of the Concord Sportsmen's Club of Concord, Calif., wish to point out that section 7 of the Senator Clair Engle bill (S. 784) is totally unacceptable to the sportsmen of California. We cannot accept the use of water for irrigation before it is used for the waterfowl area.

We urge you to act favorably on a bill that is to be presented April 24, 1963 by Senator Thomas Kuchel (S. 793). We believe this legislation to protect our wildlife is fair and just.

Respectfully yours,

JOHN YATES, *Secretary.*

SAN DIEGO COUNTY WILDLIFE FEDERATION,
San Diego, Calif., April 20, 1963.

Senator TOM KUCHEL,
*Senate Office Building,
Washington, D.C.*

SIR: This Federation of Sportsmen's Clubs wishes to be recorded as supporting your Tule-Klamath waterfowl bill.

Very truly yours,

SAM WEISENBERG, *Secretary.*

SPORTS COUNCIL INC.,
Los Angeles, Calif., April 21, 1963.

Re S. 793 to promote the conservation of the Nation's wildlife resources on the Pacific flyway in the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges in Oregon and California and to aid in the administration of the Klamath reclamation project.

Senator THOMAS KUCHEL,
*Senate Office Building,
Washington, D.C.*

DEAR SIR: Sports Council, Inc., of Los Angeles and southern California, including its combined membership of over 200 representatives and manufacturers' representatives of recreational materials and equipment are 100 percent for your Senate bill 793.

This bill will protect for many years to come the Pacific flyway in preserving the area of the Tule Lake and the Klamath as far as the Clear Lake National Wildlife Refuges, both the Oregon and California areas are in need of protection in the Pacific flyway.

Your statement in the Congressional Record, volume 109, No. 22, has been read in committee and found to be very accurate and gives full protection to all aspects of the problem, to the extent of satisfaction of those who have hunted the area for many years.

We request a "do pass" on Senate bill 793 in the meeting of the committee April 24, 1963.

Yours for conservation,

FRITZ MANGOLD, *Executive Secretary.*

ALTADENA, CALIF., April 21, 1963.

DEAR SENATOR KUCHEL: We support your Tule-Klamath bill, S. 793. It is necessary that the water level be controlled in a manner which takes into consideration the needs of the waterfowl.

Thank you for your work on the wilderness bill.

Sincerely,

WALTER B. POWELL,
Legislative Committee, Pasadena Roving Archers.

SANTA PAULA, CALIF., April 21, 1963.

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

DEAR SIR: The Santa Paula Sportsmen's Club urges you and your committee to oppose bill S. 784. We find section 7 of said bill totally unacceptable. We feel it is inconsistent to dedicate land for waterfowl, then chance cutting off the water.

The language in bill S. 793 is, in our opinion, more consistent with good practice and we further urge your support of same.

Respectfully yours,

RALPH V. BAIN,
Legislative Chairman, Santa Paula Sportsmen's Club.

FRESNO COUNTY SPORTSMEN'S CLUB, LTD.,
Fresno, Calif., April 8, 1963.

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

DEAR SIR: The Fresno County Sportsmen's Club urges your support for Senator Kuchel's S. 793 relative to the preservation of the Tule-Klamath waterfowl area. We strongly feel that the Tule-Klamath area must be preserved for the use of waterfowl.

We must also oppose Senator Engle's bill, S. 784, for the reason that it will do no good to dedicate land for waterfowl and then have the water cut off. Adequate and practical water levels must be maintained for waterfowl management purposes.

We are depending on you to do all possible to protect the future of our Pacific flyway.

Sincerely,

H. DODDRIDGE, *President.*

ARROYO GRANDE SPORTSMEN'S CLUB,
Arroyo Grande, Calif., April 10, 1963.

Senator THOMAS H. KUCHEL,
Senate Office Building, Washington, D.C.

DEAR MR. KUCHEL: Thank you for your efforts in behalf of the sportsmen and conservationists.

The Arroyo Grande Sportsmen's Club wishes to assure you of the support of the members in obtaining the passage of Tule-Klamath waterfowl legislation represented by your Senate bill 739.

Sincerely,

R. E. "BOB" McDONALD,
Chairman, Legislative Committee.

SANTA ANA CHAPTER,
 IZAAK WALTON LEAGUE OF AMERICA, INC.,
Santa Ana, Calif., April 9, 1963.

Re Tule-Klamath legislation.

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

DEAR SENATOR JACKSON: The California Division, Izaak Walton League of America, Inc., urges strongest support for S. 793 (Hon. Thomas H. Kuchel) and H.R. 3016 (Hon. James B. Utt). Other bills introduced are unsatisfactory, particularly S. 784 (Senator Clair Engle), and H.R. 3817 (Representative Harold T. "Bizz" Johnson). Waterfowl management interests in our wildlife refuges must take precedence over the interests of the Irrigation Districts.

We thank you for your consideration.

Very sincerely yours,

WARREN E. McCARTY,
Chairman, Wildlife Committee, California Division.

LODI SPORTSMAN'S CLUB, INC.,
Lodi, Calif., April 7, 1963.

Re Tule-Klamath waterfowl area.

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

DEAR SENATOR JACKSON: Senator Thomas Kuchel has a bill scheduled for hearing on April 24. We are particularly impressed with S. 793, as it provides that a water level be maintained, that are in the judgment of the Secretary of the Interior, adequate and practicable for a sound waterfowl management program.

Section 7, of Senator Engle's bill, S. 784, is totally unacceptable by the members of this club.

The members therefore respectively urge the enactment of Kuchel's bill, S. 793.

Yours truly,

GORDON L. NICHOLS,
Secretary-Treasurer.

SUNNYVALE ROD & GUN CLUB,
Santa Clara, Calif., April 9, 1963.

HON. HARRY M. JACKSON,
Senate Interior and Insular Affairs Committee,
Washington, D.C.

DEAR SENATOR: I would like to express opposition, in our club's name, to section 7 of Senator Engle's S. 784. We would also like to express our support for Senator Kuchel's S. 793.

Respectfully,

AL LAURINEE, *Executive Officer.*

FORESTER'S ROD & GUN CLUB,
Oakland, Calif., April 10, 1963.

HON. HENRY M. JACKSON.

DEAR SIR: This is in reference to bill S. 793, Tule-Klamath waterfowl legislation introduced by Senator Thomas Kuchel asking for your support in this bill.

We of the Forester's Rod & Gun Club, associated with the Associated Sportsmen of California and its affiliates, wholeheartedly support Senator Kuchel's bill and are not in favor of Senator Clair Engle's bill S. 784, section 7.

Hoping to get your support in this matter, we are,

Respectfully yours,

HERMAN O. FULLER, *President.*
 MILDRED C. FULLER, *Secretary-Treasurer.*

WEST END FISH & GAME ASSOCIATION, INC.,
Ontario, Calif., April 11, 1963.

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

DEAR SENATOR JACKSON: I am writing you on behalf of the West End Fish & Game Association. We wish to express our support for Senator Kuchel's bill, S. 793, re Tule-Klamath waterfowl legislation.

We feel that Senator Kuchel has a good understanding of the situation and in his bill is considering the overall good and the need for preserving this waterfowl habitat. Therefore, we request that you lend your support to this bill. S. 793.

Sincerely,

Mrs. E. J. DAHLSTROM, *Secretary-Treasurer.*

WEST END FISH & GAME ASSOCIATION, INC.,
Ontario, Calif., April 11, 1963.

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

DEAR SENATOR JACKSON: On behalf of the West End Fish & Game Association, I am writing expressing our opposition to Senate bill 784, author Senator Engle, re Tule-Klamath waterfowl legislation.

We are opposed to it because we feel that the water level should be maintained at a level conducive to a good waterfowl habitat. This is the only area suitable for this in many miles along the west coast. This water level cannot be maintained if the principal use of the water is for irrigation purposes.

We request your opposition to this bill.

Sincerely,

Mrs. E. J. DAHLSTROM, *Secretary-Treasurer.*

SAN DIEGO COUNTY FISH & GAME ASSOCIATION,
San Diego, Calif., April 12, 1963.

HON. HENRY M. JACKSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR JACKSON: Sportsmen from California and all the Western States urgently request that your committee again endorse Senator Kuchel's Klamath-Tule Lake conservation bill, S. 793.

We must oppose Senator Engle's bill, S. 784 because section 7 of the bill would allow depletion of the water supply.

Sportsmen are hopeful that Senator Kuchel's bill will not be held up in the House as it was last session. We ask you to actively support this fine conservation measure.

Very truly yours,

CHARLEY MARTIN, *President.*

SAN BRUNO ROD & GUN CLUB,
San Francisco, Calif., April 12, 1963.

Senator THOMAS KUCHEL,
Senate Office Building, Washington, D.C.

SIR: We members of the San Bruno Rod & Gun Club urge passage of bill S. 793.

RON ROVEGNO, *Secretary.*

STOCKTON, CALIF., April 15, 1963.

Senator THOMAS KUCHEL,
Senate Office Building,
Washington, D.C.

Our entire club and many unattached hunters are in strong support of your S. 793. You are to be congratulated and be assured of our support.

RUSSELL F. CHAPIN,
President, Stockton Sportsmen's Club.

OAKLAND, CALIF., April 17, 1963.

Senator THOMAS KUCHEL,
Senate Office Building,
Washington, D.C.

DEAR SIR: We, the members of the Key Rod & Gun Club, wish to extend our support, as to the bill S. 793, Tule-Klamath waterfowl legislation.

We oppose the bill S. 784 brought up by Senator Clair Engle.

Sincerely yours,

A. MESEKE, *Secretary.*

PACIFIC ROD & GUN CLUB,
San Bruno, Calif., April 15, 1963.

Senator HENRY M. JACKSON,
Senate Office Building,
Washington, D.C.

DEAR SIR: The Pacific Rod & Gun Club, 267 members strong, wish to advise you of their solid support to the Tule Lake bill S. 793 of Senator Tom Kuchel.

Very truly yours,

FRANK L. BURGESS, *Secretary.*

MARIN ROD & GUN CLUB, INC.,
San Rafael, Calif., April 15, 1963.

Re S. 793, Tule-Klamath waterfowl legislation.

HON. HENRY M. JACKSON,
Chairman, Senate Interior and Insular Affairs Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: As a conservation club dedicated to the preservation of fish, wildlife, and recreation, we have had occasion to examine the content of some measures now before your committee, and in particular S. 793 and S. 784.

We feel that the Tule-Klamath Waterfowl Refuge is perhaps the most important area in the Pacific flyway and must be preserved if migratory waterfowl hunting is to be enjoyed in the Western States.

May we vigorously point out that section 7 of S. 784 is completely unacceptable, and we urge the enactment of S. 793.

Our 2,300 members are of a single mind in urging your favorable consideration of S. 793.

Respectfully,

PAUL S. WARE, *Secretary.*

DIXON GAME CONSERVATION CLUB, INC.,
Dixon, Calif., April 15, 1963.

HON. SENATOR KUCHEL: Our regular meeting of the Dixon Game Conservation Club, Inc., held April 9, the members went on record to support your bill S. 793 Tule-Klamath waterfowl area and oppose Senator Engle's bill S. 784.

There are many duck hunters and duck clubs in the central California area that would be affected by the water supply kept at all times high level to keep the Western flyway available for this area.

Very sincerely,

L. E. FERGUSON, *Secretary-Treasurer.*

VALLEJO ROD & GUN CLUB, INC.,
Vallejo, Calif., April 13, 1963.

HON. HENRY M. JACKSON,
Chairman, Senate Interior and Insular Affairs Committee,
Senate Office Building, Washington, D.C.

DEAR MR. JACKSON: S. 793 is scheduled to be heard by your committee on April 24 at 10 a.m. This bill concerns the Tule-Klamath Waterfowl Refuge, perhaps the most important area in the Pacific flyway. This refuge must be preserved if we are going to continue to enjoy migratory waterfowl hunting in the Western States.

Senator Clair Engle has introduced a similar bill, S. 784. Section 7 of this bill provides a prior use of water in Tule Lake for irrigation purposes. Obviously, it will do no good to dedicate the land for waterfowl and then have the water cut off.

The Vallejo Rod & Gun Club asks you to support Senator Kuchel's bill, S. 793, for the reasons pointed out above.

Sincerely,

LAVERNE ROND,
President.
JOHN M. MOISEFF,
Secretary.

WESTERN CONSERVATION CLUB, INC.,
Los Angeles, Calif., April 13 1963.

Subject: Tule-Klamath waterfowl area, Senate Bill S. 793.

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

DEAR SENATOR JACKSON: On my own behalf and on behalf of the members of Western Conservation Club of Los Angeles, Calif. (a group of ardent sportsmen dedicated to the conservation, protection, propagation, and perpetuation of fish, game, and forest) I urge enactment of Senate bill S. 793 by Senator Kuchel, which would protect our Pacific flyway for waterfowl.

I personally feel that this bill will provide adequate and practical waterfowl management in the Tule-Klamath waterfowl area and assure us that water levels will be adequately maintained for good waterfowl-management purposes.

In reference to Senate bill S. 784, section 7, I feel that this section is not acceptable to the sportsmen of California and again recommend enactment of Senator Kuchel's bill S. 793 which, I believe, is in the best interests for proper waterfowl management.

Respectfully yours,

ROBERT B. ALLISON,
President, Western Conservation Club, Inc.

DISTRICT COUNCIL No. 3 OF THE ASSOCIATED SPORTSMEN OF CALIFORNIA,
Oakland, Calif., April 18, 1963.

Senator HENRY M. JACKSON,
Chairman, Senate Interior and Insular Affairs Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: The delegates to district council three of the Associated Sportsmen of California have instructed me to write you in support of Senator Thomas Kuchel's bill S. 793 for the preservation of the Klamath-Tule Lake Refuge.

We are opposed to section 7 of Senator Engle's bill S. 784, which would set aside the land for the refuge but allow prior use of the water for irrigation purposes.

The Pacific duck flight is dear to the hearts of California sportsmen and the Klamath-Tule Lake Refuge is one of the prime resting places for this flight.

Thank you for your consideration of our plea.

FRANK HILLEND AHL,
Recording Secretary.

TULARE FISH & GAME PROTECTIVE ASSOCIATION,
Tulare, Calif., April 17, 1963.

Senator HENRY M. JACKSON,
Chairman, Senate Interior and Insular Affairs,
Washington, D.C.

HONORABLE SENATOR JACKSON: The members of the Tulare Fish & Game Protective Association have read bills S. 793 by Senator Kuchel, and S. 784 by Senator Engle, concerning the Tule-Klamath legislation. We therefore would like

to go on record to oppose Senator Engle's bill S. 784. The reasons are section 7 of the Engle bill is totally unacceptable to the California sportsmen. We would like to urge enactment on the Kuchel bill.

Sincerely,

VILMA SHEPPA,
Secretary-Treasurer.

SAN PABLO AVENUE SPORTSMEN, INC.,
Berkeley, Calif., April 16, 1963.

HON. HENRY M. JACKSON,
Chairman, Senate Interior and Insular Affairs Committee.

DEAR SENATOR: We, a club of 350 sportsmen, are keenly interested in the passage of S. 793. We feel that parts of Senator Engle's bill, S. 784, would not be to the best interest in preserving this key Pacific flyway area for aquatic birds with which both of these bills are concerned. Section 7 in S. 784, we as sportsmen and conservationists, find particularly undesirable. We therefore ask you and members of your committee to approve favorably Senator Kuchel's bill, S. 793.

Sincerely,

WALFRID SAARNI, *Secretary.*

APRIL 15, 1963.

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

HONORABLE SIR: The Hayward Sportsmen's Club, Inc., is vitally interested in the passage of S. 793—Tule-Klamath waterfowl legislation, and we urge your active support.

While Senator Engle has done much to aid the sportsmen in the West, his S. 784, section 7, is totally unacceptable to us in that it would nullify the effect and purpose of S. 793 by providing prior use of water in Tule Lake for irrigation purposes, making it possible to draw off water for irrigation just when it is vitally needed for ducks and geese when in that area.

May we urge the careful consideration of your committee on this vital subject to western sportsmen.

Gratefully yours,

HAYWARD SPORTSMEN'S CLUB, INC.,
C. E. WILSON, *Secretary.*

REMARKS BY SENATOR THOMAS H. KUCHEL UPON INTRODUCTION OF S. 793 IN THE
U.S. SENATE

[From the Congressional Record, Feb. 14, 1963]

URGENT NECESSITY FOR CONGRESSIONAL ACTION PROTECTING VAST WILDLIFE REFUGES
IN PACIFIC FLYWAY

Mr. KUCHEL. Mr. President, I am honored to introduce today what I sincerely believe to be one of the major pieces of conservation legislation which will come before this Congress. In a word, this bill gives congressional recognition and protection to several wildlife refuges located in both California and Oregon, which have been established or expanded by various Executive orders of several Presidents during the first four decades of this century.

This proposed legislation is practically identical with S. 1988, 87th Congress, which passed the Senate without opposition a year ago. I regret that time did not permit the House of Representatives to conclude the consideration of this measure during the last session of the Congress. It is my hope that hearings by the Senate Committee on Interior and Insular Affairs can be held shortly and that the Senate will favorably pass upon the matter at an early date so that it might be sent to the House where similar legislation has been introduced by two Members of the California delegation.

I am honored that the distinguished junior Senator from Virginia [Mr. ROBERTSON] has placed his name on this measure as a coauthor.

Mr. President, by this measure the Congress would dedicate for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith, the public lands presently designated as the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges, the latter being in addition to the others earlier included in Senate bill 1988 of last year. Our hearings last year revealed there was no reason to exclude Clear Lake from the congressional protection being afforded its neighboring refuges and conservation and wildlife groups support the inclusion of the Clear Lake Refuge in this bill.

This bill will also, as did the predecessor, S. 1988, afford similar protection to an additional public lands area of some 6,891 acres not presently within the Executive order designation but similarly best suited for wildlife refuge use.

It is thrilling to contemplate that by this legislation Congress can preserve, for the highest and best use of the many, for all time, this total of some 133,000 acres so that this area may continue to serve as nature ordained long before man's shadow fell upon it.

Though significant, even this is a minimum reservation. When one considers that around the year 1900 there were about 400,000 acres of marsh and water in the Upper Klamath Basin, it is apparent that what we propose is neither too much nor too soon.

Approximately 80 percent of all the waterfowl in the Pacific flyway use these refuges. As many as 7 million birds utilize this refuge complex in their semi-annual migrations and it also serves annually as the nursery for the hatching of some 3,000 Canada geese and almost 112,000 ducks, many of the latter being the now dwindling redheads. Wildlife, other than waterfowl, also inhabit this complex as in the case of Clear Lake where sage grouse and pronghorn antelope occupy the rocky sagebrush uplands.

Let one conclude that this legislation is of interest for wildlife benefits only, even though such conservation and much-used recreation aspects would alone indicate the wisdom of the action, I point out the importance of these refuges to the economy of the immediate locality and of more southerly parts of California. This refuge complex permits the holding of these millions of fowl until the crucial harvest of crops, such as rice and lettuce, to the south, has been accomplished. Furthermore, in this feeding itself, the agricultural development of the area has been especially important. And the public hunting opportunities which are available in these refuges bring many people from all over the Pacific coast—from which the local economy is assisted.

This bill, which I introduce today, carries a provision for payment for local government services to the counties within the area. The contractual obligations of the United States with the Tulelake Irrigation District and the Klamath Drainage District are recognized. The Secretary of the Interior shall retain full authority to lease for agricultural purposes the reserved public lands lying within the Lower Klamath and the Tule Lake National Wildlife Refuges.

Under the provisions of the bill, sumps 1(a) and 1(b) in the Tule Lake Refuge could not be reduced by diking or other construction to less than the existing 13,000 acres. The bill further provides that the Secretary of the Interior shall regulate water under his control in accord with applicable migratory bird treaties and our domestic Migratory Bird Conservation Act and subject to valid existing rights, so as to maintain sump levels in the Tule Lake Refuge at levels established by contract and regulation pursuant thereto and so that such levels are adequate and practicable for waterfowl management purposes.

The Department of the Interior and the Department of Agriculture and the Bureau of the Budget all reported favorably on my bill last year and I feel assured that the present bill will again receive their favorable response.

I am also proud to have had support in this matter by such as: the Izaak Walton League of America; the National Wildlife Federation; the Audubon Society; the Sierra Club; the North American Wildlife Foundation; the Sport Fishing Institute; the Western Association of State Game and Fish Commissioners; the Wilderness Society; the Wildlife Management Institute; the Governor of California; the California Department of Fish and Game; and the California Fish and Game Commission; to mention only a few.

I am particularly pleased that several groups aware of my intention to introduce this legislation in this Congress have already written me of their support and I ask unanimous consent to have several of these communications, or per-

tinant parts thereof, and the bill which I have today introduced printed at this point in the Record.

I might add, Mr. President, that for further reprints of supporting letters, articles, editorials, statements, and so forth, I refer any interested persons to the Congressional Record of August 3, 1961, and to the printed transcript of the hearings on former S. 1988 before the Subcommittee on Irrigation and Reclamation, under date of February 23, 1962.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the communications and bill will be printed in the Record, as requested.

The communications presented by Mr. Kuchel are as follows :

WILDLIFE MANAGEMENT INSTITUTE,
Washington, D.C., February 6, 1963,

HON. THOMAS H. KUCHEL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KUCHEL: Thank you for sending me a draft copy of your bill to promote the conservation of the Nation's wildlife resources on the Pacific flyway in the Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake National Wildlife Refuges in Oregon and California and to aid in the administration of the Klamath reclamation project.

This bill will be warmly received and vigorously supported by all the national, regional, State, and local conservation agencies and organizations that endorsed your earlier bill in the 87th Congress. I also expect that the Department of the Interior again will recommend its enactment. You clearly stated the urgent need for this bill in your floor statements last year and in your testimony before the Interior and Insular Affairs Committee.

Fully 80 percent of the waterfowl of the Pacific flyway use the Tule-Klamath refuges during the spring and fall migrations. For that reason alone, their permanent dedication for waterfowl restoration purposes should be supported by all Members of Congress from the Pacific flyway States.

Approval of this proposed bill would be a significant conservation action of the 88th Congress.

Sincerely,

IRA N. GABRIELSON,
President.

NATIONAL WILDLIFE FEDERATION,
Washington, D.C., February 14, 1963.

HON. THOMAS H. KUCHEL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR KUCHEL: Thank you for the invitation to comment upon your proposed draft of a bill to promote the conservation of wildlife, resources in the Tule Lake-Klamath area of California and Oregon.

I have read your draft and note this proposal essentially is the same as your S. 1988 of the 87th Congress, with some few amendments recommended by the Irrigation Reclamation Subcommittee in the House last year. These amendments have improved the original version which was endorsed by the Interior Department and conservation organizations before passage by the Senate last year.

The National Wildlife Federation believes it is absolutely essential for the welfare of the entire Pacific flyway and our international migratory bird obligations that existing habitat at wildlife refuges in the Tule Lake-Klamath area be preserved and managed for the maximum numbers of waterfowl. This basic objective can be achieved only if the Tule Lake-Klamath area is dedicated for the major purpose of wildlife management. In short, the present refuge areas must be maintained without further loss of lands and water levels must be managed for maximum waterfowl benefits yet encouraging optimum agricultural production not in conflict therewith.

Your proposed bill accomplishes these objectives while continuing present agricultural arrangements, and we predict it will receive wide approval in States along the Pacific coast.

Sincerely,

THOMAS L. KIMBALL,
Executive Director.

CITIZENS COMMITTEE ON NATURAL RESOURCES,
Washington, D.C., February 1, 1963.

Senator THOMAS H. KUCHEL,
*Old Senate Office Building,
 Washington, D.C.*

DEAR SENATOR: I have your draft of the Tule Lake bill, and the measure is one that will have our full support.

We hope the bill will be introduced quickly in order that hearings can be arranged at the earliest possible date.

Cordially,

SPENCER M. SMITH, JR.,
Secretary.

IZAAK WALTON LEAGUE OF AMERICA, INC.,
Whittier, Calif.

Senator THOMAS H. KUCHEL.

DEAR SIR: The Whittier chapter is very much concerned with the possible loss of the nesting and flyaway area of the Klamath and Tule wildfowl refuge. Each of our members is writing their support for your bill for this protection.

If there is anyone else we can contact for support of this bill, we would like to write them, also.

Thank you.

WALLACE G. THOMPSON,
Secretary.

SOUTHERN PACIFIC ROD & GUN CLUB,
San Francisco, Calif., January 12, 1963.

Hon. THOMAS H. KUCHEL,
*Senate Office Building,
 Washington, D.C.*

DEAR SENATOR KUCHEL: This statewide organization composed of railroad workers is pleased to hear that you intend to reintroduce S. 1988, the Tule-Klamath legislation, which bill provisions proposes to preserve the Tule Lake Klamath waterfowl area.

It is indeed gratifying to the many sportsmen of our organization to have you again supporting this bill which is so important to the sportsmen of our State.

You may rest assured that your action will be given full publicity to the entire membership.

We are certainly pleased that you were reelected to fill the post that you have so capably filled during the years.

Sincerely,

CHARLES E. VISALIA,
President.

CALIFORNIA WILDLIFE FEDERATION,
Carmichael, Calif., February 7, 1963.

Senator KUCHEL,
*Senate Office Building,
 Washington, D.C.*

DEAR TOM: Thanks for your letter of January 29 referring to former S. 1988 and enclosing your new draft of this proposal.

Our federation met in Sacramento on February 2-3 in an executive session on State legislation and the arrival of your new proposal on Tule-Klamath came just in time to be reviewed and enthusiastically endorsed. I have passed the draft on to our fish and game department for their information and you may hear from them direct.

We are happy in knowing you will be in Washington looking after our interests for another term. Please continue to keep us informed on outdoor recreation and wildlife legislation.

Best of personal regards.

Sincerely,

GEORGE D. DIFANI,
Legislative Advocate.

Mr. Kuchel subsequently said: Mr. President, I ask unanimous consent that the bill which I introduced a few moments ago, relating to the Tule Lake Wildlife Refuge, which last year was referred to the Committee on Interior and Insular Affairs, be referred to the Committee on Interior and Insular Affairs in this session.

The VICE PRESIDENT. Without objection, it is so ordered.

Senator Moss. I am in receipt of a statement from Congressman Al Ullman. He has informed me that he is unable to appear personally. His statement will appear at this point in the record.

(The statement is as follows:)

STATEMENT OF HON. AL ULLMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

S. 784 and S. 793, regarding disposition of the longstanding problems of wildlife and land management in the Klamath Basin, are both primarily aimed at solving difficulties on the California side of the basin. However, these bills will vitally affect lands in the Klamath Straits in Oregon, and therefore I wish to request that careful consideration be given to the statements of Mr. George Proctor and Mr. Richard Henzel before your committee. Mr. Proctor and Mr. Henzel represent the large majority of public opinion in Klamath County, including the county courthouse, and the landholders in the Klamath Straits area.

There are two facets of the position taken by the residents of Klamath County which cannot be stressed too strongly.

First, the Klamath Drainage District is unique in that it has been the benefactor, rather than the recipient of Federal aid. The cost of draining the Klamath Straits was financed and paid for by the members of the drainage district. This included the costs for 6,365 acres which remain in public domain. The Klamath Drainage District still has not been reimbursed for the cost of reclaiming this public land.

Second, the 6,365 acres of public land in the Klamath Straits, most of which sits right in the center of the drainage district, is not an area of intensive use by waterfowl, and would be of greater all-round value if it were farmed properly, with attention to rotation of crops, while still giving protection to feeding for the birds.

Inasmuch as the members of the drainage district are willing to reserve the hunting rights on the land in perpetuity, and to prevent any use of the land which would be detrimental to waterfowl and wildlife interests, I urge careful thought be given to the amendment requested by Mr. Henzel and Mr. Proctor.

Senator Moss. You may go ahead, Mr. Edwards.

STATEMENT OF MAX N. EDWARDS, ASSISTANT TO THE SECRETARY OF THE INTERIOR AND LEGISLATIVE COUNSEL; ACCOMPANIED BY DANIEL H. JANZEN, DIRECTOR OF THE BUREAU OF SPORT FISHERIES AND WILDLIFE; AND DAVID FINNEGAN, LAWYER, LEGISLATIVE DIVISION

Mr. EDWARDS. Mr. Chairman and members of the committee, in addition to Mr. Janzen, I have on my right Mr. David Finnegan, who is a lawyer with the Legislative Division, who has been working on this problem for some time and is quite familiar with the irrigation contract, that is, the contract between the Bureau and the irrigation district.

Senator Moss. Happy to have you, Mr. Finnegan.

Mr. EDWARDS. I express the regrets of the Secretary of the Interior, Mr. Udall, that he could not be here, because he has an extreme and continuing interest in resolving this problem.

I am mindful of the chairmans' words about reading a statement. The statement which I would ask permission to read is the Secretary's, since he is not here. It is a very brief one.

Senator Moss. You may do that, sir.

Mr. EDWARDS. Since it does make specific reference to areas, I would, while I am reading it, ask Mr. Janzen if he might point out some of the areas on the maps that are displayed here, and when I have concluded, Mr. Janzen will go into a more detailed description of those areas as to how they relate to waterfowl management and to the project itself.

Senator Moss. You may proceed in that manner.

Mr. EDWARDS. Mr. Chairman, we are again appearing before your committee in support of legislation to provide a permanent basis for the management of the resources within four of the five national wildlife refuges in the Upper Klamath Basin of California and Oregon. A bill on this subject (S. 1988) passed the Senate last year but was not enacted by the 87th Congress.

While the basic purposes of Senator Engle's bill, S. 784, and the bill by Senator Kuchel and Senator Robertson, S. 793, are substantially the same, our report to your committee recommends enactment of S. 784, with one amendment, since we believe that S. 784 provides more definitive guidelines for administering the four wildlife refuges and the Klamath reclamation project.

Legislation on this subject is essential to settle a controversy over land use that has been unresolved for over 20 years. A major question is: should some 20,000 or more acres of key public lands within 2 of these refuges—Tule Lake and Lower Klamath—now leased to farmers for agricultural purposes, be homesteaded or sold, or should they be dedicated primarily for waterfowl purposes? It is our view that retention of these particular lands in Federal ownership, and retention of certain other public lands as well, will help preserve waterfowl resources of the Pacific flyway, prevent depredations, and at the same time, aid the economy of the local people.

Specifically, S. 784 provides that—

(1) The public lands within the Tule Lake, Lower Klamath, and Upper Klamath National Wildlife Refuges, which were established by Executive order, will be retained in Federal ownership for the major purpose of waterfowl management, but with full consideration of optimum agricultural use consistent therewith. S. 793 also places Clear Lake National Wildlife Refuge in this category.

(2) The agricultural use, consistent with proper waterfowl management, of specified tracts within Tule Lake Refuge and the Klamath Straits unit of the Lower Klamath Refuge will be continued under the present leasing system by the Bureau of Reclamation. The Secretary will be authorized to manage the other lands described in the bill for waterfowl purposes.

(3) The Department of the Interior will be able to round out the refuges by the addition of other small tracts of public lands mentioned in the bill.

(4) The revenues from the leases will be shared equitably with the local counties, after meeting certain contractual commit-

ments with the Tule Lake Irrigation District and the Klamath Drainage District.

(5) The Secretary will continue to regulate waters under his control to maintain levels for waterfowl management purposes, subject to valid existing rights, including the contractual rights of the Tule Lake Irrigation District.

(6) The Secretary will complete studies relating to water resources development and waterfowl management potentials of the Clear Lake Refuge.

These objectives are in harmony with the so-called "Wetlands Loan Act" of 1961 which directed our Department to speed up its program of acquiring wetlands and maintaining an adequate amount of habitat for waterfowl management before it is too late. These areas, already in Federal ownership, are probably the most important complex of waterfowl lands in the Nation. The Upper Klamath Basin Refuges are the waist of an hourglass through which funnel, during migration, most of the ducks and geese of the Pacific flyway. Proper management of these refuges is essential to hold these birds until the harvest of rice and other crops in the Central Valley of California is completed. Also, proper management of these areas is vital to providing adequate nesting and resting areas for waterfowl and other birdlife.

As I have indicated, these lands are already in Federal ownership, and we believe they must remain in that status in order to carry out properly our program of waterfowl management. Another consideration for keeping these lands in Federal ownership is to insure that public hunting areas, within these refuges, will be maintained. The contribution that visiting hunters make to the economy of the Tule Lake area is extremely important to all of the towns in the basin.

This legislation is also in keeping with the views of the Senate Select Committee on National Water Resources and the Outdoor Recreation Resources Review Commission. Their reports pointed out that fish and wildlife conservation and outdoor recreation deserve full consideration in the planning, construction, and operation of Federal water resource projects. Furthermore the President in his message on conservation, which he sent to the Congress on March 1, 1962, pointed out that water resources should be developed to provide maximum benefits for all purposes, including irrigation, wildlife and recreation.

About 80 percent of the migratory waterfowl in the Pacific continue to concentrate in the Upper Klamath Basin as they funnel through the area. Most of the concentration is in the Tule Lake and Lower Klamath refuges. Millions of ducks and geese and a great number of shore birds and various marsh-dwelling species feed and rest in this area.

The refuges also provide economic and recreational value as well as aid in preventing crop depredations. Substantial amounts of money are placed in commercial channels each year as a result of the sport of waterfowling. Further, the sight of millions of waterfowl in one area on these refuges is a prime tourist attraction. Thus, from a local, regional, and national viewpoint, the use of these refuges by waterfowl plays a highly significant economic role.

We believe S. 784, with our proposed amendment provides in clear definitive language the stability that is needed to continue our waterfowl management practices with no additional costs to the Govern-

ment, except for that portion of the lease revenues that would be apportioned to the counties. Both bills, however, are designed to protect the integrity of the refuges and the agricultural needs of the project. Further, these bills clearly recognize the financial and other obligations of the Federal Government to the local irrigation districts that must be fulfilled, as well as the international treaty obligations for the conservation of migratory waterfowl.

We believe that S. 784 in particular is designed to successfully overcome the objections that have been raised previously, and will result in maximum values for both waterfowl management and agriculture production. Its enactment will stabilize land tenure, allow for regulation of sump levels and permit the Bureau of Sports Fisheries and Wildlife and the Bureau of Reclamation of this Department to proceed with sound programs.

We believe that S. 784, with our suggested amendment, is a fair and equitable solution that is clearly in the public interest.

Senator MOSS. Thank you, Mr. Edwards.

Senator KUCHEL. I would like to ask Mr. Edwards some questions, if I may.

Senator MOSS. You may.

I understand you were reading the statement of the Secretary, but you are available for questions?

Mr. EDWARDS. Yes, sir.

Senator KUCHEL. Can you sum up what the objections which were raised previously, to our legislation last year, consist of, Mr. Edwards?

Mr. EDWARDS. I do not think the objections—I was not referring to S. 1988—I am talking about the objections that have been raised by the conservation folks, who are interested, as this Department is. And our primary emphasis is on the waterfowl management. I am referring to that in one aspect, and in another to the interest of the irrigation district and to the farmers. I think there have been objections as to how this problem should be approached.

First of all I think that the primary objection, Senator, in approaching this problem, was to eliminate from homestead the lands which yet remain within the refuges. And we now have no resistance from any source on this particular question.

And it seems to me this is a long step forward in achieving the objectives that we have all sought.

Senator KUCHEL. Well, referring to the bill of my colleague, what is the basic intent of that legislation? What would this legislation do? What authority or responsibility would it give to the Secretary of the Interior with respect to the wildlife areas?

Mr. EDWARDS. Well, it would give the Secretary of Interior authority to make a major emphasis upon waterfowl management and also to recognize the existing contract between the Bureau and the Tule-lake Irrigation District and the Klamath Drainage District.

Senator KUCHEL. Let's talk about that contract a little bit, Mr. Edwards, because it is going to plague this committee. You were here and listened to the earlier discussions?

Mr. EDWARDS. Yes, sir.

Senator KUCHEL. And you are acquainted with the provisions of section 7(b), which provide for the operation of the sumps for the primary and first purpose of agriculture with respect to the district operations?

Mr. EDWARDS. Yes, sir.

Senator KUCHEL. And you are acquainted with the other section to which reference was made, as to how disputes would be resolved?

Mr. EDWARDS. Yes, but, Senator, that section—was that section 32?

Senator KUCHEL. Yes.

Mr. EDWARDS. That section refers to disputes, I think—I guess it was on page 32; it is section 32(a), on page 3—and relates to disputes that arise between the district and any of the parties receiving water from the works operated by the district.

Senator KUCHEL. Yes.

Mr. EDWARDS. In your colloquy with Senator Engle, you were referring to a different type of dispute, as I understand it.

Senator KUCHEL. No; I was not. If the works operated by the district were transferred to the Federal Government, do I understand you to feel, then, that section 32 would not apply in the event that a dispute took place?

Mr. EDWARDS. No. Not at all. I thought you were talking about if the Secretary capriciously—

Senator KUCHEL. I was not.

Mr. EDWARDS. Then I am wrong in my reference.

Senator KUCHEL. What I am trying to get at is, Mr. Edwards: Do you think section 32 gives the Secretary of Interior the authority, where a dispute arises, to overrule the priority for agriculture in section 7(b)?

Mr. EDWARDS. Well, let me answer it in this way, and say that you and I are thinking about the maintenance of these sump levels.

Senator KUCHEL. Yes, sir.

Mr. EDWARDS. And the sump levels are maintained according to the rules and regulations of the Secretary, which are referred to in section 7 of the contract.

Senator KUCHEL. Yes, sir.

Mr. EDWARDS. These rules and regulations are made and promulgated by that authority. If these rules and regulations were violated with respect to maintaining an improper level of the sumps, I think that the Secretary could cancel the contract.

Senator KUCHEL. And with respect to any dispute on the operation of the sumps, would the Secretary have the right to make a decision as to which side of the dispute he would follow?

In other words, he would have a right to settle the dispute, would he not?

Mr. EDWARDS. Yes, sir.

Senator KUCHEL. Now, is it not your intention, and the intention of the Department of Interior, by any legislation in this field, to clothe the U.S. Government, and particularly your Department, with the responsibility, on these refuge areas, to deal first with the problem of conservation?

Mr. EDWARDS. Absolutely; yes, sir.

Senator KUCHEL. And is it not your belief that the legislation which the Congress might adopt ought clearly to spell that out, so that there is no question of priority, here? That is, I think, the position of the Department.

Mr. EDWARDS. Well, of course, you and I both recognize, and everyone who has paid any attention to it, that this is difficult to answer.

But I would say absolutely, unequivocally, and yet I do not think that we can approach this problem without recognizing this contract that exists between the Bureau and these districts.

Senator KUCHEL. I agree with you. But I think we should also agree, if we can, that the contract consists of several sections.

Mr. EDWARDS. Yes, sir.

Senator KUCHEL. And where a dispute arises, the contract specifically provides that the Secretary himself shall make the decision relative to the dispute. He should decide, any time a dispute takes place. There is no question about that.

Mr. EDWARDS. Right.

Senator KUCHEL. Now, in the bill which I introduced, Mr. Edwards, a year ago, and which I again introduced this year, page 2, section 2:

Notwithstanding any other provisions of law, all lands owned by the United States lying within the Executive order boundaries of the Tule Lake National Wildlife Refuge, the Lower Klamath National Wildlife Refuge, the Upper Klamath National Wildlife Refuge, and the Clear Lake Wildlife Refuge are hereby dedicated to wildlife conservation.

You would not quarrel with that language, of course?

Mr. EDWARDS. No, sir.

Senator KUCHEL (reading):

Such lands shall be administered by the Secretary of the Interior for the major purpose of waterfowl management.

Stopping right there, you would not object to that? That is what you desire?

Mr. EDWARDS. That is right.

Senator KUCHEL (reading):

* * * but with full consideration to optimum agricultural use that is consistent therewith.

That, too, would be in line with the position of the Department, would it not?

Mr. EDWARDS. That is true.

Senator KUCHEL. And then the following sentence, which you have already testified to specifically: "Such lands shall not be opened to homestead entry."

And that of course is the position of the Department.

In section 6 in my bill, I provide, as was the case last year:

In carrying out the obligations of the United States under any migratory bird treaty—

and so forth, as they are listed—

waters under the control of the Secretary of Interior shall be regulated, subject to valid existing rights, to maintain sump levels in the Tule Lake National Wildlife Refuge at levels established by contract and regulations pursuant thereto, which shall be levels that in the judgment of the Secretary are adequate and practicable for waterfowl management purposes.

Would you or the Department quarrel with any of that verbiage, Mr. Edwards?

Mr. EDWARDS. No, I think we have made that very clear in our report, Senator, that we do not quarrel with the language. The Senator's bill last year was passed unanimously, and we certainly do not

have any quarrel with this. These are the objectives that we are looking for.

I think you stated it very properly when you were speaking with Senator Engle. The difficulty comes in what tools we are going to use to approach the problem. We all know what the problem is.

Senator KUCHEL. I did not hear you. Will you repeat that?

Mr. EDWARDS. I said: You said this to Senator Engle before, that you both recognized what the problem is. It is a question of what tools, what words, we should use to solve it.

Senator KUCHEL. Along those lines, where you suggest in your statement that there are more definitive guidelines in the Engle bill than in mine, I wonder if you would enumerate those, section by section, for the benefit of the committee.

Mr. EDWARDS. Well, now, title I—

Maybe it would be better if we go section by section, because the bills are so nearly alike. If I may, I will just point out what I think may be the primary differences.

I refer to section 5 of S. 784.

Senator KUCHEL. That is the Engle bill?

Mr. EDWARDS. That is the Engle bill.

It is where we refer to particular areas where the Secretary shall, consistent with the proper waterfowl management, continue the present leasing patterns.

And I will ask Mr. Janzen if he will point out on the map these areas.

Senator KUCHEL. Well, just to compare the bills, however, first, those are spelled out in section 5. Would you contrast those with the situation in S. 793, my bill?

Mr. EDWARDS. I will simply say that section 4 of your bill does not make specific reference to the Klamath Straits unit, the southwest sump.

Senator KUCHEL. Would you read the language in my bill, there, Mr. Edwards, in section 4?

Mr. EDWARDS. Yes, sir.

SEC. 4. In carrying out the policy of this Act, the Secretary of the Interior shall retain full authority to lease for agricultural purposes the reserved public lands lying within the Executive order boundaries of the Lower Klamath and the Tule Lake National Wildlife Refuges. Leases for agricultural purposes shall provide for the growing of grains, forage, and soil-building crops, except that not more than 25 per centum of the leased lands may be planted to row crops.

That last is extremely important, the 25 percent being in row crops, and that is referred to also in the Engle bill.

Senator KUCHEL. Yes, sir.

Now, where I described the area capable of leasing by the Department as—

public lands lying within the Executive order boundaries of the Lower Klamath and the Tule Lake National Wildlife Refuges—

are there any lands in the Engle bill specified which are outside of the Executive order boundaries mentioned in my bill?

Mr. EDWARDS. I do not think so. No, sir.

Senator KUCHEL. So what advantage would you see in the greater verbiage in the Engle bill than the language in my bill which refers to the Executive order boundaries of these two refuges? What is the advantage?

Mr. EDWARDS. Well, I would think that that would restrict the area and fix it as of the date of enactment of this bill.

Senator KUCHEL. Well, I think that is true. But how would the Engle bill differ in that respect?

Mr. EDWARDS. Well, these areas could be changed.

Senator KUCHEL. They could? And where is the language which would permit them to be changed?

Mr. EDWARDS. Well, Senator, in the terms of your section 4, it just refers to "the area within the Executive boundaries of the Lower Klamath and Tule Lake area." And this is more specific. I think it is a minimal difference.

Senator KUCHEL. From a legal standpoint, they describe the same area. Is that not true?

Mr. EDWARDS. Yes. Yes, they do. That is right.

Senator KUCHEL. Would you just keep on, Mr. Edwards? I would like to see what the other definitive guidelines are.

Mr. EDWARDS. All right, sir.

On line 24 of page 4 of the Engle bill, the sentence:

Leases for these lands shall be at a price or prices designed to obtain the maximum lease revenues.

That is a difference in your bill. And of course, the reason for that is to protect the contract rights of the irrigation district. In other words, to protect the contract rights of the members of the district, the pattern of leasing has to be maintained.

If it were changed so that all the area within the Executive boundaries were leased, say, on a sharecropping basis, it would make a difference. And I refer to section 4 of the contract.

But again, I say that this is additional protective language relating, as I said before, to the contract itself.

Senator KUCHEL. In the absence of such a sentence, "Leases for these lands shall be at a price or prices designed to obtain the maximum lease revenues," is it your fear that the Department might for other reasons enter into leaseholds that would not bring the maximum lease revenues?

Mr. EDWARDS. Well, just as I said, Senator, sharecropping would bring less revenues.

Senator KUCHEL. Yes.

Mr. EDWARDS. As a matter of fact, would not bring any revenues at all.

Senator KUCHEL. And you would prefer legislation which would eliminate your right to enter into sharecropping leaseholds?

Mr. EDWARDS. No, if we just continued the same pattern of leasing that the Bureau of Reclamation has established.

Senator KUCHEL. Do you have sharecropping leaseholds now?

Mr. EDWARDS. Yes, sir.

Senator KUCHEL. Then would this language in the Engle bill prevent you from entering into sharecropping contracts in the future?

Mr. EDWARDS. No, sir. But without that language, it might be possible to devote the full area to a sharecropping basis which would then be a violation of the terms of the contract, and quite objectionable, I am sure, from the standpoint of the irrigation district. As a matter of fact, I am quite sure I know this.

Senator KUCHEL. I do not know that I understand you. The language you referred to in the Engle bill provides that leases for these lands, that is, the lands susceptible to lease, shall be at a price or prices designed to obtain the maximum lease revenues. And you want that to be in any legislation that the committee would approve?

Mr. EDWARDS. Yes, sir. I think so.

Senator KUCHEL. Did I understand you to say that a sharecropping lease might bring less than the maximum lease revenues?

Mr. EDWARDS. It would not bring anything. It would not give anything to the district.

Senator KUCHEL. Is this language, "leases for these lands shall be at a price designed to obtain maximum lease revenues"—does that include funds that would accrue to the benefit of the district?

Mr. EDWARDS. I cannot answer that right now. I can have a man who is familiar with the leasing practices of the Bureau.

Senator KUCHEL. Would you prepare a memorandum on the necessity of that sentence for the record, before we close it, Mr. Edwards?

Mr. EDWARDS. Yes, sir.

(Subsequently the following communication was received:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 9, 1963.

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

DEAR SENATOR JACKSON: During the hearings on April 24, 1963, before the Subcommittee on Irrigation and Reclamation of the Senate Committee on Interior and Insular Affairs on S. 784 and S. 793, Senator Kuchel requested that we explain further the provisions of section 5 of S. 784 and in particular the following sentence in that section: "Leases for these lands shall be at a price or prices designed to obtain the maximum lease revenues."

Section 5 of S. 784 provides:

"SEC. 5. The Secretary shall, consistent with proper waterfowl management, continue the present pattern of leasing the reserved lands of the Klamath Straits unit, the Southwest Sump, the League of Nation unit, the Henzel lease, and the Frog Pond unit, all within the Executive order boundaries of the Lower Klamath and Tule Lake National Wildlife Refuges and shown in plate 4 of the report entitled "Plan for Wildlife Use of Federal Lands in the Upper Klamath Basin, Oregon-California," dated April 1956. Leases for these lands shall be at a price or prices designed to obtain the maximum lease revenues. The leases shall provide for the growing of grain, forage, and soil-building crops, except that not more than 25 per centum of the total leased lands may be planted to row crops. All other reserved public lands included in section 2 of this Act shall continue to be managed by the Secretary for waterfowl purposes, including the growing of agricultural crops by direct planting and share-crop agreements with local cooperators where necessary."

This section authorizes and directs the Secretary of the Interior, consistent with proper waterfowl management, to continue to lease certain described lands within the present Executive order boundaries of the Tule Lake and Lower Klamath refuges for agriculture purposes. These described lands have been historically leased by this Department through the Bureau of Reclamation. This section also provides that these leases include provisions for the growing of grain, forage, and soil-building crops, except that not more than 25 percent of the total leased lands may be planted to row crops. This provision, which is designed to assist in the management of migratory waterfowl, is now included in the leases issued by this Department covering the above described areas.

In addition to the above provisions section 5 of S. 784 provides that all the other reserved public lands included in section 2 of S. 784 shall continue to be managed by this Department for waterfowl purposes, including the growing of agricultural crops by direct planting and sharecrop agreements.

This would effectively authorize the Secretary to carry on the present practices of the U.S. Fish and Wildlife Service in providing feed for the migratory waterfowl and in aid of controlling depredations. Such authority is essential to the management of these lands for wildlife purposes.

Finally, section 5 provides: "Leases for these lands shall be at a price or prices designed to obtain the maximum lease revenues." This provision is designed to insure that the agricultural leases covering the described reserved public lands shall provide revenues sufficient to meet obligations under the contract between the United States and the Tulelake Irrigation District, dated September 10, 1956. Section 4(a) of that contract provides in part:

"4.(a) * * *, the district shall be entitled to and shall receive for use by it for any lawful purpose or purposes an amount equal to \$50,000 or 30 percent, whichever is the lesser, of the total of the—

(i) Net lease revenues derived, during the immediately preceding year, from the rental of public lands lying within the boundaries of the district, plus

(ii) Other revenues derived during the immediately preceding year, which are or may have been available for credit to the district pursuant to subsection I of the act of December 5, 1924 (43 Stat. 672) and the Interior Department Appropriation Act of June 18, 1940 (54 Stat. 406)."

This provision is also designed to insure that such leases shall provide revenues sufficient to permit amortization of appropriate project construction costs in the manner contemplated by the act of August 1, 1956 (70 Stat. 799); and finally, to provide revenues sufficient to meet the obligation of making annual payments to the counties pursuant to section 4 of S. 784.

We believe that these provisions of section 5 of S. 784 are essential to the management and operation of the wildlife refuges and the project.

Sincerely yours,

MAX N. EDWARDS,

Assistant to the Secretary and Legislative Counsel.

Senator KUCHEL. Now, what other definitive guidelines would you point to?

Mr. EDWARDS. On page 5 of the Engle bill, on line 3, there begins the last sentence, which reads:

All other reserved public land included in section 2 of this act shall continue to be managed by the Secretary for waterfowl purposes, including the growing of agricultural crops by direct planning and sharecrop agreements with local cooperators where necessary.

This, again, refers to the same thing which we have just been discussing, that would give us authority to continue sharecropping if we feel that it is absolutely necessary.

Senator KUCHEL. Is there anything in my bill which would prevent you from continuing in sharecropping?

Mr. EDWARDS. No, sir. I think this is clarifying, however.

Senator KUCHEL. How does it clarify?

Mr. EDWARDS. Because it simply refers to it. It might be questioned that we did not have the authority under the existing leasing practices, or they might be challenged.

This is the only reason that I say that we prefer this language. But there is nothing in your bill that says we cannot sharecrop.

Senator KUCHEL. And has anyone ever challenged your right to sharecrop?

Mr. EDWARDS. Not to my knowledge.

Senator KUCHEL. And you would contend that you have that right?

Mr. EDWARDS. Yes, sir.

Senator KUCHEL. All right. What other definitive guidelines?

Mr. EDWARDS. I think the only other thing is with reference to section 4—

Senator KUCHEL. In the Engle bill?

Mr. EDWARDS. In the Engle bill, section 4 refers to, as does your bill, the amounts to be paid to the counties from the net revenues, and the Engle bill makes no specific reference, under section 4, subparagraph (2), to a specific amount, but says:

To pay the Klamath Drainage District the balance thereof until such sum as may be determined to be equitable by the Secretary and the district has been paid as full reimbursement for the construction of irrigation facilities to the lands involved.

And also subparagraph (1) makes the same reference that you do in your bill to payments or credits due the Tulelake Irrigation District. In your bills you refer to the specific amount of \$197,315.

This is a small point, but there seems to be some uncertainty. I do not think there is a wide variance, but there seems to be some uncertainty as to what the exact amount is, and that is why it seems to me that it would be better to leave it in a negotiable state rather than fix this amount by statute.

Senator KUCHEL. Mr. Edwards, did the Department prepare Senator Engle's bill?

Mr. EDWARDS. Yes, sir.

Senator KUCHEL. Now, as a matter of fact, a year ago the Department prepared most of my bill.

Mr. EDWARDS. Yes, sir.

Senator KUCHEL. The committee did amend it somewhat. The fixed dollar amount in my bill was written into my bill a year ago by your Department. What is the basis on which you have felt that there should be this change?

Mr. EDWARDS. I will have someone from the Bureau of Reclamation go into this. You asked me whether we prepared Senator Engle's bill. Of course, we did. And we prepared the same bill for you as a drafting service.

I have spoken with Mr. Andrews several times, of course, about this. Or, rather, we furnish a copy of the same to you and also to Congressman Johnson.

Senator KUCHEL. Yes, sir. And since that time, you now feel that section 7 of the Engle bill ought to be amended?

Mr. EDWARDS. Yes, sir.

Senator KUCHEL. We will get into that in a minute.

Are there any other definitive guidelines, if I may use that phrase, which differentiate this bill from my bill?

Mr. EDWARDS. I think, Senator, that is just about it.

Senator KUCHEL. Now, I am not kidding when I say this. I do not think those are very definitive guideline differences. But I am glad to get them in the record.

Let's refer to the text of your now new section 7 to the Engle bill. What were the reasons, Mr. Edwards, for the Department's suggesting this new section 7?

Mr. EDWARDS. As is spelled out in the legislative report, Senator? Did you say as spelled out in the legislative report?

Senator KUCHEL. Yes; if you would just summarize the reasons which prompted the Department to come forward with a new suggested section 7 to what is previously prepared as section 7.

Mr. EDWARDS. Essentially, the only thing that we did was to add language so that the contract could be amended between the parties.

Senator KUCHEL. The contract could be amended?

Mr. EDWARDS. Yes. In other words, we refer to the contract dated September 10, 1956, and then we added "or any amendment thereof."

Senator KUCHEL. Is that really important, Mr. Edwards?

Mr. EDWARDS. I think it is, Senator.

Senator KUCHEL. You do think it is?

Mr. EDWARDS. It restricts the contract by legislative fiat. Then we have to go back to Congress to change it.

Senator KUCHEL. So that your belief is that the two words, "as amended," do constitute a perfection to that section 7?

Mr. EDWARDS. Yes, sir.

Senator KUCHEL. All right. Go on.

Mr. EDWARDS. And then we add the language "and the rules and regulations of the Secretary thereunder."

Now, that is in the present section of the printed bill.

And—this in new language—"and the levels that are in the judgment of the Secretary adequate and practicable for waterfowl management purposes."

Senator KUCHEL. Now, let me ask: Why do you consider it necessary to single out the provisions of the contract enumerated in articles 7 (b) and (d) and place them in the bill as a guideline for the Secretary's decision?

Mr. EDWARDS. Well, the Senator is familiar with the problem which arose in 1959. This is where this controversy was accentuated. And since that time, however, I believe that the interests of the Department, the interests of the irrigation district, the interests of the conservationists, have honestly been maintained by hardworking reasonable people.

I was out at Tule Lake for 3 or 4 days over 6 weeks ago, and spent an equal amount of time with the manager of the Tulelake Irrigation District and the manager of the refuge. I was pleasingly surprised to see the extreme amount of cooperation that exists between these people.

Senator KUCHEL. Does the district favor the Engle bill now, Mr. Edwards?

Mr. EDWARDS. That I do not know. I will have to let them speak for themselves.

Senator KUCHEL. I think that probably would be better.

Mr. EDWARDS. But I think that this is the way that we recommend a solution. It is perhaps not perfect. I do not know whether we could achieve perfection, here. But I think that there had been for a long time a fear on the part of the farming interests and the water users that there was some effort on the part of the conservationists to just ignore the contract that existed.

And in speaking to the conservation people, I many times have said that it could not be done, and that I hoped they did not try to give that impression.

Senator KUCHEL. And you and I both agreed a year ago on that very position, and therefore we wrote into the bill that the Senate passed a year ago, which I introduced, a specific provision with respect to the contract.

Mr. EDWARDS. Yes.

Senator KUCHEL. But my point is this: Why have you approved, this year, a reference to two sections of the contract? A contract ought to be treated as a whole, should it not? Why should this Congress give dignity to any particular section of a contract and not give equal dignity to the other sections?

Mr. EDWARDS. I would have no objection to a reference to the contract itself.

Senator KUCHEL. To the entire contract?

Mr. EDWARDS. Yes, because I do not think the fact that we spell out article 7(b) and 7(d)—I do not think that you ignore the four cornered rule of contracts.

Senator KUCHEL. At least, you ignore it in the bill.

Mr. EDWARDS. Well, I do not think we should ignore it in the bill. I think that a reference to it does not enlarge it. I do not think it diminishes its legal impact.

Senator KUCHEL. If you do not ignore the whole contract, at least you do not mention it. All you do is mention two sections. Is that not true?

Mr. EDWARDS. I am sorry. I did not get the question.

Senator KUCHEL. I say: If you do not ignore the other provisions of the contract, at least you do not mention them in this Engle bill. The only sections you mention are section 7(b) and 7(d).

Let me read you again, Mr. Edwards, the phraseology in my bill, section 6:

In carrying out the obligations of the United States under any migratory bird treaty—

and so forth, with the other applicable statutes—

waters under the control of the Secretary of Interior shall be regulated, subject to valid existing rights, to maintain sump levels in the Tule Lake National Wildlife Refuge at levels established by contract and regulations pursuant thereto, which shall be levels that in the judgment of the Secretary are equitable and practicable for waterfowl management purposes.

What part of that section would you quarrel with, Mr. Edwards?

Mr. EDWARDS. I think I have already told the Senator that I do not quarrel.

Senator KUCHEL. How would you find section 7 of the Engle bill, as you recommend it to be amended, better serving the public interest?

Mr. EDWARDS. I would say it makes a specific reference to the contract.

Senator KUCHEL. Well, so does mine in providing "at levels established by contract and regulations pursuant thereto."

Mr. EDWARDS. And by referring to article 7(b) and 7(d), we are touching on this problem of sump levels, and I think that is the only thing that we have left here that you and I may be in disagreement about, that is, from the standpoint of how to solve this problem.

Senator KUCHEL. Other than that, you have no quarrel with my language?

Mr. EDWARDS. No, sir.

Senator KUCHEL. Well, suppose, rather than say, "established by contract," supposing we said: "established by sections 1, 2, 3, 4, 5, 6, 7 (a), (b), (c), (d)," and on down?

Mr. EDWARDS. And spell it on out?

Senator KUCHEL. Would you have any objection to that?

Mr. EDWARDS. No, sir.

Senator KUCHEL. Well, if you would not have any objection to that, why not just say "the contract"; because "the contract" would include the whole?

Mr. EDWARDS. I think that I have said that. I have said this is something we prefer. This, in the final analysis, is going to be determined by this committee and by the Congress of the United States.

I must confess—and this may be what the Senator is searching for—that I am looking for a solution to this problem, and I am not willing to sacrifice what I think is the important principle, because I think the paramount interest here is in the conservation of the waterfowl resources that we have. I think this is something we may get through this Congress—not saying that this will not, also. But this is my thinking.

Senator KUCHEL. Just one more thing: In your judgment, your proposed amended section 7, in specifically referring to two sections of the contract, does not give any greater dignity to those sections than any other provision in the contract? Is that correct?

Mr. EDWARDS. No, sir; it does not.

Senator KUCHEL. And you want this Congress to pass legislation which will provide that the purposes of conservation and sound waterfowl-area practices, consistent with the optimum use of agriculture, be the basic intent of any legislation that the Congress would adopt?

Mr. EDWARDS. Yes; I do.

Senator KUCHEL. Well, I thank you very much, Mr. Edwards.

Senator Moss. Thank you, Mr. Edwards.

I do not think that I have any questions.

Senator KUCHEL. I want to ask Mr. Edwards about one more point, if you will let me, Mr. Chairman.

On page 2 of your report, you go on to say that my bill, S. 793, "also places Clear Lake National Wildlife Refuge in this category," the category being for major purposes of waterfowl management.

Are you in favor of that provision of my bill?

Mr. EDWARDS. Yes; although there is nothing mentioned in here.

Senator KUCHEL. It is not mentioned in the Engle bill?

Mr. EDWARDS. It is not. But it is referred to as one of the areas that would preclude further homesteading.

Senator KUCHEL. So you would recommend that the intention with which my bill spells that area out be included in any legislation we pass?

Mr. EDWARDS. Yes.

Senator KUCHEL. Thank you.

Senator Moss. You may proceed, Mr. Janzen.

STATEMENT OF DANIEL H. JANZEN, DIRECTOR, BUREAU OF FISHERIES AND WILDLIFE

Mr. JANZEN. Mr. Chairman, I have a statement here concerning the wildlife details of this project.

Our Department urges enactment of S. 784 or S. 793, if amended as suggested in the Department's report to your committee. We consider legislation on this subject essential to our waterfowl conservation program.

Under treaties between the United States, Canada, and Mexico, the Department of the Interior has responsibility for management of all migratory birds. Waterfowl are dependent upon each of these countries during some part of the year, because of their migration habits.

During their journeys, ducks and geese use four general travel routes, or flyways, which are known as the Atlantic, Mississippi, Central, and Pacific flyways.

Aquatic migratory birds, such as wild ducks and geese, must have suitable marsh and water with an adequate food supply along their entire path of migration, or they cannot survive. The demands of civilization have eliminated much of this needed habitat.

Congress has long recognized the needs of waterfowl and through the years has provided legislation designed to help safeguard wetlands. In 1961 the Congress authorized an advance of \$105 million, to be expended over a 7-year period for the purchase of waterfowl habitat. Seven million dollars have been appropriated to date. All advances will be paid back from duck stamp receipts.

We believe the loan fund authorized by Congress will make a distinct contribution toward meeting the long-range needs of migratory waterfowl. It is essential that existing private wetlands be procured while they are still available.

It is equally important that federally controlled wetlands and other habitat suitable for waterfowl be retained for waterfowl-management purposes. We must also continue to take advantage of waterfowl-conservation opportunities on water-resource projects.

The five refuges in the Upper Klamath Basin; namely, Tule Lake, Lower Klamath, Upper Klamath, Clear Lake, and Klamath Forest National Wildlife Refuges, fall in the category of existing Federal wetlands habitat. Tule Lake and Lower Klamath are the most important waterfowl areas in the Pacific flyway and the Nation.

We estimate that approximately 80 percent of the ducks and geese in the Pacific flyway funnel through the Upper Klamath Basin during migration periods. Federal refuges in the basin provide necessary protection, food, and nesting grounds for waterfowl.

Providing adequate waterfowl food is an important function of the basin refuges as a measure to delay the southward migration for the protection of rice and other crops in the Central and Imperial Valleys of California.

Providing feed on the refuges also minimizes waterfowl feeding in barley fields of local farmers in the basin. On a single day in the fall there have been as many as 7 million ducks and geese on the Lower Klamath and Tule Lake Refuges. The Klamath Basin was a magnificent resting and feeding ground for migratory and other birds long before the white man settled this country.

Around 1900, there were about 400,000 acres of marsh and water in the Upper Klamath Basin. Records of the Game Transfer Co. in San Francisco show that during the late 1890's market hunters shipped up to 120 tons of ducks to market in one season from this area.

Drainage of the marshes on the north fringe of Tule Lake for agriculture was undertaken by a few settlers in the early 1900's. More extensive drainage by the Reclamation Service, forerunner of the Bureau of Reclamation, followed cession of the lands by Oregon and California and the implementing Federal Act of 1905.

Tule Lake National Wildlife Refuge was established by Executive order in 1928 on 10,585 acres. Subsequent orders brought the total to 37,337 acres, of which some 2,400 acres have since been homesteaded.

Under agreements with the Bureau of Reclamation, the Bureau of Sport Fisheries and Wildlife obtained joint use of 13,000 acres of marsh and water for wildlife-management purposes.

This marsh and water sump provides an extremely valuable resting and feeding area for waterfowl during migrations and also functions as primary habitat for most of the birds produced on Tule Lake. The agreement also gave the Bureau of Sport Fisheries and Wildlife administrative use of 2,500 acres of agricultural land adjacent to the sump areas for wildlife food production.

Of the remaining, 15,000 acres within the refuge is cash leased to local farmers by the Bureau of Reclamation. Following the harvest, waterfowl glean the lease lands stubble fields for waste grain. The farmed lease lands provide needed living space where waterfowl may feed and rest, and are particularly attractive and valuable to geese and field-feeding species of ducks, such as mallards and pintails.

Waterfowl use records indicate that about 55 percent of all refuge goose use occurs on the water and marsh of sump 1b and on reserve sump 3 which is lease land except for a small acreage farmed by refuge personnel for waterfowl.

The combination of water and marsh on Tule Lake, refuge lands farmed for wildlife food, and lease lands providing supplemental resting and feeding has resulted in the most attractive and heavily used waterfowl area on the North American Continent.

S. 784 and S. 793 would retain these lease lands in Government ownership in perpetuity, dedicate them to the major use of wildlife conservation, but with full consideration to maximum agricultural use consistent therewith.

Tule Lake National Wildlife Refuge, the very heart of the Upper Klamath Basin refuge system, has consistently been threatened by a variety of plans for homesteading or land disposal by sale. About 2,400 acres of the refuge have already been homesteaded.

The construction of homes and buildings in the homesteaded area called the Panhandle, together with human habitation and other disturbance, have prevented waterfowl from using the area extensively.

Waterfowl use on the homesteaded area, now minor during the critical period of the hunting season, is similar to use on other private lands outside the Executive order boundary of the refuge.

A 13,000-acre area, now in water and marsh, which the bills specify shall not be reduced, produces as many as 53,000 young ducks and 1,100 geese in a single year and furnishes tremendous quantities of aquatic food.

For years sportsmen from throughout California and many other States have hunted the famed Tule marshes. Hunter use-days on Tule Lake exceed that of any other public hunting area in the State of California.

A key factor in the management of this vital segment of Pacific flyway waterfowl habitat is in the regulation of water elevations in sumps 1a and 1b to develop and maintain the best possible habitat and

environment for waterfowl, especially for redhead ducks which traditionally nest there in great numbers.

The bills, with the Department's proposed amendment, emphasize the need to maintain practicable water elevations for waterfowl management purposes in accordance with the district's contract and secretarial regulations. The bills provide that several small scattered tracts of public land under Bureau of Reclamation withdrawal which are contiguous or adjacent to the Tule Lake Refuge be dedicated to wildlife conservation.

This Bureau, under early agreements with the Bureau of Reclamation, has constructed housing and storage buildings on two of the tracts. The others, adjacent to the west boundary and on Sheepy Ridge, possess potential for public hunting and other recreational use.

In its pristine state Lower Klamath Lake was the ancestral breeding grounds for countless thousands of waterfowl and other water-loving birds. Migrant waterfowl in numbers described as "blackening the sky" gathered here each fall and spring in passing to and from breeding and wintering grounds.

Its outstanding value to waterfowl was recognized by ornithologists and conservationists, and through their influence President Theodore Roosevelt established it as the first waterfowl refuge in the United States by Executive order in 1908. At that time it was a vast water and marsh area of over 80,000 acres.

Attempts to reclaim the lake for agriculture began early in the 1900's. The supply of water from the Klamath River which supplied Lower Klamath Lake was shut off at the Southern Pacific Railroad, and the lake dried up by evaporation. Peat fires developed as the soils dried, and the attendant smoke and dust caused criticism and inconvenience in the basin.

Subsequent agreements with the Bureau of Reclamation provided that the Bureau of Sport Fisheries and Wildlife should manage 29,700 acres of Lower Klamath Lake intensively for waterfowl, but with the requirement that the area should serve as a sump for Tule Lake floodwaters.

A system of dikes, drains, and water control structures was constructed to create 13 management units designed for the following purposes: To make optimum use of water supplies; to minimize and control waterfowl losses from botulism or avian "duck sickness"; to farm the better agricultural lands so that the vast numbers of migrating waterfowl could be accommodated on reduced acreage and provided with food to avoid depredations to agricultural crops in the basin and in the Central Valley of California.

Management units may be selectively flooded to provide marsh habitat or farmed to produce grain for waterfowl needs. Most of the Lower Klamath land is less productive than the more fertile soils of Tule Lake.

However, new and improved farming techniques and practices have made agricultural crop production feasible on the better lands. The water and marsh and agricultural land development is supporting large waterfowl concentration.

Waterfowl production also is important. Records indicate that more waterfowl were produced on the refuge than taken by hunters in the refuge public hunting area and contiguous lands.

Lower Klamath ranks close to Tule Lake in the numbers of hunters accommodated. The 6,366-acre Klamath Straits tract which is within the Executive order boundary of the Lower Klamath Refuge but outside the intensive use area is available to Oregon sportsmen for waterfowl hunting.

It should remain in public ownership as a hunting area for the public, and continue to be leased for agricultural purposes by the United States as provided for in S. 784 and S. 793.

Should this tract be converted to private ownership, farm residences and other buildings and the attendant increased human disturbance and interference would depreciate its waterfowl values substantially.

The Miller Lake area, California-Oregon, could, with development, provide additional public hunting area.

Other tracts of public land under Bureau of Reclamation withdrawal within the Executive order boundary which the bills dedicate to wildlife conservation are Sheepy West (3,925 acres) and Sheepy East (1,902 acres).

These areas will provide lands needed for expansion of waterfowl facilities of the Lower Klamath Refuge and for additional hunting area. Outside the Executive order boundary are Bureau of Reclamation-controlled White Lake—1,189 acres—and various scattered tracts of importance in waterfowl management.

White Lake, when flooded, is a natural marsh dotted with innumerable small hummocks and islands and acreagewise is the most productive nesting habitat in the basin. The other tracts include portions of the "p" irrigation and drainage canal and join private lands on the west which later should be acquired to block out the Lower Klamath Refuge.

As a result of intensive development Lower Klamath Refuge has become a key refuge area with stature nearly equal to Tule Lake Refuge. Soil limitations and the higher frost hazard at Lower Klamath result in seasonal variations in production of waterfowl foods which lead to corresponding fluctuations in waterfowl use.

Specified Executive order lands in the refuge in California, which are not now being managed for wildlife, must be developed and managed intensively to fulfill waterfowl needs.

Drainage of 34,000 acres of wetlands in the Upper Klamath Basin since 1940 emphasizes the need for stabilizing management of the remnant of waterfowl habitat still available in the basin.

Federal lands in the Klamath Straits unit which are farmed under reclamation leases will continue to serve waterfowl management needs.

The Upper Klamath National Wildlife Refuge of 8,140 acres was established by Executive order in 1928, and enlarged by purchase of additional land to about 12,500 acres in 1952. The refuge, located in a narrow strip within the 28,000-acre bulrush marsh north of Upper Klamath Lake and west of Agency Lake, is subject to maximum annual fluctuation of about 6 feet as water is drawn from Upper Klamath Lake for irrigation and hydroelectric power.

During low water years, this marsh is largely a mudflat. Low water levels discourage nesting and result in waterfowl losses from botulism.

S. 784 and S. 793 would add 1,440 acres adjoining the refuge and dedicate this tract, and Bureau of Reclamation lands within the Executive order boundary, to wildlife conservation. This addition and further development could greatly increase waterfowl production and public hunting opportunity.

Upper Klamath National Wildlife Refuge has outstanding potential for diving duck nesting if water levels can be stabilized during the critical nesting period.

We do not anticipate that it will be possible to develop and operate this area in a manner that will serve large concentrations of birds as is the case at Lower Klamath and Tule Lake Refuges.

Because of the high cost of development and the frost hazard, refuge farming will be limited to that necessary to meet local depredation need and provide food for moderate numbers of fall and spring migrants.

Development of Upper Klamath National Wildlife Refuge should include Hank's Marsh, 1,050 acres of Bureau of Reclamation first form withdrawal land on the east edge of Upper Klamath Lake, north of the city of Klamath Falls.

Hank's Marsh has outstanding waterfowl nesting potentials. It suffers from annual fluctuations of Upper Klamath Lake which, in dry years, lower the marsh level during the nesting season and the summer botulism period. The correction of this situation will be a part of our long-range plan.

Hank's Marsh is a popular public waterfowl hunting area for sportsmen of Klamath Falls. It should be retained in public ownership, dedicated to wildlife conservation (the bills would do this), and developed as a nesting area for diving ducks and Canada geese, and as a public hunting area.

Clear Lake National Wildlife Refuge, established by Executive order in 1911 to protect colonial nesting birds, particularly white pelicans, and comprising 7,440 acres of rocky upland terrain and 25,500 acres of impounded water under normal conditions, is superimposed on a Bureau of Reclamation storage reservoir.

Excessive wind and wave action, combined with fluctuating water levels and extreme turbidity have precluded the establishment of aquatic plant growth.

Canada geese nest to some extent on the refuge and the vast open expanse of water is used to a minor degree as a resting area by fall waterfowl migrants. Sage grouse and pronghorn antelope occupy the rocky, sagebrush uplands.

Prior to the construction of the Bureau of Reclamation dam at the outlet of the lake and the raising of the water elevation for storage purposes, a sizable marsh existed in the northeast portion of the lake. Waterfowl used this marsh extensively for nesting.

The Bureau of Reclamation has made several proposals for the development of the Clear Lake unit and these have been reviewed by our Bureau with the objective of determining means of increasing waterfowl value on this area.

The proposals advanced thus far do not appear to afford opportunities for significant benefits through the production of cereal grains or natural foods.

We will continue and complete studies of possibilities for waterfowl development at Clear Lake in cooperation with the Bureau of Reclamation in hopes that a multiple-use program for this reservoir facility can be developed that will serve Reclamation's needs and also provide for greatly increased waterfowl use of this area.

The Klamath Forest National Wildlife Refuge, commonly referred to as Klamath Marsh, was formerly a part of the Klamath Indian Reservation. Acquisition was authorized in the Klamath Termination Act.

Transfer of 14,641 acres of tribal lands to the Bureau of Sport Fisheries and Wildlife was accomplished September 7, 1960, by the payment of duck stamp funds. The refuge area has been increased to 15,226 acres by additional purchases of private lands.

This roundstem bulrush marsh, situated at the extreme upper end of the Upper Klamath Basin at the foot of the east slope of the Cascade Mountain Range, is a productive nesting area for waterfowl, as well as for many species of marsh and water birds, including common snipe and greater sandhill cranes.

The rigorous climate precludes the growing of cereal grain which is so essential to feed mass waterfowl concentrations. The marsh freezes at an early date each fall pushing the birds southward.

This historically valuable and productive nesting habitat is now preserved in public ownership. Klamath Forest National Wildlife Refuge will never accommodate masses of waterfowl on the scale of the lower refuges of the basin, but is valuable in the total management program.

In conclusion, we believe that enactment of either S. 784 or S. 793, with the Department's proposed amendment, is a reasonable and equitable solution to the problem of joint use of lands in the Upper Klamath Basin withdrawn for waterfowl and reclamation purposes.

The Department's report on these bills recognizes that S. 784 would provide more definitive guidelines for harmonious and cooperative use of the natural resources of four National Wildlife Refuges and the Klamath Federal reclamation project.

I think instead of commenting on my statement, I might spend a few minutes explaining the features named in the bill.

Senator Moss. You may do that.

Mr. JANZEN. Mr. Russell, the manager of the refuges down there, will point out the features.

First I would like to call your attention to this large map, which shows in blue the original waterfowl habitat in the Klamath Basin before it was reclaimed for agriculture. This area was a magnificent resting and feeding ground for migratory and other birds long before the white man settled this country.

Around 1900, there were about 400,000 acres of marshland, which again is shown in blue, in the Upper Klamath Basin. The waterfowl value of these marshes can be illustrated by referring to the records of the Game Transfer Co., in San Francisco, which show that during the late 1890's, market hunters shipped up to 120 tons of ducks to the market in one season from this area. This would represent over 100,000 ducks shipped by one company in 1 year.

Mr. William L. Finley, early day naturalist and photographer, reported conditions on the original Tule Lake as follows:

When I cruised across Tule Lake in 1908 it was a body of water about 12 or 15 miles long and 10 or 11 miles wide. It was supplied by the water of Lost River entering from the north. The west side and the whole northern border was a vast tule marsh and a natural wildlife nursery.

There is every indication that Tule Lake had few equals as a mecca for waterfowl and other aquatic birds.

I simply point this out to make clear that these birds were not attracted into the basin because of these refuges superimposed on reclamation projects.

These birds have always heavily utilized these areas, and we must provide ways and means of taking care of them here in the fall until the agricultural crops to the south in California have reached that stage of harvest where they are no longer vulnerable to serious bird damage, and this must be done in such a way as to keep depredations to a minimum on the crops in the Klamath Basin.

We have superimposed in orange the Executive order boundaries referred to in S. 784 and S. 793. These refuges were established many years ago—Lower Klamath in 1908, the first major waterfowl refuge established in the United States; Clear Lake was established in 1911; Tule Lake and Upper Klamath in 1928.

I mention these dates merely to show that the need for dedicating some of the fast disappearing waterfowl habitat for water birds was appreciated many years ago.

Now we will turn this map around, and you will see the situation as it is today.

First, we will point out Tule Lake, which is referred to in the bill, and which, as I mentioned, has the most impressive history of waterfowl use. It still has the heaviest waterfowl use of any area in the Nation. This is because of the combination of shallow water sumps and the adjoining 2,500 acres of agricultural land farmed exclusively for the birds, plus the 1,500 acres of farmland leased by the Bureau of Reclamation to local farmers, which is by agreement devoted to crops which after harvest provide a great deal of waste grain.

This leased land, plus sump 1-b, is the area that has been suggested in the past as suitable for homesteading. This homesteading will be prohibited by either of the bills under consideration.

We feel that this refuge, with its combination of water and agricultural land, must remain intact in Government ownership and continue to be managed in much the same manner as it is now.

As I indicated earlier, this area in conjunction with Lower Klamath Lake Refuge holds 3½ to 7 million ducks out of the California rice fields until most of the crops are harvested. We cannot afford to reduce the bird holding power of this refuge.

Now, the Lower Klamath Refuge was a vast water and marsh area of over 80,000 acres, as denoted on the previous map. A part of it is now served as a sump for water pumps from Tule Refuge, which is at a lower elevation.

Now, a substantial part of this area is farmed for waterfowl use. The number of birds found on this area is almost unbelievable. It is a paradise for photographers that want to take pictures of large masses of birds.

Klamath Straits, mentioned in the bill, is located on the Oregon side of the Lower Klamath Refuge. It is leased by the Bureau of Reclamation to local farmers, with special restrictions on the types of crops that can be planted.

This area provides food for the birds. It is open to public hunting during the hunting season. There are no residences on the area that interfere with the birds or the hunting in connection therewith.

White Lake is considered acre for acre the most productive habitat.

Miller Lake (2,311 acres), Sheepy West (3,925 acres), and Sheepy East (1,902 acres), included in the Executive order boundary, have good potential for waterfowl if developed, but I want to point out that any additional development for waterfowl on these areas can in no sense be considered as a possible substitute for Tule Lake.

I mention this because it has been suggested in the past that development of areas such as these might produce waterfowl habitat that might substitute for some of the habitat on Tule Lake Refuge.

The additional lands that might be developed will no more than offset the drainage of waterfowl habitat which is still continuing in the basin on private lands. Approximately 34,000 acres of wetlands have been drained in the Upper Klamath Basin since 1940.

Now, there are a series of small alphabetical tracts mentioned in both bills. They are needed for canal right-of-way, road right-of-way, public hunting, and so forth. Two are being utilized for refuge buildings.

Upper Klamath Lake (12,500 acres): Upper Klamath Refuge adjoins Upper Klamath Lake. Because of fluctuating water levels of Klamath Lake—the water being utilized for irrigation and hydroelectric power—the refuge will not have much value for waterfowl until developed.

We have future plans for development, though it will be costly construction. Agricultural production of grain here is marginal. It will be outstanding for diving duck production, but never support large masses of birds such as we find at Tule and Lower Klamath Refuges.

We have concluded it cannot be considered as substitute habitat for Tule Lake.

Hanks Marsh, 1,050 acres, is dry or wet, depending upon fluctuations of Klamath Lake. It is now used for public hunting, is susceptible to being made into a good marsh with development, and we propose in the long range to improve it for waterfowl and keep it available for public hunting.

Klamath Forest National Wildlife Refuge, 15,226 acres, was bought from the Klamath Indian Reservation with duck stamp funds. It is valuable for waterfowl production. It is not an important stopping place for birds. It freezes up early.

Clear Lake: We now come to Clear Lake. It is referred to in both bills.

This is an Executive order refuge superimposed upon a reclamation storage reservoir in the year 1911, primarily to protect colonial nesting birds, particularly white pelicans.

The Bureau of Reclamation has given consideration to the feasibility of partitioning the water area of Clear Lake and draining a portion of the lake bottom to make it available for agricultural use. We

have been studying the wildlife values which might result from this development.

It is our considered opinion that even with expensive development, this area would never become important enough to waterfowl to be considered as a substitute for lands on the Tule Lake Refuge.

There are, however, possibilities of improving it for wildlife, and, as provided in both bills under consideration, we plan in cooperation with the Bureau of Reclamation to continue and complete studies relating to the development of the water resources and waterfowl management of this area.

This gives you a "once over lightly" of a very complex water development project on which agriculture and wildlife must live together.

If the Chair desires, we have a publication of the entire refuge system, which we can make available to each member of the committee for their use.

Senator Moss. I think that would be a very excellent idea.

Mr. JANZEN. And I might call your attention to some exhibits of mass birds that we have placed around the room.

I have, but in the interests of time you may want to skip this, a few slides. They were shown last year, and it is up to the Chair.

Senator Moss. I recall seeing them, and I am sure Senator Kuchel has, so we will skip the slides today. These pictures give some idea of the great mass of wildfowl that come in there, in this area.

Thank you very much, Mr. Janzen. We appreciate your testimony about this matter.

Do you have any questions of Mr. Janzen?

Senator KUCHEL. No, sir.

Senator Moss. Mr. Finnegan, did you have anything to add?

Thank you very much. We appreciate your appearance, Mr. Edwards and Mr. Janzen and Mr. Finnegan.

We cannot finish this list of witnesses by continuing this morning. Therefore, we will recess for lunch at this time. However, we will endeavor to get permission from the Senate to resume, because many of the witnesses have traveled a long distance to come to this hearing today, and we want to give them their opportunity.

I reiterate the opportunity there is for those who would wish to file a statement and have it made part of the record. That may be done. Otherwise, you may return—all of those who were to testify—at 1:30. We will resume at 1:30.

(Whereupon, at 12:10 p.m., the committee was recessed, to resume at 1:30 p.m., the same day.)

AFTERNOON SESSION

The subcommittee reconvened at 1:30 p.m., Senator Frank E. Moss (chairman of the subcommittee) presiding.

Senator Moss. The hearing will come to order, and we will resume.

This afternoon I say again to any of the witnesses that any of you who may wish to introduce your statements into the record may do so, and you may comment, if by so doing you may shorten the time, and this afternoon I would like to move along as rapidly as possible.

Our next witness will be Richard Henzel, who is president of the board of supervisors of the Klamath Drainage District.

Mr. Henzel, glad to have you with us, and is this Mr. Proctor?

STATEMENT OF RICHARD HENZEL, PRESIDENT OF THE BOARD OF SUPERVISORS FOR THE KLAMATH DRAINAGE DISTRICT; ACCOMPANIED BY GEORGE H. PROCTOR, ATTORNEY

Mr. HENZEL. With your permission, I would like Mr. Proctor to sit up here, and I will read my statement, which is rather short, and Mr. Proctor will summarize and will introduce the Oregon amendments.

Senator Moss. That will be fine.

We are very happy to have Mr. Proctor, who is counsel for the district.

You may proceed, sir.

Mr. HENZEL. Thank you.

The Klamath Drainage District comprises some 27,000 acres in 25 ownerships, all within the State of Oregon.

I have been actively engaged in farming in the Klamath Basin since 1932 and have been serving on this board since 1941.

Through district affairs and in our own farming operations, I have been in close contact with the Bureau of Reclamation and the Fish and Wildlife Service. I am familiar with much of the work these organizations have done in our area and the problems that were involved. I believe we have cooperated fully with both agencies through the years on mutually good terms.

On behalf of my associates and myself, I want to thank this subcommittee for arranging to let us present the problems of the Klamath Drainage District as affected by this proposed legislation.

In order to understand these problems, a brief background of the district and of the conditions and events leading up to the present situation will follow.

And I would refer you to this little green map, which is a detailed map of our district, showing the straits unit and other isolated tracts which we are concerned with in this legislation.

Senator Moss. You may refer to the map, and that will be included in the record by reference, so that we may relate your testimony to it.

Mr. HENZEL. Thank you.

In the early days our district was part of Lower Klamath Lake, which was fed by the floodwaters of the Klamath River. The whole area would overflow during the spring runoff period. The water would soon recede, leaving water in the lower part of the lakebed connected to the Klamath River only by the straits. This amounted to an annual preirrigation in the spring, which left the land out of water the remainder of the year. Early settlers saw the possibilities of developing this land for farming.

Title to these private lands was obtained by purchase from the State of Oregon, the State having received title under the Swamp and Overflow Act.

In order to stimulate agricultural development, the State of Oregon in 1905 ceded their remaining portion of the uncovered lakebed to the Federal Government, for development for agricultural purposes under the Reclamation Law of 1902.

U.S. Bureau of Reclamation surveys: The Bureau of Reclamation then proceeded to make preliminary survey and studies of the Lower Klamath area. Experimental plots were established in the vicinity of the Klamath Straits. Apparently these early studies were not too

favorable, since the Bureau practically abandoned the Lower Klamath portion of the Klamath project. By 1915 these preliminary studies had cost approximately \$254 million.

District idea: During these years, the private owners had been farming without adequate drainage. It became apparent that it would be necessary to form a district to provide the drainage and irrigation system required. This situation was complicated by the United States holding title to some of the land within the proposed district. It also necessitated the closing of the gates at the straits at Ady, which would cut off the water supply for the nearby Van Brimmer Irrigation District.

This Van Brimmer District lay to the east, but it received its water out of Lower Klamath Lake.

Klamath Drainage District organized: The organizers of the proposed district negotiated with the U.S. Bureau of Reclamation. It was finally agreed in order to include the necessary public land within the district, the landowners would reimburse the United States for their pro rata share of the \$254,000 expended upon Lower Klamath Lake for preliminary surveys, et cetera. Also included was an amount for changing the Van Brimmer water supply. These charges, as determined by the United States, have all been paid. The Klamath Drainage District was finally organized on March 6, 1915. On November 30, 1917, the first contract between the United States and the Klamath Drainage District was signed.

Water rights: Inasmuch as the Bureau had filed on all of the unappropriated waters of the Klamath Basin in 1905, it was necessary to acquire a water right for the new district. On August 24, 1921, the district entered into a water right agreement with the Bureau for all of the lands within the Klamath Drainage District, including the public land. These water right charges have also been paid in full by the district, both for the private and public lands.

Plan of reclamation: The plan of reclamation of the Klamath Drainage District, submitted to the State engineer for his approval under the laws of Oregon, included the development of the public land as well as the private land. The United States, through the Bureau of Reclamation, in all of its dealings with the district, has taken the position that the public lands within the district would go into private ownership.

Construction burden: At this time, I would like to stress that this is a private district, not constructed by the Bureau of Reclamation. Both the irrigation and drainage systems in the district have been designed and built to serve the public as well as the private lands. The private landowners in the district have carried the burden of the cost of construction. They bonded their lands and through direct assessment paid for this construction. They did so with the understanding that the public lands would go into private ownership which would make the district stronger and more economical. The audit report of the Klamath Drainage District for June of 1962 shows the district has spent over \$1,250,000 in this construction. None of these costs have been charged off to flood control, recreation, or paid out of power revenues.

Requests for private ownership: The board of supervisors for the Klamath Drainage District has periodically requested that the public land go into private ownership. We have urged for many years that the land be homesteaded as the normal route to private ownership. The Bureau of Reclamation made studies to complete development themselves according to their usual high standards of construction. The costs of a district within a district, in all instances, proved to be economically prohibitive. In the meantime, the Bureau has continued to lease these lands for cash. The total net lease revenues accumulated from the leasing of the Klamath Straits unit to date is \$1,214,310. The net allocated income is \$194,808. This leaves a net unallocated income of \$1,019,502.

Problems: As far as this proposed legislation is concerned, we in the Klamath Drainage District are pleading for the solution of the two principal problems.

1. That the public lands within our boundary go into private ownership as an integral part of the district.

2. That the United States promptly pay its just debt of \$197,315 to the district.

Present bills: Senate bills 784 and 793 do not solve the problems of the Klamath Drainage District. They would forever keep the straits unit and the Miller Lake lands in public ownership in direct violation of all past agreements and intent of both the Cession Act and reclamation law.

Furthermore, these bills propose the debt to the district be paid out of future lease revenues. Why should the Klamath Drainage District be forced to wait any longer for the money it advanced in good faith, when the United States now has on hand over \$1 million of net unallocated income out of past lease revenues from the Klamath Straits unit? This revenue was accumulated largely as a result of development at district's expense.

Solution: We believe the proposed amendments, which Mr. Proctor will explain later, are a sensible solution to the district problems. They provide for private ownership of the public land within our district by either sale or exchange. At present the Klamath Drainage District lands are so interspersed by public land that further economical development is not feasible.

I might stop here and give you just a little bit about the condition of these lands. The Miller Lake area, which is to the left, the Miller Lake area in Oregon, is not developed at all. It is just an alkali flat. The straits unit has been cropped with grain for many years, and that cannot go on, because the land is deteriorating under this cropping practice. It needs additional work done on it. It needs more drainage ditches and additional laterals to complete its development.

These amendments also provide for payment of the \$197,315 the United States owes the district. This was computed on the basis of \$31 per acre for the 6,365-acre straits unit. Our district has agreed to accept this amount as reimbursement for the construction work performed, providing the public land within our district goes into private ownership.

BENEFIT TO THE U.S. FISH AND WILDLIFE SERVICE

These amendments will help the wildlife program. They will stimulate development of the straits unit to diversified production. This will provide more feed for migratory ducks and geese. The privately owned alfalfa and irrigated pasture lands of our district are now used heavily by migratory waterfowl.

I would like to interject this. We are not opposed to the wildlife program. We feel we are one of the best friends the wildlife program has in the Klamath Basin. Our district provides a lot of feed for the migratory waterfowl, particularly in the spring, for the spring migration. During this time of the year, the birds like to feed on the short tender growths that come up on the alfalfa fields in conjunction with the cattle operations. They do not care for tall, overgrown grass. And so the condition on irrigated pasture with cattle is ideal, and they make extensive use of the feed produced in our district. So I am contending that we are a friend of wildlife. We are a big friend to them.

These amendments will make possible the development of the Miller Lake area for irrigated pasture. At present this is an alkali flat with very little wildlife value. Reclaimed for irrigated pasture, it will furnish feed for both spring and fall migrations and the honker geese that hatch and stay in the area all year.

Benefit to the U.S. Bureau of Reclamation: Oregon's proposed amendments provide for the disposition of isolated pieces of Government land, too small to be economically developed by themselves. Surrounded as they are by lands of the district, and being presently served by district facilities, commonsense would dictate they become part of the district.

These amendments will enable the United States to fulfill its legal and moral obligations to the Klamath Drainage District and to the State of Oregon. Properly executed, these amendments will change the Bureau's position from obstructing the progress of our district to helping complete its development.

Benefit to the State of Oregon: These amendments will help build Oregon's economy. Agricultural income is now second in importance, forest products being first, with tourism and recreation third. Full development of the Klamath Drainage District will add to both the cash crop and livestock income of the basin. In addition, adequate public shooting grounds will increase recreational opportunity, which will also add to the economy.

The proposed amendments will put the straits unit and Miller Lake lands on the tax roll of our district and of Klamath County. Further development will add to the tax base. This is important, since 68 percent of the land within the county is in public ownership.

At this time, I want to make one point very clear. Private ownership of the Klamath Straits unit will not add to farm surpluses. Most of these lands have already been in production for over 25 years under the leasing program.

Good for all concerned: We firmly believe these amendments are good for all concerned; they benefit the U.S. Fish and Wildlife Service, the U.S. Bureau of Reclamation, and the people of Oregon and California. They are an equitable solution for a long-standing controversy

that has hindered the development of our district and of the Klamath Basin. We sincerely urge the inclusion of Oregon's proposed amendments to Senate bills 784 and 793.

Thank you, Mr. Chairman.

Senator Moss. Thank you, Mr. Henzel.

Mr. Proctor is to present the amendments that you recommend?

Mr. HENZEL. That is correct.

Senator Moss. You may do that, if you will, Mr. Proctor, then we may have questions either for you or for Mr. Henzel.

STATEMENT OF GEORGE H. PROCTOR, ATTORNEY, KLAMATH DRAINAGE DISTRICT

Mr. PROCTOR. Mr. Chairman and members of the committee, my name is George H. Proctor, and I represent the Klamath Drainage District, and I would like to file the statement for the record of C. L. Langslet, who had intended to be here, but was unable to be here and present his statement.

Senator Moss. That may be placed in the record.

(The statement referred to follows:)

STATEMENT OF CHET LANGSLET ON BEHALF OF VARIOUS ORGANIZATIONS¹

Mr. Chairman and members of the Subcommittee on Reclamation and Irrigation, I am Chet Langslet, acting as spokesman for a number of municipal divisions and organizations and wish to file for the record statements from the above who support inclusion of Oregon's amendments to S. 784 and 793. Amendments as proposed by the above are also submitted for the record at the end of this statement.

Taxing, agricultural, sporting, and conservation interests in Klamath County have long recognized the need for adequate nesting, feeding, and resting refuges for 262 million days usage and concentrations exceeding 7 million waterfowl.

Our community is economically dependent on the wise use and conservation of our natural resources. Sixty-eight percent of our land is in Federal ownership and this does not include in excess of 200 square miles of water area.

Only by blocking out ownerships with the attendant responsibilities for the greatest potential benefits in the interest of conservation can we continue to exist. We who live with the problems feel we have a reasonable solution.

The largest remaining marsh adjoins the Upper Klamath Lake. The Fish and Wildlife Service owns 4,378 acres, U.S. Bureau of Reclamation approximately 10,780 acres, Forest Service approximately 2,400 acres, and private interests 9,771. It is not practical or economically feasible for any one ownership to develop his area. Fish and Wildlife Service, if they develop the entire marsh, can use it most advantageously. At present, it floods during the early nesting period and drowns the nests. The late nesting birds are caught in a botulism trap due to water releases from Upper Klamath Lake. The level of the lake normally fluctuates approximately 6 feet. I don't state this as fact, as there is no way in which to count the loss, but I believe from observation that this one area accounts for more bird loss than gunning. With the acquisition of the private land, this could be developed into a magnificent refuge of approximately 26,000 acres. This, the Fish and Wildlife Service state they need to have an operable unit.

¹ Composed of Klamath Sportsmen's Association, Inc., Klamath Basin Water Users Protective Association, Oregon Reclamation Congress, Klamath County Chamber of Commerce, Klamath County Land Use Committee, Klamath County Farm Bureau, Klamath County Court, city of Klamath Falls, Meadows Drainage District, Langell Valley Irrigation District, Horsefly Irrigation District, Klamath Basin Ground Water Users Association, Van Brimmer Ditch Co., Keno Irrigation District, Shasta View Irrigation District, Wocus Drainage District, Mallin Irrigation District, Enterprise Irrigation District, Poe Valley Improvement District, Wood River Valley District Improvement Co., Willow Valley Irrigation District, Pine Grove Irrigation District, Sunnyside Irrigation District, Plevna District Improvement District, and Lakeshore Gardens Drainage District.

The Public lands in Klamath Straits unit, within the Klamath Drainage District, and on which the district has paid the Government for water rights under a 1921 contract, should go into private ownership. This unit has been a stumbling block to orderly development by the very farmers who made it possible for the U.S. Bureau of Reclamation to obtain \$1,214,310 in net lease revenue. It is not practical to develop a separate district within a district, and the Government should pay these landowners an acknowledged debt for construction of facilities to serve these lands out of present accumulated revenues. Hunting rights in perpetuity should be retained on this unit, whether it be sold or exchanged for private land on Upper Klamath Lake to block out that refuge.

The lands in the Klamath Straits unit are not now and never have been in refuge status, and are outside the intensive use area for waterfowl. This tract has been in agricultural production for 25 years. They are not needed for production of feed for waterfowl as Tule Lake and the expanded Lower Klamath Lake refuges can produce more feed than required.

At present the county receives no revenue from these lands. Private ownership would add approximately \$100,000 annually to the economy of Klamath County. Last year Klamath County received 22 cents in lieu of taxes on the 4,378 acres owned by the Fish and Wildlife Service which were taken off the tax roll of our county.

Hanks Marsh contains but 1,149 acres. Klamath County desires that this be developed for public hunting and recreation by United States or in cooperation with the State or county and that it not be set aside as a preserve. They also wish a reasonable in lieu of tax provision.

Oregon's amendments provides more acreage for wildlife purposes and better habitat in Oregon and would place in refuge status approximately 20 square miles plus 10 square miles of public shooting grounds, all within a radius of 50 miles of Klamath Falls, Ore.

The adoption of the Oregon's amendments is urged as a solution to the problem in Oregon.

OREGON'S PROPOSED AMENDMENTS TO SENATE BILLS 784 AND 793, APRIL 1963

Together with corresponding technical changes to accomplish the intent of the amendments, add new section as follows:

"The Secretary of the Interior shall dispose of the public lands owned by the United States within the boundaries of the Klamath Drainage District by public sale or exchange for private lands adjoining or encompassed within the refuges in the Klamath Basin of Oregon or California.

"In the sale or exchange under this act the patents to the land in the Klamath Straits unit within the Klamath Draining District shall reserve the hunting rights on such property in perpetuity to the public, to be administered in accordance with the laws of the State of Oregon and any rules or regulations that may be established by the duly constituted agency of the State of Oregon responsible for the same. The patents to said lands shall likewise provide that access to engage in the hunting shall be permitted by the owners during any of the times of the year when hunting is legally permitted. Said patents shall also provide that no dwelling houses or other structures shall be erected that would materially affect the use of the property by water fowl, upland birds, or the hunting public.

"The sum of \$197,315 previously accumulated in the leasing of the lands within the Klamath Straits unit shall be paid to the Klamath Drainage District as reimbursement for irrigation and drainage facilities constructed by the Klamath Drainage District for the Klamath Straits unit."

SUMMARY

These amendments affect the lands in Oregon and provide for—

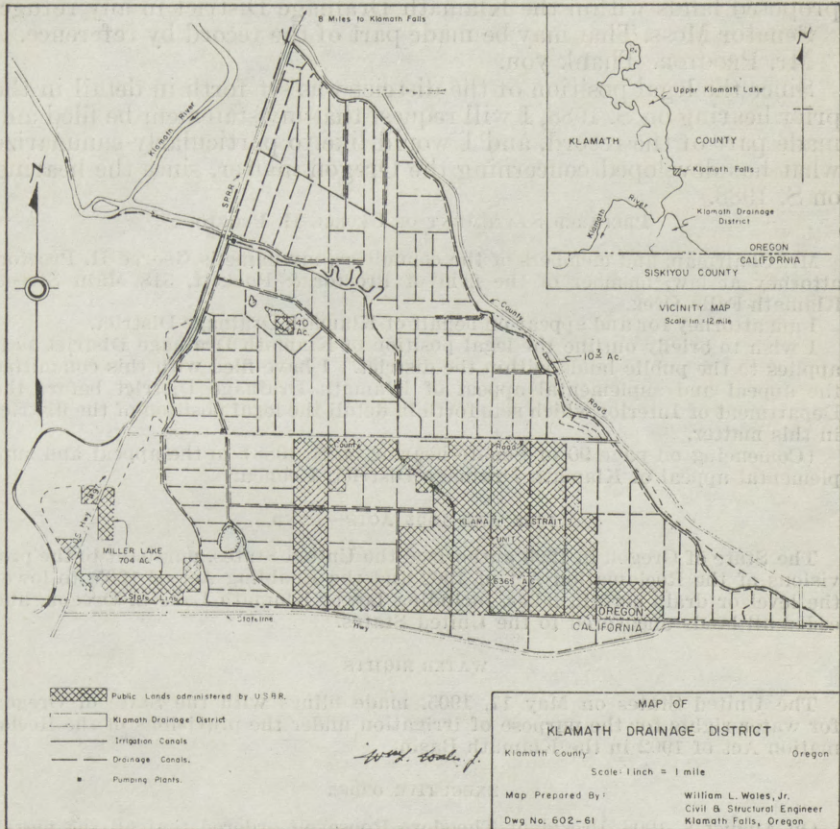
- (1) Preservation of the wetlands which are needed for breeding, nesting, and aquatic feeds.
- (2) Preservation to the public of the hunting rights which are the only and highest recreational value upon the Klamath Straits unit.

(3) The opportunity for the Secretary to provide within the State of Oregon 3,400 more acres being devoted to wildlife together with hunting rights in perpetuity on 6,365 acres.

(4) The feasibility of a refuge of approximately 26,000 acres where all the recreational and wildlife values can be developed.

(5) The blocking out of various administrative, control, and ownerships into economic and feasible units for both federal and private lands.

(6) Recognition of the legal and moral obligation of the United States to the State of Oregon and Klamath Drainage District.



Mr. PROCTOR. And I would also like to file in their place in the record a number of letters from the Klamath Sportsmen's Association and others on a local level supporting the suggestions that I will present and also authorizing us to present them.

Senator Moss. They may be placed in the record following your presentation.

Mr. PROCTOR. And it is my understanding that the map of the district will be made a part of the record.

Senator Moss. It has been made part of the record.

Mr. PROCTOR. It was for the purpose, of course, of showing the isolated tracts within the district that are in public ownership.

I also request that there be included a 1961 fish and wildlife map which was presented by the Fish and Wildlife Department at the hearing called by the Governor of the State of Oregon, for the purpose of showing, first, that there is no existing refuge within the Klamath Drainage District, and, second and more important, the 1961 Fish and Wildlife Department did not intend to include any of the proposed lands within the Klamath Drainage District in any refuge.

Senator MOSS. That may be made part of the record by reference.

Mr. PROCTOR. Thank you.

Since the legal position of the district was set forth in detail in the prior hearing on S. 1988, I will request that my statement be filed and made part of the record, and I would like to particularly summarize what has developed concerning the Oregon matter, since the hearing on S. 1988.

PREPARED STATEMENT OF GEORGE H. PROCTOR

Mr. Chairman, and members of the committee, my name is George H. Proctor, attorney at law, member of the firm of Proctor & Puckett, 518 Main Street, Klamath Falls, Ore.

I am attorney for and appear on behalf of Klamath Drainage District.

I wish to briefly outline the legal position of Klamath Drainage District as it applies to the public lands within the district. I have filed with this committee the appeal and supplemental appeal of Klamath Drainage District before the Department of Interior which sets forth in detail the legal position of the district in this matter.

(Commencing on page 90 of Senate hearing on S. 1988) to the appeal and supplemental appeal of Klamath Drainage District, I concur.

1902 AND 1905 ACTS—LAND

The State of Oregon in 1905 authorized the United States, pursuant to the provisions of the Reclamation Act of 1902 and the Enabling Act of 1905, to lower the level or drain certain lakes, including Lower Klamath Lake in Oregon, and ceded all lands uncovered to the United States.

WATER RIGHTS

The United States on May 17, 1905, made filings with the State of Oregon for water rights for the purpose of irrigation under the provisions of the Reclamation Act of 1902 in the Klamath Basin.

EXECUTIVE ORDER

On August 8, 1908, President Theodore Roosevelt ordered that all the marsh and swamp land unsuitable for agriculture purposes in Lower Klamath Lake be reserved for breeding grounds for native birds. The order was made subject to and was not to interfere with the use of any part of the area pursuant to the Reclamation Act of 1902.

KLAMATH DRAINAGE DISTRICT

On March 6, 1915, the Klamath Drainage District was organized under the drainage district laws of the State of Oregon to drain and reclaim all the lands within the district, since the area was suitable for one drainage system consisting of approximately 27,000 acres.

1917 CONTRACT

On November 30, 1917, the United States and Klamath Drainage District entered into a contract providing, among other things, for the closing of the gates of Klamath Straits at Ady.

By the closing of the gates and the reclamation by Klamath Drainage District, 7,000 acres within the district were uncovered and became public lands to the

United States. This land which is located in the heart of the district, is productive only because of the drainage and reclamation works carried on by the district.

1921 CONTRACT

On August 24, 1921, the United States and the Klamath Drainage District entered into a water right agreement, paid in full by the district, for all the lands within the district boundaries, including public lands.

1943 CONTRACT

On April 28, 1943, the United States and Klamath Drainage District entered into a revised contract which reaffirmed, in addition to other things, the water right for 27,500 acres, the distribution to be in accordance with the Federal reclamation law, the opening to entry of the public lands, the assessment of the public lands, and the water rental charge prior to the opening by entry.

1940 CONTRACT

An agreement dated March 30, 1940, between the United States by the Biological Survey (now Fish and Wildlife) and the Klamath Drainage District provided for the reconstruction and enlargement of the south canal of the district to carry water through the canal to California lands with an agreement that the interests of the district were fully protected.

1947 CONTRACT

On October 11, 1947, the United States and the Klamath Drainage District provided for a drainage outlet for the California lands, which specifically provides that the rights of the district as to its interests within the boundaries of this district were paramount to those of the United States.

FINNEY OPINION

The legal position of the district was confirmed as early as June 9, 1932, by an opinion of E. C. Finney, Solicitor for the Interior Department, and approved by John A. Edwards, Assistant Secretary. (M-27055, Senate hearing, p. 127.)

MEMORIAL

The Legislature of the State of Oregon in 1957 passed a memorial requesting that the public lands within the district be thrown open to homestead entry without further delay in accordance with the acts between the United States and the State of Oregon. (Senate hearing, p. 100.)

PLAN OF RECLAMATION

The plan of reclamation of the district provided for reclaiming of all the lands within the district, including public land. The cost of reclamation of both the public and private lands within the district was paid by the private landowners within the district.

The United States has leased these lands for agriculture purposes and received lease revenues. The United States by and through the Bureau of Reclamation has represented to the district that the lands would be developed and transferred to private ownership for agriculture purposes.

ACKNOWLEDGMENT OF CONSTRUCTION COST

Kenneth Holmes, Assistant Secretary of the Interior, in a letter dated September 28, 1961, to Senator Kuchel, said:

"We recognize that in constructing the irrigation and drainage system to serve the private lands, the district included sufficient capacity and extended the system so as to provide a water supply to the public lands.

"The added cost of constructing the system to serve the public lands was paid by assessments levied against the privately owned lands and not against the public lands. We anticipate that any resolution of the matter will make due allowance for appropriate compensation for these assessments."

COST PER ACRE

On March 25, 1959, Fred G. Aandall, Assistant Secretary of the Interior, in a letter addressed to the district, concluded by stating that the construction cost of the public lands was \$31 per acre. (Senate hearing, p. 108.)

The district has agreed to accept the arbitrated figure of \$31 per acre, providing that the public lands be transferred into private ownership, and that the public land reimbursement to the district should be computed on a per-acre basis from accumulated lease revenues (6,365 acres times \$31 equals \$197,315).

THE KLAMATH DRAINAGE DISTRICT

The Klamath Drainage District is interested specifically in the inclusion, in any bill adopted pertaining to this matter, in two things:

One, that the public lands within the boundaries of the district be transferred by the most feasible method to private ownership so that they become an integral part of the district as provided for by the act of 1905 of the State of Oregon and subsequent contracts between the United States and the district.

Two, that the United States pay out of accumulated revenue the sum of \$31 per acre to Klamath Drainage District as reimbursement for construction of the irrigation and drainage facilities constructed by Klamath Drainage District for Klamath Straits public lands.

In determining an overall solution to the problem, and particularly as it affects Klamath Drainage District, it is necessary to take into consideration the statutes, contracts, and the conduct of the United States upon which the district has relied throughout the years.

PROPOSED LEGISLATION

The Klamath Drainage District and the people of the State of Oregon are interested in the concept of this proposed legislation to resolve a longstanding problem so that full utilization of the water, land, and natural resources may be realized in the State of Oregon. The Oregon amendments are a result of this desire to reconcile the various interests.

FACTUAL CONSIDERATIONS

In reconciling this matter, the following are important factual considerations:

I

- (1) Klamath Drainage District was organized in 1915.
- (2) The public lands within the district were uncovered and became public lands only because of the reclamation of the district.
- (3) The reclamation of the public lands was done at the expense of the district and not the United States.
- (4) The district not only purchased a water right for the private lands, but also for the public lands.
- (5) The United States has an acknowledged debt to the district which remains unpaid to this day.
- (6) The United States by its trust obligation, contracts, and conduct looked to the day when public lands would become an integral part of the district.

II

- (1) Klamath Drainage District lands are not within any existing refuge.
- (2) Klamath Drainage District lands are outside the intensive use area for waterfowl.
- (3) The Klamath Straits unit has been in agricultural production for more than 25 years.
- (4) The public land is intermingled with the private lands within the district.
- (5) The Klamath Straits unit as late as 1961 was not intended to be included in refuge status as evidenced by the fish and wildlife map, 1961, which has been submitted for the record and file.

UNIQUE FEATURES

In discussing this matter, I wish to emphasize two points:

- (1) That the Klamath Drainage District is unique in that in this case it is the benefactor, not the U.S. Government.
- (2) That proposed amendments provide for the opportunity of maximum benefits to wildlife interests while not being detrimental to agricultural interests.

OREGON AMENDMENTS

The proposed Oregon amendments would accomplish, in the State of Oregon, the objectives as set forth in the amendment summary. These amendments have the support of local and State wildlife and agricultural interests, the Oregon State Game Commission, the State of Oregon and others.

We respectfully request the inclusion of the Oregon amendments in the legislation that this committee is now considering.

OREGON'S PROPOSED AMENDMENTS TO SENATE BILLS 784 AND 793, APRIL 1963

Together with corresponding technical changes to accomplish the intent of the amendments, add new section as follows:

"The Secretary of the Interior shall dispose of the public lands owned by the United States within the boundaries of the Klamath Drainage District by public sale or exchange for private lands adjoining or encompassed within the refuges in the Klamath Basin of Oregon or California.

"In the sale or exchange under this Act the patents to the land in the Klamath Straits unit within the Klamath Drainage District shall reserve the hunting rights on such property in perpetuity to the public, to be administered in accordance with the laws of the State of Oregon and any rules or regulations that may be established by the duly constituted agency of the State of Oregon responsible for the same.

"The patents to said lands shall likewise provide that access to engage in the hunting shall be permitted by the owners during any of the time of the year when hunting is legally permitted. Said patents shall also provide that no dwelling houses or other structures shall be erected that would materially affect the use of the property by waterfowl, upland birds or the hunting public.

"The sum of \$197,315 previously accumulated in the leasing of the lands within the Klamath Straits unit shall be paid to the Klamath Drainage District as reimbursement for irrigation and drainage facilities constructed by the Klamath Drainage District for the Klamath Straits unit."

SUMMARY

These amendments affect the lands in Oregon and provide for—

1. Preservation of the wetlands which are needed for breeding, nesting, and aquatic feeds.
2. Preservation to the public of the hunting rights which are the only and highest recreational value upon the Klamath Straits unit.
3. The opportunity for the Secretary to provide within the State of Oregon, 3,400 more acres being devoted to wildlife together with hunting rights in perpetuity on 6,365 acres.
4. The feasibility of a refuge of approximately 26,000 acres where all the recreational and wildlife values can be developed.
5. The blocking out of various administrative, control and ownerships into economic and feasible units for both Federal and private lands.
6. Recognition of the legal and moral obligation of the United States to the State of Oregon and Klamath Drainage District.

Mr. PROCTOR. I call the committee's attention to the Upper Klamath Wildlife Refuge, which Mr. Janzen pointed out, which includes not only Fish and Wildlife land but U.S. Bureau of Reclamation land

and also Forest Service land. Right to the north and east are also wet lands, which are presently privately owned.

He also pointed out Hanks Marsh, half way between the upper refuge and the city of Klamath Falls, as well as the Klamath Straits unit.

In 1905, the State of Oregon authorized the United States, pursuant to the provisions of the Reclamation Act of 1902, to lower the level of certain lakes, including Lower Klamath Lake in Oregon, and ceded all the lands uncovered to the United States.

In particular I would like to call the committee's attention to the Executive order of Theodore Roosevelt, which has previously been printed in the prior hearing, to this effect: The other Executive orders pertaining to the other refuges that have been under discussion in this bill provide for the establishment of these refuges by description. Actually, the first Executive order, that pertained to the Lower Klamath Lake, is short, and I would like to read the pertinent portions:

It is hereby ordered that all islands situated in the Lower Klamath Lake, in the marsh and swamplands, unsuitable for agricultural purposes, in the townships which they describe, are hereby reserved and set apart for the use of the Department of Agriculture as a preserve and breeding grounds for native birds.

The last sentence of the order:

This order is made subject to and is not intended to interfere with the use of any part of the reserve area by the Reclamation Service acting under the provisions of the act of June 17, 1902, and any subsequent legislation.

Actually, in the State of Oregon, prior to 1905, within executive boundaries as shown and drawn, all that land that is in the white on the map which is confronting you, except the red portion, was in private ownership, having been ceded to the State of Oregon and having been patented.

And as my statement indicates in detail, of course, in subsequent years, in 1917 the drainage district entered into a contract with the United States, and as a result, by closing the straits at Ady, the 7,000 acres that we are talking about became uncovered, and as a result became public lands.

If this was not done by the district, they would not have become public lands of the United States.

Subsequently, in 1921, the district acquired water rights for all the lands within the district, and paid for the same, which included not only the private lands but also the public lands.

Then there were the subsequent 1943 contract between the Government and the district, and also the 1940 contract with Fish and Wildlife, and the 1947 contract providing for the carriage and drainage of water through the district to the refuge in California.

The Klamath Drainage District—people in the State of Oregon are interested in the concept of this proposed legislation to resolve a long-standing problem so that full utilization of the water, land, and natural resources may be realized in the State of Oregon. The Oregon amendments are as a result of this desire to reconcile the various interests.

I call the committee's attention to page 5 of my statement. I wish to call your attention to several factual considerations which I think need to be considered, to be able to reconcile this matter in the State of Oregon.

First, the Klamath Drainage District was organized in 1915.

Second, the public lands within the district were uncovered and became public lands only because of the reclamation of the district.

Third, the reclamation of the public lands was done at the expense of the district and not the United States.

Fourth, the district not only purchased the water rights for the private lands but also for the public lands.

Fifth, the United States has an acknowledged debt to the district which remains unpaid to this day.

Sixth, the United States, by its trust obligations—I withdraw that.

The United States, by its trust obligations and contracts, looked to the day when public lands would become an integral part of the district.

Also, in the Klamath Drainage District, the lands are not within any existing refuge. They may be within an existing Executive order, but they are not within the existing refuge.

Two, the Klamath lands are outside of the lands for the waterfowl previously testified to by the Department.

Three, the Klamath Straits unit has been in agricultural production for more than 25 years. This is not wetlands that we are discussing in the Klamath region, but lands that have been devoted to agriculture.

The public land is intermingled with private lands within the district. As you will notice by the map, there is a 40-acre tract to the north and west in the district, and a 10.3-acre tract to the right, or rather to the east, in the middle of the district.

On the south and west of the district, there are the Miller Lake tracts, that are in public ownership, and a portion of that is in dispute as to the ownership with the State of Oregon, as previously indicated in prior hearings.

And then, five, the Klamath Straits unit as late as 1961 was not intended to be included in the refuge status, as evidenced by the fish and wildlife map of 1961, which has been submitted for the record.

In discussing this matter, I wish to emphasize two points.

First, the Klamath Drainage District is unique in that in this case it is the benefactor, not the United States. And second, the proposed amendments provide for the opportunity of maximum benefits for wildlife interests, while not being detrimental to agricultural interests.

The proposed amendments would accomplish in the State of Oregon the objectives as set forth in the amendment summaries. These amendments have the support of local, State, wildlife, and agricultural interests in the State of Oregon.

I would like to just read an excerpt of the key paragraphs, of the position of the State of Oregon, as evidenced by the letter of the Governor of the State of Oregon, which has already been filed and made a part of this record.

Because of Oregon's long-standing interests in this matter, which are subject to these bills, I feel your committee should know my views. First may I say we vigorously support the concept of these measures, since they are directed toward resolving a long-standing controversy with the Department of Interior and between agriculture and wildlife interests relative to the administration of Federal lands in the Klamath Basin, Oreg., and Calif. It is my hope that this Congress will take affirmative action along the lines suggested in S. 784 and S. 793, with certain amendments.

Full consideration should be given to the reimbursement of the Klamath Drainage District for irrigation and drainage facilities constructed by the district in the Klamath Straits unit.

Then he quotes the next paragraph:

In addition, the following new language, which I understand is agreeable to the Oregon State and Game Commission and the Klamath Drainage District, should be considered in whatever bill is finally acted upon.

And he sets out the amendments for consideration.

The last paragraph:

The passage of the bill incorporating these suggestions would result in stabilization of the public and private rights, would afford opportunity for further protection of the waterfowl resources, and would recognize all the legal and moral obligations. I trust your committee will favorably consider these thoughts.

Calling the committee's attention to the last page of my statement and the last portion, as to the summary of what these suggested amendments would accomplish in the State of Oregon: First, they would preserve the wetlands, which are needed for the breeding, nesting, and aquatic feeds.

Basically, we are talking about roughly the 9,000 acres adjacent to the Upper Klamath National Wildlife Refuge, which are the lands that Congress has indicated in the authorization for \$105 million for the Department to acquire.

Second, to preserve to the public the hunting rights, which are the only and the highest recreational value upon the Klamath Straits unit, which is within the Klamath Drainage District.

Third, to provide the opportunity for the Secretary to provide within the State of Oregon 3,400 more acres being devoted to wildlife, together with hunting rights and fertility, 365 acres. This is with the concurrence of the local community.

Four, the feasibility of a refuge of approximately 26,000 acres, where all the recreational and wildlife values can be developed.

Fifth, the blocking out of the various administrative, control, and ownerships into economic and feasible units for both Federal and private lands.

Sixth, recognition of the legal and moral obligation of the United States to the State of Oregon and the Klamath Drainage District.

I think we can probably all agree that these are objectives that are worthwhile to accomplish, and also for this committee to consider in attempting to resolve the problems that have arisen in the State of Oregon.

I may say that the proposed suggested amendments—of course, there is nothing definitive about them. I participated in the draftsmanship. The chairman of the Oregon State Game Commission, who is also an attorney and a past president of the Oregon Izaak Walton League, participated in it.

But basically, this is to accomplish the objectives that we have stated; first, directing the Secretary to dispose of the public lands within the boundaries of the Klamath Drainage District, by public sale or exchange, for lands adjoining or encompassed within the other refuges within the Klamath Basin.

In other words, to allow the Secretary the flexibility to accomplish the blocking out.

And in the sale or exchange under these acts, that the patent on the Klamath Straits unit would reserve the hunting in perpetuity

to the public, and that this patent would also reserve the right of ingress and egress to the public for hunting purposes.

And second, the patent would also reserve that there be no dwelling houses or other structures which shall be erected that would materially affect the use by the hunting public for fowl or upland birds.

The third paragraph makes provision for reimbursement to the district of the acknowledged obligation.

We certainly submit to this committee these considerations, and we feel that the Oregon problem along these lines could be solved for years to come, as compared to necessarily just freezing the ownerships on the Oregon side, which would thereafter prevent full utilization of the lands either for wildlife or for agricultural purposes.

Thank you, Mr. Chairman.

Senator Moss. From what does this obligation arise?

Mr. PROCTOR. The obligation of the U.S. Government is for the construction of facilities on the 6,365 acres of the Klamath Straits unit, in which the Department has acknowledged by letter in prior testimony that there is an obligation due and owing for this work, and it should be repaid to the district.

Senator KUCHEL. Who acknowledged that responsibility?

Mr. PROCTOR. Under Secretary Aandahl. And I will be glad to supply the page.

Senator KUCHEL. If you would do that, I would appreciate it.

Mr. PROCTOR. Yes. It is in the prior hearing, Senator Kuchel.

Senator KUCHEL. Thank you.

Do you have further questions?

Senator Moss. It has been pointed out to me that in S. 793, Senator Kuchel's bill, there is an amount provided in there of \$197,315. Is that the same figure in amount that you refer to?

Mr. PROCTOR. That is the same figure that we refer to. It is \$31 an acre times 6,365 acres.

Senator Moss. Thank you.

Now, these provisions that you speak of: You have not drafted them as specific amendments geared to one of the bills, I suppose. They are just general recommendations?

Mr. PROCTOR. They are not drafted for a specific bill. If they were included, there would have to be certain other technical amendments as it affects the Klamath Straits unit. But basically, the concept of these proposed amendments we feel should be included in any legislation that is approved by the committee.

Senator Moss. The way that this figure is set up in the Kuchel bill—does that satisfy your request on the payment? It does not provide for a lump-sum payment, does it? It does not say so in so many words?

Mr. PROCTOR. It is my understanding that this figure would be the correct figure, assuming that lands within the district went into private ownership as an integral part of the district. We would hope that repayment would not be delayed beyond a reasonable length of time.

Senator Moss. Thank you, Mr. Proctor.

Mr. Henzel, we do appreciate your coming here to testify. You have been very helpful to the committee as we consider this problem.

(The communications submitted by Mr. Proctor are as follows:)

THE KLAMATH SPORTSMEN'S ASSOCIATION, INC.,
OF KLAMATH COUNTY,
Klamath Falls, Oreg., April 15, 1963.

Re S. 784 and S. 793.

HON. FRANK MOSS,
Chairman, Interior and Insular Affairs Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR: The Oregon delegation comprising Chester L. Langslet, Dick Henzel, and George H. Proctor are authorized to testify on behalf of Klamath Sportsmen's Association pertaining to the above Senate bills.

Very truly yours,

CARL J. HARRIS, *President.*

ANCHORAGE, ALASKA, April 18, 1963.

MR. GEORGE PROCTOR,
Washington, D.C.

DEAR MR. PROCTOR: Authorization is granted you to represent me in all matters pertaining to Klamath County before Congress.

C. L. LANGSLET.

KLAMATH COUNTY COURT,
Klamath Falls, Oreg., April 17, 1963.

Senator FRANK MOSS,
Chairman, Subcommittee on Irrigation and Reclamation,
Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: The Klamath County Court, in session on April 17, 1963, approves the Oregon proposed amendment to S. 784 and S. 793 which will be presented by the Oregon delegation consisting of C. L. Langslet, Dick Henzel, and George Proctor. We concur on the principle of blocking out various administrative, controls and ownerships into economical and feasible units for both the Federal and private lands. Such amendments would provide for an orderly development and maximum utilization of the land involved in Klamath County.

We are of the opinion that the tract known as Hanks Marsh should be developed by the Department or in cooperation with the State game commission and Klamath County for its recreational values including public hunting and that it not be set aside as a preserve.

Sincerely yours,

R. R. WALKER,
County Judge.
FRANK F. GANONG,
County Commissioner.
E. K. ALLISON,
County Commissioner.

CITY OF KLAMATH FALLS, OREG.,
April 15, 1963.

HON. FRANK E. MOSS,
Chairman, Subcommittee on Irrigation and Reclamation,
Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: On behalf of the city of Klamath Falls, Oreg., we hereby support the inclusion of the Oregon amendments to S. 784 and S. 793 which will be presented to your committee by the Oregon delegation consisting of Messrs. C. L. Langslet, Dick Henzel, and George H. Proctor.

We feel that these amendments will solve a long existing problem and provide an orderly development and maximum utilization of the land and natural resources within the county.

Respectfully yours,

ROBERT E. VEATCH,
Mayor of Klamath Falls.

KLAMATH COUNTY CHAMBER OF COMMERCE,
Klamath Falls, Oreg., April 16, 1963.

Senator FRANK MOSS,
*Chairman, Subcommittee on Irrigation and Reclamation,
 Senate Office Building, Washington, D.C.*

DEAR SENATOR MOSS: For many years there have been widely divergent opinions regarding utilization of certain federally owned lands in the Klamath Basin. As a result of this conflict, orderly development and maximum utilization of these lands has been obstructed.

The Klamath Basin Water Users Protective Association, the Klamath Sportsmen's Association, Inc., and other interested groups and individuals in Klamath County and the State of Oregon, we believe, offer hope for settlement of this longtime controversy through Oregon's amendments to S. 784 and S. 793, bills to aid in the administration of the Tule Lake, Lower Klamath, and Upper Klamath National Wildlife Refuges in Oregon and California, and for other purposes.

The board of directors of the Klamath County Chamber of Commerce has studied these bills with the proposed Oregon amendments, and has discussed them with representatives of the Klamath Basin Water Users Protective Association and the Klamath Sportsmen's Association, Inc. We heartily agree with them that passage of a bill with the inclusion of the Oregon amendments, would work for the benefit of all concerned, providing for orderly development and maximum utilization of the lands involved.

With this in view, our board of directors, at its regular meeting on April 10, 1963, voted to reaffirm the support it has accorded the water users, sportsmen, and other groups on previous occasions, and to respectfully urge your subcommittee's serious consideration of the inclusion of the Oregon amendments as presented by the Oregon delegation of C. L. Langslet, Dick Henzel, and George H. Proctor.

Sincerely,

GEORGE T. CALLISON, *Manager.*

KLAMATH COUNTY FARM BUREAU,
Klamath Falls, Oreg., April 17, 1963.

HON. FRANK E. MOSS,
*Chairman, Subcommittee on Irrigation and Reclamation,
 Senate Office Building, Washington, D.C.*

DEAR SENATOR MOSS: The Klamath County Farm Bureau, representing over 500 member families, strongly supports Oregon's proposed amendments to Senate bill 784 and Senate bill 793.

The uses of public lands in the Klamath Basin have been in controversy for many years, and we feel that proposed amendments will resolve this problem in the most satisfactory manner for all concerned.

For several years we have supported proposals that would block out the existing refuges by land exchange and purchase. It is our firm opinion that the Fish and Wildlife Service should be given complete jurisdiction over existing refuges after they are blocked out. This will relieve the stalemate that has existed for over 55 years, and will allow this agency to begin development, which will make these refuges more valuable and desirable for wildlife.

On behalf of this bureau, I hereby delegate and authorize Mr. C. L. Langslet, Mr. Dick Henzel, and Mr. George Proctor to submit this testimony for the record of your hearing.

Very truly yours,

W. E. HARNSBERGER, *President.*

KLAMATH COUNTY LAND USE COMMITTEE,
Klamath Falls, Oreg., April 15, 1963.

Re S. 784 and S. 793.
 Hon. FRANK MOSS,
Interior and Insular Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: The Klamath County Land Use Committee, which represents all of the various interests of Klamath County, Oreg., was formed 26 years ago for the purpose of conservation, through best use, the land and all other natural resources of the county.

The committee urges the inclusion of the Oregon amendments to S. 784 and 793, as presented by the Oregon delegation of C. L. Langslet, Dick Henzel, and George H. Proctor.

Such amendments provide for an orderly development and maximum utilization of the lands and natural resources and resolves a longstanding problem.

Very truly yours,

GEORGE E. STEVENSON, *Chairman.*

OREGON RECLAMATION CONGRESS,
Klamath Falls, Oreg., April 15, 1963.

Hon. Senator FRANK E. MOSS,
Chairman, Subcommittee on Irrigation and Reclamation,
Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: For several years the Oregon Reclamation Congress has supported the joint proposals of the Klamath Basin Water Users Protective Association and the Klamath Sportsmen's Association, Inc., for uses of public lands in the Klamath Basin.

Oregon's proposed amendments to Senate bills 784 and 793, supported by individuals and groups in the Klamath Basin, will in our opinion, satisfactorily settle this longstanding controversy in an orderly manner.

Proposed amendments will benefit Government agencies concerned, and one drainage district. And by blocking out the existing refuges by land exchange and purchase, with Fish and Wildlife Service given complete jurisdiction, free from the controls of other bureaus and private owners, the stalemate that has existed for some 56 years will no longer exist.

The Oregon Reclamation Congress is in full accord with Oregon's proposed amendments, and respectfully requests that you and your committee give them careful consideration.

Very truly yours,

JOHN L. STEWART, Jr., *President.*

OREGON RECLAMATION CONGRESS,
Klamath Falls, Oreg., April 15, 1963.

Hon. Senator FRANK E. MOSS,
Chairman, Subcommittee on Irrigation and Reclamation,
Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: The Oregon delegation, comprised of Chester "Chet" Langslet, Dick Henzel, and George Proctor, attorney, appearing at hearing on Senate bills 784 and 793, scheduled for 10 a.m., April 24, 1963, in room 3110, New Senate Office Building, be and are hereby delegated and authorized to speak for the Oregon Reclamation Congress, in favor of Oregon's proposed amendments to these bills.

Very truly yours,

JOHN L. STEWART, Jr., *President.*

KLAMATH DRAINAGE DISTRICT,
Klamath Falls, Oreg., April 1963.

Hon. FRANK E. MOSS,
Chairman, Subcommittee on Irrigation and Reclamation,
Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: We, the undersigned landowners in Klamath Drainage District, hereby approve the proposed amendments to be presented to your committee by our president, Dick Henzel, on April 24 concerning S. 784 and

S. 793. We are of the opinion that the public lands within the district should be transferred by the most feasible method to private ownership subject to public hunting and that the most feasible method for the Secretary to accomplish this is by public sale.

Dated April 19, 1963.

Very truly yours,

Murel Long, Jack Liskey, Virginia Liskey, Leon Andrieu, Venland L. Huff, George P. Andrieu, Oscar A. De Nault, Regis Andrieu, Lawrence Gray; O'Connor Livestock Co., by Jack M. O'Connor; Luskey Farms, by John Luskey; and John Takacs.

Senator Moss. Our next witness is Mr. Alvin Landis of the Tulelake Irrigation District.

Is Mr. Cushman here also?

Would you like to also come to the table, Mr. Cushman?

Mr. Cushman is also representing the Tulelake Irrigation District.

I see you have some other men with you, too.

STATEMENT OF ALVIN LANDIS, ATTORNEY, TULELAKE IRRIGATION DISTRICT; ACCOMPANIED BY LESTER M. CUSHMAN, VICE PRESIDENT, TULELAKE IRRIGATION DISTRICT; ED LANCE, MANAGER OF THE TULELAKE IRRIGATION DISTRICT; AND IVAN ROSE, MEMBER, BOARD OF DIRECTORS, TULELAKE IRRIGATION DISTRICT

Mr. LANDIS. Also here are Mr. Ed Lance, the manager of the Tulelake Irrigation District, and Mr. Ivan Rose, who is a member of the board of directors of the Tulelake Irrigation District.

Senator Moss. Fine. We welcome you all, and you may proceed.

Mr. LANDIS. Mr. Chairman, with your permission, I would like to have at this point in the record inserted my statement, which is a brief statement, and comment briefly, if I may, on some of the areas of inquiry which were opened up by Senator Kuchel this morning.

Senator Moss. That may be done. It may be inserted in the record at this point.

(The statement referred to follows:)

STATEMENT OF ALVIN LANDIS, ATTORNEY FOR THE TULELAKE IRRIGATION DISTRICT

Mr. Chairman and members of the committee, my name is Alvin Landis. I am counsel to the Tulelake Irrigation District and I have been authorized to appear on behalf of the district to discuss S. 784 introduced by Senator Clair Engle and S. 793 introduced by Senator Thomas Kuchel and Senator Robertson. Both bills seek to achieve the objective of stabilizing the ownership of land in the Klamath Federal reclamation project in Oregon and California, stabilizing the administration and management of this project, and stabilizing the administration and management of the Tulelake, Lower Klamath, Upper Klamath, and Clear Lake Wildlife Refuges.

S. 793 is similar in language to S. 1988 which was introduced by Senator Kuchel in the 87th Congress, 2d session. Extensive hearings were held before this subcommittee on S. 1988 and the views of the district with respect to that bill can be found in the printed reports of those hearings. Suffice it to say, the district and the people of the Tulelake Irrigation District area were gravely concerned that the provisions of S. 1988 were inimical to their interests while at the same time did not necessarily accomplish the purposes expressed in that bill. This is also their view with the provisions of S. 793.

In my testimony before this subcommittee on S. 1988, I testified as follows:

"I would also like to mention to you, Mr. Chairman and Senator Kuchel, that I, at least, as a lawyer, belong to that school which advises its clients that litigation is the most costly, the most time consuming, and the least productive of solutions.

"The CHAIRMAN. You are talking to the president of the Casualty Co. and I agree with you.

"Mr. LANDIS. With respect to the matter here, I have so advised them. I suggested that every effort should be made to attempt to resolve the technical problems, and they are very complex, leading over a history of over 50 years, every effort should be made with the Department and with the various bureaus to see if the objectives to be achieved, as intended by the committee print, can be achieved."

Following the close of the 87th Congress, the district approved the policy suggested by me. Long and protracted negotiations were carried on, including personal conferences in Washington, D.C. The Department of the Interior sent at least one representative to visit the area to obtain firsthand knowledge of the physical situation. As a result of these efforts, a proposal similar to S. 784 was developed. It was exhaustively analyzed and studied by the district board and their staff personnel, as well as the various agencies of the Department of the Interior concerned with this legislation.

It is the district's opinion as will be expressed by Mr. Cushman, vice president of the board, that the provisions of S. 784 constitute a fair compromise of the difficult and complex problems; that S. 784, if properly administered, will enable the district to operate and maintain the facilities in the best interests of agriculture and conservation and at the same time afford maximum benefits to migratory wildfowl.

I believe that the enactment of either bill could create some justifiable problems. However, I do not believe that this matter need be explored. As I indicated before, if the district believes that S. 784 represents, in their considered judgment, a fair resolution of the vexing problem, I would be the last to advise them to trade a fair compromise for judicial proceedings seeking strict enforcement of a lawyer's interpretation of their legal rights.

Mr. LANDIS. Thank you.

Mr. Chairman, the two areas of concern, which are developed by the legislation now pending before you, relate essentially to the elimination of homesteading and to the probably impairment of the contract between the United States and the Tulelake Irrigation District.

Now, in commenting on these two areas of concern, I would like to make two prefatory statements.

One, I am certain that Senator Kuchel knows the very high regard that I have for his legislative ability and for his knowledge of the law—

Senator KUCHEL. I thank you very much. I appreciate it.

Mr. LANDIS. As I do for the other members of the committee and for the eminent witnesses who have testified here this morning.

Now, with respect to the first area of concern, the elimination of homesteading: The district, by its acceptance of the principles of Senator Engle's bill, has eliminated that area of controversy, and has consented and accepted the concept of no further homesteading. And, of course, obviously, this would apply also to Senator Kuchel's bill.

So this area of controversy which prevailed at the hearings on S. 1988 last year is no longer present.

However, the other area of controversy; namely, the probable impairment of the contractual obligations, is still a matter of deep concern to the district.

Now, I would like to relate this area of controversy to two specific provisions in both bills. And in doing so, I must refer to section 4(a) of the contract between the United States and the district, which provides that the district shall be entitled to and shall receive for use by it for any lawful purpose or purposes an amount equal to \$50,000

or 30 percent, whichever is lesser, of the total net lease revenues as provided in the contract.

In accepting this provision of the contract—and I might add that this contract took a period of more than 4 years of negotiation—in accepting this provision of the contract, the district gave up its rights under subsection (y) of the Fact Finders Act of December 5, 1924, which were substantial monetary rights given to the district by the Congress of the United States.

Now, let me go back a little bit. There are two present practices with respect to leasing in the area.

Those areas which have been transferred to the administration of the Fish and Wildlife Service, now the Bureau of Sport Fisheries, are under what is called a sharecropping pattern.

The areas which have been enumerated in section 5 of the Engle bill have historically been leased on a cash revenue basis, and the cash revenue derived from these areas has been utilized for the payment of this \$50,000 or 30-percent figure.

In working out this problem with the Department of the Interior, we pointed out that we were very much concerned that since the bill transfers administration to the Fish and Wildlife Service, it would possibly, or probably, go into a sharecropping pattern. And if it did this provision of the contract obviously would be impaired.

So that in resolving the leasing pattern we suggested that they take the present areas which are under cash lease and provide that that pattern of leasing be continued, and take those areas which are the remaining areas, which the Bureau of Sports Fisheries has been administering on a sharecropping lease pattern, and continue that, if they want to.

But in any event, as a result of the division of the areas, the revenues which we are entitled to under the contract would be maintained.

And I might add, as I understand it, that the lease revenues are so substantial that not only has the district received the \$50,000 each year, but substantial lease revenues have gone into the Federal Treasury or the reclamation fund.

So this is the basic difference between Senator Kuchel's section 4 and Senator Engle's section 5; namely, that by dividing the two areas and retaining the present pattern of cash revenues, section 4(a) is maintained, and the remaining areas can be administered any way that the Department or the Bureau of Sports Fisheries deems appropriate.

Senator KUCHEL. Where is that exact language, Mr. Landis, in the Engle bill?

Mr. LANDIS. In the Engle bill, the areas which have been subjected historically to cash lease revenues are set forth: Klamath Straits unit, the southwest sump, the League of Nations unit, the Hensell lease, and the Frog Pond unit. Those are the specific areas which have been historically leased on a cash basis.

Senator KUCHEL. The bill does not say that, though, does it?

Mr. LANDIS. Well, the bill says this—

Senator KUCHEL. Where are you reading from, now?

Mr. LANDIS. From section 5 of S. 784:

The Secretary shall, consistent with proper waterfowl management, continue the present pattern of leasing the reserved lands— which I have enumerated. And then we go down to line 24:

Leases for these lands shall be at a price or prices designed to obtain the maximum lease revenues.

And the remainder of the section relates itself to those other areas which have been on a sharecropping basis, and, of course, which we have no concern with; and if they wish to sharecrop those, it is perfectly appropriate to continue that practice.

So that with all due respect, Senator Kuchel, I think if you read section 4 in your bill, which says he shall retain full authority to lease for agricultural purposes, it does not distinguish whether they should be leased for cash revenues or on a sharecrop basis, and since both practices are in effect, presumably they could impose a sharecropping pattern over the entire area.

Now this, we feel, is an important consideration, because a considerable amount of money which the district was entitled to under section (a) of the Fact Finders Act was given up, or the rights to it, I should say, in return for this provision of the contract, and we feel that if this amount is jeopardized, a very serious impairment of the contract would result.

So this is the basic difference, and this is why we suggested, in our discussions with the department, that since nobody has ever come out with a statement that they do not want to continue the cash leasing practice—and if I recall correctly, at the hearings on S. 1988 the Bureau of Sports Fisheries said that they intended to continue that practice—we felt that that intention should be made clear in the bill, so that no possible or probable impairment of the contract could be developed by somebody else, who might develop a contrary intention.

Now, with respect to section 7 of S. 784 and section 6 of S. 783, the problem relates itself this way—and I think, Senator Kuchel, my concern has been fortified by some of your comments this morning.

As I view—and I preface this by saying this is my legal judgment, for your consideration, and of course you do not have to accept it, but as I view the language of section 6 of S. 793, the requirement, or the standard, which is essentially imposed, under that section, relates to the levels that in the judgment of the Secretary are adequate and practicable for waterfowl management purposes.

It is my view, and I realize that public interest may be involved here, but it is my view, that this would create a standard different than the standard provided for in section 7(b) of the contract.

I might add also that article 32 of the contract, to which you referred, relates only, in my opinion, to the authority granted to the Secretary to act as an arbitrator between the water users and the district, and does not grant him any authority to exercise judgments as to whether he has or has not breached the contract between the United States and the district.

Senator KUCHEL. What would your views be on section 7(d) of the contract, relative to the right of the Secretary of the Interior to promulgate new or different regulations relative to the operation of the contract?

Mr. LANDIS. I think that authority to promulgate regulations is limited by the terms of the contract, and particularly by section 7(b).

Senator KUCHEL. For example, if I may, Mr. Chairman, I think the purpose of section 7(b) is clear that the priority of use shall be for agricultural purposes.

What, then, would your comment be on the Rules and Regulations of the Secretary of Interior, dated February 10, 1960, promulgated under section 7(d) of the contract, which, in my view, set down both agriculture and waterfowl management as purposes to govern the operation of the sumps?

Mr. LANDIS. I would say, Senator Kuchel, that if the regulations constituted a substantial impairment of that priority, the Secretary would be in violation of the contract.

I say "substantial impairment." Now, there is always the question of just minimum, and we exercise judgment with respect to that. But if it constitutes factually a substantial impairment of that standard imposed in the contract, in my opinion he would be violating the contract.

Senator KUCHEL. Simply to read the exact language with respect to the rules and regulations for operation and maintenance of Klamath works project transferred to Tulelake Irrigation District under this contract, a subdivision of part (A):

Tule Lake primary sump: This sump shall be operated, (1), to collect and retain drainage waters and flood flows and to supply irrigation water, and, (2), to maintain the objective water levels of the Service for wildlife refuge purposes to the extent such objective levels are attainable by use of the project works; natural inflows, and irrigation return flows as set out in this part (A), and by following the procedures and criteria set out in part (B) hereof.

Your answer is that if—well, perhaps I should not try to put words in your mouth.

Is there a conflict, in your opinion, between section 7(b) of the contract and that section of the Secretary's regulations which I have just read?

Mr. LANDIS. I would say no. It is my understanding that that is the manner in which the regulations operate. There has been no impairment of the contract, and therefore the regulations are valid.

I think we always have two questions here, Senator Kuchel, with respect to regulations. The first question is whether the regulations comply with the standards promulgated in the contract, and the second one is whether the district has violated the regulations, assuming that the regulations do comply.

Now, this is what actually happened in 1959. A serious issue arose as to whether the regulations were consistent with the contract. That controversy eventually was resolved by revised regulations, from which Senator Kuchel has just read.

And it is my understanding, and we have a letter which will be read into the record from the project manager, that the district has been operating in compliance with these regulations, and that they do protect migratory wild fowl adequately, as well as maintaining the priority of the agricultural status.

Senator KUCHEL. Again, with respect to the last sentence of section 7(d):

Additional transfers of property and modifications of rules and regulations may be made pursuant to this article at such time or times as the Secretary may determine.

Would you contend that "rules and regulations may be made as the Secretary may determine" would limit him, however, to the terms of the contract?

Mr. LANDIS. That is correct, in the same way that the Congress has often given the Secretary authority to issue rules and regulations under various laws, but consistent with those laws.

He cannot issue regulations inconsistent with those laws, because then he might as well throw the laws out.

Now, I would like to make one other comment, if I may, Mr. Chairman, and that is this: I am not here, nor am I qualified, to evaluate the respective public interests that are involved here. I am an attorney. I feel I am qualified to render an opinion on the legal issues that are involved.

I feel certain that the Congress would no more want to—at least this is my view, and I hope I am right—enact legislation which would impair the validity of a contract to meet a public purpose, any more than it would enact legislation to take away property to meet a public purpose, without providing for just compensation in accordance with the Constitution.

This is the way I view this legislation, that if it does impair the obligations of the contract, and if we can amend the legislation to immunize it against such an attack, then I think we ought to do it.

And this was the basis of a year's negotiation, as I point out in the statement, between the district and the Department of the Interior. And these views I had hoped would be made known to Senator Kuchel and to the committee staff. At least I had some discussions with the staff along that line, myself.

So essentially, this is the problem, the legal problem, that is involved in the difference between the two bills.

Senator KUCHEL. Is it your judgment as a lawyer that where the Engle bill specifically refers to section 7(b) of the contract to guide him, that effectively prevents the Secretary from overruling the priority of use for agricultural purposes of the waters involved?

Mr. LANDIS. Let me answer that in this way. I think that the contract does that now. I think by incorporating that provision in this legislation, you protect the legislation against an attack that it does not.

Senator KUCHEL. Well, so that I completely understand: If your contention is that the contract gives your client that right today, you provide specifically for section 7(b) in the Engle bill as a guideline simply to eliminate any contention that section 7(b) could, under certain circumstances—

Mr. LANDIS. No, Senator. This is not my view, at all. My view is that the language of section 6 in your bill creates a conflict in the priorities, and that the Secretary of the Interior, in administering both the legislation, or the bill, if it is enacted into law, and the contract, does not know which is the priority.

Your bill says it is waterfowl management, and the contract says it is agricultural purposes.

Senator KUCHEL. And what does the Engle bill say?

Mr. LANDIS. The Engle bill says it is agricultural purposes, and consistent with section 7(b) of the contract.

Senator KUCHEL. That was the point I wanted to make. So in your judgment, the inclusion of 7(b) of the contract in section—

Mr. LANDIS. Section 7(b), I think you are referring to, in section 7.

Senator KUCHEL. In section 7 of the Engle bill—simply underlines, in your judgment, the intention of that bill that agricultural purposes shall control and have No. 1 priority?

Mr. LANDIS. Well, this is one view, of course, but the other side of the coin, Senator, is that your bill destroys that priority, in my opinion, or could destroy it.

And if it does destroy it, then it destroys also the provision of the contract, and if that is true, then we do have legislation which impairs the validity of the contract.

Senator KUCHEL. Your position is clear.

Senator MOSS. You may proceed.

Mr. LANDIS. I have finished my statement. These are the two areas of concern, as I jointed out, and we feel that the negotiations with the Department, and the language incorporated in S. 784, eliminates those areas of concern insofar as the district is concerned, and that is why it is supporting language in those two sections.

Senator MOSS. Thank you, Mr. Landis.

Mr. LANDIS. Thank you, Mr. Chairman.

Senator MOSS. Mr. Cushman, would you like to proceed?

STATEMENT OF LESTER M. CUSHMAN, VICE PRESIDENT, TULELAKE IRRIGATION DISTRICT

Mr. CUSHMAN. Mr. Chairman, with your permission, I would like to read my statement. I was going to summarize it, but I feel in view of some of the earlier statements made this morning, there are some very pertinent references in here that perhaps will contribute something toward clarification.

Senator MOSS. You may do so.

Mr. CUSHMAN. Mr. Chairman and members of the committee, my name is Lester Cushman. I am vice president of the Tulelake Irrigation District, a farmer, and a sportsman. I have resided in the Greater Klamath Basin for 27 years, and I have seen many changes take place during that time. My testimony is given to define as clearly as I can the district's position with respect to what we feel would be the best multiple and cooperative use of the land and water resources in the Klamath Basin.

Our community consists primarily of small businesses which collectively depend on agriculture as their primary source of income.

The people of our area feel that wildlife and recreation benefits derived therefrom are also important to a continued healthy economy. The people also understand the importance of wildlife conservation to the Nation. Both interests require protection. The conflict which has arisen is caused by the fact that those who want to protect the migratory waterfowl intend to do so without regard to the cost to the farmers and the people in the area.

The Klamath project was authorized as a reclamation project in 1905, about 58 years ago. As the lands were reclaimed, they were opened to homesteading. While the reclamation project was being developed by the Bureau of Reclamation, various areas were set aside for wildlife refuges. However, in all cases, the Executive orders state that the lands involved have been withdrawn for reclamation purposes, and the reservation of these lands for a bird refuge is subject to the use thereof by the Department of the Interior for irrigation and other incidental purposes and to any other valid existing rights.

The Tululake Irrigation District was organized in 1952. It contains an area of more than 93,000 acres. The legislation before you involves 37,430 acres in the district. This area has been administered by the Fish and Wildlife Service and by the Bureau of Reclamation under various agreements. Over the years, differences have developed and when the contract between the district and the United States was entered into on September 10, 1956, we sort of inherited these problems. We think the time and circumstances have arrived that necessitate legislation, but we feel this legislation should relate itself to the agricultural interests as well as migratory waterfowl. This legislation should not ignore the farmers and businessmen of the community and the contract between the United States and the district. In fact, the private lands in the area are very important to migratory waterfowl. Waterfowl make great use of the private lands and irrigation facilities within the district.

At this point, Mr. Chairman, I would like to elaborate slightly and say that we have a group of pictures before us here showing birds on the refuge, and they are truly representative pictures. There are birds on the refuge. But the implication that birds use only refuge lands and not private lands is absolutely, positively not true.

I would like, with your permission, to show you a set of pictures that we took just before we left home, which shows the birds feeding on our local fairgrounds, which are within the city limits of Tululake. I think they are quite interesting pictures and that you would enjoy looking at them.

As a matter of fact, at the local school district, the little kids, before they could play baseball, had to run the geese off of the ball area. And this occurred not only at the city limits but on all green pastures and private lands.

A moderate estimate of crop gleanings left on these lands after harvest time is approximately 200 pounds per acre on grain and 500 pounds per acre on row crop. This provides approximately 2,438 tons of grain and approximately 2,475 tons of potatoes and onions left on the ground available for waterfowl each year.

The record shows that cropping patterns in the private lands, although rotated (have been consistent in the percentage of irrigated lands devoted to growing grain, row, and green crops. Of the approximate 45,000 acres of private lands farmed in the district, an average of 61 percent is in grain, 19 percent in row crop, and 20 percent in legumes.

Legume crops grown on private lands perform a function of tremendous value because they provide early spring feed for waterfowl as they return to nesting areas. This occurs during the time of year when other waterfowl feed in the basin is in short supply.

I would also like to mention something about the ability of the Tulelake area to hold birds during the fall in order to prevent depredation of crops in the southern parts of our State. The Fish and Wildlife Service has done an excellent job of containing the birds during the time of depredation. But one major factor should be brought to your attention—you can have an abundance of waterfowl food on the ground, but when you get 2 feet of snow on top of it, Mother Nature tells these birds to go south. That is what occurs. It has happened before and no doubt will continue.

I have mentioned that we have inherited problems. They are serious and complex problems. Late in 1959 the situation concerning rules and regulations under the district's contract became so acute that the Secretary of the Interior issued a "take over" order. In 1960, as a result of discussions and negotiations, and pursuant to articles 7(b) and 7(d) of the contract dated September 10, 1956, between the United States and the district, the revised rules and regulations were issued by the Secretary of the Interior and accepted by the district.

Mr. Chairman, with your permission I would like to submit for your files a copy of the document entitled "Rules and Regulations for Operation of Klamath Project Works Transferred to the Tulelake Irrigation District," dated February 10, 1960.

I don't know whether one of these has been introduced or not.

Senator Moss. That will be made part of the committee files for reference in this matter.

Thank you.

Mr. CUSHMAN. In brief, these rules provide that the Tule Lake sump shall be operated: (1) to collect and contain drainage water and floodflows and to supply irrigation water, and to (2) maintain the objective water levels of the service for wildlife refuge purposes to the extent such levels are attainable by the use of project works, natural inflows, and irrigation return flows.

I would like to say I stress the importance of this area, here, that these rules have worked reasonably well, and that we have earnestly endeavored to adhere to them. We do feel that these rules and regulations should be periodically subjected to review with respect to flood control criteria which would furnish maximum benefits to both agriculture and waterfowl needs. The district is responsible for the maintenance of the dikes containing the lake as well as the irrigation and drainage works adjacent to the lake. Occasionally the existing rules impose a hardship on the district as was illustrated by the October 1962 storm which brought 5 inches of rainfall in 5 days. The October objective levels, as established in these rules, leave very little room for storage of flood waters.

Mr. Chairman, I would like to submit for the record a study of the results of this same storm conducted for our district by Howard Stoddard of Stoddard & Karrer, consulting engineers, Los Banos, Calif.

Senator Moss. That will be incorporated in the record (see appendix).

Mr. CUSHMAN. This study reveals that runoff into the lake exceeded available storage by some approximately 8,000 acre-feet. By a cooperative effort between the local operating agencies involved, the district was able to disperse the flood at a cost of \$12,000. Because of the rehabilitation of existing facilities in the Frog Pond area, there

were no row crops grown last year. Consequently, we were able to utilize some of these lands for flood storage. During any normal year, these lands would still have had unharvested row crops on them which would no doubt have suffered damage, costing the farmers and the district many times more than the \$12,000 expended last year.

We are convinced that adequate flood protection for agriculture is mutually beneficial for refuge management. It is only logical that unintentional or unnecessary flooding eliminates the availability of feed on the ground for waterfowl as well as destroying project facilities.

As I have pointed out, these rules, as presently established, are obviously compatible with all parties concerned. Our district must look to the future, and we are concerned under what procedure any changes might occur at that time. Toward that end, we feel section 7 of S. 784 does the best job of clarifying the standards under which any possible changes might transpire. To put it bluntly, you can't carry 2 gallons of water in a 1-gallon bucket without spilling some, and we are simply trying to avoid being put in that position.

Perhaps this letter from the Klamath project manager, U.S. Department of the Interior, Bureau of Reclamation, will illustrate how the lake has been operated in the past several years.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
REGION 2, KLAMATH PROJECT,
Klamath Falls, Oreg., March 15, 1963.

MR. EDWIN V. LANCE,
*Manager, Tululake Irrigation District,
Tululake, Calif.*

DEAR MR. LANCE: This is a reply to your letter of March 8 requesting some review of the operation of the Tule Lake sump during the 3 years that the present rules and regulations have been in effect. These rules and regulations concern control of the sump levels during the fall, winter, spring, and summer for the benefit of hunter access, flood control, wildfowl nesting, and botulism prevention, in that order of the seasons.

During the past 3 years the fall levels have been at or above the prescribed minimum levels necessary for desirable hunter access into the marsh areas of the water sump. Although the recordbreaking storm and runoff of early October 1962 raised the sump for a time above the objective level, hunter access was favored rather than being impaired. Following this very unusual storm as the sump water levels were high, your full operation of pumping plant D, to export the surplus water, was in accordance with the contract regulations. Similarly, beginning on November 1 of 1960 and 1961 the operation of the export pumping plant, plant D, to lower levels and thus make available unused sum capacity for the control of possible flood inflow and prevent inundation of the Tululake farmlands, wildlife buffer areas, and related laterals and drains, was also as prescribed by the contract regulations.

It is noted that during the past 3 years the spring precipitation and natural runoff were insufficient to appreciably raise the sump levels until after the drainage and return flows from early irrigation contributed to the sump inflow. As a result, the sump water did not reach the high level desired for nesting until about May 12 in 1961 and 1962, and May 23 in 1960. In June of the summer of 1960, your operation of the outlet pumping plant was continued for about 3 days after we felt that the sump water had been lowered to the objective. At this time, a deviation of over one-tenth of a foot occurred and some water was released directly to the sump. Later that year for various reasons there was noted some lesser deviations.

During the summers of 1961 and 1962 there were some deviations approaching a tenth of a foot or slightly more which were not preventable by a change in the operation of plant D. Due to a raise during the last half of May 1962 in spite of your heavy export pumping, the Bureau of Sport Fisheries and Wild-

life chose to exercise their option provided in the operating regulations, and asked that the objective level be temporarily raised two-tenths of a foot as of June 1, and thence tapered to the regular objective level of August 1. In line with this new objective the export pumping to lower the sump was discontinued during June and most of July.

From the detailed review of the sump levels and control operations that a successful operation requires, much of the time requiring daily attention, it is evident that there are periods of heavy winds and other uncontrollable factors acting upon the extensive water surface of the sump which make close control quite difficult.

Your continued control of the sump levels in accordance with the rules and regulations of the contract, insofar as it is possible to do so by careful management of the outlet pumping is appreciated.

Sincerely yours,

C. D. LAWRENCE, *Project Manager.*

Last year Senator Kuchel introduced S. 1988. We sincerely believed that the provisions of this bill seriously threatened the district. During the hearings on this bill, both before the Senate and House committees, we tried to show this. S. 793 is the same bill.

After Congress adjourned last year, the district authorized our attorneys to discuss the kind of legislation which would be fair to both agriculture and wildlife conservation. After considerable study and discussion between our representatives and the Department of the Interior, a bill similar to S. 784 was developed. We have gone over S. 784 very carefully. We believe that the farmers in the district can live with this legislation while at the same time it provides maximum protection to migratory waterfowl.

The district has authorized me to state that it supports S. 784 as a compromise to a longstanding controversy. I therefore urge you to give S. 784 your favorable consideration.

Senator MOSS. Thank you very much, Mr. Cushman.

Senator KUCHEL.

Senator KUCHEL. Mr. Cushman, you have just stated that the Tule-lake Irrigation District endorses the provisions of Senator Engle's bill, S. 784.

Mr. CUSHMAN. That is correct.

Senator KUCHEL. Now, does it endorse the provisions of that bill in the printed form before you, or does it also endorse the suggested substitute amendment which the Department of the Interior asked this committee to amend into it today?

Mr. CUSHMAN. Senator, the best way that I can answer is that we have not had time to give these suggested amendments consideration. So therefore I don't know what action the board of directors will take. I think if the impact of the bill was not necessarily and different, certainly we would give them due consideration.

Senator KUCHEL. And it would be the position of the district that Congress could not make conservation purposes superior to agricultural purposes, as that latter term is used in your contract with the Government?

Mr. CUSHMAN. When we signed our contract with the Federal Government, after a great deal of negotiation, we felt that the language in our contract clearly established the priority of uses. And I would like to say at this time that it is the board's position that we feel we have a valid legal contract, and that we are bound to operate

under the stipulations established in that contract. We have an obligation to our water users to follow the terms of our contract.

Senator KUCHEL. Well, now, you said from eliminating homesteading. What do you think the purpose, then, of the Engle bill is?

Mr. CUSHMAN. I may ask you to envision a bowl of water, at a certain level it runs over the top, and at a lower level, of course, it will not. Our concern is this: We are operating a sump, a water sump. That sump provides us with flood protection for agriculture. Now, our problem, and the reason we are supporting S. 784 is because we believe it projects its thinking toward the future and respects our contract. Now, what level in the future would be a compatible level for duck-hunting access—this lake that I referred you to has a core that is actually building up. At what rate I am not prepared to say, but we do know there is a trend for the floor of the lake to raise. We assumed a contract to maintain and take care of these dikes. So if the dikes have to be raised, this would be our problem. This is what we do not want to have to do.

Senator KUCHEL. So what do you think the purpose of the Engle bill is?

Mr. CUSHMAN. I think the purpose of the Engle bill is to give our contract its due respect.

Senator KUCHEL. It's what? I did not hear you.

Mr. CUSHMAN. It refers to the contract. And I think Senator Engle put it quite well. It is very comforting to the Tulalake Irrigation District to have specific mention of our contract.

Now 7(b) and 7(d) relate themselves directly to sump levels. And after all, that is what we were talking about, the sump levels.

Senator KUCHEL. What authority do you think the Engle bill gives to the Secretary of the Interior with respect to wildlife and conservation practice?

Mr. CUSHMAN. Senator, I think that is a matter of interpretation, and I feel our legal counsel would be better qualified to answer that.

Senator KUCHEL. At any rate, you are sure that any conservation practice must be, and should be, and so far as the Engle bill is concerned, is junior to the agricultural purposes provided in your contract.

Mr. CUSHMAN. I would think that is what our contract says; yes, sir.

Senator KUCHEL. And you agree with the statement that was made?

Mr. CUSHMAN. I would think so.

(The question of Senator Kuchel was read by the reporter, as follows:)

At any rate, you are sure that any conservation practice must be made, and should be, and so far as the Engle bill is concerned, is junior to the agricultural purposes provided in your contract.

Mr. CUSHMAN. Senator, I might elaborate to this extent. I think the people in our area definitely feel that there is room for both interests, under proper management.

Senator KUCHEL. You do not answer my question.

Mr. CUSHMAN. I apparently do not understand your question clearly, Senator.

(The question was reread by the reporter as follows:)

At any rate, you are sure that any conservation practice must be, and should be, and so far as the Engle bill is concerned, is junior to the agricultural purposes provided in your contract.

Mr. CUSHMAN. I would have to say "Yes."

Senator KUCHEL. Sure. You have a good lawyer down there, that urges that this, from a legal standpoint, is the only position that Congress can take.

Mr. LANDIS. Well, may I comment, Senator Kuchel?

Senator KUCHEL. Surely.

Mr. LANDIS. I think we have to look at this from a rather broader point of view. Both bills relate to a vast area. Both bills seek to develop the protection and enhancement of migratory waterfowl over a tremendously vast area. Where the area of conflict is in a very small area, and that is with respect to the water area and the sumps. It has nothing to do with this tremendous other area which the fish and wildlife people will be getting for migratory wildfowl. Now there is no question that with respect to this small area our contract gives it some protection. But as far as migratory waterfowl and conservation is concerned with respect to either bill, it contemplates considerably more, or both bills contemplate considerably more, than just the question as to whether agriculture should have a prior effect in a sump, or whether it should not. And I think this is the area of distinction that must be made, that we are not dealing in these bills primarily with a sump which has some water in it. Both of these bills deal with a vast area and a vast problem of migratory waterfowl.

Now, when we relate that, or relate either bill, to a specifically small water area, other problems inject themselves, one of which being the contractual provisions with respect to that area.

So I don't think that we can label one an agricultural bill and the other a conservation bill. Both bills deal with the same problem.

Senator KUCHEL. I just asked a question. That is all I did.

Mr. LANDIS. I tried to answer it, Senator.

Senator KUCHEL. Have you had a chance to study the recommended substitute section 7?

Mr. LANDIS. Since arrival in Washington, yes, sir.

Senator KUCHEL. And do you have a view on that?

Mr. LANDIS. My view is that it is similar in import and intent to the provisions of section 7 of S. 784. It makes no material change. And I would recommend to the district that it accept that modification in language.

Senator KUCHEL. Could you express to the committee, Alvin, in your own words, what you think that new section 7 provides?

Mr. LANDIS. As different than the old section 7?

Senator KUCHEL. No, what does it do, the new section?

Mr. LANDIS. It says to the Secretary of the Interior: "You can maintain these levels to the extent practicable for waterfowl management, but in doing so you give recognition to the fact that section 7(b) of the contract between the United States and the district provides that the primary purpose," or the prior purpose, whatever the word

is, I forget now, "shall be agriculture." But this relates itself solely to a sump area and does not relate itself, for example, to the Klamath Forest National Wildlife Refuge, to this vast 37,000 acres which are being taken out of homesteading, and which are being put under the administration of the Bureau of Sports Fisheries for Migratory Waterfowl, which both bills do. So that I think that the conservationists have received a tremendous benefit here. And I am not criticizing the value or the need for the benefit. But I do say that this has been a reclamation project. It has been such for 58 years.

Mention has been made of a diminishing body of water, but that body of water, as I understand it, has been diminished because there have been two acts, one by the State of California and one by the State of Oregon, which say to the Bureau of Reclamation, "You diminish that body of water and reclaim that land for agricultural purposes," a policy which has been adopted by the Congress of the United States, not only in authorizing various facilities for the Klamath project but in appropriating millions of dollars for that purpose. So that when you have 58 years of a reclamation project, this is not just a wild area out some place in the State, where we are now arguing whether it should be agriculture or whether it should be conservation. A developed economy has grown up in that area, predicated upon the policies laid down by the Congress of the United States. And this is a departure from that policy. I am not saying it is a bad departure. But I think recognition ought to be given to the fact that it is a departure from that policy.

I might add one other thing, Mr. Chairman, and that is if you will read the Executive orders establishing these National Wildlife Refuges, everyone of them contain a condition or a provision that the prior purposes for which these lands have been withdrawn have been under the Reclamation Act. So that this is not only a departure in policy from congressional legislation. It is a departure in policy from the executive branch as well. And again, I am not criticizing the need or the correctness of that departure. I don't think we ought to minimize, however, that it is a substantial departure from that policy.

Senator Moss. Thank you, Mr. Landis.

Are there any other statements from any of you gentlemen?

Mr. ROSE. I might like to say just one thing, that maybe you gentlemen don't know. This area that we are talking about—we dug a canal up there, and that is how Tule Lake developed. And when you get storms way back on the mountains there, if Clear Lake happened to be full, the conversion canal can only carry so much water. That water automatically comes down to Tule. And we only have five pumps, and we only have a conduit 6 feet in diameter and that does not carry too much water if we have to pump it out in a matter of 3 or 4 days or a week.

Senator Moss. Thank you, gentlemen. We appreciate your presence and your testimony.

Senator Moss. Mr. Glading of the California Fish and Game.

Happy to have you, sir. You might put your statement in the record and comment, or you may read it, whichever you prefer.

STATEMENT OF BEN GLADING, APPEARING ON BEHALF OF
CALIFORNIA DEPARTMENT OF FISH AND GAME

Mr. GLADING. My name is Ben Glading, representing the California Department of Fish and Game.

This statement is being made on behalf of Dr. Walter Shannon, Director of the Department, and on behalf of the California Fish and Game Commission.

Both of these agencies have been supporting actively this much needed legislation for a number of years.

The purpose of this legislation—and now I am referring to both bills—is to preserve the necessary existing habitat for migratory waterfowl in the most vital single area of the Pacific flyway. It will also assure the continued control of depredations on agricultural crops, and the preservation of one of the largest and best waterfowl public hunting grounds in the United States.

The Tule-Klamath refuges are indispensable to the mains of the Pacific flyway and its waterfowl resources. Eighty percent of the waterfowl of this flyway uses this area during the spring and fall migrations. At times the daily concentration of waterfowl reaches over 7½ million birds. While the area is of primary value as resting and feeding habitat, it compares favorably, acre for acre, with some of the best Canadian breeding grounds. On the average, 100,000 to 125,000 waterfowl are produced here, with a large proportion being the endangered species of redheads, and ruddy ducks.

The need for stabilizing the existing refuges is indicated by the fact that during the past 60 years the marsh and water areas have dwindled from an original 187,000 acres to the present 25,000 acres. Each year additional encroachments are being made on the remaining habitat. The existing areas meet certain waterfowl requirements.

If their value for this use is seriously impaired or destroyed, replacements will be necessary if the waterfowl resource is to be preserved. On the basis of experience in California, the purchase of suitable replacement lands would be very expensive, and at this late date practically unobtainable.

It should be emphasized that in addition to being essential for the maintenance of the Pacific flyway's waterfowl, the Tule-Klamath refuges are absolutely essential to maximum agricultural production in the Central Valley of California.

During the fall migration, there is no stopping place for ducks between those refuges and the Central Valley that is capable of holding more than a small number of birds. Should the carrying capacity for the millions of ducks that stop over on the Tule-Klamath refuges each fall be jeopardized, the consequence to rice farmers and other agriculturists would be disastrous.

An earlier witness says whenever it snows the birds are going to move on, anyway. But these snows do not occur at the time of year that is critical to agriculture in the Central Valley.

In other words, this critical time is past by the time any snows of any consequence arrive at the Tule-Klamath area.

The proposed legislation will stop any further homesteading—and this is highly important—but it will not reduce agriculture income.

The practice of leasing 15,000 acres of farmland will be continued under various practices. This practice not only helps the local economy, but it also provides waterfowl with great quantities of waste grains, weed seeds, and, after the fall rains, green forage.

Thus, the agricultural economy will continue, but, even more important, the more valuable waterfowl resource will be provided.

In summary, the main purpose of these bills is to stop any further encroachment on refuge lands for reclamation and homesteading purposes. Since these refuges are established only by Executive order, their status could change at any time.

These bills would establish the refuges on a permanent basis, perpetuate the esthetic and recreational values of the waterfowl resource, and assure protection to the Central Valley's established agricultural interests.

For these reasons, it is essential that the refuge areas covered by legislation of this type be permanently dedicated to the primary purpose of waterfowl management—and I would have to add, personally, as soon as possible.

Senator Moss. Thank you very much, Mr. Glading.

Senator Kuchel?

Senator KUCHEL. We have two bills before us, S. 784 and S. 793. Which bill, if either, has your commission recommended?

Mr. GLADING. As I tried to indicate in my statement, Senator, the main purpose is served by each bill. However, we have made a careful analysis, largely through the Attorney General's office, and as they are presently worded, there is a preference for your bill, S. 793, which has to do with the controversial sections that have been discussed.

Senator KUCHEL. Thank you, sir.

Senator Moss. Thank you, Mr. Glading. We appreciate your testimony.

Senator Moss. Mr. Leffler, the general counsel for the International Association of Fish & Game Directors.

STATEMENT OF ROSS L. LEFFLER, GENERAL COUNSEL, INTERNATIONAL ASSOCIATION OF GAME, FISH & CONSERVATION COMMISSIONERS

Mr. LEFFLER. Mr. Chairman, I am Ross L. Leffler, general counsel of the International Association of Game, Fish & Conservation Commissioners. I reside in New Florence, Pa.

The international association is composed of administrators of official State wildlife agencies in all of the States. These agencies are the State counterparts of the Bureau of Sport Fisheries and Wildlife.

It long has been my privilege to work with these gentlemen, first as a member of the Pennsylvania Game Commission and later as a representative of the Department of the Interior, and I know of their deep and abiding concern about the preservation of waterfowl resources in the Pacific flyway.

A statement on behalf of the international association was filed with this subcommittee last year as it considered another proposal to conserve wildlife in the Tule Lake-Klamath region of California and Oregon. At its last meeting, in September 1962, the association reaffirmed its support of this proposal.

In summary, this organization long has endorsed measures which would preserve and protect the remaining waterfowl habitat in the area. My purpose in appearing here today is to emphasize again how important we believe it is for these waterfowl resources to be protected in the public interest.

In my personal opinion, Mr. Chairman, the two most important conservation proposals currently before the Congress are those to protect wilderness and to preserve waterfowl habitat at Tule Lake-Klamath.

This committee certainly is to be congratulated upon its fine work which already has resulted in Senate approval of the wilderness bill by an overwhelming margin. We are hopeful that similar progress can be realized on Tule Lake-Klamath.

The same justifications considered favorably by the subcommittee last year still exist. Reduced to the most basic considerations, these are the justifications:

1. Up to 80 percent of the migratory waterfowl in the Pacific flyway utilize this critical area. To reduce it even further in size would endanger the great public interests, including those of an international character, in an important natural resource.

2. National refuges in this region must be operated at the maximum efficiency to accommodate birds which otherwise would cause serious crop depredations.

3. Protection of existing habitat would not alter current agricultural practices in the area concerned, or cause hardship.

An earlier version of this proposal was reported favorably by this subcommittee and the full committee. It was passed by the Senate and, with a few amendments, won subcommittee approval in the House.

We are convinced that only a lack of sufficient time prevented enactment last year. Therefore, we respectfully recommend that the subcommittee give early favorable consideration to S. 793, which essentially is the same proposal that advanced so far in 1962.

Thank you for the opportunity of making these comments.

Senator Moss. Our next witness will be Thomas L. Kimball, executive director of the National Wildlife Federation.

Glad to see you here, Mr. Kimball.

STATEMENT OF THOMAS L. KIMBALL, EXECUTIVE DIRECTOR, NATIONAL WILDLIFE FEDERATION

Mr. KIMBALL. I will file this statement for the record and then make a few comments to the committee.

Senator Moss. That would be very desirable, and it will be made a part of the record.

(The statement referred to follows:)

STATEMENT OF THOMAS L. KIMBALL FOR THE NATIONAL WILDLIFE FEDERATION

Mr. Chairman, I am Thomas L. Kimball, executive director of the National Wildlife Federation, with headquarters here in Washington, D.C.

The National Wildlife Federation is a private organization which uses educational means to attain conservation objectives. The National Wildlife Federation has independent affiliates in all 50 of the States and the District of Columbia. These affiliates are composed of individuals who, when considered with other

supporters of the National Wildlife Federation, number an estimated 2 million persons.

Prior to my employment with the National Wildlife Federation, Mr. Chairman, it was my privilege to serve as director for State governmental wildlife agencies in both Arizona and Colorado. From this personal experience, and from expressions from wildlife conservationists in the areas concerned, I know how highly important this Tule Lake-Klamath complex is to the welfare of waterfowl in many Western States, Canada, and Mexico. Unquestionably, this is the most important single waterfowl area in the Pacific flyway, probably in the entire Nation.

I was honored to be able to appear before this subcommittee on the same proposal last year. Then, as now, as we see it, the two major requirements for preservation of waterfowl at the Tule Lake-Klamath area are these:

(1) Retention of adequate amounts of land and water in permanent Federal ownership for the primary purpose of waterfowl use and production, thereby excluding any possibility of further disposition of the valuable waterfowl habitat into private ownership. The Lower Klamath refuge was the first to be established in the United States and this was accomplished in 1908 by Executive order. Now, after 55 years, it is time to give it permanent legal status.

(2) Insuring ample supplies of water for proper wildlife management. In the broadest public interest, water levels should be maintained for the maximum opportunities for waterfowl management consistent with valid existing agricultural rights.

We are confident that these objectives can be achieved in harmony with existing agricultural operations in the immediate area. Most certainly, measures taken in the Tule Lake-Klamath complex which hold waterfowl in the area also are of tremendous value in preventing crop depredations elsewhere. In short, we believe management of wildlife in this area produces many public benefits which deserve protection.

It is encouraging that the two distinguished Senators from California have authored proposals so nearly in agreement. They are to be commended for their interest in reaching a permanent solution to what has been a problem area.

We are hopeful that the subcommittee may see fit to report favorably upon S. 793. This proposal already has undergone much refinement, both in this subcommittee and in its House counterpart. This version was recommended by the Department of the Interior last year. It won the approval of the subcommittee, the full committee, the Senate itself, and the House subcommittee. Essentially the same conditions exist. Early endorsement and consideration could make this one of the outstanding accomplishments in wildlife conservation for this session of the Congress.

Thank you, Mr. Chairman, for the opportunity of making these observations.

Mr. KIMBALL. Mr. Chairman, there are two major requirements for the preservation of waterfowl at the Tule-Klamath area and in my opinion these two are the retention of adequate amounts of land in personal Federal ownership for the primary purpose of waterfowl use and production, and it is our opinion that both of the bills that are before the subcommittee at this time would do this job. Both of the bills eliminate homesteads and set aside the land for waterfowl use.

The second requirement is the insurance of ample supplies of water for the proper management of waterfowl, and here there is no question in my mind but what S. 793, introduced by Senator Kuchel, is the one which would provide these ample supplies of water.

We are hopeful that the subcommittee may see fit to favorably report on that bill. This bill has undergone much refinement. It has, during the last session of Congress, passed this subcommittee, passed the Senate, passed the subcommittee in the House, and I think would have passed the full committee in the House itself had there been time during the last session of Congress.

Specifically referring to section 7 of the Engle bill, which describes certain sections of the contract between the Tulelake Irrigation District and the Federal Government, it in our opinion really negates the intent of the entire bill by, in essence, protecting solely the agricultural rights and making everything else subject thereto. We are perfectly willing to see that the legislation be subject to any valid existing right, but we hate to see two particular sections pulled out of the contract and given official congressional recognition.

It is my understanding that another section of this same contract provides the Secretary with the authority to make judgments in connection with how this water should be manipulated, and if we are going to start mentioning sections of the contract, we would like to see that section 32 also be included so that the Secretary can actually exercise his judgment and that he is not precluded from consideration of waterfowl and limited to taking action solely for the benefit of agricultural interests. Therefore, we would like to see that particular amendment, if the committee considers the other bill, stricken and substitute the language that was contained in the previous legislation that this bill is subject to all valid existing rights. I think that covers both the wildlife and the agricultural interests and wouldn't pinpoint any specific one.

Senator KUCHEL. A very fine statement.

Senator Moss. Thank you, Mr. Kimball, for a fine statement. We are glad to have it for the record.

Mr. Gutermuth, for the Wildlife Management Institute. We are very glad to have you here, Mr. Gutermuth.

STATEMENT OF C. R. GUTERMUTH, VICE PRESIDENT, WILDLIFE MANAGEMENT INSTITUTE

Mr. GUTERMUTH. Thank you, Mr. Chairman.

I would like to comment about a couple of things having to do with section 7 in the Engle bill, S. 784.

Conservationists are pleased that the committee has scheduled an early hearing on these bills that would permanently stabilize the Tule Lake, Lower Klamath, and Upper Klamath National Wildlife Refuges, along the California-Oregon boundaries, for wildlife purposes. The circumstances favoring the need for congressional recognition of the refuges have not changed in the year that has passed since the committee last considered this subject and reported out a sound bill that was approved by the Senate and by the House Subcommittee on Irrigation and Reclamation. Formal dedication of the refuges to wildlife purposes is supported by the affected Federal and State agencies and by conservationists everywhere.

Because of their unique location in respect to available waters and marshlands in the Pacific flyway, the refuges are used by more than 80 percent of the flyways ducks during the spring and fall migrations. Large numbers of ducks, geese, and other birds also nest there, and thousands of young are reared each year. The refuges also help retard the southward migration of ducks into California's Central and Imperial Valleys thereby assisting materially in decreasing serious agricultural depredations that would be experienced if the birds arrived before most harvesting was completed. The refuges

are open to public visitation and hunting, and provide many hours of outdoor recreation opportunity for thousands of people and enhance the local economy, in addition.

Mr. Chairman, the committee's records and printed documents contain a thorough discussion of the origin of the three refuges, their history of operation and development, and the factors that have forced the decision to seek congressional dedication of the areas for wildlife purposes. Much of that record already is known to the members of the committee and more of it undoubtedly will be reviewed before this hearing concludes. Rather than adding further to that testimony, I wish to discuss the principal differences of the two bills before the committee.

First, it should be recognized that conservationists are grateful to both of the California Senators for their interest in seeking to resolve a problem that has pestered successive administrations for more than 20 years. There is widespread support for the overriding objective of both bills; namely, to stabilize the boundaries of the three refuges and to assure their continued management in the interests of waterfowl and other wildlife and to aid in the administration of the contiguous project.

Two fundamental elements influence the management of any refuge for waterfowl purposes. The first of these is land—living space in a sense—and this is provided in the bills. Both would stabilize the boundaries of the refuges, exempt them from further homestead entry, and include limited additions of certain other public lands that are recognized as having primary value for the operation and management of the refuges.

We are pleased that the bills authorize continuance of the present pattern of agricultural leasing within the Tule Lake and Lower Klamath Refuges. There is no opposition to this. The present leasing agreements on about 15,000 acres enable local farmers to benefit from arable lands within the refuges, while at the same time, the crops that may be grown are carefully regulated so as to provide on-refuge waste grain for the ducks and geese. The Federal Government also farms about 2,500 acres to provide additional and necessary food for the birds.

Leasing revenues would be shared with local counties on the basis of not to exceed 25 percent of the net revenues collected annually, providing that the total annual payment per acre shall not exceed 50 percent of the average per-acre tax levied on similar lands. This scale of revenue sharing is consistent with the policy of the Federal Government as it applies throughout the country.

As I noted previously, the refuge operation depends for its success, or failure, on suitable elements of land and water. Both S. 784 and S. 793 would assure that the refuges have sufficient area of land in order to fulfill their primary purpose without loss of value for wildlife. Some persons with whom I have talked have expressed preference for section 5 of S. 784 over section 4 of S. 793 in that it is more precise in describing the areas of the Tule Lake and Lower Klamath Refuges that would be open to agricultural leasing. Section 5 relates those lands to the official "Plan for Wildlife Use of Federal Lands in the Upper Klamath Basin, Oreg.-Calif." dated April 1956.

The productive capacity and the overall usefulness of a waterfowl refuge depends upon an adequate supply of water, balanced both in quantity and in time with the needs of the birds. It is possible, in the case of a refuge like Tule Lake where the sump water levels can be controlled, to regulate the water supply so as to greatly facilitate waterfowl nesting, to minimize the occurrence of botulism, or western duck sickness, and to favor public access at times where such access is necessary or desirable. Reasonable control of the water levels is necessary in order to assure that the Tule Lake Refuge will be managed so as to produce maximum benefits for waterfowl consistent with other prominent, local considerations.

The acute relationship between water-level control and refuge productivity is not idle speculation, Mr. Chairman. For example, operation and maintenance of the reclamation project whose waters pass into the Tule Lake Refuge sumps was taken over by the Tulelake Irrigation District in 1956 under a repayment contract to the United States. Contract regulations specified objective water levels in the sumps so as to be compatible with waterfowl nesting, to minimize the hazards of botulism to the birds, and to accommodate public hunting, when permitted. The district ignored the regulations, altered the water-level schedule drastically, ruined a waterfowl-nesting season, and made it impossible for hunters to reach shooting areas by boat. In 1960, the Interior Department charged the district with violating the contract and took steps to operate the project's water pumps. Only then did the district agree to comply with a new set of objective water levels and to operate the pumps so as not to interfere with the wildlife objectives of the refuges.

Conservationists wish to avoid any such misunderstanding in the future. It is not good for the waterfowl resource, for the Tule Lake Refuge, or for the local residents who are interested in the operation of the irrigation district. All parties should know exactly where they stand, the requirements that have to be met, and what is expected of them. Preservation of the status quo is not enough.

The committee should know that the conservationists do not think that section 7 of S. 784 adequately takes care of the situation. Section 7 differs considerably from the corresponding section in S. 1988, which was reported by the committee and approved by the Senate last year, and from section 6 of S. 793, which is identical to the earlier bill. It also is at variance with the recommendations of the Department of the Interior on S. 1988 last year.

We are concerned about section 7 of S. 784 because it singles out two paragraphs of the contract between the United States and the Tulelake Irrigation District for inclusion in the proposed law. The first of these, paragraph b, stipulates that the sumps within the Tule Lake National Wildlife Refuge—

shall be operated and maintained primarily for the protection of lands within the district for agricultural purposes, including flood protection and drainage, and the use of said sumps for said purposes shall be prior to all other uses * * *

Paragraph d of section 7 in the contract specifies that the Secretary of the Interior may make additional modifications of rules and regulations from time to time.

The reasoning for seeking to include only two paragraphs of the contract between the irrigation district and the United States in a law that would be enacted by the Congress is obscure. In fact, the reasoning for including any part of the contract in law is obscure. The two paragraphs that are singled out would, in our opinion, project into the future the same doubts and misapprehensions that have provoked difficulties in the past. Their inclusion would weaken, not strengthen, the overall objectivity of any law that may be enacted by the Congress.

Neither this committee, the Senate, nor the House Subcommittee on Irrigation and Reclamation thought that any such reference was necessary last year; the language in section 6 of S. 793 was satisfactory then. If the Congress were to enact isolated parts of the contract into law, then perhaps the conservationists should insist that the last sentence of section 8 of the contract should be included, too. It reads:

Subject to the terms and provisions of this contract, the jurisdiction of the United States over Tule Lake National Wildlife Refuge shall be unchanged and the continued use of refuge lands and waters for refuge purposes shall be as the Secretary may direct.

The net result of including section 7 of S. 784 would, in the conservationists' opinion, provide grounds for the continuance of unfortunate and unnecessary conflicts between the wildlife refuge and local farmers. We are opposed to section 7 as written. The apprehensions of the local farmers, if they may be termed apprehensions, are unjustified. We would much prefer section 6 of S. 793 in that it recognizes "valid existing rights." We believe that local interests have "valid existing rights" under the terms of the contract.

Conservationists are not trying to run the farmers in the Tule Lake area out of business. Any allegation of that kind is ridiculous. What we are striving to do is to protect the Tule Lake National Wildlife Refuge and to obtain necessary safeguards and assurances so that it can be operated efficiently and productively in future years. Tule Lake is not a local problem. It affects much more than local people. Because of the migratory nature of the waterfowl it accommodates, the influence of the Tule Lake Refuge ranges from Alaska to Mexico, directly affecting the interest of hundreds of thousands of people who reside in the several States of the Pacific flyway. This larger interest, it seems to conservationists, requires that Congress make sure that the law that it enacts does not introduce any obstacles in the proper management of the refuge. The interests of sportsmen and outdoor enthusiasts of all kinds in the several Western States must also be taken into regard. For this reason, the committee is urged to adopt the language of section 6 of S. 793 as it pertains to this situation. It is hoped that the bill can be reported and acted upon early in this session.

The conservationists are quite disturbed about the specific references to those two sections in the contract in this bill. We think that it is uncalled for and unnecessary, and while the colloquy this morning here had to do with this other provision, and Mr. Kimball just mentioned this section 32 of the contract, I still think that it is a serious mistake to consider anything but the references to the contract itself in this legislation.

Mr. Edwards said this morning, or at least I understood him to say, that the conservationists had asked that we ignore the contract, if my understanding of his statement is correct, and I certainly do not want the record to show that.

The conservationists have never suggested that we ignore this contract. What we are trying to say is that there is no use or good in specifically referring to this contract in this legislation.

We have no desire to avoid or to abrogate or to disregard this contract. That is not our thought. We want this contract carried out, but while we don't want the contract ignored, we, at the same time, do not want it recognized in law by specific references in this legislation. We do not want inflexible parts of this contract referred to and made a part of the law. We don't think that that is good. If you want to refer to the contract, which we have no objection to, then we think that is perfectly adequate to refer to the valid and existing rights. While we are discussing obligations of the Federal Government under this contract, I would like to also refer you to the obligations, very severe ones, of the Federal Government under the Migratory Bird Treaty.

It is my understanding that treaties have an overriding effect in many respects, and we certainly have a real obligation under the Migratory Bird Treaty that certainly should be given very serious consideration when we are talking about the Federal Government's obligation under this contract.

Now, if it is very comforting for the Tulalake Irrigation District to have some references made to that, then I can say that it is very discomfoting to a lot of other people to think that treaty obligations are not being more specifically referred to in connection with the maintenance of these important refuges.

One other comment and then I have said about all I care to. The record is full of the importance of these refuges, need for them. When we talk about the obligations to the general public in maintenance of these refuges we are talking about the obligations to literally millions of people. We are talking about these treaty obligations and all of the other responsibilities that we have in the maintaining of these renewable natural resources in the broad public interest over a long haul.

If this legislation that was put through last year, which referred to valid and existing rights, was acceptable last year, and if it went through and was acceptable to the House subcommittee last year, as it was in S. 1988, then I say to you that in my humble opinion it will be acceptable to that House committee again this year, and I hope that this language is deemed adequate by this committee again this year and by the Senate again this year.

With that, I would like to say that we will take this legislation in its stride if the Senate will favor us with this legislation which we think is right, and proper and have urgently needed.

The conservationists will go to work to get this legislation through the House.

Thanks very, very much, Mr. Chairman.

Senator Moss. Thank you, Mr. Gutermuth. Knowing the influence you have around this Congress, I would say that is a promise of some action. Do you have any questions, Senator Kuchel?

Senator KUCHEL. No; just that I am most grateful for your statement, and I think the treaty obligation, while it has not been stressed thus far in these hearings, must be a part of this committee's deliberations because it is the supreme law of the land. It has an overriding impact along with the Constitution of the United States, as you well know, and it does have a bearing, and I appreciate the other comments you have made.

Mr. GUTERMUTH. In that treaty we are charged with the responsibility of maintaining this habitat in these areas, and this is what this legislation is designed to do.

Senator Moss. Thank you, Mr. Gutermuth.

Mr. GUTERMUTH. Thank you.

Senator Moss. Mr. Brandborg, of the Wilderness Society, has left his statement to be included in the record, and it will be made part of the record. Mr. Brandborg is associate executive director of the Wilderness Society. That statement will be included at this point.

(The statement follows:)

STATEMENT OF STEWART BRANDBORG, ASSOCIATE EXECUTIVE DIRECTOR OF THE WILDERNESS SOCIETY

I am Stewart Brandborg, associate executive director of the Wilderness Society. I appreciate this opportunity to comment in the society's behalf in support of the bills before the committee. I shall not take much time because other conservation organizations, with whom we are privileged to be cooperators, will discuss the subject in more intimate detail out of their specific concerns with wildlife environment of this area.

The Wilderness Society is a nonprofit citizens conservation organization with 22,000 members in all of our 50 States. It was founded in 1935 to secure the perpetuation of our wilderness resources. The society is aware of the related values which govern such fundamental dedications as our national wildlife refuge areas which help to perpetuate waterfowl and other wildlife resources.

The wildlife refuge program is so well established that there is no necessity for defending it, but the program as a whole is only as strong as its parts. Among the most important of these is the refuge system in the Klamath Basin area.

The importance of Tule Lake, and the Upper and Lower Klamath refuges, among others, has been documented for your records. Therefore the proposal to stabilize management of the waterfowl resources here through coordination of wildlife conservation and reclamation activities is not only appealing and reasonable, but urgent.

One of the threats which the measures before the committee, S. 784 and S. 793, must overcome is that of homestead entry in the described areas. Homesteading would nullify the values which are desired here. These bills, if enacted, would prevent homestead entry. They would permit the continuation of Federal ownership and they would provide for management and protection of the vitally important Tule-Klamath waterfowl refuges.

We are glad to support, with our cooperators, these measures, together with amendments which we hope will be considered by the committee to strengthen the legislation. We hope that a bill will be reported out soon for consideration on the floor of the Senate.

We recommend that section 7 of S. 784 be clarified to avoid the inference that the water areas in the Tule Lake refuge would be used largely for agriculture, flood control, and related purposes. The wording of section 6 of S. 793 seems to meet this shortcoming. On the other hand, the clear descriptions in S. 784 of refuge areas that would be open to agricultural leasing under regulations of the Secretary of the Interior, seems to be preferable to the language of S. 793.

We respectfully urge the committee to give this legislation prompt and favorable consideration so that these refuges can be given full congressional protection. Only in this way can the perpetuation of the irreplaceable waterfowl resource of the Pacific flyway be assured for the benefit of future generations of Americans.

Thank you for the privilege of appearing here to offer this statement.

Senator Moss. Mr. Callison of the National Audubon Society. Is Mr. Callison here?

**STATEMENT OF DANIEL A. POOLE, EDITOR, OUTDOOR NEWS
BULLETIN, WILDLIFE MANAGEMENT INSTITUTE**

Mr. POOLE. Mr. Chairman, I am not Charles Callison. He had an important meeting downtown, and he left his statement with me, and he asked that I submit it for the record with your permission, and also to make the additional comment that the National Audubon Society favors section 6 of S. 793.

Senator Moss. Thank you. The statement of Mr. Callison will be included in the record at this point, with the further remark made by Mr. Poole.

(The statement follows:)

**STATEMENT OF CHARLES H. CALLISON, ASSISTANT TO THE PRESIDENT, NATIONAL
AUDUBON SOCIETY**

The National Audubon Society, incorporated in 1905 but preceded in organization by a number of State and local Audubon Societies, is America's oldest citizen's organization primarily concerned with the conservation of wildlife and related resources. Local branches and affiliates are now active throughout the United States. Many of them were represented at the biennial Audubon western conference held only 2 weeks ago at Asilomar Beach State Park in California at which the attendance exceeded 800, the largest in history. The long whittling away of the marshes of the Upper Klamath Basin was discussed at the Asilomar meeting. The delegates cheered the introduction of the bills being considered at this hearing and expressed determination to remove the threat of these highly important national wildlife refuges.

Our society, Mr. Chairman, has long been actively interested in the Klamath Marshes and their importance to the migratory bird resources of the Pacific flyway. It was on the basis of information supplied by William L. Finley, pioneer naturalist and western representative of the National Association of Audubon Societies (now National Audubon Society) that President Theodore Roosevelt in 1908 issued the Executive order that made Lower Klamath Lake a Federal bird reservation. It is interesting to recall, and to record here, that the first warden appointed to protect the remarkable wildlife resources of the area was hired, and his salary paid, by the Audubon Society.

It was Mr. Finley whom Director Daniel H. Janzen, Director of the Bureau of Sport Fisheries and Wildlife, quoted last year in describing the pristine condition of Tule Lake, the remains of which were made a national wildlife refuge in 1928.

"When I cruised across Tule Lake in 1908," Mr. Finley wrote, "it was a body of water about 12 or 15 miles long and 10 or 11 miles wide. It was supplied by the water of Lost River entering from the north. It will be remembered that Lost River was the outlet of Clear Lake. The west side and the whole northern border was a vast tule marsh and a natural wildfowl nursery."

Without question, as Director Janzen noted, Tule Lake had few equals in North America as a nesting area and migration mecca for waterfowl and myriads of other marsh-dwelling birds. It is still a marvelously productive area, even if greatly reduced in size from its original condition.

Mr. Chairman, other testimony here has established the vital relationship of the Tule-Klamath complex of refuges to the migratory wildlife resources of the entire West, from Alaska to Arizona and southern California. I shall only re-

emphasize the fact that three-fourths or more of all the wild ducks and geese of the Pacific flyway use these refuges. It holds millions of birds in late summer and early fall, preventing a mass movement of the migrating flocks into the agricultural areas of central and southern California at a time when crops are ripening and being harvested.

The wildlife resources dependent on these refuges, we respectfully submit, are far more important than the additional crops that could be grown there were they drained, irrigated and cultivated to the maximum extent. Please keep in mind, we respectfully ask the committee, that the legislation before you proposes to take away no private property or rights. It would remove or convert no land now being used for agricultural production. It affects only the hopes or ambitions of a few individuals who would like to expand their farming operations or take up homesteads at Tule Lake.

It takes away no home or farm now owned or occupied by any person.

It does, however, protect the interests of many millions of citizens who own, use and enjoy the migratory bird resources of the Pacific flyway.

The two bills before the committee are not essentially different except in respect to the sections that would affect future water supplies of the Tule Lake Refuge. We recommend the language of section 6 of S. 793, the bill introduced by Senators Kuchel and Robertson, as clearly preferable to section 7 of Senator Engle's bill. The latter would serve to perpetuate the old controversy with the local irrigation district. Its effect would be to let the irrigators keep a foot in the door, so to speak, and they would certainly continue to push and pull and pry through pressure on the Department of the Interior, and through litigation, to open the door wider and take more of the water, and eventually the land. One of the basic reasons for this legislation in the first place was to resolve the water controversy.

Mr. Chairman, the National Audubon Society enthusiastically recommends the enactment of either bill, provided the one passed contains the protective language contained in section 6 of S.793.

Senator Moss, Mr. Joseph Penfold, of the Izaak Walton League.

His statement has been left with the committee and will be made part of the record at this point.

(The statement follows:)

STATEMENT OF JOSEPH W. PENFOLD, CONSERVATION DIRECTOR, IZAAK WALTON LEAGUE OF AMERICA

Mr. Chairman, I am Joseph W. Penfold, conservation director of the Izaak Walton League of America. The league is a nationwide organization of citizens devoted to the conservation of America's soil, woods, waters, wildlife, and other natural resources.

The record of last year's hearing on S. 1988 contains clear demonstration of the degree and details of local, State, and National league support for congressional protection of the Klamath-Tule refuges.

We support again today the purposes of both S. 784 and S. 793. We commend and thank the sponsors of these bills for their continuing efforts to preserve the waterfowl values of the Klamath-Tule refuge complex.

The Izaak Walton League favors section 6 of S. 793 which places emphasis on waterfowl management—and that is where the emphasis belongs. Moreover section 6 of S. 793 is identical to the language in S. 1988 passed by this committee and the Senate last session, and was also approved by the House Subcommittee on Irrigation and Reclamation. We are less sure of section 7 of S. 784 because it might subordinate primary waterfowl management purposes to irrigation considerations.

We understand that the committee is being requested to amend this legislation to provide for Federal transfer or disposal of the Klamath Straits unit in Oregon. The league does not support such amendment.

Mr. Chairman, we thank you for the opportunity to state our views.

Senator Moss, Mr. Spencer Smith of the Citizens Committee on Natural Resources.

STATEMENT OF SPENCER M. SMITH, JR., SECRETARY, CITIZENS COMMITTEE ON NATURAL RESOURCES

Mr. SMITH. I am Spencer M. Smith, Jr., secretary of the Citizens Committee on Natural Resources, a national conservation organization with headquarters in Washington, D.C.

We wish to strongly endorse the basic principles of S. 784 and S. 793, introduced by Senators Engle and Kuchel, respectively. We should also like to commend the Senators for their proper concern for waterfowl and recreational resources.

Many measures are before the various committees of the Congress dealing with outdoor recreation resources. The Outdoor Recreation Resources Review Commission and almost every similar study that has been made by local, State, or Federal agency, indicates that the demands for more hunting and general outdoor recreation will increase significantly in the coming years. The task we have before us is to take effective action, in order that the recreational resources of the country will be properly conserved and managed in order to meet our requirements.

In the last session of Congress, the efforts of sportsmen extending over some period of years came to fruition when Congress authorized \$104 million advance per year for 7 years for the purpose of purchasing wetlands and other suitable areas for waterfowl. This was a significant step forward and a recognition by the Congress of the need for immediate action in acquiring the fast disappearing waterfowl and duck areas. The authorization of this accelerated program was enthusiastically supported by people all over the country, and was especially gratifying to American sportsmen, who after initiating the duck stamp program had spent over \$70 million to purchase necessary waterfowl areas.

With burgeoning recreational needs and an increased competition for land use, the increase in value of most of the areas needed for recreational purposes is necessary to place in proper perspective the basic importance of the refuges under consideration in the measures before this committee. The maintenance of the Tule Lake, Lower Klamath and Upper Klamath refuges is of deep and general concern to all that are interested in outdoor recreation. The importance of these areas can hardly be overemphasized in light of the general condition and the specific impact that these areas have on approximately nine Western States. The refuges are vitally important to the Pacific flyway for approximately 80 percent of the ducks in this flyway for nesting, resting, and feeding habitat. Thus millions of waterfowl use the areas in question during the spring and fall migrations.

Another significant effect of these refuges is their importance in meeting our country's obligation with Canada and Mexico under the existing migratory bird treaties. Many of the northbound migrants stop in these areas and more than 100,000 ducks, combined with thousands of Canadian geese, are reared here each year. The Pacific flyway's most scarce species of diving ducks, the Red Heads and Ruddies, are produced on these refuges. It has been said that acre for acre

these refuges are as productive as Canada's best duck producing marshes.

In a real sense this is a last ditch effort to guarantee the use of these areas for waterfowl. The area has been whittled constantly from the great famous marsh of 60 years ago which at that time totaled approximately 190,000 acres. Today only 25,000 is left, and the wet lands now existing comprise almost all of the waterfowl habitat that remains. It has been a marvel that these areas from such a reduced land base have been able to be as productive and play such an integral part in one of the most important flyways of the country.

There have been occasions in the past where there has been considerable misunderstanding as to the motive of all those who desire specific uses for the land in question. It has been charged that conservationists desire that contracts with farmers be set aside or abrogated. On the contrary, it has been pointed out time and again that judicious use of the farming activities need not impair the importance of waterfowl conservation areas. The purposes of the two measures before the committee are to make sure that in the general uses of the areas involved that waterfowl areas be protected and not be destroyed or rendered useless to their basic purposes by other activities that are provided for in the areas. Both measures achieve this protection in the main and both seek to accomplish the same goals.

Our preference as to detail would be for section 5 of S. 784 rather than section 4 of S. 793. The reason for this preference stems essentially from spelling out the waterfowl management areas and their relationship to the April 1956 plan for water life use of Federal lands of the Upper Klamath Basin, Oregon and California.

Also, we would prefer section 6 of S. 793, to section 7 of S. 784. This preference perhaps is one of semantics, though we do feel that intent is of importance. Last year the Senate passed the language presently in section 6 of S. 793 and the Subcommittee on Irrigation of the House Interior and Insular Affairs Committee also agreed to the same language. Section 7 of S. 784 appears to give undue emphasis to the agricultural and irrigational uses of these areas without a concomitant recommendation and statement as to the importance of waterfowl preservation. Certainly section 6 of S. 793 appropriately guarantees the rights of farmers and others in the area and reaffirms the sanctity of the contract between those and the Federal Government. There appears to be no good reason not to use the language in section 6, that had the approval of the Senate last year.

It is the sincere hope of our organization that the Senate will act with its customary dispatch and report favorably on these measures to the Senate.

Senator Moss. Thank you, Mr. Smith. That completes the list of witnesses that we have scheduled for today.

If there is anybody that has been left out that would like to say a word now he may do so. Otherwise the hearing will be adjourned at this point.

(Thereupon, at 3:22 p.m., the hearing was adjourned.)

APPENDIX

FLOOD CONTROL OPERATION IN TULELAKE SUMPS

(By Tulalake Irrigation District, October 1962)

REVIEW AND CONCLUSIONS

(By Howard Stoddard, Stoddard & Karrer, Los Banos, consulting engineers)

SUMMARY AND CONCLUSIONS

1. The storm of October 1962 caused inflow to sump 1 that exceeded available storage capacity.

2. As a result of the surplus inflow, it was necessary to flood certain lands to prevent the sump 1 water levels from exceeding 4,035.50, the maximum safe operating level.

3. A combination of the following listed unusual circumstances that cannot reasonably be expected to reoccur in future years prevented damage to crops estimated at \$280,000 and damage to the drainage system estimated at \$31,500.

(a) Because of the construction being carried out in the Frog Pond, a limitation on cropping in the Frog Pond had been instituted in 1962. As a result, only grain had been grown in the area and all grain in the area had been harvested prior to the storm. Because of the fact that there was only grain stubble in the Frog Pond, certain areas were available for flooding without crop damage or without damage to the construction underway in the area. During October of any other year, there would have been unharvested potatoes in the Frog Pond area, making it necessary to flood sump 2. In so doing, unharvested potatoes in sump 2 would have been flooded, with damage estimated at \$280,000. Damage to the drainage system in sump 2 would have approximated \$31,500.

(b) The N canal was dry, thus making storage space available in the canal itself.

(c) The Lost River diversion channel could be operated at full capacity. As a result, no water was released down Lost River below Wilson Bridge.

4. If the sump 1 water levels had been controlled prior to the storm in accordance with recommendations of the Tulalake Irrigation District as proposed in 1959 rather than in compliance with regulations prescribed by the Secretary of the Interior, storage space adequate to control the entire flood of October 1962 would have been available in sump 1 and no flooding of lands outside of sump 1 would have been required.

5. Results of the storm indicate quite clearly that the rules and regulations now in effect should be reviewed in an effort to establish more realistic flood control capacity in the fall and winter months.

INTRODUCTION

I. HISTORY OF THE OCTOBER 1962 FLOOD

This report is the result of a study conducted by the Tulalake Irrigation District to analyze the effect of the October 1962 storm on the district.

The Tulalake weather station recorded a total rainfall of 4.87 inches during the period from October 8 through October 14. On October 10, the storm produced 2 inches of rain in less than 12 hours. This storm caused heavy runoff from the 300-square-mile watershed tributary to the drain and sump system of the district. The Lost River at the lower Lost River diversion dam peaked at 6 p.m., October 12, at 518 cubic feet per second.

The tributary runoff resulting from the storm caused the water levels in district drains and Tulalake sump 1 to rise at an alarming rate. The lake

level before the storm was at elevation 4,034.80. This elevation was within operational tolerance of elevation 4,034.75, the objective level for the month of October under the 1960 rules and regulations as prescribed by the Secretary of the Interior. The total measured net inflow into sump 1 as tabulated for the period from October 6 through November 6 totals 36,447 acre-feet. Normal net inflow for this period is approximately 8,200 acre-feet. Exhibit I is a table entitled "Operation Study of October 1962 Storm—Tulelake, Operated Under the 1960 Rules and Regulations." Tabulated in this exhibit are precipitation on the lake, water inflow directly into the lake, the effective storage in sump 3 as a result of the district's flooding operations, net inflow into sump 1, lake level elevations, and pumping at plant D.

The table shows that no spill was released past Wilson Bridge. However, the report of daily operations, Klamath project, recorded an average flow in Lost River of 3,050 second-feet on October 14, all of which was diverted to the Klamath River through the Lost River diversion channel. The Tulelake Irrigation District manager was notified by the U.S. Bureau of Reclamation Klamath project manager on the night of the 13th and the 14th that it might be necessary to release excess water into Lost River below the diversion channel. Virtually the entire capacity of the Klamath River was available for carrying floodwaters from Lost River diversion channel and, as a result, there was greater capacity in the diversion channel than anticipated. For this reason, it did not become necessary to spill Lost River water into the Tulelake sump. The safe operating level for the channel is 4,089.25. The channel reached a maximum elevation of 4,089.17 during the storm. This was alarmingly close to the safe elevation.

II. OPERATION DURING STORM OF OCTOBER 1962 UNDER U.S. BUREAU OF RECLAMATION RULES

The Tulelake Irrigation District converted its operation to one of flood control on October 10, the day of the 2-inch rain. This rain alone caused the elevation of the water surface of sump 1 to rise 0.25 feet during that 1 day. Projection of anticipated runoffs into the sump as a result of the storm showed that the water surface elevation in sump 1 would exceed 4,035.50, the maximum safe elevation. At that time, the district began looking for areas in addition to sump 1 in which water could be stored with a minimum of damage. The only sump area in the district that did not have potatoes in the ground was the Frog Pond (sump 3). The fortuitous situation was a result of a limitation in crops in the Frog Pond related to the 1962 construction program. In cooperation with the Bureau of Reclamation, areas were selected in the Frog Pond for flooding that would not affect the contractors who were engaged in the construction of ditches and drains in the area. These selected areas are shown in the attached map (exhibit II). Flooding operations were conducted in an orderly manner. Ditchriders were put in the area and began taking water out of and diverting water from sump 1 into the Frog Pond. On the 12th of October, 576 acre-feet of water were diverted from and taken out of sump 1 and put into some of the selected areas of the Frog Pond. By the next day, this was increased to approximately 950 acre-feet and this rate was maintained up until the 22d of October at which time it was gradually reduced.

Pumping plant 10, draining the Frog Pond, was kept in operation to maintain the drains at an operating elevation, thus preventing damage to the drains. Drain elevations in the Frog Pond did not exceed levels reached during the past irrigation season. Although over 14,000 acre-feet of water were diverted from and taken out of sump 1 and put into the Frog Pond and other flooding areas, the net storage by flooding for the period as shown on the operations study was 8,759 feet. The flooding was regarded necessary by the district manager and the Klamath project manager to prevent the necessity of breaking dikes or releasing water into a sump and flooding irrigation and drainage facilities and unharvested crops. Exhibit I tabulates the net inflow into sump 1 from October 6 to November 6 and shows the total to be 36,447 acre-feet. The amount of water evacuated by pumping plant D for the same period was 17,106 acre-feet. This left a balance of 19,341 acre-feet to store with only 10,100 acre-feet of safe storage space available in sump 1, this being the storage space available under the rules and regulations prescribed by the Secretary of the Interior. The physical condition of the facilities used for water spreading was most advantageous at the time of the storm. As an example, the entire South N Canal was completely dry as a result of construction work being carried on in that area. When it became necessary to divert water from sump 1 to the South N Canal, it

took several days for the canal to reach operating level, thus a significant quantity of water was stored in the canal alone. All pumping plants and water distribution facilities were in operating condition and except for power failures and the difficulty of controlling moss, all facilities ran continuously throughout the storm.

Prior to the storm, the district had just turned on the second unit at pumping plant D in order to maintain the lake at the elevation prescribed by the Secretary. Serious difficulty was encountered in the operation of pumping plant D during the entire storm because of two major operational difficulties.

(1) The storm brought in huge quantities of heavy moss that plugged the trash rack gates, and made it impossible to operate the plant at full capacity. The decision was made on the 10th of October to go to full operation of the five units at plant D; however, the operational study (exhibit I) shows that steady five-unit operation was not reached until October 14 because of difficulties in controlling moss and power failures. It was necessary to put on an 8-man crew on a 3-shift operation requiring 24 men per day to pull the moss at plant D. The moss was taken from the pumping plant by the district's 2-cubic yard loader and placed on a pile which, within a week, reached a size comparable with the size of the pumping plant itself.

(2) The other operational difficulty encountered was one that can happen in any storm—power failure. The Tule Lake Basin is fed by the Pacific Power & Light Co. from three sources: (1) A line coming from Dorris to pumping plant D substation, (2) another coming from Lakeview, and (3) one from Klamath Falls. The district suffered a power outage at plant D for 6 hours and at other pumps for longer periods during the storm because all three high voltage lines were down. What power was restored was fed for 2 days from one line with no assurance given that steady power could be continued. Low-voltage conditions were prevalent throughout the storm.

The spreading operations, although practical and necessary, were expensive. Additional pumping as a result of the flooding operations cost approximately \$3,000. The cost incurred for the operations required to conduct the flooding practice amounted to \$2,500. These extra expenses were caused by having inadequate available storage in sump 1 to contain the storm. The exceedingly high waves in sump 1, resulting from the storm winds, endangered the dikes and indicated a need for increased freeboard.

III. OPERATION UNDER NORMAL CROPPING PATTERN

Normal cropping patterns in the Frog Pond (sump 3) did not exist this year because of construction contracts in that area. The Frog Pond has been in the past and will be in the future, open to cash crop leasing. If the storm had occurred when potatoes had been grown in the Frog Pond as would have been the case in any other year, it would have been impossible to release any water into that sump without having done extensive crop damage. The rules and regulations set a priority of flooding, placing sump 2 as the first area to be selected. Assuming operations under the rules and regulations and a normal cropping pattern, it would have been necessary to release 8,700 acre-feet of water into sump 2, flooding the land as shown in exhibit III. A study of exhibit III will show that 453 acres of row crops in sump 2 would have been inundated. Assuming the same acreage in row crops that were planted this year, total crop damage would have been in excess of \$280,000. Also 28 miles of drain ditches would have been completely submerged necessitating a cleaning operation after dewatering. The cost of this maintenance work would be approximately \$31,500. The estimated cost of additional pumping made necessary by the flooding operation is \$3,000. The total damages and additional expense, during a normal crop year as a result of operating under the levels presently specified for October, including the cost of dewatering the sump 2 area and other miscellaneous costs is estimated at \$314,500.

IV. HYPOTHETICAL OPERATION DURING FLOOD OF 1962 UNDER RULES AND REGULATIONS PROPOSED BY THE TULELAKE IRRIGATION DISTRICT, DECEMBER 1959

This storm could have been contained if the sump had been operated consistent with the operations proposed by the district in the report entitled "Flood Control Operation of Tule Lake Sumps, December, 1959," by Stoddard & Karrer, Civil Engineers. The district recommended a lake level during October at elevation 4,034.0. Exhibit IV is the operation analysis of the same storm as-

suming an elevation of 4,034.0. Analysis shows that the storm would have been contained with a maximum lake level of 4,035.42, thus saving the expense of handling any floodwaters outside of sump 1. The risk of crop damage and extensive drain damage would have been contained.

This type of operation would have prevented much damage to the dikes containing sumps 1a and 2b. The district is now engaged in extensive bank maintenance work throughout the sump. The A dike, C dike and the Winema dike suffered serious washing as a result of high lake levels and strong winds that caused waves to wash dike banks. Lower lake levels during the storm would have reduced the dike erosion that took place. The extent of this damage would be difficult to analyze and no attempt is made at this time to determine this effect of the rules and regulations.

Additional costs due to loss of lease revenues and O. & M. charges on the land may have occurred if the area in sump 2 could not have been dewatered in time for the 1963 irrigation season.

(The following communications and statements were submitted to the committee subsequent to the close of the hearing:)

LOS ANGELES, CALIF., April 23, 1963.

Senator HENRY M. JACKSON,
Chairman, Irrigation and Reclamation Subcommittee of the Senate Interior and Insular Affairs Committee, Washington, D.C.:

The Southern Council of Conservation Clubs, with a membership in excess of 20,000, urge the passage of S. 793. The Tule-Klamath Refuge must not be reduced in size or changed in any way that will make it less favorable for waterfowl. It is an extremely important part of Pacific flyway of migratory waterfowl. Section 7 of Senate bill 784 by Senator Engle which gives control of the water level to the Tule Lake Irrigation District is truly unacceptable in any form. We, the sportsmen, have not forgotten the fight we had a few years ago to force these people to maintain a proper lever of utilization by both hunters and waterfowl.

Sincerely yours,

JOHN "BILL" LOWERY.
JOHN C. LOWERY.

SAN FRANCISCO EXAMINER,
San Francisco, Calif., April 23, 1963.

Hon. HENRY M. JACKSON,
*Chairman, Senate Interior and Insular Affairs Committee,
Senate Office Building, Washington, D.C.*

DEAR SENATOR JACKSON: About 125,000 duck hunters in California and the large group of farmers who grow rice on about 400,000 acres of land are highly in favor of Senator Kuchel's bill (S. 793), because it will enable the U.S. Sport Fisheries and Wildlife Service to get sufficient water to prevent another large-scale outbreak of botulism which killed more than 200,000 ducks during 1 season on the Klamath and Tule Refuges. Passing bill S. 793 will also provide enough water to hold all waterfowl instead of having them move south to eat our rice in the Sacramento and San Joaquin Valleys. We in central California will appreciate anything you can do for us to save our ducks and rice.

J. P. CUENIN.

STATE OF CALIFORNIA,
FISH AND GAME COMMISSION.
Sacramento, Calif., April 16, 1963.

Hon. HENRY M. JACKSON,
*Chairman, Senate Interior and Insular Affairs Committee,
Washington, D.C.*

DEAR SIR: With reference to Senate bills 793 and 784 I would like to go on record in support of Senate bill 793 and in opposition to Senate bill 784.

Section 7 of the Engle bill would be very detrimental to the waterfowl situation in Tule Lake and make the situation impossible.

Thank you for anything you can do to help enact the Senator Kuchel bill.

Yours very truly,

T. H. RICHARDS, Jr.,
Fish and Game Commissioner.

OREGON FARM BUREAU FEDERATION,
Salem, Oreg., April 19, 1963.

HON. FRANK E. MOSS,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR MOSS: I am informed that hearings will be held before your subcommittee on Irrigation and Reclamation on bills S. 784 and S. 793 in Washington, D.C., on April 24, 1963.

Speaking for the Oregon Farm Bureau Federation I wish to state that we look with favor on the general purpose of both bills but we feel that, as they apply to the part of the refuge areas in Oregon, some modifications are in order. Specifically, the amendments proposed by the Klamath Drainage District and associated groups appear to be in the public interest and we recommend their adoption.

The Farm Bureau has recognized the mounting pressure on recreation and wildlife resources that increasing population is occasioning, and has concluded that successful utilization must depend on local cooperation among the resource users and the Federal and State managing agencies.

In line with this concept this organization has conducted studies and has held public conferences with the groups and agencies in the Klamath Lakes area regarding the problems of landownership and wildlife management. It became quite evident that the basis for cooperation was present. The legitimate needs of resources for wildlife management was fully conceded and the need, on the other hand, for the interest and the counsel of the local farmers in the long-range management problems was clearly recognized. No challenge to the fairness of the proposals of the Klamath Drainage District, as set forth in the proposed amendments, was voiced by the management representatives present. Mutual respect among the parties was quite apparent.

It is the hope of this organization that the attitude of cooperation here evidenced may be encouraged by the actions of the Congress on the bills now before your committee.

Sincerely,

HAROLD BEACH,
President, Oregon Farm Bureau Federation.

RESOLUTION OF THE JACKSON COUNTY CHAPTER, OF THE IZAAK WALTON LEAGUE
OF AMERICA, INC., MEDFORD, OREG.

PRESERVE KLAMATH STRAITS UNIT (FIRING LINE) OF THE LOWER KLAMATH NATIONAL
WILDLIFE REFUGE

Whereas it is essential that the Federal Government safeguard existing recreational sites; and

Whereas the Klamath Straits unit of the Lower Klamath National Wildlife Refuge has high waterfowl value; and

Whereas this is the only public hunting grounds of this nature in Oregon; and

Whereas demands for public hunting grounds are increasing; and

Whereas disposal of the Klamath Straits unit would establish a precedent that might lend to sale of lands elsewhere in the refuge complex; and

Whereas it is questionable that any development in the Upper Klamath Lake area would attract the ducks from the Lower Klamath and Tule Lake Refuges; and

Whereas due to climatic and physical features of the lands, waters, and marshes of the Upper Klamath Lake, the duck and goose hunting in that area practically terminates when the marshes start freezing; and

Whereas snowfall and cold of the Upper Klamath Refuge is far more severe than that of the Lower Klamath Refuge; and

Whereas stormy weather results in dangerous water conditions that make most of the marshes of the Upper Klamath Lake inaccessible much of the time during the hunting season; and

Whereas the agricultural process of flooding the fields of the Klamath Straits unit late in December provides the best hunting in the Klamath Basin; and

Whereas it is doubtful that public lands can be placed in private ownership under conditions which can reserve in perpetuity the hunting of the Klamath Straits unit as it exists today; and

Whereas leasing of these lands for agricultural purposes will result in 25 percent of the net revenues collected being paid annually to Klamath County; and

Whereas disposal of the unit could cause problems because of the 160-acre reclamation limitation; and

Whereas it is possible for the people of the United States to secure enactment of one of the bills now before Congress without the loss of the Klamath Straits unit: Now, therefore, be it

Resolved, That the Jackson County Chapter of the Izaak Walton League of America is opposed to any amendment of bills before Congress that would relinquish any of the Klamath Straits unit to private ownership.

MONTE VISTA, COLO., April 16, 1963.

HON. FRANK E. MOSS,

*U.S. Senator, Chairman, Senate Subcommittee on Irrigation and Reclamation,
Senate Office Building, Washington, D.C.*

DEAR SENATOR MOSS: On April 24 you will be listening to testimony on the merits of giving congressional protection to Tule Lake, Lower Klamath, and Upper Klamath National Wildlife Refuges (S. 784 and S. 793). Although I will be unable to attend this important hearing, I would like to throw my full support behind these bills. In general, I believe S. 793 comes closer to accomplishing the task that needs to be done, but I would suggest that S. 784 contains a clearer description of the refuge areas that would be opened to agricultural leasing.

This complex of refuges is probably the most important in all of the United States. As you know, upward of 80 percent of the entire Pacific flyway waterfowl funnel through them. It is absolutely imperative that their effectiveness for caring for these millions of birds remain unimpaired. If this Nation is to discharge its responsibility in preserving an important national heritage, and is to provide hunting recreation outlets for our increasing population, then the integrity of the Klamath Basin refuges must be preserved.

By copies of this letter I am urging Senators Allott and Dominick from this State to attend the hearings and to speak in favor of giving maximum protection to the refuges.

Sincerely yours,

ROBERT M. BALLOU.

STATE OF DELAWARE,
BOARD OF GAME AND FISH COMMISSIONERS,
Dover, Del., April 19, 1963.

Senator FRANK E. MOSS,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR MOSS: The Board of Game and Fish Commissioners of the State of Delaware wishes to convey to you and members of your Senate Committee on Irrigation and Reclamation its interest in S. 784 and S. 793. Either of these bills would give congressional protection to the Tule-Klamath Refuges by establishing their boundaries ruling out further homesteading and by dedicating them permanently to wildlife conservation. It is our feeling that these are all essential steps in preserving these vital refuges. Our commission and the sportsmen of this State are in favor of legislation to accomplish these aims.

Sincerely,

NORMAN G. WILDER, *Director.*

Izaak Walton League of America, Inc.,
 Redwood Empire Chapter,
 Santa Rosa, Calif., April 18, 1963.

Hon. HENRY M. JACKSON,
 Chairman, Senate Interior and Insular Affairs Committee, Senate Office Building,
 Washington, D.C.

DEAR SENATOR JACKSON: The Redwood Empire Chapter of the Izaak Walton League (Santa Rosa) in common with the members of some 28 other California chapters is deeply interested in two current Senate bills affecting the Tule Lake-Klamath Wildlife Refuge.

The Tule Lake-Klamath Refuge is well recognized as the keystone in the geographic structure supporting the Pacific flyway for migratory waterfowl.

Senator Engle's bill S. 784 proposes to allow the Tule Lake Irrigation District to control the water levels in the sumps. In years of water scarcity this could be disastrous to the waterfowl which furnish the recreational mainstay of our California duck and goose shooters. We are bitterly opposed to this as there is no economic justification or necessity for destroying this recreational resource. For years the expenditures of duck and goose hunters for guns, equipment, food, lodging, and transportation have attained the proportions of big business, with no consumptive use of irrigation water and no appreciable use of lands economically capable of agricultural development.

Waterfowl hunting should be recognized for the clean, soul-satisfying outdoor sport that it is, with a legitimate claim to equitable recognition in the apportionment of uses of public lands and public waters.

Senator Kuchel's bill S. 793 provides very properly that the water levels in the sumps will be controlled by the U.S. Fish and Wildlife Service through the Secretary of the Interior.

We strongly urge your committee to give favorable consideration to S. 793.

Respectfully yours,

ROBERT J. WHITTING
 Chapter President.

NASHVILLE, TENN., April 23, 1963.

Senator FRANK E. MOSS,
 Senate Office Building,
 Washington, D.C.

With other member States of International Association of Game, Fish, and Conservation Commissioners, we urge your favorable consideration of Senate bills S. 784 and S. 793.

FOREST V. DURAND,
 Director, Tennessee Game and Fish Commission.

STATE OF KANSAS,
 FORESTRY, FISH AND GAME COMMISSION,
 Pratt, Kans., April 18, 1963.

Senator FRANK E. MOSS,
 Chairman of the Subcommittee,
 U.S. Senate, Washington, D.C.

DEAR SENATOR MOSS: We in Kansas in the recreation field are extremely interested in the national waterfowl picture and we believe the Tule-Klamath Refuge in California is an extremely valuable part of the national waterfowl picture.

I am chairman of the National Waterfowl Council and this organization is very much concerned with this refuge. We understand that your subcommittee is holding hearings on Senate bill 784 and Senate bill 793 regarding the protection and stabilizing the boundaries of this refuge.

As the director of the Kansas Forestry, Fish and Game Commission who has a tremendous stake in the waterfowl situation for the citizens of this State and as chairman of the National Waterfowl Council we strongly urge favorable consideration of these bills.

Yours truly,

GEORGE C. MOORE, Director.

OREGON HUNTING & RETRIEVER CLUB,
Portland, Oreg., April 19, 1963.

Hon. WAYNE L. MORSE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MORSE: The Oregon Hunting & Retriever Club, Portland, Oreg., would like it to go on record, as favoring the objectives of Senate bill S. 793.

We feel that in promoting the conservation of our wildlife resources on the Pacific flyway in the Tule Lake, Lower Klamath, and Upper Klamath National Wildlife Refuges in Oregon and California; enjoyment would be met by future generations.

It was impossible to foretell the requirements of national wildlife as it is at present, compared to 1908 when this national wildlife was established.

Today wetlands and areas conducive to the propagation of migratory waterfowl are diminishing to a point where we should feel extremely concerned for the future of our waterfowl and other wetland birds.

We request that the recommendation of this club be made a part of the official record on this legislative proposal.

Sincerely,

GAILLEN R. HARVEY, Secretary.



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